

July 11, 2019

Margaret C. Hupp
MHupp@perkinscoie.com
D +1.206.359.3438
F +1.206.359.4438

VIA ONLINE COMMENT FORM

Heather R. Bartlett
Water Quality Program Manager
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Scoping Comments Regarding Ecology's Environmental Impact Statement for Rulemaking to Adopt Water Quality Standards Variances for Spokane River PCBs

Dear Ms. Bartlett:

On behalf of Kaiser Aluminum, we respectfully submit the following comments regarding the scope of the environmental impact statement ("EIS") that the Washington State Department of Ecology ("Ecology") will prepare to identify and assess probable significant adverse impacts that may result from Ecology's issuance of variances of the PCB water quality standard for the Spokane River. Kaiser supports Ecology's development of variances to allow National Pollutant Discharge Elimination System ("NPDES") permittees to engage in a legally enforceable process to reduce PCBs and achieve the highest attainable condition in the Spokane River. Kaiser appreciates Ecology's efforts to consider sufficient and accurate information to inform its rulemaking.

A. The rulemaking EIS should assess the environmental benefits of variances to water quality in the Spokane River in Washington.

Ecology proposes to issue discharger-specific variances to facilities discharging to the Spokane River pursuant to NPDES permits issued under the Clean Water Act. The EIS to support Ecology's variance rulemaking should assess the environmental benefits of discharger-specific variances. Discharger-specific variances will reduce PCB levels in the Spokane River by requiring permittees to identify and minimize sources of PCBs to make reasonable progress toward meeting the currently unattainable, stringent PCB water quality standard. Ecology's regulations governing variances demonstrate that discharger-specific variances will reduce PCB levels as permittees implement pollution minimization plans with Ecology oversight. The rulemaking EIS should assess the environmental benefits provided by discharger-specific variances, which will require permittees to demonstrate "reasonable progress" toward achieving water quality standards.

1. Variance regulations will ensure that permittees demonstrate “reasonable progress” toward achieving water quality standards.

A variance is the best tool to carry out Ecology oversight of permittee actions to improve water quality in the Spokane River. Under regulations promulgated by Ecology to implement water quality compliance tools, a variance may issue only when “reasonable progress” will be made toward meeting the underlying water quality standard during the period the variance is in effect. WAC 173-201A-420(1)(d). Several regulatory provisions guiding permittees’ applications and Ecology’s implementation demonstrate that discharger-specific variances will improve water quality by reducing PCB levels in the Spokane River.

First, a variance is a time-limited designated use and water quality criterion that allows Ecology to track permittees’ “reasonable progress” toward achieving PCB reductions. *See* WAC 173-201A-420(5). Discharger-specific variances allow Ecology to oversee and enforce pollution-reducing conditions in facilities’ NPDES permits. WAC 173-201A-420(7) (“The department must establish and incorporate into NPDES permits all conditions necessary to implement and enforce an approved variance....”). Discharger-specific variance conditions include effluent limits, monitoring and reporting requirements, and permit reopeners. *Id.*

Second, a variance provides for regular and scheduled oversight to determine if permittees are making “reasonable progress.” A variance will issue only “for the minimum time estimated to meet the underlying standard(s).” WAC 173-201A-420(5)(a). Moreover, a variance is subject to mandatory interim review by Ecology, at least every five years. WAC 173-201A-420(8). Ecology will review a variance that is written into a discharge permit when it reviews the permit for renewal, and Ecology’s review will focus on the permittee’s compliance with the variance conditions. WAC 173-201A-420(8)(a). Discharger-specific variances will become mandatory, enforceable, and reviewable conditions of the facilities’ NPDES permits.

Third, all permittees seeking a variance must submit a “description and schedule of actions” that the facility proposes to ensure that the underlying water quality standard will be met or the highest attainable use will be achieved. WAC 173-201A-420(3)(e). Kaiser, for example, has proposed and is in the process of implementing projects to reduce the volume of water used in its facility, thereby reducing its permitted discharge of PCB-containing wastewater, and to enhance the performance of its water treatment system. Kaiser engaged with Ecology as it developed these projects that will lead to the eventual elimination of river water as a source of cooling water and optimize the facility’s use of groundwater for cooling. Kaiser has also contracted with an independent third party wastewater engineering firm to conduct literature reviews to identify effective additional treatment technologies to remove PCBs. These efforts are memorialized in the plans submitted to Ecology for approval as part of Kaiser’s variance application.

Finally, a variance applicant must submit a schedule for developing and implementing a “pollution minimization plan.” WAC 173-201A-420(3)(e). As part of its application for a PCB water quality variance, Kaiser provided a schedule for the submittal of a pollution minimization plan that will describe efforts it has already taken to reduce PCBs in the facility’s discharge and estimate the impact of those efforts, identify additional minimization efforts to be taken, and propose implementation schedules for those actions determined to be feasible and effective. The pollution minimization plan will be iterative, and Kaiser will submit an annual update to Ecology to ensure the facility continues to reduce potential sources and improve treatment where feasible.

Discharger-specific variances are time-limited, enforceable tools that will reduce PCB discharges to the Spokane River. Throughout the life of the variance, Ecology and permittees will work to implement feasible and effective PCB reductions in an iterative and monitored process. The rulemaking EIS should consider the environmental benefits provided by discharger-specific variances.

2. Ecology should consider the condition of the Spokane River as it enters Washington as the baseline for assessing impacts, alternatives, and mitigation.

