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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476
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December 16, 2010

DEPARTMENT OF ECOLOGY

Kelley Susewind, Program Manager
Water Quality Program
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

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WATER QUALITY PROGRAM

RE: Revision of Washington State Water Quality Standards

As Chairman of the Swinomish Indian Tribal Community, I am writing to express my concerns regarding the potential revisions to the State's surface water quality standards.

I represent a Native American community with countless generations of deep connection and interdependence with our water and the resources dependent on that water. We are fishers and as such, improving and sustaining the health of the water and its natural resources is of the utmost importance to our livelihoods, our culture, and our health as a people.

We are closely watching the review process of the Washington State water quality standards (WQS), just as we have done with the Oregon review process. We expect and strongly support revisions to the WQS that will result in more stringent standards.

In particular, we would like to mention two areas of the Washington State WQS that are in need of more rigorous standards and more accurate statistics: fish consumption rates and criteria for toxic pollutants.

FISH CONSUMPTION RATES

There are several flaws in the calculation of current fish consumption rates. I have summarized these inaccuracies below:

1. "Fish" should refer to all fish and shellfish that people consume within a geographic boundary, *all freshwater, saltwater and estuarine species*. The current 6.5 grams per day (gpd) rate in the Washington State WQS, derived directly from the outdated US EPA Office of Water data, does not include marine species. When the WQS are updated, they must include all

fish consumed within Washington State in order to be considered protective of human health.

2. *Non-consumer data should not be included in the determination of a fish consumption rate.* The current rate includes data from non-consumers which lowers the overall fish consumption rate and is thus not protective of fish consumers.
3. *The new rate must protect my people-- tribal fishers who consume fish.* The fish consumption rate (fcr) cited in the current Washington State WQS (6.5 gpd) is no longer considered representative of the US general population, let alone those populations who consume orders of magnitude more fish than the general population. Since the purpose of establishing a fish consumption rate is to be protective of the people who eat fish, it is counter-productive to choose a number that is too low and thus not representative. The fcr should protect the people who consume the most fish—such as tribal members—and thus ensure that all people are safe.

For developing ambient water quality standards, a US EPA technical support document (2000) refers to an “ideal” scenario of using fish consumption rates derived from the local populations who eat fish from the water body in question, and that those who eat the most fish are given “priority.” If local data are not available, then choosing a population that closely mirrors the local population is recommended; regional data is acceptable if other data are not available. Only if no other data are available, should national data be employed. We are fortunate in Washington State to have several sources for local data, including tribal fish consumption surveys. *We believe that the Suquamish (2000) survey is the least flawed and the most representative of Coast Salish tribes—a population who consumes large amounts of fish and thus the population that the fcr should aim to protect.* We acknowledge that each Tribe is unique and neighboring tribes may not eat the same amounts of fish and shellfish; however we have studied all of the Washington State tribal surveys and believe that the Suquamish survey is most representative of the tribes. Other tribal surveys (e.g., the Tulalip and Squaxin Island survey, the Columbia River Inter Tribal Fish Commission [CRITFC] survey) contain inaccurate information due to data collection and analysis errors (see Donatuto and Harper 2008 for additional details of these errors).

4. *Revised fcr should reflect the 95 percentile of the Suquamish tribal fish consumption data, not the average.* Looking at Washington State data, we feel that the Suquamish data is most representative. *The 95 percentile Suquamish fish consumption rate for all species harvested in Puget Sound is 766.7 grams per day.* It is the subsistence, high-use fish consumers of all tribes, reflective of the Suquamish rates, who are at the highest risk because they still practice a traditional lifestyle. If subsistence users are protected, then the health of the population is protected. Policy guidance is required to ensure the protection of vulnerable populations without imposing the burden of risk reduction on those populations themselves

(i.e., it is unacceptable to protect the average person and expect the vulnerable groups to provide the additional needed protection themselves).

