



LAW OFFICE
of the
PUYALLUP INDIAN TRIBE



December 21, 2018

VIA ELECTRONIC SUBMISSION, U.S. MAIL AND ELECTRONIC MAIL

Shingo Yamazaki
Industrial Section
P.O. Box 47600
Olympia, WA 98504-7600

Re: WestRock Tacoma Steam Limit Project
Comments on MDNS and Construction Order 4153 modification

Dear Mr. Yamazaki:

The Puyallup Tribe of Indians hereby submits limited comments to the MDNS and Order 4153 for the WestRock Tacoma Steam Limit Project. The Tribe has not had ample time or any discussion, via Government to Government consultation, to gain adequate information to meaningfully comment on this project.

The Puyallup Tribe is a federally recognized Indian Tribe with its reservation located in Tacoma and surrounding communities in the State of Washington. The WestRock proposal its associated facilities are proposed to be constructed within and adjacent to the 1873 Survey Boundary for the Puyallup Tribe's Reservation. In addition to other lands, the Tribe owns land across two waterways from the proposed WestRock facility. The lands owned by the Tribe are used as restoration sites providing critical and essential fish habitat, as cultural sites, and as marinas for both recreational and commercial boat traffic. Tribal members reside within miles of the facility and conduct usual and accustomed cultural activities, including fishing and shellfish harvesting, near the facility in Commencement Bay.

The Tribe, through the Medicine Creek Treaty of 1854, has a treaty right to fish in the waters surrounding the site and waters that will be impacted by the development and use at the proposed project site. The impacts to the waters, shorelines, habitat, and surrounding shoreline properties and uses go to the heart of the Tribe's culture and livelihood with potential impacts to fish, other wildlife, and natural resources, as well as impacts to the health and welfare of Tribal members. As is secured in Article VI, cl. 2 of the U.S. Constitution, the Treaty "shall be the supreme Law of the Land." As affirmed by *U.S. v. Washington*, the rights arising from the Medicine Creek Treaty cannot be diminished or interfered with absent authority from Congress.

While the Tribe appreciates Ecology's desire to efficiently process the permits, Ecology has failed to consult with the Tribe, and the Tribe hereby requests that Ecology conduct a meaningful consultation with the Tribe as required under Federal and State law prior to commencing any further review or permit decisions on the facility. The Tribe has significant concerns with the determination to not conduct an Environmental Impact Statement given the significant impacts from the proposal, lack of mitigation, and failure to adequately address cumulative impacts. In particular, it is wholly improper for Ecology to ignore the cumulative impacts this facility will have with another facility, the Tacoma LNG plant, located within 1.5 miles and currently under review by the Puget Sound Clean Air Agency. The documents available demonstrate that this project and the LNG plant will have wide range impacts on the environment and Tribal Resources.

Furthermore, Ecology is acting through authority that is traced not only to the State of Washington but also delegated from the Federal Clean Air Act and the United States Environmental Protection Agency. Under the Federal Clean Air Act the EPA has a trust responsibility to the Tribe and must consult on matters that impact the Tribe. The State of Washington has parallel authorities to consult with the Tribe. The obligations of both the Federal Government and the State of Washington to consult with the Tribe do not vanish as a result of any delegation under the Clean Air Act. Furthermore, the Tribe is a neighboring jurisdiction with authority, under the Clean Air Act, to regulate air quality. Therefore, the Tribe requests that formal government to government consultation, with the full quorum of Tribal Council as required, be scheduled without further delay and that the staff of both the Tribe and Ecology meet prior to any leadership consultation to exchange meaningful information to allow each leadership team to be adequately informed before the meeting.

More specifically, WestRock is proposing to increase GHG emissions by 60,000 tons per year (TPY) as part of an increase in power generation developed by one of their natural gas powered steam turbines referred as power boiler #6. For comparative purpose, the new PSE LNG facility presently under construction, is projected to discharge 50,000 TPY. It is unclear if the calculations for GHG emissions included the necessary calculation of upstream and downstream emissions for the natural gas to be used by the facility.

Additional air emissions from the WestRock expansion include:

- 3.78 TPY of PM above 2.5
- SO₂ 0.28 TPY
- NO_x 2.99 TPY
- Formaldehyde by 76.2 pounds/year (lb/yr)
- Benzene by 2.1 lbs/yr
- Toluene by 3.5 lbs/yr

Many of the concerns presented by the Tribe to the proponents and permitting agencies of the LNG are applicable to DOE's review of the WestRock proposal. The paramount concern being that the Tribal Community bears a disproportionately higher risk from their day to day operations due to

their immediate proximity. The Puyallup Reservation and tribal community whom live, work, recreate and commute within the immediate area are subject to greater exposure time, higher concentrations of contaminants and therefore greater overall health risks. The impacts to air quality and the cumulative effects of all emissions contribute to the health and safety concerns of the reservation community and beyond. An increase in emissions within the reservation, to the tribal community and to surrounding communities without any analysis of cumulative effects is simply unacceptable.

I appreciate Ecology's willingness to meet with the Tribe in early January to present the technical information and prepare for a leadership level Government to Government consultation in early 2019. Please contact me at (253) 573-7852 if there are additional questions or concerns. The Tribe reserves its right to present additional comments throughout the review process.

Sincerely,



Lisa A.H. Anderson
Environmental Attorney

cc: Governor Jay Inslee
Maia Bellon, Director, Department of Ecology (via electronic mail)
Craig Kenworthy, Director, Puget Sound Clean Air Agency (via electronic mail)
Tom Lorie, Tribal Liaison, Department of Ecology (via electronic mail)
Mayor Victoria Woodards, City of Tacoma (via electronic mail)
Peter Huffman, Director, Planning and Development Services Department, City of Tacoma (via electronic mail)
Steve Victor, City Attorney, City of Tacoma (via electronic mail)