

Spokane Tribal Natural Resources

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July 10, 2019

Susan Braley
WA Department of Ecology
PO Box 47600
Olympia WA 98504-7600

RE: Scoping Comments on PCB Variance

Dear Ms. Braley,

Please accept these scoping comments on behalf of the Spokane Tribe's Department of Natural Resources ("Department"). Unless these comments specifically state, these comments apply to all five applications, and the development of the potential rule generally. At the start, the Department notes that the comment period for this scoping was woefully inadequate. The material submitted by the five dischargers amounted to thousands of pages with numerous references to additional materials. It is simply too much material to review and comment on meaningfully in 30 days. With that said the Department provides these general comments to be included in Ecology's proposed rule development scoping.

In general, the Tribe has a duty to protect its water and fishing rights in the Spokane River for future generations of the Tribe. Its approved water quality standards are designed to protect its waters for cultural, recreational and economic purposes to allow for healthy, harvestable, and safely edible fish populations. These scoping comments are made with this duty of the Tribe's firmly in mind.

First, the Ecology must address how it intends to meet the following requirement:

(b) Human health protection. The following provisions apply to the human health criteria in Table 240. **All waters shall maintain a level of water quality when entering downstream waters that provides for the attainment and maintenance of the water quality standards of those downstream waters, including the waters of another state.** The human health criteria in the tables were calculated using a fish consumption rate of 175 g/day. Criteria for carcinogenic substances were calculated using a cancer risk level equal to one-in-one-million, or as otherwise specified in this chapter. The human health criteria calculations and variables include chronic durations of exposure up to seventy years. All human health criteria for metals are for total metal concentrations, unless otherwise noted. Dischargers have the obligation to reduce toxics in discharges through the use of AKART.

WAC 173-201A-240(b)(*emphasis added*). The Spokane Tribe's water quality standard for PCBs is 1.3 part per quadrillion. Ecology must address how this variance will result in the "attainment and maintenance" of the Tribe's water quality standards.

Second, 40 C.F.R. Section 122.4(d) requires that: “No permit may be issued: (d) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States.” The Tribe has treatment as a state status under the Clean Water Act, and its standards are treated in the same manner as a State’s. Ecology must address how this variance will result in NPDES permits for these dischargers that ensure compliance with the Tribe’s water quality standards.

Third, in *Sierra Club, et al. v. EPA, et al.* Judge Rothstein required that EPA, in consultation with Ecology, develop and submit a plan for the Spokane River to meet applicable water quality standards (this includes the Tribe’s WQS) or prepare a TMDL. One of the key provisions of the Plan submitted by EPA in the case follows:

December 15, 2027: The applicable water quality standards for PCBs are met and the Spokane River and adjacent segments are no longer included on Washington’s 303(d) list of impaired waters. EPA issues a determination by July 15, 2028, after conferring with Ecology and the Spokane Tribe, whether the waters meet the applicable water quality standards. If EPA determines that applicable water quality standards are not met or if the Spokane River and adjacent segments remain on Washington’s 303(d) list of impaired waters, then Ecology would immediately initiate development of a PCB TMDL for impaired segments of the Spokane River, and such TMDL would be submitted for EPA’s approval by July 15, 2030.

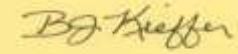
Granting the applied for variances will make meeting the plan’s deadlines impossible. Ecology should closely analyze an alternative, which includes the development of a PCB TMDL for the Spokane River, instead of variances. Additionally, the Ecology should review the entire plan submitted by EPA to identify other conflicts that may be present between the plan’s deadlines and the proposed variances.

In review of the applications it appears many alternatives such as additional treatment methods, reuse, no discharge, and others are summarily dismissed with little in depth analysis. Ecology should consider all alternatives and keep in mind the purpose of the Clean Water Act: “**it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985.**” 33 U.S.C.A. § 1251(a)(1). We have not met this goal yet and allowing PCB discharges at high levels for another 20 years will not move us in this direction.

Furthermore these five dischargers also argued that they could not meet the requirements of the DO TMDL and now they are on track to meet those requirements. In short, Ecology must push the dischargers and the Region to move towards meeting the goals of the Clean Water Act. The creation of the hard and difficult to reach deadlines and goals will help drive new innovative technology.

In conclusion, the Tribe stopped participating in the Spokane River Regional Toxics Task Force (“Task Force”) on May 21, 2012 because it appeared to not be following the “straight to implementation” mantra that helped gain support for the Task Force. Now, after seven years it appears these dischargers are throwing up their hands and stating that they can do no more than what they already agreed to in the DO TMDL. Unfortunately, these variance applications and Ecology’s consideration of them confirms that the Tribe’s decision in 2012 was the correct one. If you have any questions regarding these comments please do not hesitate to reach out.

Sincerely,



B.J. Kieffer
Director
Department of Natural Resources
Spokane Tribe of Indians

Cc: Carol Evans, Chairwoman
Brian Crossley, Water and Fish Program Manager
Ted Knight, Special Legal Counsel, Spokane Tribe of Indians