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4/29/22

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ATT: Karl Rains,
Water Quality Planner, Washington Department of Ecology,
Eastern Regional Office
4601 N. Monroe, Spokane, WA 99205-1295

RE: Comments for Draft NPDES Permits for Inland Empire Paper (# WA0000825)

Dear Mr. Rains,

The following are comments on the draft NPDES permit (Permit No. WA0000825) for Inland Empire Paper Company (IEP), which is being submitted by both Riverkeeper as well as the Upper Columbia River Group – Spokane River Group - Sierra Club. Both organizations are advocates for the Spokane River Watershed as well as the public who uses and values a healthy and clean Spokane River Watershed. Please find several other submissions designed to support the comments below.

- **Background and perspective on NPDES Permitting Process:**

Both Sierra Club (SC) and the Spokane Riverkeeper (SRK) conceptualize the NPDES permit as a way to 1) ensure that the states waters meet the legal water quality standard for the State of Washington (thereby ensuring "designated uses" under law) and 2) work on regulating all dischargers such that they will minimize their pollution loading to the eventual end of water pollution in the states waters. In their memo, submitted during the informal comment period (see attachment) on variances in the Spokane River Basin, lawyers from Bricklin and Newman state that the objective of the Clean Water Act (CWA) is *"to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," and to achieve "wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." 33 U.S.C. § 1251(a) and (a)(2) Additionally, the National Pollution Elimination System Permit (NPDES) contains the word "elimination" as the architects of the CWA foresaw, not only limiting pollution to our waters but*

the actual "elimination of water pollution by 1985. The CWA stated, "it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985" (CWA101(a)(1)).[1]

Washington Department of Ecology's Preliminary Proposed Rulemaking for PCB Variances on the Spokane River

Comments on Discharge Effluent Limits:

SC and SRK appreciate and support the WDOE using numeric limits for Total PCBs in the effluent of IEP's discharge to the Spokane River. We appreciate and support the (average monthly) numeric effluent limit of 170 picograms per liter at the end of outfall 001 as it conforms to the Washington State water quality standard.

This represents progress moving to state WQS for IEP and has been a benchmark that has been asked for by numerous stakeholders and members of the public since the NPDES permit was issued for IEP in 2011. Notably, the 2011 permit was absent from the numeric effluent limits for PCBs.

Total PCB Compliance – Use test method 1668c:

Section D of the Fact Sheet - Total analytical methods - on page 52, states that *"Evaluating compliance with numeric effluent limits – Use only 40 CFR part 136 methods. This is currently Method 608. 40 CFR 122.44(i)(1) specifically requires monitoring to assure compliance with permit limitations according to Part 136 approved methods."*

On page 52, it is stated in Table 32 that using test method 608 the detection limit for PCBs is 0.065 parts per billion (ug/L). This means that the detection limit is 65,000 parts per quadrillion (picograms/Liter). However, the human health criteria (HHC) limit is set at only 170 parts per quadrillion (pg/l) to protect the health of the public. In other words, test method 608 is not sensitive enough to adequately detect whether the WQS for PCBs is being met at the end of the outfall pipe. This leaves a public, who is entitled to be able to consume fish (designated use) without risk to their health, vulnerable to bioaccumulated toxics. According to the EPA, PCBs have been established to have negative health effects when consumed at very low levels. They cause cancer, they have negative impacts on the reproductive and endocrine system and they cause disruption to the immune system.[2] According to the Department of Health fish consumption advisories, the public is at risk of consuming unhealthy levels of PCBs that have bioaccumulated into Spokane River fish.[3] This makes the detection and effective regulation of PCBs being dumped into the Spokane River extremely important.

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[1] Washington Department of Ecology's Preliminary Proposed Rulemaking for PCB Variances on the Spokane River – Comments developed by Bricklin and Newman and submitted for Gonzaga Law School
[2] https://www.epa.gov/pcbs/learn-about-polychlorinated-biphenyls-pcbs#healtheffects
[3] https://doh.wa.gov/community-and-environment/food/fish/advisories/publications

Test method 608 would allow for a potentially false sense of compliance with water quality standards under RCW 90.48.520 and allow IEP to potentially pollute the States waters, violate the human health criteria, and cause and contribute to downstream water quality violations with Washington State and other entities such as the Spokane Tribe of Indians.

Test method 1668c has detection limits that are accurate enough to assess the actual PCBs amounts, levels, and types being discharged from outfalls into the Spokane River.

