

Nisqually Indian Tribe



NISQUALLY INDIAN TRIBE

Natural Resources

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Torrie Shaul
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
torrie.shaul@ecy.wa.gov

Re: Comment Letter Regarding SEPA Determination of Non-significance Issued for Draft Statewide General Permit for Biosolids Management

Dear Ms. Shaul:

The Nisqually Indian Tribe submits this comment letter regarding the Washington Department of Ecology's determination of non-significance (DNS) for the draft statewide general permit for biosolids management under the State Environmental Policy Act, Chapter 43.21C Revised Code of Washington.

Since time immemorial, the *Squalli Absch* (Nisqually) have been a fishing people and have lived on and stewarded the lands in the Nisqually Watershed. The Tribe is a federally recognized sovereign nation and a successor-in-interest to the bands and tribes who were signatories to the 1854 Treaty of Medicine Creek. The Treaty of Medicine Creek guarantees the Tribe the right to harvest salmon running and passing through its "usual and accustomed" fishing areas (U&A) at a level sufficient to support a moderate standard of living. The Tribe's U&A includes South Puget Sound and the Nisqually Watershed (WRIA 11). The Tribe is a co-manager of fisheries resources with the State of Washington, and the Tribe has dedicated innumerable resources to protecting and restoring endangered or threatened species in the ecosystem, including salmon and the Southern Resident Orca Whale that rely on them.

The Tribe has previously expressed its concerns about the statewide general permit for biosolids management. On July 12, 2021, the Tribe submitted a letter to Ecology regarding the 2021 Draft Statewide General Permit for Biosolids Management and Associated SEPA Checklist. The Tribe also submitted a letter on July 8, 2022, regarding Ecology's issuance of the 2022 Statewide General Permit for Biosolids Management. In both letters, the Tribe requested that the Nisqually Watershed be excluded from the general permit under WAC 173-308-90005(1)(b), including because of the threat that contaminants of emerging concern (CECs) like polybrominated diphenyl ethers (PBDEs), per- and polyfluoroalkyl substances (PFAS), and 6PPD pose to the Watershed.

The Tribe recognizes Ecology's diligence in supplementing its DNS with a summary of the state of research into sources and effects of these CECs. Nevertheless, as the DNS acknowledges, there is incomplete and unknown information about these CECs, and this dearth of information hinders robust regulatory action. DNS at 18. A lack of information should not be justification to risk the recovery of the Nisqually Watershed and the species it supports, over the Tribe's objection.

The DNS indicates that PFAS and PBDEs in biosolids have been found at differing levels in Washington State. *Id.* The Tribe knows this to be true from our ongoing research. Nisqually steelhead suffer from the highest observed levels of toxic loading of PBDEs in the Puget Sound region. While other watersheds in the State with much lower loading might be able to withstand the risk of receiving biosolids likely containing elevated levels of PBDEs, the Nisqually Watershed cannot. The increased risk of extinction to steelhead, an incredible biological and Treaty-protected resource, is too high. The DNS should have evaluated excluding the Nisqually Watershed as an "inappropriate" geographic area from the draft general permit's scope.

The Tribe renews its request that the statewide general permit for biosolids management exclude the Nisqually Watershed, just as it does not apply to federal lands, lands within the boundaries of Washington Tribal Reservations, or lands outside of Washington Tribal Reservations that are held in trust by the federal government for a Tribe. In the alternative, the Tribe desires to continue its ongoing government-to-government conversations with Ecology regarding best practices for information sharing and monitoring of biosolids in the Watershed.

Thank you in advance for your consideration.

Sincerely,



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Natural Resources Director
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cc:

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