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5 BEFORE THE POLLUTION CONTROL HEARINGS BOARD
IN AND FOR THE STATE OF WASHINGTON

6 SPOKANE RIVERKEEPER, THE LANDS
7 COUNCIL, KOOTENAI ENVIRONMENTAL
8 ALLIANCE, LAKE SPOKANE ASSOCIATION
9 THE CITY OF COEUR D'ALENE and
INLAND EMPIRE PAPER COMPANY,

Appellants,

10 v.

11 STATE OF WASHINGTON, DEPARTMENT
12 OF ECOLOGY, and WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE,

Respondents.

PCHB No. 16-____

JOINT NOTICE OF APPEAL

13
14 Pursuant to Chapter 43.21B RCW, Chapter 34.05 RCW, and Chapter 371-08 WAC,
15 Spokane Riverkeeper, The Lands Council, Kootenai Environmental Alliance, and Lake Spokane
16 Association, by and through its attorneys Rick Eichstaedt and the Center for Justice, the City of
17 Coeur d'Alene and Inland Empire Paper Company, by and through its attorneys James A. Tupper
18 and Tupper Mack Wells PLLC, hereby appeal coverage under the Upland Fin-Fish Hatching and
19 Rearing General Permit issued on December 16, 2015, as to the Washington Department of Fish
20 and Wildlife Spokane Hatchery, Permit No. WAG137007.

21 I. Appealing Parties and Representation

Party	Legal Counsel
Jerry White, Jr. Spokane Riverkeeper 35 West Main Avenue, Suite 300 Spokane, WA 99201	Rick Eichstaedt CENTER FOR JUSTICE 35 West Main Avenue, Suite 300 Spokane, WA 99201 Telephone: 509-835-5211 Fax: 509-835-3867 <i>ricke@cforjustice.org</i>

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Party

Mike Petersen
Executive Director
The Lands Council
25 W. Main Avenue, Suite 222
Spokane, WA 99201

Adrienne Cronebaugh
Executive Director
Kootenai Environmental Alliance
P.O. Box 1598
Coeur d'Alene, ID 83816-1598

Galen Buterbaugh
Lake Spokanc Association
10128 N. Ridgecrest Dr.
Spokane, WA 99208

H. Sid Fredrickson
Wastewater Superintendent
City of Coeur d'Alene
710 E. Mullen Street
Coeur d'Alene, ID 83814

Kevin Rasler
President & General Manager
Inland Empire Paper Company
3320 N. Argonne
Spokane, WA 99211

Legal Counsel

Rick Eichstaedt
CENTER FOR JUSTICE
35 West Main Avenue, Suite 300
Spokane, WA 99201
Telephone: 509-835-5211
Fax: 509-835-3867
ricke@cforjustice.org

Rick Eichstaedt
CENTER FOR JUSTICE
35 West Main Avenue, Suite 300
Spokane, WA 99201
Telephone: 509-835-5211
Fax: 509-835-3867
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CENTER FOR JUSTICE
35 West Main Avenue, Suite 300
Spokane, WA 99201
Telephone: 509-835-5211
Fax: 509-835-3867
ricke@cforjustice.org

James A. Tupper
Lynne Cohee
TUPPER MACK WELLS PLLC
2025 First Avenue, Suite 1100
Seattle, WA 98121
Telephone: 206-493-2300
Fax: 206-493-2310
tupper@tmw-law.com
cohee@tmw-law.com

James A. Tupper
Lynne Cohee
TUPPER MACK WELLS PLLC
2025 First Avenue, Suite 1100
Seattle, WA 98121
Telephone: 206-493-2300
Fax: 206-493-2310
tupper@tmw-law.com
cohee@tmw-law.com

1 II. Identification of Parties

2 2.1 , Spokane Riverkeeper, The Lands Council, Kootenai Environmental Alliance,
3 Lake Spokane Association, The City of Coeur d'Alene, and Inland Empire Paper Company
4 Appellants.

5 2.2 State of Washington, Department of Ecology, and Washington Department of
6 Fish and Wildlife, Respondents.

7 III. Decision under Appeal

8 3.1 The Upland Fin-Fish Hatching and Rearing Permit issued by the Department of
9 Ecology on December 16, 2015. A copy of the permit is attached hereto.

