

July 24, 2020

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VIA EMAIL AND U.S. MAIL

Marla Koberstein
Department of Ecology
Preliminary draft variance comments
PO Box 47696
Olympia, WA 98504-7696

Re: Kaiser Aluminum Washington LLC's Comments on Preliminary Variance Rule Language and Related Documents

Dear Ms. Koberstein:

Kaiser Aluminum Washington LLC ("Kaiser") appreciates the opportunity to review and comment on the preliminary draft rule language and supporting documents to adopt water quality standard variances for polychlorinated biphenyls ("PCBs") in the Spokane River. As you know, Kaiser has been actively engaged in the variance rulemaking process and prepared a complete and robust application for a variance in April 2019. Kaiser continues to believe that a variance is appropriate and necessary to achieve near-term, meaningful PCB reductions and hopes Ecology will issue draft rule language for formal comment as soon as possible.

A. Kaiser's Role in the Reduction of PCBs in the Spokane River

Kaiser is a leading producer of fabricated aluminum products for aerospace and custom industrial applications. Its largest facility is the Trentwood rolling mill in Spokane Valley that produces aluminum sheet and plate products by casting large aluminum ingots and rolling them to various gauges. Trentwood employs approximately 900 people and generates significant economic activity in the Spokane region.

Although Kaiser does not use or produce PCBs in its aluminum rolling processes, there are legacy sources of trace amounts of PCBs at the site. From the 1950s to the early 1970s, before the risks were known, PCBs were commonly used as a lubricant fluid in industrial facilities like Trentwood (which was constructed during World War II to produce aluminum products for the manufacture of airplanes), and trace amounts of PCBs remain at the Trentwood facility today. Additionally, the facility's cooling water intake from the Spokane River and from groundwater wells contains PCBs before it ever enters the fabrication process.

The Trentwood facility treats process wastewater in an acid break system, and all wastewater and stormwater enters a settling lagoon and filtration system before being discharged pursuant to Kaiser's National Pollutant Discharge Elimination System ("NPDES") permit (Permit No. WA0000892) issued by Ecology. Pursuant to its NPDES permit, Kaiser monitors and reports PCB concentrations in its effluent and investigates potential sources if the monthly PCB average exceeds the established loading criteria. The walnut shell filtration system has a capacity of 11 million gallons per day, but Kaiser has implemented multiple projects to reduce the facility's water usage to improve the system's efficiency and removal capabilities. Despite improvements, the system cannot consistently remove PCBs to concentrations below 170 ppq.

In addition to reducing PCBs in its permitted discharge water and working to reduce water use throughout the facility, Kaiser has investigated and removed historical sources of PCBs throughout its property. With Ecology oversight, in 2007 Kaiser removed 1,700 tons of PCB- and petroleum-contaminated soil from the West Discharge Ravine, a former wastewater conveyance on the property. Kaiser removed 1,000 tons of PCB-contaminated sludge from the on-site lagoon in 2008. Between 2008 and 2012, Kaiser performed three sewer cleanout projects and removed almost eighty tons of PCB-contaminated sludge. Since completing the sewer cleanout projects, Kaiser has worked with Ecology to test and validate different sampling methods to determine the most accurate means of identifying low concentrations of PCBs for removal. Finally, to address groundwater contamination, Kaiser conducted a pilot test to demonstrate the practicability of removing PCBs from extracted groundwater with a walnut shell filtration system. Kaiser continues to operate the walnut shell filtration system while also evaluating, pursuant to a proposed agreed order with Ecology, new technologies that may be even more effective at removing PCBs.

In 2011, Kaiser joined Ecology, other dischargers, municipal and regional governments, and environmental groups to form the Spokane River Regional Toxics Task Force ("Task Force"). The Task Force is guided by a Comprehensive Plan to address PCB contamination in the Spokane River by identifying, reducing, and eliminating PCB sources to the river. The Task Force coordinates sampling and data collection, identifies projects and best management practices, measures reductions, and coordinates stakeholders' efforts to reduce PCBs in the Spokane River.

B. Necessity of a PCB Variance

1. PCBs are a legacy and inadvertent pollutant.

More than forty years after their commercial production was banned, PCBs remain in our environment because the traits that made PCBs useful also made them persistent. Additionally, PCBs are still being created. Hundreds of production processes have the potential to inadvertently generate PCBs, and PCBs are found in thousands of commonly used consumer and

commercial products. The Toxic Substances Control Act (“TSCA”) allows consumer goods to contain up to 50 ppm PCBs, a level that is millions of times higher than what is allowed under the Clean Water Act.

Ecology has consistently recognized that PCB levels in the Spokane River are caused by legacy pollution, historic uses, and breakdown of PCBs in common goods in amounts allowed by TSCA. Accordingly, Ecology has consistently determined that a variance is an appropriate compliance tool to address PCBs in the Spokane River because “[h]uman caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.” *See* 40 C.F.R. § 131.10(g)(3). Kaiser agrees with Ecology’s assessment that PCB levels in the Spokane River are caused by trace amounts of PCBs from legacy sources and inadvertent, TSCA-allowed levels of PCBs in everyday products, as well as atmospheric deposition, stormwater and agricultural runoff, and groundwater contributions.

