BEFORE THE POLLUTION CONTROL HEARINGS BOARD

STATE OF WASHINGTON

SIERRA CLUB and CENTER FOR ENVIRONMENTAL LAW and POLICY,	)	
Appellants,	)	
vs.	)	PCHB No. 11-184
STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY and SPOKANE COUNTY,	)	
Respondents.	)	

TESTIMONY OF JIM BELLATTY

March 27, 2013
Tumwater, Washington

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TUMWATER, WASHINGTON

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MR. LAVIGNE: Ecology would like to call Jim Bellatty.

JIM BELLATTY, having been first duly sworn on oath or affirmed to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. LAVIGNE:

Q Good afternoon, Mr. Bellatty. Could you please state your name for the record.

A Yes. My name is Jim Bellatty.

Q And, Mr. Bellatty, who are you currently employed by?

A I work for the Washington State Department of Ecology.

Q And how long have you been an employee with the Department of Ecology?

A I have been employed with the Department of Ecology since September of 2002; approximately ten years.

Q And what is your current position with the Department?

1 A I am a water quality section manager for the Water
2 Quality Program in the Eastern Regional Office in
3 Spokane.
4 Q And can you explain to us what that means; what do you
5 do?
6 A As part of my job, I manage approximately 30 people
7 dedicating their time toward watershed management type
8 of work, water quality permitting type of work,
9 financial assistance, hydroelectric dam relicensing,
10 and things like that.
11 Q And have you been the section manager for the Water
12 Quality Program at the Eastern Regional Office for your
13 entire ten-year career with the Department?
14 A Yes.
15 Q And you've been in the hearing the whole time; correct?
16 A Correct.
17 Q There's been a fair amount of talk about the Regional
18 Toxics Task Force. Are you familiar with that group?
19 A Yes, I am familiar with that group.
20 Q We'll need to have you talk directly into the mike.
21 A Sorry.
22 Q It's far more important that they hear what you have to
23 say than me.
24 A Okay.
25 Q When was the Department of Ecology first approached

1 with the idea of using source reduction efforts to
2 reduce PCB discharges into the Spokane River?
3 A The idea of source identification and control came to
4 our attention in 2011 when we became involved with the
5 PCB settlement agreement process that was between the
6 City of Spokane and the Riverkeeper, Spokane
7 Riverkeeper, and the Gonzaga University Environmental
8 Law Clinic and the Center for Justice, I think it was.
9 Q And you mentioned that was a settlement agreement. Was
10 that in relation to some sort of litigation between the
11 Spokane Riverkeeper and the City of Spokane?
12 A Yes, that's my understanding.
13 Q And do you know what kind of litigation those parties
14 were embroiled in?
15 A The litigation I believe was about PCBs and their
16 stormwater system.
17 Q And was it a Clean Water Act citizen suit action?
18 A Yes, I believe so.
19 Q And were the parties suggesting they would settle their
20 lawsuit by doing some sort of PCB source reduction
21 activities?
22 A Yes, that was part of the settlement.
23 Q And what was your just basic understanding of what the
24 parties were proposing to do?
25 A The way I understand it is the settlement agreement put

1 forward an aggressive plan for the City of Spokane to
2 look for every opportunity they could to identify
3 sources of PCBs in their stormwater system and control
4 those sources, remove them, keep them from going to the
5 river.
6 Q And just to make sure we are clear on this, this
7 involved the city's stormwater system. We've also
8 talked a lot about the city's treatment facility, the
9 Riverside Park facility. This settlement agreement was
10 not related to Riverside, correct, it was to the
11 stormwater?
12 A Correct.
13 Q And that would be those -- Mr. Rawls pointed out the
14 combined sewer overflow pipes on that map, the red
15 dots. That's part of that system; correct?
16 A Correct.
17 Q What did Ecology think about this suggestion from the
18 Riverkeeper and the City of Spokane?
19 A Ecology viewed this as a very positive step forward
20 toward identifying the sources of PCB pollution in
21 their system and trying to be able to keep them out of
22 the river and take real immediate action to identify
23 those sources and to do something about it.
24 Q And Mr. Rawls testified earlier about the county and
25 the Riverkeeper eventually sitting down and working on

