



NISQUALLY INDIAN TRIBE

Department of Natural Resources

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July 12, 2021

Re: Comments on the New Draft Statewide General Permit for Biosolids Management and Associated SEPA Checklist

Ms. Kijowski,

The Nisqually Indian Tribe provides the following comments to the Department of Ecology's request for comments on the New Draft Statewide General Permit for Biosolids Management and Associated SEPA Checklist. We understand that Ecology intends to issue a statewide general permit for the management of biosolids, although it recognizes individual permits could better protect public health and the environment and could be more efficient, less burdensome, and less costly. The Nisqually Indian Tribe also supports the comment letter submitted by Mr. Ed Kenney and the issues that he has raised.

Nisqually has seen historic, ongoing, and proposed future applications of biosolids in the Nisqually watershed. Our experience informs us that individual, site-specific permits written to the unique physical and biological conditions of a proposed site best protect the resources needing our common stewardship. Nisqually has significant concerns about the adverse impact the inadequate management of biosolids in the Nisqually Watershed will have on our treaty rights and trust resources through the sole use of a general permit.

Each watershed in the State is unique in multiple ways, and capturing that in a general permit, even with the ability to condition, is challenging at best and inadequate far too often. We have invested a tremendous amount of tribal, State, and Federal resources into protecting and restoring habitat in the Nisqually to benefit the ecosystem and to support multiple listed species' recovery. In many cases, these protected and restored lands and waters represent the last best hope for critical species to survive the rapidly changing climate and, in the case of Nisqually steelhead, from going extinct. The location and connection of these lands and waters, and the future work to improve baseline conditions in the Watershed, is unique to the Nisqually, and simply cannot be addressed in this general permit that applies statewide.

We have observed through the use of the previous general permit did not adequately protect our trust resources. A general permit allows a certain level of risk to be applied to the surrounding environment; it is only after the impacts have been discovered that remediation and risk reduction occur. On the other hand, an individual permit written to address local conditions and needs greatly reduces the risk to the environment from unintended consequences before those unintended consequences occur. This precautionary approach is most protective of the environment and of the Tribe's treaty rights.

As one particular example, only individual permits can presently require that the risk factors associated with the source and content of bio-solids be clearly identified and monitored on site. If a general permit does not require certain actions, such as source identification and complete toxic screening, conditions on an application to the general permit cannot require them.

This is a critical issue for the Tribe, particularly because our ESA-listed steelhead suffer from the highest observed levels of toxic loading of polybrominated diphenyl ethers (PBDEs) in the Puget Sound region. Adding biosolids from unknown sources likely containing elevated levels of PBDEs to the Watershed would increase the risk of extinction to this incredible biological and treaty-protected resource. The Nisqually Watershed cannot withstand this risk, even though other watersheds in the State with much lower loading might be able to. Individual permits tailored to a site's unique physical and biological conditions offer the only solution for ensuring the areas of our State requiring our protection the most, such as the Nisqually Watershed, receive it.

We have observed that individual permits can offer the same ease in management as general permits if individual permits begin from a common set of best management practices (BMPs). There are likely some common application standards based on Ecology's many years of experience in this issue that can be captured in BMPs. If these BMPs serve as the basis for each individual permit, Ecology could have some uniformity in management while having the opportunity to consider each particular biosolid source in the context of the surrounding ecosystem and to protect each unique aspect of each site.

We highly encourage Ecology to develop and implement mechanisms within this new general permit the ability to require individual permits for any facilities in the Nisqually Watershed. Under WAC 173-308-90005(1)(b), the Director has the authority to issue a site specific individual permit for facilities within appropriate geographic areas. The Nisqually Watershed is an "appropriate geographic area" given its high loading of PBDEs and the risk the inadequate management of biosolids poses to the Watershed's ESA-listed steelhead. The Nisqually Watershed requires the protection only an individual permit can offer. If Ecology utilizes a general permit for the management of biosolids throughout most of the State, it should exempt facilities in the Nisqually Watershed from that coverage and should require those facilities to apply for individual, site-specific permits.

We also request that Ecology provide additional protections to water quality and environmental health and equity in the general permit by requiring:

1. Source identification of all biosolid materials
2. Enhanced testing of the source materials and proposed product application to include known issues like PBDE's and 6PPD Quinone
3. Require enhanced water quality monitoring of surface and ground water in and around the application site, including establishing a baseline prior to application.
4. A system to evaluate and determine eligibility of proposed permit holders including past performance with regards to compliance and reporting.

We do not see these issues clearly identified in the proposed general permit and are willing to work with staff to incorporate these critical elements into the general permit. The Nisqually Indian tribe is interested in the further development of this program and reserves the right to seek a government to government meeting to resolve any remaining areas of disagreement. Please keep us informed and thank you for this opportunity to comment. Please feel free to contact me if there are any questions at 360-456-5221.

Sincerely,



David A Troutt
Natural Resources Director