Therefore, we ask that the total PCB loads from the IEP outfall be monitored for compliance with test method 1668c rather than the test method 608 as currently required in the draft permit.

PCB Monitoring, Fact Sheet:

The fact sheet states on page 46 that: "*the proposed permit does not include this additional monitoring. (for PCBs)".*

We believe that this is inappropriate, and that ongoing monitoring should be conducted by IEP in receiving waters for the duration of this permit. This is IEPs responsibility to the State of Washington and the public, given the surface waters of the Spokane River in this section are on the States Category 5 list for PCB impairments.

Further, IEP is extremely late in optimizing their tertiary treatment and PCBs may well continue to be discharged at levels that cause and contribute to water quality violations and human health criteria violations for the State of Washington. Additionally, discharges of PCBs from IEP's facilities contribute to violations of the downstream water quality standard of the Spokane Tribe (which has a WQS of 1.3 pg/L). Monitoring should be the responsibility of the discharger (IEP) in this case.

Monitoring for the total sum of PCBs should be conducted in the discharged effluent during this permit cycle.

Delay in AKART implementation to address PCB pollution. On page 46 the Fact Sheet states:

Ecology will delay the analysis of effluent PCB and TSS data until sufficient effluent data is available from the system. The following statement on page 46 of the Permit Fact Sheet states, "***This analysis will likely occur at the next permit renewal".*** This is an unacceptable subordination of the public values of clean water and perhaps illegal under the Clean Water Act of 1972 and the Washington Water Pollution Control Act. RCW 90.48.

We ask that the analysis of PCB Effluent and TSS data be conducted during the impending (***this)*** *permit cycle* and that this analysis be made publicly available.

Compliance Schedule extension for meeting Total Phosphorus and CBOD, Fact Sheet Page 35-39:

The Fact Sheet states, "*In a letter dated November 10, 2021, IEP requested additional time to meet its final WQBELs for total phosphorus and CBOD5*".

We are unclear why IEP is late in delivering on pollution upgrades that are promised with the implementation of tertiary treatment or AKART. The law demands that AKART (tertiary treatment) be implemented under the DO TMDL and the compliance schedules that WDOE had developed to ensure meeting the clean water goal. The DO TMDL/Ecology clearly laid out the timelines over ten years ago. The Fact Sheet (page 35) states that installation of the "ultrafiltration system" was not completed until "*late 2019*" now in 2022, IEP is "unable" to meet its waste load allocations from the DO TMDL. We are curious as to why it took 9 years to complete the implementation of tertiary treatment.

In 2021 IEP asked for 5 more years to meet waste load allocation for phosphorus and CBOD In the Fact Sheet (page 38), it states:

> *"IEP had requested an additional five years to meet these limitations. In considering this request, Ecology has proposed to extend the compliance schedule an additional two compliance seasons (2022 and 2023). Ecology believes this will:*
>
> - *Allow sufficient time for the Permittee to optimize its mill processes and effluent treatment system*
> - *Allow time to address any unforeseen circumstances*
> - *Meet the 'as soon as possible' requirement*.

We ask that the "annual status updates" in the process of meeting the effluent limitations for total phosphorus and CBOD5, be provided to the public via letters filed in the PARIS database at Ecology. We also ask that these updates be posted on the Spokane River webpage at the WDOE website under "Directory of improvement projects".

On page 35 the Bubble Permit (Delta Elimination Tool) for CBOD and Total Phosphorus is discussed and states that "*The Permittee will not be considered in violation of the seasonal average individual limit for CBOD5 unless the seasonal average bubble (aggregate) limit is also exceeded.*"
We wonder about how this will work in practice. For example, if IEP exceeds their portion of the seasonal average individual" bubble limit" what portion of the legal liability lies with Kaiser Aluminum, LLC?

We ask that you ask that no more allowances be made to exceed the limits and timelines and that Ecology hold IEP responsible to achieve the goal of compliance with the WLA at the "Beginning with the 2024 Compliance Seasons" (page 54, Fact Sheet).

BMPs Fact Sheet:

These tasks consist of regulatory reform of the Federal Toxic Substances Control Act (TSCA) and the Food and Drug Administration's (FDA) food packaging regulations to:

- *revisit currently allowed concentration of PCBs in chemical processes*
- *eliminate or reduce the creation of inadvertently generated PCBs*
- *reassess the current use authorizations for PCBs"*

The above conditions that require the listed BMPs are not adequate.