1 some language that found its way into the permit. Was
2 Ecology eventually approached to consider that same
3 approach that the Riverkeeper and the city had used to
4 go into these treatment plants as well?
5 A Yes.
6 Q And my understanding is there's five point source
7 dischargers on the Washington side of the Spokane
8 River; is that correct?
9 A Correct.
10 Q And do all five of those dischargers have language in
11 their permit similar to what's in Condition S13 of the
12 county's permit?
13 A Yes.
14 Q And the task force, Mr. Bellatty, is it just limited to
15 the point source dischargers or are there other members
16 of the Spokane community that are also part of the task
17 force?
18 A The task force is open to anyone who wants to be part
19 of addressing and solving the PCB problem in the
20 Spokane River.
21 Q Was the Spokane Tribe of Indians eventually or
22 initially involved with the task force?
23 A Yes.
24 Q Did they participate in any way in developing the
25 language that made its way into the permits?

1 A Yes, they did.
2 Q The tribe has indicated that they no longer support the
3 task force or are involved with it. Despite that, does
4 Ecology continue to work with the tribe on a
5 government-to-government basis to address PCB loadings
6 to the Spokane River?
7 A Yes, we do.
8 Q And has the tribe contributed any funding to the
9 workings of the task force?
10 A Yes, they have.
11 Q And what have they contributed and to what particular
12 programs?
13 A The Spokane Tribe has contributed $7500 toward the
14 Ruckelshaus Center contract.
15 Q And before you go on, what is the Ruckelshaus Center
16 going to do?
17 A The Ruckelshaus Center is facilitating the toxics task
18 force.
19 Q And any other financial contributions by the tribe to
20 the workings of the task force?
21 A Yes. The Spokane Tribe is also contributing
22 approximately $21,000 to a combined effort with the
23 Department of Ecology to do some long-term toxics
24 monitoring on the Spokane River.
25 Q And what's the purpose of that long-term toxics

1 monitoring effort?
2 A One of the purposes is to be able to determine trends
3 over time of PCBs in the Spokane River in sediments, in
4 fish tissue and in water.
5 Q Mr. Bellatty, can you grab the thinner of the notebooks
6 up on the table there and I'd like to go to Ecology
7 Exhibit 1, which is the permit, and, please, turn to
8 page 48.
9 A Okay.
10 Q The paragraph at the bottom of that page, can you just
11 take a moment and familiarize yourself with that
12 language.
13 A Yes.
14 Q Is that language that was suggested by the tribe?
15 A Yes.
16 Q This language says that if the task force fails to make
17 measurable progress towards meeting applicable water
18 quality criteria for PCBs, Ecology would be obligated
19 to proceed with development of a TMDL or some other
20 alternative to ensure standards are met.
21 In light of that language, Mr. Bellatty, do you
22 consider the task force to be quote-unquote in lieu of
23 a TMDL?
24 A No.
25 Q What's the purpose of the task force in your mind?

1 A The purpose of the task force, in my mind, is to bring
2 together a diverse array of people in the community who
3 are willing to sit down and address and try and solve
4 the toxics pollution problems in the Spokane River.
5 Q And you heard Mr. Rawls talk about the collaborative
6 effort that they've been involved with. Have you been
7 tracking the task force activities?
8 A Yes.
9 Q And is your assessment of what the task force has done
10 so far consistent with Mr. Rawls' testimony?
11 A Yes.
12 Q This language we were looking at at page 48 of the
13 permit sort of sets this metric of measurable progress,
14 and Mr. Rawls testified, apparently, a little bit to
15 the dischargers' consternation, that hasn't been
16 defined yet. Is that a term that Ecology is going to
17 define or is that something the task force is going to
18 do?
19 A That is a term that the Department of Ecology will need
20 to define.
21 Q And as the Department works to define what measurable
22 progress means, is it your intent to continue to work
23 on a government-to-government basis with the Spokane
24 Tribe in developing that?
25 A Yes.