10 IV. Grounds for Appeal

11 4.1 The Department of Ecology ('Ecology') granted coverage under the Upland Fin-
12 Fish Hatching and Rearing Permit ("Permit") to the Washington Department of Fish and
13 Wildlife Spokane Hatchery under permit number WAG 137007. Hatcheries and hatchery fish
14 are known sources of Polychlorinated Biphenyls ("PCBs") to receiving waters. The terms of the
15 permit coverage for the Spokane Hatchery and other potential hatcheries are not reasonable or
16 adequate to identify, monitor and reduce PCB loading to the Spokane River and Lake Spokane.
17 The obligations of the City of Coeur d'Alene and Inland Empire Company to manage PCB
18 concentrations in their influent and effluent as well as their obligations to participate in the
19 Spokane River Regional Toxics Task Force. The grant of coverage to the Spokane Hatchery is
20 prejudicial to the Spokane Riverkeeper, The Lands Council, Kootenai Environmental Alliance,
21 and Lake Spokane Association, and their members who have an interest in maintaining and
22 improving water quality including beneficial uses for the recreational and aesthetic enjoyment of
23 the Spokane River and Lake Spokane. The Appellants request that the Pollution Control
24 Hearings Board revoke the permit coverage under the Permit for the Spokane Hatchery unless
25 the coverage for the hatchery under the Permit is modified to appropriately address PCBs
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1 discharged from the hatchery and the release of PCB contaminated fish in the Little Spokane
2 River, the Spokane River and Lake Spokane.

3 V. Statement of Facts

4 5.1 The Spokane Riverkeeper is a program of the Center for Justice, a non-profit
5 corporation, dedicated to protecting and restoring the health of the Spokane River and its
6 tributaries. The Spokane Riverkeeper conducts surveillance of the Spokane River (“River”) and
7 reaches out to river users who share its commitment to a river that is swimmable, fishable, and
8 properly regulated. The Spokane Riverkeeper is a founding member of the SRRTTF.

9 5.2 The Lands Council is a non-profit corporation whose mission is to preserve and
10 revitalize Inland Northwest forests, water, and wildlife through advocacy, education, effective
11 action, and community engagement. The Lands Council’s goals include reducing the risk of
12 Spokane and Kootenai County citizens, particularly ethnic and economically disadvantaged
13 people, from the health hazards of lead, PCB’s and other toxics in our rivers and aquifer. The
14 Lands Council is a founding member of the SRRTTF.

15 5.3 The Kootenai Environmental Alliance is a non-profit corporation established to
16 conserve, protect and restore the environment, with particular emphasis on the Coeur d’Alene
17 Lake Basin and the Spokane River in Idaho. The Kootenai Environmental Alliance is a member
18 of the SRRTTF.

19 5.4 The Lake Spokane Association is a non-profit dedicated to the protection and
20 conservation of Lake Spokane, its shoreline communities, wildlife, fisheries, and recreational
21 opportunities. Through education, awareness, and collaboration, its officers and members strive
22 to unite our community, local and regional agencies, corporate partners, and government entities,
23 to preserve and enhance the lake and habitat. Using monitoring and research efforts, it makes
24 recommendations for the future benefit of Lake Spokane, its residents and its many and diverse
25 recreational users. The Lake Spokane Association is a founding member of the SRRTTF.

1 5.5 The City of Coeur d'Alene, located on the Spokane River below Lake Coeur
2 d'Alene, owns and operates a Wastewater Treatment Plant that is subject to an individual
3 NPDES permit administered by EPA Region 10.

4 5.6 Coeur d'Alene has a long standing working relationship with all dischargers on
5 the Spokane River to improve and enhance water quality in the river. This includes efforts to
6 reduce toxic loading of PCBs through the conditions in its NPDES permit that require it to
7 participate in the Spokane River Regional Toxics Task Force ("SRRTTF"). Coeur d'Alene has
8 worked closely with and has provided funding of the SRRTTF.

9 5.7 Inland Empire Paper Company owns and operates a pulp and paper mill located
10 on the Spokane River in the City of Millwood within Spokane County. Inland Empire Paper
11 Company is regulated under an NDPEs permit administered by Department of Ecology. Inland
12 Empire Paper Company is also required under its NPDES permit to PCB management and
13 reduction efforts and to participate in the SRRTTF.

14 5.8 Inland Empire Paper Company has worked closely with and has provided funding
15 of the SRRTTF. Inland has also worked independently of the SRRTTF on efforts to reduce
16 PCBs in the environment through an Ecology Chemical Action Plan and through federal
17 legislation and regulations to reduce the allowable PCB concentrations in commercial and retail
18 products.

19 5.9 The City of Coeur d'Alene and Inland Empire Paper Company NPDES permits
20 specifically require the SRRTTF to develop a comprehensive plan to make measurable progress
21 toward bringing the Spokane River into compliance with applicable water quality standards for
22 PCBs.