Ecology’s Clean Water Act authority to regulate permittees and reduce PCB levels in the Spokane River is limited to that stretch of the river that is in Washington. Thus, when assessing probable significant adverse impacts, alternative actions, or potential mitigation measures, Ecology should consider the condition of the river as it enters Washington. As demonstrated by sampling conducted by the Spokane River Regional Toxics Task Force (“SRRTTF”), the Spokane River enters Washington with levels of PCBs above the current water quality standard. Between 2014 and 2018, the SRRTTF collected samples from the outlet of Lake Coeur d’Alene, the headwaters of the Spokane River. Regardless of the correction level used to address laboratory blank contamination, sample results from the headwaters show that the Spokane River enters Washington with concentrations of PCBs above the 7 pg/L water quality standard:

PCB Characterization at Lake Coeur d’Alene Outlet (geometric means, pg/L)		
Zero blank correction	5x blank correction	10x blank correction
53	12	11

Because Ecology’s Clean Water Act authority to regulate permittees’ effluent or take actions to reduce PCB levels in the Spokane River is limited to waters in the state, Ecology should assess

any alternatives to improve water quality and any measures to mitigate environmental impacts relative only to the concentrations of PCBs in the Spokane River as it enters Washington. Moreover, it would be unfair to consider action alternatives that would require Washington permittees to redress upstream contamination and remove PCBs from the river that they could not possibly have contributed.

B. The rulemaking EIS should consider the variance applicants' descriptions of infeasible actions in its assessment of potential alternatives.

Ecology is considering a variance for the Spokane River PCB water quality standard because no other action to reduce PCBs is feasible. Indeed, variance applicants are required to evaluate treatment or other actions to achieve water quality standards and describe why those actions are not technically or economically feasible. *See* WAC 173-201A-420. Ecology's rulemaking EIS should consider the actions considered by the variance applicants and why they were infeasible. Ecology's assessment of discharger-specific variances should consider that alternative actions are technically and economically infeasible.

As part of its variance application, Kaiser described treatment actions it has studied and implemented to reduce the concentration of PCBs in its wastewater. In 2002 and 2003 Kaiser conducted an engineering design report and then installed a state-of-the-art walnut shell filtration system. Kaiser closely monitors the system's efficiency at different wastewater flow rates. Although Kaiser has continuously taken actions that have improved the performance of its treatment system, the treatment system cannot reduce PCBs in the discharge flow to below 7 pg/L at the point of discharge. The literature review conducted for Kaiser identified potential emerging technologies that may be applicable with respect to additional PCB reductions; however, none of the treatability performance data for these emerging treatment technologies demonstrated the ability to achieve the PCB water quality standard of 7 pg/L at the point of discharge. Moreover, the treatability performance data also did not demonstrate the ability to meet a concentration level of 170 pg/L, the former Washington Water Quality standard for PCB.

Ecology's consideration of alternatives in the rulemaking EIS should take into account the information provided by the variance applicants. As described by the permittees, existing treatment technologies are infeasible and unable to reduce PCB concentrations to below the water quality standard for the Spokane River. A variance is the necessary and effective tool to allow permittees to make continual, "reasonable progress" to reduce PCB discharges from their facilities.

C. Other regulatory compliance tools are not feasible alternatives to the proposed variance approach.

Washington's EPA-approved water quality standards authorize Ecology to implement multiple compliance tools, including variances. *See* WAC 173-201A-400-510. Other compliance tools, however, are not reasonable or feasible alternatives to the proposed discharger-specific variances for PCBs. For example, an intake credit is available when a permittee removes water containing some pollutant from the same waterbody to which the permittee discharges; the credit allows a permittee to discharge the same mass or less of the intake pollutant back to the receiving waterbody. WAC 173-201A-560. As explained above, Kaiser has engaged with Ecology to develop steps to eventually eliminate river water as one of its sources of cooling water. An intake credit is not an applicable rulemaking alternative for a facility such as Kaiser that will soon not intake river water for cooling.

A water quality offset is similarly unavailable to permittees discharging to the Spokane River. A water quality offset is available when a permittee implements pollution controls on another source to create sufficient assimilative capacity for a new or expanded discharge to the receiving waterbody. WAC 173-201A-450. First, Kaiser is working to reduce its discharge volume, not expand, so a water quality offset is unavailable. Second, as explained above, existing treatment technologies have not been demonstrated to reduce PCB concentrations of industrial cooling water to below the current water quality standard at the point of discharge. Offsets are not feasible alternatives to discharger-specific variances.

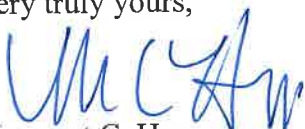
Finally, compliance schedules are available to allow a permittee to meet water quality-based effluent limits within an established period of time by implementing treatment or best management practices. WAC 173-201A-510(4). Here, where existing treatment technologies and best management practices cannot reduce permittees' discharges to the current water quality standard for PCBs in the Spokane River, a compliance schedule is not a feasible rulemaking alternative.

Kaiser appreciates this opportunity to comment on the scope of the rulemaking EIS and urges Ecology to consider information regarding the benefits of variances and the infeasibility of alternative actions. Discharger-specific variances are a time-limited, enforceable regulatory tool

Heather R. Bartlett
July 11, 2019
Page 6

that will guide permittees' actions to reduce PCBs in the Spokane River and make reasonable progress to meet water quality standards or achieve the waterbody's highest attainable use.

Very truly yours,



Margaret C. Hupp

MCH:mch

cc: Kaiser Aluminum