1 Q And why would you do that?
2 A Well, it's part of our responsibility, in terms of
3 regulating a shared resource, to work together with our
4 colleagues on the federal and on the state and the
5 tribal level to solve these problems.
6 Q There's also been some discussion during the hearing
7 about a draft PCB TMDL document that Ecology's
8 Environmental Assessment Program put together. Why
9 hasn't Ecology completed a PCB TMDL for the Spokane
10 River?
11 A There are several reasons why the Department of Ecology
12 has not put together a PCB TMDL, the first of which is
13 we felt that the draft PCB TMDL that was put together
14 by the Environmental Assessment Program in 2006 had
15 some deficiencies in terms of monitoring data,
16 especially as it relates to stormwater, and that was of
17 concern because of the high percentage of pollution
18 load from the stormwater.
19 A second concern that affected our ability to do
20 this is the fact that that draft report was not able to
21 identify more than 43 percent of the sources of
22 pollution, which for us leaves a lot of unanswered
23 questions and uncertainty with our ability to be able
24 to do a TMDL.
25 Then the last reason why we were unable to do a

1 PCB TMDL is at the time when a lot of this came up, we
2 were in the middle of doing the dissolved oxygen TMDL,
3 and dissolved oxygen TMDL was a 12-year process that
4 took us up until 2010 and it consumed all of our time
5 and resources.
6 Q And did the agency make some sort of policy decision
7 with respect to finishing off the dissolved oxygen
8 TMDL?
9 A Yes.
10 Q So after the draft TMDL came out, there was a document,
11 and we'll talk a little bit more about it, dated in
12 2011, the PCB source assessment document. Are you
13 familiar with that?
14 A Yes.
15 Q Why couldn't Ecology just convert that into a TMDL?
16 A Similar to the draft PCB TMDL in 2006, there still
17 remains the 57 percent unknown sources that need to be
18 figured out, so that document in and of itself would
19 not be able to transform into a TMDL.
20 Q Could you pull out Exhibit A-37. It's in one of those
21 thicker notebooks.
22 A A --
23 Q A-37. I'm sorry, it's A-34, the Spokane River Draft
24 TMDL. When you get to that, could you turn to Appendix
25 B, it starts at 114, but I want to start on page 115,

1 if you could, please.
2 A Okay.
3 Q What does Appendix B reflect?
4 A Appendix B is the sampling locations for the Spokane
5 River PCB TMDL study.
6 Q Is that the data the study is based on?
7 A Sampling locations, yes.
8 Q Okay. And if you turn the page, does it also show the
9 sampling dates?
10 A Yes, it does.
11 Q When I looked through that appendix, Mr. Bellatty, it
12 looked to me like the samples were limited to a time
13 frame from about September 2003 into late spring, early
14 summer of 2004. Is that your read of that table as
15 well?
16 MR. SMITH: Objection. Leading.
17 JUDGE MARCHIORO: Sustained.
18 Q Mr. Bellatty, what period of time is covered by the
19 sampling referenced in Appendix B of Exhibit A-34?
20 A Well, the time periods that I see here are October of
21 2003 through May of 2004.
22 Q And could you also, and I think it might be in the
23 other book, can you open up to Exhibit A-12, and I'm
24 also going to ask you to go to Appendix B in that
25 document, which starts at 121, but I want to go to page