An example of why it is important to pay attention to which set of tribal data is chosen, and how conservative the protection offered by a specific rate really is, can be illustrated by examining the CRITFC (1994) data. The CRITFC 95th percentile is 170 gpd. However, within the Confederated Umatilla Tribes, one of the CRITFC member tribes, a subset of subsistence consumers who adhere more closely to traditional practices such as harvesting and preparing their own food currently consume approximately 540 gpd (Harris and Harper 1997). The large difference in these two rates points to the fact that even within one tribe practices are not homogenous, so using any rate less than the 95 percentile from a tribal fish consumption survey will fail in protecting the health of many more people than one initially assumes. This point is of particular importance considering that the Oregon rates were based on CRITFC data.

5. *While we are recommending a revised rate based on current Suquamish data for this tri-annual review process, we explicitly state that this suggested Suquamish rate is not our final, preferred rate. We will continue to push for use of tribal rates that are not suppressed. Many Native people have been forced to reduce their intake below historic subsistence levels, in essence suppressing their fish consumption rate (Harper and Harris 2008). A 'suppression effect' occurs when a fish consumption rate for a given population, group, or tribe reflects a current level of consumption that is artificially diminished from an appropriate baseline level of consumption for that population, group, or tribe. The more robust baseline level of consumption is suppressed, inasmuch as it does not get captured by the fish consumption rate (NEJAC 2002: 43-45). Using the lower, contemporary rates in regulatory actions and in setting standards sets the maximum consumption value that may be safe to harvest and consume in perpetuity, effectively restricting tribes from ever achieving their desired traditional subsistence consumption rates in the future.*

CRITERIA FOR TOXIC POLLUTANTS

1. We request that the criteria for toxic pollutants be updated to reflect the most recent data and standards for each pollutant. Many of the current criteria are outdated and have since been given more stringent standards either at the federal or state level.

I appreciate that you have asked for review and comments on the State's tri-annual review process. As a federally-recognized Tribe, we request a meaningful and committed place at the table in deciding how the Washington State WQS are updated. If you would like more detailed information on our comments, please contact Swinomish employee Jamie Donatuto at 360.466.1532 or jdonatuto@swinomish.nsn.us.

Thank you for your time and attention to these important matters.

Sincerely,

Brian Cladoosby, Vice Chairman

Brian Cladoosby, Chairman
Swinomish Indian Tribal Community

CC: Ted Sturdevant, Director, WA DOE

Citations:

CRITFC (Columbia River Inter-Tribal Fish Commission). 1994. A Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin. Technical Report no. 94-3. Columbia River Intertribal Fish Commission, Oregon.

Donatuto, J. and B. Harper. 2008. Issues in Evaluating Fish Consumption Rates for Native American Tribes. *Risk Analysis* 28(6): 1497-1506.

Harris, S.G. and B.L. Harper. 1997. A Native American exposure scenario. *Risk Analysis* 17(6):789-795.

Harper, B.L. and S.G. Harris. 2008. A possible approach for setting a mercury risk-based action level based on tribal fish ingestion rates. *Environmental Research* 107(1):60-68.

NEJAC (National Environmental Justice Advisory Council). 2002. Fish Consumption and Environmental Justice. US Environmental Protection Agency, Washington, DC. URL: http://www.epa.gov/compliance/resources/publications/ej/fish_consump_report_1102.pdf (September 15, 2007).

Suquamish Tribe. 2000. A Fish Consumption Survey of the Suquamish Indian Tribe of the Port Madison Indian Reservation, Puget Sound Region. Suquamish Fisheries Department, Suquamish, WA.

USEPA (US Environmental Protection Agency). 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. EPA-822-B-00-005. US Environmental Protection Agency, Office of Water, Washington, D.C. URL: <http://www.epa.gov/waterscience/criteria/humanhealth/method/supportdoc.pdf> or <http://www.epa.gov/waterscience/criteria/humanhealth/method/index.html> (last accessed April 2008).