23 5.10 The SRRTTF was established, and participation required in the City of Coeur
24 d'Alene and Inland Empire Paper Company NPDES permits, in response to listings of the
25 Spokane River and Lake Spokane as impaired for failing to meet water quality standards for
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1 PCBs under section 303(d) of the federal Clean Water Act. These listings are based on fish
2 tissue equivalent concentrations for the applicable PCB criteria based on water column
3 concentrations for the state of Washington. The fish tissue data includes results from fish tissue
4 collected from hatchery fish released in the river and lake.

5 5.11 Ecology has through its own research concluded that waterbodies may be
6 included on the § 303(d) list due to contamination stemming from hatcheries. Ecology has in
7 fact concluded that for PCBs, hatchery fish may contribute to impairment and, in some cases,
8 may cause the bulk of impairment. Ecology has advised that water quality program improvement
9 efforts such as the SRRTTF should consider hatchery fish as contaminant sources.

10 5.12 Coverage under the Permit for the Spokane Hatchery improperly and
11 unreasonably fails to require the Spokane Hatchery to participate in the SRRTTF on the same
12 terms as the City of Coeur d'Alene and Inland Empire Paper Company NPDES permits and other
13 NPDES permits issued by Ecology and EPA on the Spokane River.

14 5.13 Coverage under the Permit for the Spokane Hatchery improperly and
15 unreasonably fails to require the Spokane Hatchery to conduct influent and effluent monitoring
16 together with receiving water sampling on the same terms as the Coeur d'Alene NPDES permit
17 or the monitoring program established by the SRRTTF.

18 5.14 Coverage under the Permit for the Spokane Hatchery improperly and
19 unreasonably fails to require the Spokane Hatchery to undertake an adequate toxics management
20 plan to identify and eliminate existing sources of contamination within the direct control of the
21 hatchery, procurement practices that are consistent with state law prohibiting state agencies from
22 purchasing products containing PCBs, providing public education on disposal of PCB containing
23 waste and annual reporting on toxic management efforts.

24 5.15 Coverage under the Permit for the Spokane Hatchery improperly and
25 unreasonably fails to require the hatchery to sample the fish tissue concentrations of PCBs in fish
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1 that are stocked from or through the hatchery to the Little Spokane River, the Spokane River and
2 Lake Spokane. The hatchery should be required to document and report the fish tissue
3 concentrations together with the dates, the number of fish and location of the release of any PCB
4 contaminated fish. The hatchery should additionally be required to undertake a study that
5 documents the fate of the fish that are released through recreational fishing, predation or death.

6 VI. Relief Sought

7 Wherefore, Spokane Riverkeeper, The Lands Council, Kootenai Environmental Alliance,
8 Lake Spokane Association, the City of Coeur d'Alene, and Inland Empire Paper Company,
9 respectfully request that the Board grant the following relief:

10 1. An order declaring invalid the Spokane Hatchery coverage under the Permit and
11 directing Ecology to modify the coverage for consistency with applicable requirements of federal
12 and state law;

13 2. Such other and further relief as the Board deems appropriate under the
14 circumstances of this case.

15 Respectfully submitted this 14th day of January, 2016.

16 CENTER FOR JUSTICE

17 

18 Rick Eichstaedt, WSBA No. 36487
19 Attorneys for Spokane Riverkeeper, The Lands
20 Council, Kootenai Environmental Alliance, and
21 Lake Spokane Association

22 TUPPER MACK WELLS PLLC

23 

24 James A. Tupper, Jr., WSBA No. 16873
25 Lyne Cohee, WSBA No. 18496
26 Attorneys for the City of Coeur d'Alene and Inland
Empire Paper Company

DECLARATION OF SERVICE

I declare on oath that on this date I filed the foregoing Joint Notice of Appeal with the Pollution Control Hearings Board by delivering a copy via facsimile, and by sending the original and one copy, via U.S. mail, postage prepaid, addressed as follows:

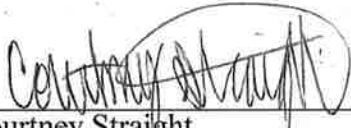
Pollution Control Hearings Board
1111 Israel Rd. SW, Ste 301
Tumwater, WA 98501

I further declare that I caused copies of the foregoing Joint Notice of Appeal to be served on the Department of Ecology by mailing the same via first-class mail, postage prepaid, addressed as follows:

Department of Ecology
Appeals Coordinator
P. O. Box 47608
Olympia, WA 98504-7608

Jim Unsworth, Director
Washington Department of Fish and Wildlife
600 Capitol Way N.
Olympia, WA 98501-1091

Signed at Seattle, Washington, this 14th day of January, 2016.



Courtney Straight

4810-5971-3580, v. 1