1 122, please.
2 A Okay.
3 Q And what's reflected in Appendix B of Exhibit A-12?
4 A It looks like the exact same information that I saw in
5 Table B-1.
6 Q Isn't the data in A-12 exactly the same as was in the
7 draft TMDL?
8 MR. SMITH: Objection. Leading.
9 MR. LAVIGNE: I'll rephrase.
10 JUDGE MARCHIORO: I'll overrule.
11 MR. LAVIGNE: I am trying to move this along,
12 but I can --
13 JUDGE MARCHIORO: No, I appreciate that. I
14 just want to remind the parties that we've been
15 somewhat flexible about leading questions and so we are
16 going to go ahead and allow the question as phrased.
17 MR. SMITH: I will withdraw that objection.
18 Q Mr. Bellatty, isn't it true that the data that the
19 source assessment is based on is the same as the data
20 that the draft TMDL is based on?
21 A Yes.
22 Q Can you explain why Ecology put that source assessment
23 together?
24 A One of the things that we had to think about was we
25 wanted to be able to capture the information that was

1 collected as part of the draft PCB TMDL; we didn't want
2 to lose track of that. So what we've done is added
3 some other information and put it in the form of a PCB
4 source assessment.
5 Q And I notice on all the pages on the draft TMDL,
6 Exhibit A-34, it even says at the bottom of every page
7 "Draft. Do not cite or quote"; correct?
8 A Correct.
9 Q So is this an effort to get this out of a draft form?
10 A Correct.
11 Q But doesn't involve any updated data?
12 A To my knowledge, the only updated information that was
13 in the PCB source assessment was for stormwater.
14 Q So you testified that there were too many data gaps and
15 too much uncertainty about, I think you said, 57
16 percent of the PCB sources reflected in both the source
17 assessment and the draft TMDL, to actually complete a
18 TMDL. Were you involved with the development of the DO
19 TMDL?
20 A Yes, I was.
21 Q And given your experience in the development of the DO
22 TMDL and the data gaps and the lack of source
23 information on PCBs that you've testified to, how long
24 do you think it would take Ecology, if they decided to
25 start developing a PCB TMDL today, to actually get it

1 done?
2 A In my judgment, it would likely take at least as much
3 time as the dissolved oxygen TMDL and maybe more.
4 Q Mr. Koch testified as to why he did not include a
5 numeric PCB effluent limit in the county's permit.
6 Were you here for that testimony?
7 A Yes.
8 Q I notice on the front of the permit you actually signed
9 the permit; correct?
10 A Correct.
11 Q And you're Mr. Koch's supervisor?
12 A No. Mr. Koch worked for the permit unit supervisor,
13 Diana Washington, when he was with the Department of
14 Ecology.
15 Q And are you Ms. Washington's supervisor?
16 A Correct.
17 Q So would it be fair to say you are an indirect
18 supervisor to Mr. Koch?
19 A Correct.
20 Q And when this permit got brought to you to sign, why
21 didn't you insist that Mr. Koch go back and come up
22 with a numeric PCB number?
23 A The recommendation that I've gotten from Mr. Koch was
24 to pursue a narrative limit based on the fact that we
25 had no PCB data for this facility.

1 Q And Mr. Koch testified about it, and I think Mr. Rawls
2 as well, about the monitoring the county is required to
3 do under their permit. Will that monitoring data give
4 Ecology the information it needs to do a reasonable
5 potential analysis?
6 A Yes.
7 Q Will that data also give Ecology the information it
8 needs to develop a numeric PCB effluent limitation?
9 A Yes.
10 Q And might that numeric PCB effluent limitation be a
11 water quality-based limitation?
12 A Yes.
13 Q Mr. McDonald asked Mr. Rawls about whether it was his
14 understanding whether the county would get a numeric
15 limit even if the task force made measurable progress.
16 Were you here for that questioning?
17 A Yes.
18 Q What is Ecology's intent with respect to a numeric PCB
19 limit in the next permit round connected to whether or
20 not reasonable progress is made by the task force?
21 A We intend to have a numeric limit in the next permit.
22 Q Even if the task force makes measurable progress of
23 reducing PCBs?
24 A Correct.
25 Q So those pieces aren't connected?

