



Upper Columbia River Group

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March 15, 2010

Ted Sturdevant
Director, Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Mr. Sturdevant,

On behalf of Sierra Club and the Center for Environmental Law & Policy (collectively "Sierra Club"), I write to invoke the Department of Ecology's Dispute Resolution Process with respect to certain issues arising out of the Spokane River Dissolved Oxygen TMDL, issue February 12, 2010. Sierra Club requests opportunity for oral presentation to the Dispute Resolution Panel, which is currently scheduled to meet on April 5, 2010. We thank you for the opportunity to engage in informal resolution of issues relating to the Spokane River DO TMDL.

Reasons for Dispute

Sierra Club disputes two aspects of the TMDL.

- (1) The Spokane River Dissolved Oxygen TMDL makes a waste load allocation to Spokane County for its proposed wastewater treatment plant. We contend this waste load allocation is improper and in violation of Clean Water Act requirements and regulations governing TMDLs. As a sub-issue, to the extent the WLA is based on assumptions re phosphorus concentrations in groundwater, we contend those assumptions may be incorrect.
- (2) The Spokane River Dissolved Oxygen TMDL proposes that Spokane County may offset its pollution discharge by utilizing its "septic tank elimination program" (STEP). We contend that the TMDL, combined with other approvals issued by Ecology, improperly approves the County's offsets program pursuant to state regulations. As a sub-issue, serious questions arise whether the County may properly claim sewage offset credit, given the contributions to the STEP made by state taxpayers and other local agencies and entities.

Prior Involvement

Sierra Club has provided substantive comments on each of the four drafts issued for the Spokane River dissolved oxygen TMDL (see list of comments below), provided expert reports evaluating Spokane County's proposed water quality offset program, participated as a member of the TMDL advisory committee, and met with Ecology staff on many occasions to discuss the issues. Sierra Club also has been a longstanding commenter and participant in Spokane County's environmental and facilities review process for the proposed new treatment plant.

Applicable Law

Applicable laws include the following:

- Clean Water Act, 33 U.S.C. 1341, et seq., including but not limited provisions relating to water quality standards (Section 303), NPDES permits (Section 402) and implementing regulations, including 40 CFR Parts 122, 134 and 125 and NPDES regulations, 49 Fed. Reg. 37998
- Water Pollution Control Act, RCW Ch. 90.48, and implementing regulations, including state water quality standards, WAC Ch. 173-201A, including but not limited to the water quality offset regulation, WAC 173-201A-450

Related Correspondence

Sierra Club's correspondence with the Department of Ecology relating to the Spokane County issue includes the following letters and reports, which are a part of Ecology's files and records pertaining to the Spokane River DO TMDL:

- Sierra Club comments on Spokane River Dissolved Oxygen TMDL (12-28-04)
- Sierra Club/CELP comments on 2007 draft DO TMDL for Spokane River (11-13-07) (particularly pp. 45-48 and cited appendices, including reports prepared by Gary Andres and Dr. Joel Massman)
- Sierra Club/CELP comments on May 2008 draft Dissolved Oxygen TMDL for Spokane River and Lake Spokane (6-24-08)
- Sierra Club comments on Spokane River Dissolved Oxygen TMDL (12-30-09)

Spokane County documents are also relevant, including:

- Letter, Sierra Club to Spokane County Commissioners (12-1-08)
- Spokane County Wastewater Treatment Facility Planning Documents (on-line at <http://www.spokanecounty.org/utilities/waterreclamation/content.aspx?c=2362>)
- Onsite Sewage Disposal System Phosphorus Loading Estimate (HDR 2006)
- Sierra Club comments on Spokane County WWTP DEIS (5-24-04)

Ecology correspondence with Spokane County regarding its proposed treatment plant facilities plan appears to approve the offset program:

- Letter, James Bellatty, Department of Ecology to Bruce Rawls, Spokane County Utilities (3-14-08)

Desired Resolution

The waste load allocation for the proposed Spokane County wastewater treatment plant should be removed from the TMDL. References to Spokane County's proposed offset program should be stricken from the TMDL and the TMDL should be revised to clarify that any such offsets must be determined only when an NPDES permit is issued to the County.

Thank you for your consideration,



Rachael Paschal Osborn
Spokane River Project Coordinator