THE TULALIP TRIBES

**6406 Marine Drive**
**Tulalip, WA 98271-9694**
**(360) 716-4500**
**FAX (360) 716-0642**



January 31, 2024

**SUBMITTED VIA ELECTRONIC MAIL**

Tricia Miller, Permit Administrator
Washington State Dept of Ecology - NWRO
PO Box 330316
Shoreline, WA 98133-9716

**RE: National Pollutant Discharge Elimination System (NPDES) Wastewater Discharge Permit WA00024490**

Dear Administrator Miller,

I write you on behalf of the Tulalip Tribes of Washington ("Tulalip") regarding the Washington State Department of Ecology, Northwest Regional Office ("Ecology") Draft National Pollutant Discharge Elimination System Waste Discharge Permit No. WA00024490 ("Draft Permit") for the City of Everett Water Pollution Control Facility ("Everett Facility"). Tulalip is a federally recognized Indian tribe comprised of the Snohomish, Snoqualmie, Skykomish people and allied bands who reside on the Tulalip Indian Reservation. The Tulalip Indian Reservation was established pursuant to the Treaty of Point Elliott on January 22, 1855 (12 Stat. 927) and Executive Order of December 23, 1873. Through the Treaty of Point Elliott, Tulalip reserved its immemorial right to fish throughout its ancestral fishing areas—denoted as "Usual and Accustomed grounds and stations" in the Treaty—these areas include, but are not limited to, the Snohomish River Basin and Port Gardner Bay.

The people of Tulalip are the Salmon People and the cultural significance of salmon to Tulalip cannot be overstated. Since colonization, the once abundant returns of anadromous salmon and steelhead have dwindled to imperiled levels, leading to the listing of Puget Sound Chinook and Puget Sound Steelhead populations as threatened under the Endangered Species Act. In addition to providing an integral food source for Tulalip, Chinook salmon are also the primary prey for another species of paramount importance to Tulalip—the endangered Southern Resident Killer Whale. In an effort to stave off extinction of these important species, Tulalip has invested significant resources throughout the Snohomish River Basin.

Tulalip fully supports and incorporates the comments submitted by Earthjustice and submits its own comments to highlight Tulalip's grave concerns about the ongoing harms to Chinook salmon that are being caused by unprecedented levels of Polybrominated Diphenyl Ethers ("PBDEs"). The Draft Permit is unacceptable because, among other reasons, it fails to reduce, let alone prevent, the discharge of PBDEs into Tulalip's ancestral waters. The concentration of PBDEs in the lower Snohomish River—an area that

provides crucial rearing habitat—harms juvenile Chinook salmon by suppressing the immune systems' ability to fend off naturally occurring diseases.

The State of Washington and its agencies and subdivisions, such as Ecology and the City of Everett, are bound by the Treaty of Point Elliott to refrain from destroying salmon habitat and Tulalip's immemorial right to fish, which "would be worthless without harvestable fish."[1] The permitting of and actual discharge of toxics that are known to harm ESA-listed Chinook salmon into critical spawning, rearing, and migration habitat, appear to violate the Treaty of Point Elliott and the Endangered Species Act take prohibition. Moreover, the status quo perpetuated by the Draft Permit continues to violate the State's water quality standards which protect the Snohomish River from introducing toxic substances at levels which may have the potential" to "adversely affect" salmon spawning, rearing, and migration.[2]

While Ecology has long been aware that PBDE pollution from the Everett Facility is harming salmon,[3] Ecology located sources through influent screening in 2021 when it identified two industrial users (IU) subject to NPDES requirements, an industrial laundry and landfill, discharging influent containing alarming levels of PBDEs into the Everett Facility.[4] Despite Ecology's location of two significant sources of these toxic pollutants, the Draft Permit requires mere information gathering during this permit cycle and does not require either known PBDE source IU (or any other source of PBDE pollution) to take any action to reduce PBDE discharge.

Accordingly, Ecology must mandate pretreatment pollution reduction actions for the pretreatment permits of the known sources of PBDE pollution to prevent harm to Chinook salmon during this permit cycle. Further, Ecology must mandate that pretreatment permits be modified to require pretreatment pollution reduction actions for all IUs that, through effective monitoring, become known sources of PBDE discharge. Tulalip also insists that Ecology mandate a toxic reduction plan similar to that required under the Ecology-issued NPDES permit for the City of Spokane's Riverside Park Water Reclamation Facility. Importantly, the requisite toxic reduction plan must require adaptive management based on effective monitoring to ensure the efficacy of toxic reduction actions.

In addition to influent controls, Ecology should analyze potential effluent limits and technology for reducing PBDEs from the Everett Facility outfalls, especially in light of the known available technology, such as the system at the City of Spokane's Riverside Park Water Reclamation Facility. Effluent controls must be implemented to prevent harmful concentrations of PBDEs from passing through the Everett Facility. Relatedly, while the Everett Facility effluent discharge should continue to be routed through the Port Gardner Bay deep-water outfall during the Chinook salmon outmigration, effective monitoring at

---

[1] *United States v. Washington*, 853 F.3d 946, 965-66 (9th Cir. 2017).

[2] WAC 173-201A-240(1); *see also* WAC 173-201A-602; and 310(1).

[3] Carey, A.J., West, J.E., Fisk, R.J., Langness, M., Ylitalo, G.M., and O'Neill, S.M. (2019) Location Source of PBDE exposure of juvenile Chinook salmon along their out-migrant pathway through the Snohomish River, WA. p. 17 in 2018 Salish Sea Toxics Monitoring Synthesis: A Selection of Research. Edited by C.A. James, R. Jordan, M. Langness, J. Lanksbury, D. Lester, S. O'Neill, K. Song, and C. Sullivan. Puget Sound Ecosystem Monitoring Program. Tacoma, WA. 88 pp: https://www.eopugetsound.org/articles/2018-salish-sea-toxics-monitoring-synthesis. (Jan 29, 2024); Sandra M. O'Neill, *et al.,* Toxic contaminants in juvenile Chinook salmon (*Oncorhynchus tshawytscha*) migrating through estuary, nearshore and offshore habitats of Puget Sound 58 (2015); Sloan et al. *PBDEs in juvenile* Chinook Arkoosh et al. *Disease susceptibility of salmon exposed to PBDEs Disease susceptibility of salmon exposed to polybrominated Diphenyl Ethers* Aquatic Toxicology 98 (2010) 51–59.

[4] Wong, S. 2022. Chemicals of Emerging Concern in Pretreated Industrial Wastewater in Northwestern Washington State: Screening Study Results, 2021. Publication 22-03-013.

this outfall must be required to determine the environmental impacts, including those impacts associated with PBDEs. Further, Tulalip opposes the spreading of biosolids from the Everett Facility onto agricultural fields and insists that such biosolids be effectively monitored, similar to influent and effluent monitoring.

Finally, Tulalip insists that Ecology require that all monitoring data and the toxic reductions plan (subsequent updates and evaluations) be made publicly available.

Thank you for taking the time to listen to consider our recommendations. Should you have any questions or need further follow up, please contact the Natural and Cultural Resources Executive Director, Jason Gobin at jgobin@tulaliptribes-nsn.gov or Tyler J. Eastman at teastman@tulaliptribes-nsn.gov.

Sincerely,

Jason Gobin

cc: Tulalip Tribes Board of Directors
Tyler J. Eastman, Reservation Attorney