1 A Correct.
2 Q Mr. Bellatty, could you turn please to page 47 of the
3 permit, Ecology Exhibit 1. And on this page, it's got
4 near the top a section of four bullets and under that a
5 section of three bulleted items. Is there anything in
6 any of those bulleted items that represent best
7 management practices Ecology has directed the county to
8 implement?
9 A Yes.
10 Q Can you explain which ones.
11 A Each of those bullets would be considered a best
12 management practice that we would consider.
13 Q I notice in the paragraph under the first set of
14 bullets, and, actually, the paragraph under the second
15 set of bullets as well, there is reference to a
16 five-parts-per-million regulated level and then in the
17 other paragraph, a TSCA regulatory threshold of five
18 parts per million. Do you see that?
19 A Yes.
20 Q And you were here when Mr. Rawls testified about the
21 TSCA law allowing allegedly PCB products to have a
22 certain amount of PCBs in them; correct?
23 A Correct.
24 Q Is that what this language references?
25 A Yes.

1 Q And if I recall, Mr. Rawls mentioned that under TSCA,
2 the regulatory thresholds were about 25 and 50 parts
3 per million; correct?
4 A Correct.
5 Q And the permit looks like it makes them go a bit lower;
6 is that true?
7 A Yes. Five parts per million.
8 Q You were also present when Mr. Rawls talked about what
9 the task force has been able to accomplish to date, and
10 I don't want to belabor the point, but I'll just ask
11 you, is his testimony consistent with your
12 understanding of what the task force has accomplished
13 to date?
14 A Yes.
15 Q So in addition to having the task force work on PCB
16 source reduction activities in the Spokane River Basin,
17 is Ecology's clean-up program doing any work to help
18 remove PCB sources from the Spokane River?
19 A Yes, they are.
20 Q Are you familiar with a clean-up effort at the Upriver
21 Dam?
22 MR. SMITH: I am going to object to the
23 relevance of this line of questioning.
24 JUDGE MARCHIORO: Mr. Lavigne.
25 MR. LAVIGNE: Mr. Smith had his expert

1 witness speculate at length yesterday regarding the
2 quality of the Spokane River in the vicinity of the
3 county's discharge, and he based that in large part on
4 the stale data in the source assessment report. I
5 believe he's opened the door for me to explain clean-up
6 efforts Ecology has done that renders those opinions
7 questionable because there's been -- Mr. Bellatty will
8 testify to source reduction activities that have
9 actually cleaned up the river since that data Mr.
10 Smith's expert relied on was generated.
11 JUDGE MARCHIORO: I will overrule the
12 objection.
13 Q Could you explain what occurred in 2006 at the Upriver
14 PCB removal project.
15 A Yes. The Department of Ecology oversaw a clean-up
16 project to install a three-layer cap over the sediments
17 in the bottom of the river immediately above Upriver
18 Dam.
19 Q And was the sediment PCB contaminated?
20 A Yes.
21 Q And you've got the map behind you, Mr. Bellatty. Where
22 is the Upriver Dam in comparison to the county's
23 discharge?
24 A The Upriver Dam is approximately -- I think it's about
25 two miles upriver from the county discharge.

1 Q And can you explain Ecology's involvement in the 2007
2 PCB- removal effort at Donkey Island?
3 A Yes. Immediately upstream from the Upriver Dam, there
4 is a site that was contaminated with PCBs and other
5 toxics and that site was cleaned up. They excavated,
6 removed soil and replaced it with clean sand and
7 vegetation, 2007.
8 Q And can you explain Ecology's oversight of work done in
9 2007 at Kaiser's west discharge main?
10 A Yes. My understanding is that they excavated out a
11 significant amount of soil that was contaminated with
12 PCBs and with petroleum products at the west ravine
13 discharge location, which was used by Kaiser for a
14 number of years.
15 Q And was that clean-up also upriver of the county's
16 facility?
17 A Yes, it was.
18 Q You mentioned at the start of your testimony that this
19 concept of aggressively going after PCB sources was
20 first brought to you by the City of Spokane and the
21 Riverkeeper in relation to a Clean Water Act
22 settlement. Has Ecology been monitoring the work the
23 City of Spokane has been doing under that settlement
24 agreement?
25 A Yes, we have.

