
July 9, 2019

Washington Department of Ecology
Water Quality Program
Cheryl Niemi, Rulemaking Lead
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Re: Spokane River TMDL variance process – EIS scoping comments

Dear Ms. Niemi:

Sierra Club and the Center for Environmental Law & Policy thank you for the opportunity to provide comments on the scope of the environmental impact statement for the proposed variance of the PCB numeric water quality standard and several designated use standards for the Spokane River. Our organizations are deeply concerned that Ecology would consider eliminating the natural uses of the river at points below the pollution discharges, including redband trout habitat and recreational primary contact. We believe this proposal is inconsistent with both the letter and the spirit of the Clean Water Act, which calls for the rivers of the United States to be fishable and swimmable by 1985. Thirty-five years later, we seem to have a problem with Spokane River compliance.

The Washington Court of Appeals recently reaffirmed the importance of the Spokane River to the Spokane region in Center for Environmental Law & Policy v. Ecology, 2019 Wash. App. LEXIS 1668. In its unanimous opinion, the court noted that "[t]he river is a central feature of the region's identity, and Spokane residents view the river as an integral part of their community," and went on to note the extensive public concerns over recreational use, including the businesses supported by river rafting. *Id*. at *3; *Id.* at *6. As well as recognizing that the river and its associated aquifer are the sole source of drinking water for the area, the court held that Ecology's failure to thoroughly consider recreational and navigational values was arbitrary and capricious. *Id.* at *4; *Id.* at *27. Protection of water quality is a critical factor in protecting these full-contact recreational uses.

In the mid-2000s, Sierra Club asked you to coordinate your regulatory approach and simultaneously address both phosphorus and PCB contamination, so that the substantial investments about to be made by Spokane River dischargers would ensure that both problems were resolved. You declined and now, fifteen years later, the dischargers have spent hundreds of millions of dollars on cleanup technology that is inadequate to address PCBs. Instead of actual cleanup, they seek variances that will insulate them from responsibility for River cleanup for the next two decades. The public interest has not been served by this approach.

In fact, Ecology has failed to implement even the most basic requirements of the Clean Water Act for the Spokane River. You have never included numeric limits on toxic pollutants in the pollution permits

issued to Spokane River dischargers as the law requires, nor have you ever prepared an overall PCB cleanup plan (called a "TMDL") for the Spokane River. It appears that the substantial sums of public monies granted to the discharger-led Toxics Task Force have been used to develop data to support the variance proposal rather than cleaning up the river.

We are also mystified as to why Ecology is moving forward with this proposal when the U.S. Environmental Protection Agency has announced its plans to rescind the Human Health-based PCB water quality criteria, the very standard for which the dischargers seek a variance. We are aware of the state lawsuit challenging EPA's proposal to rescind, and wonder whether processing this variance request serves as a signal to Washington's polluter community that they need not worry about future compliance.

Items the EIS needs to clarify

- The EIS should include a "plain language" discussion of the variance process as set forth in WAC 173-201A-420, including definitions for all terms that are subject to interpretation by the agency, including
    - "highest attainable condition,"
    - "reasonable progress,"
    - "feasibility" of attaining the existing PCB water quality standards (state and Spokane Tribe),
    - "pollutant minimization plan,"
    - "cost-effective and reasonable best management practices for permitted sources that address the [PCB] pollutant,"
    - "best management practices for nonpermitted sources"
    - "intergovernmental involvement process"
    - "measurable milestones, for all pollution sources (permitted and unpermitted)"
    - "adaptive management to fine-tune and update actions, schedules, and milestones"
    - "currently achieved or achievable effluent conditions," and "effluent limits that are sufficient to meet the underlying water quality standard upon expiration of the variance"
    - "monitoring and reporting requirements"
    - Mandatory interim review "evaluation of whether the variance is still necessary"
- The EIS should include discussion of the relative merits of and differences between "discharger specific" and "waterbody" variances, including context of their use in the Spokane River for PCB pollution.
- The EIS should explain all reasons why the PCB criteria and designated uses of the Spokane River under current water quality criteria cannot be met and therefore must be modified.

Items the EIS needs to study:

- A complete inventory of all natural resources associated with the Spokane River, including benthic, water column, riparian and flood zone resources.
- A complete inventory of human uses of the Spokane River, including the location and potential impacts on human recreational use of the river at the pollution outfalls for which variances are sought. The Water Resources Act (RCW 90.54.020) provides that "[w]aters of the state shall be

of high quality," and includes recreational, environmental, and aesthetic uses of water as beneficial uses to be protected.

