July 24, 2020

Dear Department of Ecology,

Please accept these comments on the Preliminary Draft Variance for PCB discharges into the Spokane River. The Lands Council has been a member of the Spokane River Regional Toxics Task Force since its inception and believes that a well written variance for individual dischargers will be the most effective regulatory tool to remove PCB's from the Spokane River. While it is currently not technologically feasible to meet the PCB water quality standard of 7 parts per quadrillion (ppq), The Lands Council wants to see a path forward that will lead to a reduction of PCB's into the river. We believe that a limit of 7 ppq is an appropriate standard for the river because PCB's bio-accumulate in fish and can pose a health risk to those consuming fish.

We note that the Center for Justice, a Spokane based group that until recently housed the Spokane Riverkeeper, acknowledged the variance tool could be used in a letter to Ecology Director Jay Manning dated Feb 3, 2009:

> A water quality standard variance is a short-term exemption from meeting the otherwise applicable water quality standards. EPA authorizes States and Tribes to include variances in their water quality standards. *See* 40 C.F.R. § 131.13. EPA regulations and policies already authorize Washington to grant (with EPA review and approval) renewable variances from state water quality criteria to individual dischargers if meeting the criteria "would cause substantial and widespread economic or social impact." 40 C.F.R. § 131.13; Water Quality Standards Handbook § 5.3 (EPA 1994); NPDES Permit Writer's Manual § 10.2.3 (EPA, 1996). Applications for variances would normally be considered at the time of permit issuance, reissuance, or modification.
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> We believe that a variance is a better tool to achieve the desired outcome described at our meeting because a variance is: (1) a short-term and temporary change to a standard; (2) allows the basic water quality standards remain in place; (3) is pollutant and discharger specific; and (4) is a tool already available under the Clean Water Act.

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The Variance Requirements that the dischargers must follow are given in **WAC 173-201A-420 Variance.** (1) **General provisions.**

(3) **Requirements.** Any entity initiating a variance request or applying for coverage for an individual, multi-discharger, or water body variance must submit the following information to the department:

(a) The pollutant-specific criteria and designated use(s) proposed to be modified by the variance, and the proposed duration of the variance.
(b) A demonstration that attaining the water quality standard for a specific pollutant is not feasible for the requested duration of the variance based on 40 C.F.R. 131.14.
(c) An evaluation of treatment or alternative actions that were considered to meet effluent limits based on the underlying water quality criteria, and a description of why these options are not technically, economically, or otherwise feasible.
(d) Sufficient water quality data and analyses to characterize receiving and discharge water pollutant concentrations.
(e) A description and schedule of actions that the discharger(s) proposes to ensure the underlying water quality standard(s) are met or the highest attainable use is attained within the variance period. Dischargers are also required to submit a schedule for development and implementation of a pollutant minimization plan for the subject pollutant(s).

While the variance mentions a use attainability analysis (UAA) can be done, The Lands Council does not support this. The historic and future highest use in the Spokane River is for safe fish harvest by Spokane Tribal members and others. This should not be compromised.

The Preliminary Draft Environmental Impact Statement for PCB Variances on the Spokane River discusses the pros and cons of the two draft alternatives on pages 9 to 13. Alternative 2 will result in the greatest removal of PCBs from the Spokane River because Alternative 1 considers compliance to attained when Method 608.3 is used, which would mean anything less than 50,000 parts per quadrillion is in compliance, due to testing limitations. Alternative 2, where dischargers have their own variance will reduce PCB's further because the variance will address some of the nonpoint sources of PCBs and not just focus on the PCBs from the facility. Addressing both point and non-point in the PCB variance will help the river achieve the highest obtainable condition (HAC).

The PCB variances should require implementation of pollutant minimization plans (PMP), the purpose of which are to continually reduce sources of PCB pollution to the Spokane River. The variance also identifies state pollution reduction activities, which can vary from discharger to discharger. The PMP's should contain a host of strategies, including education, outreach, studies into new technology, pre-treatments and product testing. PMP actions should be looked at every 5 years and evaluated using 1668 testing. Each discharger needed to monitor the river below their discharge, the Task Force could design these with the discharger. Dischargers should use adaptive management to fine-tune and update actions, schedules, and milestones in order to achieve the goals of the variance.

In closing, we believe the PCB variance is the best way forward for reducing PCB's to the river. We also believe that the public would benefit by seeing a chart of where the PCB's entering the river are coming from, so the public can see the relative amounts from Idaho, NPDES dischargers, stormwater and other non-point sources.

Thank you for the opportunity to comment.

Mike Petersen, Executive Director
The Lands Council