Labeling these "Best Management Practices" is inappropriate as they will not, in fact, lead to a reduction of PCB loading in this permit cycle. For example, TSCA reform may not happen for 10 years. Therefore - while perhaps laudable outside a permit process - they do not constitute a practice that is a pollution reduction strategy for a permittee inside the NPDES program. It would be more appropriate for WDOE and dischargers to pursue the outcomes of TSCA reform by petitioning petition the EPA to reform TSCA outside this process or program.

We ask that you strike these actions and develop further BMPs that will have actual, demonstratable reductions in PCB loading to the Spokane River from IEP effluent.

Comments on Section S8, Draft Permit Page 30:

SC and SRK recommend re-naming the Pollutant Minimization Plan to Toxic Management Plan. We support the rest of the section in the draft permit.

Reject or deny all applications for discharger and/or waterbody variances for PCBs:

Discharger and/or waterbody variances should not be used (in this or any future permit cycle) to downgrade the designated uses in the Spokane River and allow for the discharge of bioaccumulative toxic such as PCBs, PFAS, or PBDEs. Variances for bioaccumulative toxins will violate EPA regulations regarding variances. Discharger or water body variances for bioaccumulative toxins in a system wherein polluters continue to discharge these same pollutants amounts to a violation of the spirit and intentions of the CWA and frustrates the goals and outcomes envisioned by the original architects of the CWA. Additionally, we believe that any variance for bioaccumulative toxics will prove to be ultimately illegal.

Please refer to the attached document assembled in 2020 by Gonzaga Law School and included in this submission which was originally a part of the SEPA (unofficial comment period) on the 5 applications for PCB variances in the Spokane River.

Cut the SRRTTF requirement for IEP:

Omit the requirement to take part in the Spokane River Regional Toxics Task Force. The SRRTTF should be dissolved.

NPDES Permit must have automatic and specific re-opener clauses:

The permit must contain a reopener clause that initiates the reopening of the NPDES permit to:
1) conform to the federal or State promulgation of a new Human Health Criteria and Water Quality Standard for any number of parameters including PCBs.
2) To the development of a new Total Maximum Daily Load for PCBs and its attendant new Waste Load Allocation for PCB pollution.
3) The federal or State promulgation of a new Aquatic Life Criteria for toxics.
4) After the two-year extension in the compliance schedule is completed and the appropriate waste load allocations as prescribed in the DO TMDL are codified in a modified permit.

Please add PFAS and PBDEs to the list of Persistent Bioaccumulative Toxins (PBT) and require monitoring and reporting to the public:

Per-and polyfluoroalkyl substances (PFAS) are finally being recognized as a persistent and present danger to our communities and our waters and their ecosystems. Additionally, they are being identified in wastewater treatment systems, biosolids, sewers, and stormwater systems. The CWA states clearly that it aims to prevent, reduce, and eliminate pollution in the nation's water in order ‘‘to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,’’ and to achieve ‘‘wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.’’

U.S.C. § 1251(a) and (a)(2). As per the CWA and EPA guidance, the permits should address all pollutants are known to threaten our waters and their ecological integrity. Therefore, the permit should require that IEPs WWTP test for PFAS. Please see EPA statements on their future ambitions and strategic directions with regards to finding and preventing PFAS from entering our ground and surface waters. Monitoring of Receiving Waters should be included in this permit as well as monitoring of wastewater effluent.

Additionally, request that PBDEs (Polybrominated diphenyl ethers) be monitored in wastewater effluent and receiving waters under Permit. Spokane has had an extremely high level of these chemicals in the aquatic ecosystems and continues to have levels high enough to warrant Department of Health Fish Consumption Advisories on the River.[4]

Section H Sediment Quality of the IEP - reference pg 47 Fact Sheet:

In this section - Page 47 of the Fact Sheet - it states that “The Spokane River in the vicinity of the discharge is not an area of sediment deposition.” However, that does not appear to be the case upon a site visit. We ask that you establish how this area around outfall 001 is not a depositional environment.

[4] https://doh.wa.gov/sites/default/files/legacy/Documents/Pubs//334-164.pdf

We are asking that IEP does a study that shows that the toxins (such as PCBs or heavy metals) in their effluent do not accumulate in sediment in the reservoir environment near outfall 001 to the extent that a violation of the sediment-water quality violation does not occur. We feel that there is a possibility at some low flow times of the year, this outfall is far enough into the reservoir environment that it could be a deposition zone.

We appreciate the opportunity to comment and look forward to reading the response to comments.

Respectfully,

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Spokane Riverkeeper

Tom Soeldner
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