May 7, 2024

Marla Koberstein

Department of Ecology  
Water Quality Program  
PO Box 47696  
Olympia, WA 98504-7696

**RE Comments on Proposed Aquatic Life Toxics Criteria**

Dear Ms. Koberstein:

Thank you for the opportunity to provide comments on the Washington Department of Ecology’s (WDOE) proposed Aquatic Life Toxics Criteria for freshwater and marine waters. Updating criteria for toxic pollutants is long overdue; the last major update occurring in 1992. Much has changed in our watersheds since 1992, notably the listings of salmon, steelhead and bull trout under the Endangered Species Act. These populations in many watersheds throughout the state are deemed at crisis levels, and further delay is unacceptable. As such, we strongly support this rulemaking effort and urge WDOE to adopt the proposed rule, but for those specific exceptions noted below.

The Puyallup Tribe, a sovereign nation, signed the Treaty of Medicine Creek, 10 Stat. 1132 (1855), with the United States reserving rights to harvest fish and other natural resources both within and outside of its reservation boundaries.  The Treaty Right of the Puyallup Tribe to harvest fish both within and outside reservation boundaries was re-affirmed in the 1974 decision in *U.S. v. Washington,* 384 F.Supp. 312, (W.D. Wash., 1974).  For time immemorial, the Puyallup Tribe has fished the waters both within and outside its current reservation boundaries as a subsistence fishery, with the salmon being a traditional food source and cultural staple. The Tribe has a Treaty Right to fish and consume fish that are safe for consumption. If fish are not safe for consumption, it is an impairment of the Tribe’s Treaty Right.

We agree with Ridolfi’s technical comments submitted to Greg Haller at the NWIFC, on May 3, 2024 and attached to this letter for reference. However, on the matter of heptachlor epoxide, we do believe the state should adopt the nationally recommended criteria for this toxic. As a degradation product of heptachlor, which was widely used as an insecticide historically, shows up in many NPL sites and is toxic to fish at very low concentrations, we believe it is the most protective approach. We also do not agree with the state’s proposed criteria for hardness-dependent metals. These include cadmium, chromium III, lead, nickel, silver and zinc. Many of

our waters in the Puyallup watershed are much softer than 100 mg/L, which the state uses to derive the criteria for these metals. As such, the criterion should be hardness-dependent to the waters for which the criteria apply.

Thank you for the opportunity to comment. Please feel free to contact me if you should have any questions (253.405.7815).

Sincerely,

Char Naylor

Char Naylor

Assistant Fisheries Director

Puyallup Tribe of Indians