- Analysis of the impact of modifying Spokane River PCB criteria and designated uses on the ecological, social, economic and cultural resources of the Spokane Tribe of Indians (we strongly recommend this analysis be conducted by or with the consent of the Spokane Tribe of Indians).
- Analysis of the relationship between the current water quality standard, the proposed variance from those standards, and the related water quality standards of the Spokane Tribe of Indians.
- Analysis of the ecological, social and economic impact of de-listing redband trout salmonids as a designated use of the Spokane River, including the impact on reintroduction of anadromous steelhead into the Spokane River and other tributaries of the Columbia River utilizing Spokane River redband trout as a resource for regeneration of the steelhead fishery.
- Cost-benefit evaluation of the cost of cleanup versus economic value to the community (e.g., wages, taxes) for each of the major dischargers.
- Complete review of "highest attainable condition," which appears to be the cleanup concentrations achieved via Spokane County treatment technology, i.e., membrane bioreactor. We are particularly concerned that the dischargers appear to believe HAC is defined by what they are currently achieving with existing technology. The EIS should fully define this standard and explain how it is to be met.
- Fully identify the scope of a "pollutant minimization process" should a variance be granted. How stringent must this process be? For example, the City of Spokane has declined to stop using PCB-contaminated products related to road maintenance because of cost. Is this acceptable?
- Comparison with process, cost and effectiveness of other large-scale PCB cleanup sites in large, flowing waters, including the Hudson River, New York, St. Louis River, Minnesota, and San Francisco Bay, California PCB cleanups.
- Complete evaluation of the status quo with respect to PCB groundwater contamination, and how groundwater would be affected by a variance.

<u>Alternatives to a Variance:</u>

The EIS should present an unbiased study of each alternative to a variance, focused on how PCB pollution, groundwater contamination, recreational uses, fish habitat, and human health effects of fish consumption would be affected.

- Zero discharge by each of the dischargers (individually, in combination, and collectively), including a competent analysis of water right impairment issues (see RCW 90.03.130). It is particularly important to study this alternative because the applicant/dischargers assert that no technology is available to meet the 7pg/l PCB water quality standard (and presumably the more stringent PCB water quality standards promulgated for the downstream Spokane Indian Reservation). Therefore, zero discharge may be the only viable option to achieve PCB water quality standards. This analysis should include:
    - Review of water right mitigation measures such as trust water rights, water banks, etc. How would "zero discharge" affect downstream water right holders and/or the instream flow? How would such impacts be mitigated? While the City and County assert that mitigation is expensive and infeasible, water rights mitigation is being utilized throughout Washington state.

  - Partial or seasonal reuse options. Evaluation of reuse should include an assessment of the impact of discharging water after reuse, including any PCBs in such discharges.
  - Bioremediation techniques such as alluded to in Spokane County's variance application.
  - Possible use of reclaimed water in wetlands restoration. Analysis of this method should include effects on streamflows, senior/downstream water rights, and potential contamination of the aquifer.
  - Review of public acceptance of reclaimed wastewater. The dischargers have asserted for many years that the public will not accept reuse, notwithstanding the widespread use and acceptance of reuse water in California, Arizona and other water-short areas.
  - Impacts of reuse wastewater on groundwater, where reuse includes irrigation and potential transfer of PCBs to groundwater resources.
- An independent and unbiased analysis of the City of Spokane's assumptions about the technical and economic feasibility of reuse should be prepared. For example, the City has provided no information about potential seasonal reuse at City-owned golf courses.
- Implementation of all appropriate high-level technological alternatives for pollution filtration and cleanup, including but not limited to bio-membrane technology and reverse osmosis technology, including technical and economic feasibility.
- Closing operations of one or both of the industrial dischargers.
- The City of Spokane claims its next level treatment (NLT) membrane technology obtains PCB concentrations equivalent to both the MBR technology at use at the Spokane County wastewater plant and reverse osmosis (RO) treatment technology. This less-than-credible assertion requires unbiased evaluation, particularly because the type of available treatment speaks to the Highest Attainable Condition that would be required should a variance be granted.
- City of Spokane's Alternatives Analysis (Section 5) reviews several treatment options and concludes that "no data is available" to show improvement of technology levels. This does not provide sufficient review of treatment alternatives – simply reviewing the internet and journals is not adequate. The EIS should require and include actual test treatment of City of Spokane effluent using actual treatment modes.
- Ecology must conduct a competent economic analysis of all scenarios to ensure accurate conclusions about economic feasibility. Ecology has a track record of producing inaccurate economic analyses of its actions, e.g., Columbia River Office's use of input-output models and analyses of Odessa Subarea project that double-counted economic and job impacts.
- Similarly, Ecology cannot rely solely on the economic analyses provided by the variance applicants. Applicant data is contaminated by pre-study bias toward an outcome that would alleviate the dischargers of responsibility for meeting the standards. Credible, neutral analysis is needed to protect public interests in the Spokane River.

<u>Sierra Club Upper Columbia River Group Member Alert Comments</u>

(1) What are the impacts of de-listing redband trout as a designated use of the Spokane River, thus allowing the decline and destruction of the redband fishery?

(2) What are the impacts of deciding not to reduce PCB concentrations in the Spokane River, particularly when summer flows fall to dangerously low levels due to overpumping and climate change?

(3) Explain the basis for deciding that allowing polluters off the hook for cleaning up PCB contamination is more important than public and ecological use of the Spokane River?

(4) Explain why, after more than 50 years of knowing about the public health dangers posed by PCBs, the State of Washington has repeatedly refused to impose PCB pollution controls on Spokane River polluters, thereby failing to meet the Clean Water Act goals of a fishable, swimmable river?

Thank you for the opportunity to provide comments.

Sincerely,

/s Tom Soeldner

Trish Rolfe and W. Thomas Soeldner

On behalf of the
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