2. A variance is necessary whether the PCB water quality standard is 7 ppq or 170 ppq.

A variance is a necessary compliance tool to address PCBs in the Spokane River. Data show that PCB levels exceed 7 ppq, the water quality standard in effect during Ecology’s rulemaking process and discussed in Kaiser’s variance application. However, a variance is still necessary to address Spokane River PCBs to comply with the now-applicable standard of 170 ppq as long as the Spokane River remains on Washington’s Section 303(d) list of impaired waterbodies. Although data compiled by the Task Force in November 2016 show that average water concentrations of PCBs are below 170 ppq when appropriately corrected for blanks or laboratory interference, the river remains impaired based on concentrations of PCBs in fish tissue.¹ If the river remains on the state’s Section 303(d) list due to fish tissue concentration data, other compliance tools may be inapplicable to permitted dischargers. A mixing zone, for example, may be unavailable for discharges to an impaired waterbody.²

3. There are no reasonable regulatory alternatives.

The documents released by Ecology to support its preliminary variance rule language demonstrate that alternative regulatory actions are not feasible. In the preliminary draft environmental impact statement (“EIS”), Ecology acknowledged that neither a compliance

¹ LimnoTech, 2016 Comprehensive Plan to Reduce Polychlorinated Biphenyls (PCBs) in the Spokane River (November 2016), at 9-10, *available at* http://srtrtf.org/wp-content/uploads/2016/04/2016_Comp_Plan_Final_Approved.pdf.

² Ecology, *Mixing Zones for Wastewater Discharges* (January 2009), at 2, *available at* <https://fortress.wa.gov/ecy/publications/documents/0010002.pdf> (“Ecology may deny a mixing zone if ... [t]he receiving water already fails to meet water quality standards.”).

schedule nor a total maximum daily load (“TMDL”) for PCBs is a reasonable alternative to a discharger-specific variance. Kaiser agrees with Ecology’s assessment that a compliance schedule is not a viable alternative because permitted dischargers cannot achieve an end-of-pipe effluent limit equal to the water quality standard “due to technology limitations.” Where there is no known technology that can consistently remove PCBs to ensure permitted discharges can achieve the water quality standard, whether that standard is 7 ppq or 170 ppq PCBs, a compliance schedule is not the appropriate regulatory tool. As Ecology’s preliminary draft EIS states, “A compliance schedule can only be used when it is shown that a discharger can meet effluent limits at the end of the compliance schedule period.”³ Kaiser also agrees with Ecology that a TMDL would not be an effective near-term tool to reduce PCBs in the Spokane River and would be difficult to develop and implement given the large contribution of non-point sources not subject to permit conditions. For these reasons, Ecology correctly declined to consider these regulatory options as alternatives to discharger-specific variances in the draft EIS.

Moving forward with permits without including discharger-specific variances, *i.e.*, the “No Action Alternative” in the draft EIS, is also not a viable alternative to finalizing the variance rule language. The mismatch between the detection limit of Method 608.3, the only EPA-approved test method to measure NPDES permit compliance, and the water quality standard for PCBs, whether 7 ppq or 170 ppq, does not provide the permitted dischargers any regulatory certainty and would not encourage near-term actions to reduce PCBs in the Spokane River.

In contrast, a rule that provides discharger-specific variances will put in place actionable, reviewable, and enforceable PCB reductions that will begin as soon as the rule is finalized. Ecology’s preliminary draft EIS accurately assesses the benefits of variances for the Spokane River permitted dischargers: implementation of the best removal technologies; frequent and required review of the availability of additional technologies; and targeted upstream PCB source identification and removal. Variances will require adaptive management pursuant to each permitted dischargers’ pollutant minimization plan. Ecology’s preliminary draft EIS did not identify any potential negative impacts of discharger-specific variances, only some stakeholders’ inaccurate “perceptions” that a permittee subject to a variance is somehow being let off the regulatory hook.

Kaiser knows that a variance would not be a regulatory pass. In fact, consistent with its application for a variance and the preliminary variance rule language, Kaiser has already implemented actions to reduce PCBs in its effluent. For example, Kaiser has completed several actions to reduce its effluent flow by reducing the use of cooling water and utilizing underground injection for infiltration of non-contact cooling water. Additionally, Kaiser has already initiated an evaluation of technologies to increase the removal efficiency of its walnut shell filtration

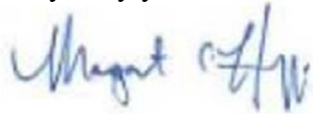
³ Ecology, Preliminary Draft Environmental Impact Statement for PCB Variances on the Spokane River (June 10, 2020), at 9, *available at* <https://ecology.wa.gov/DOE/files/90/90a9f3ee-d7e1-4b6b-90cb-86edf06d7671.pdf>.

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system or alternative treatment systems to remove even greater amounts of PCBs. If the variance rule is finalized, Kaiser is committed, and will be legally obligated to implement, the pollutant minimization plan as included in the preliminary draft variance rule language. *See* Prelim. Draft WAC 173-201A-622, Table 622(2)(b)(iii).

Because the variance rule will provide a legally enforceable and thoughtful tool to improve water quality in the Spokane River, Kaiser is disappointed that Ecology feels it is unable to move forward with adopting the new variance rule at this time. Kaiser looks forward to the opportunity to comment on the final rule language as soon as possible and to continue working with Ecology to implement actions that will further reduce PCBs in the Spokane River.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Margaret C. Hupp".

Margaret C. Hupp

MCH:mch

cc: Kaiser Aluminum Washington LLC