**SPOKANE RIVERKEEPER \* THE LANDS COUNCIL \* KOOTENAI ENVIRONMENTAL ALLIANCE**

April 13, 2012

Dennis J. McLerran

Regional Administration

Environmental Protection Agency, Region 10

1200 Sixth Avenue, Suite 900

Seattle, Washington 98101-3140

**SENT VIA EMAIL (mclerran.dennis@epa.gov)**

 **RE: NPDES Permits for Spokane River Dischargers**

Dear Mr. McLerran:

This letter is sent on behalf of the Spokane Riverkeeper, The Lands Council, and the Kootenai Environmental Alliance (“Conservation Groups”) in response to your March 29, 2012 letter to Sarah Hubbard-Gray regarding conditions to address PCBs that will be included in the NPDES permits for Spokane River dischargers in the State of Idaho. In that letter, you stated, in part, that “the EPA does not believe the Clean Water Act or its implementing regulations provide us with the authority to require [Idaho discharge] participation in the Task Force.”

In the Department of Ecology, April 2011 *Spokane River PCB Source Assessment[[1]](#footnote-1)* (“Assessment”), Ecology concluded that “PCB loading from Idaho at the state line represented 30% of the overall loading.” The Assessment also concludes:

A PCB loading scenario was proposed to meet the Spokane Tribe human health water quality criterion for total PCBs (3.37 pg/l, equivalent to 0.1 ng/g in tissue). **The scenario requires a 95% PCB load reduction at the Idaho border**, a 97% load reduction in the Little Spokane River, and ≥99% reductions in municipal, industrial, and stormwater discharges.

In short, the best available information concludes that drastic reductions are required from both Idaho and Washington dischargers to meet water quality standards.

While the Conservation Groups believe that strong permit limits may be necessary to address this level of PCB reduction, the Riverkeeper and other stakeholders, including NPDES permittees in Washington, reached a compromise that took a comprehensive approach to addressing PCBs. This approach included the formation of a regional Toxic Task Force that would develop and implement measures that would result in measurable reductions in PCBs in the Spokane River. The permittees in Washington ultimately agreed to this approach and the language was included in the NPDES permits adopted in Washington.

In supporting this approach, the Conservation Groups made it clear that it was our expectation that permittees on both sides of the border would have identical permit conditions. **Absent such parity, the Conservation Groups would expect that EPA includes PCB effluent limits that ensure that water quality standards for PCBs are met in the Spokane River, as is specifically required by the Clean Water Act.**

All NPDES permits must ensure compliance with water quality standards. A failure to ensure such compliance is a violation of the Clean Water Act. The applicable federal regulations are not ambiguous: those regulations require that the Permit the Region issues “shall include” water quality-based effluent limits to “[a]chieve water quality standards.” 40 C.F.R. § 122.44(d)(1). Specifically, “[l]imiations must control all pollutants” that may cause, contribute to, or have a reasonable potential to cause a violation of water quality standards. *Id.* § 122.44(d)(1)(i). There is no legal authority for the Region to ignore these clear requirements of the federal NPDES permitting regulations and water quality standards.

While we understand that this puts EPA in a difficult situation, addressing PCBs in the Spokane River is no easy task. The Washington permittees, Ecology, the Spokane Tribe, and the environmental community came together to craft an acceptable approach in lieu of end of the pipe limits. It certainly is not unreasonable to expect that EPA would take the lead to ensure that the permits in Idaho contain conditions that are identical to this approach.

We look forward to working with the Task Force and EPA in ensuring that the permits issued for the Idaho permittees are protective of water quality in the Spokane River.

Sincerely,

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Cc: Spokane River Toxics Task Force

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 Mike Lidgard, EPA Region 10 (Lidgard.michael@epamail.epa.gov)

1. Available at <http://www.ecy.wa.gov/pubs/1103013.pdf>. [↑](#footnote-ref-1)