1 Q And has that resulted in removal of PCB sources from
2 the river?
3 A Yes, it has.
4 Q Do you have any examples you could share with us?
5 A Based on the information that the City of Spokane
6 provided Department of Ecology in their September 2012
7 Toxics Source Control Management Plan, they have
8 removed a significant amount of sediment from their
9 sediment basins and they've also removed PCBs that was
10 associated with that sediment.
11 Q In your view, Mr. Bellatty, would the data depicted in
12 Exhibits A-12 and A-34, the draft TMDL and the source
13 assessment report, accurately reflect the receiving
14 water quality of the Spokane River in the vicinity of
15 the county's discharge, given these activities you just
16 testified to?
17 A Based on the clean-up activities, I would expect that
18 the ambient river water quality would be improving; PCB
19 levels, based on the clean-ups, should be going down.
20 Q Could you turn, please, to Exhibit A-34, the draft TMDL
21 document, at page 93.
22 A Okay.
23 Q This table establishes recommended load allocations for
24 some of the PCB sources on the Spokane River; correct?
25 A Correct.

1 Q And I believe you testified earlier that this draft
2 TMDL failed to account or was unable to discover
3 roughly 57 percent of the sources of PCB loading to the
4 river?
5 A Correct.
6 Q Would Ecology develop a total maximum daily load for a
7 pollutant if it didn't even know where 57 percent of
8 the sources of that pollutant came from?
9 A No.
10 Q Why not?
11 A It would leave too much uncertainty and I think it
12 would require the dischargers to pay an inequitable
13 amount of their resources to solve the rest of the PCB
14 problem.
15 Q And of the known sources of PCB loading into the river,
16 what's the biggest source?
17 A Stormwater.
18 Q You were here when Mr. Koch offered his opinion that if
19 all the point sources on the Washington side of the
20 river were taken out of the river altogether, the river
21 still wouldn't be in compliance with standards
22 primarily because of the stormwater contribution. Do
23 you agree with that?
24 A Yes.
25 Q Is Ecology doing anything to help fill the data gap

1 that so far has made it impracticable to do a TMDL for
2 PCBs?
3 A Yes.
4 Q Could you explain what the agency is doing?
5 A Yes. As I explained earlier, the Department is working
6 together with the Spokane Tribe to collect PCB
7 information on the river itself. We're also requiring
8 the additional PCB monitoring in the context of the
9 NPDES permits.
10 Q So if Ecology gets to a point where it determines the
11 task force isn't making measurable progress, is the
12 agency going to need to go back to square one to start
13 collecting data to develop a PCB TMDL?
14 A No.
15 Q Why not?
16 A Because a lot of the information we are gathering will
17 actually help be able to fill those data gaps and
18 hopefully reduce that amount of uncertainty that we
19 currently have with the 57 percent unknown sources.
20 Q They kind of go hand in hand?
21 A Correct.
22 Q Thank you, Mr. Bellatty. I have no further questions.
23 JUDGE MARCHIORO: Mr. Nelson.
24 MR. NELSON: Nothing from me, Your Honor.
25 Thank you.

1 JUDGE MARCHIORO: Mr. Smith.
2
3 CROSS EXAMINATION
4 BY MR. SMITH:
5 Q Mr. Bellatty, I have a couple of questions for you
6 about the county's permit, which is Exhibit R-1. Mr.
7 Lavigne had you turn to page 47 and talk about what
8 were characterized by the BMPs there.
9 A Yes.
10 Q And you were talking about the first four bullets on
11 page 47; right?
12 A Yes.
13 Q And what I see this saying is, "The action is to
14 address of eliminating active sources such as," comma,
15 and then it has those four bullet points there.
16 A Yes.
17 Q Where does this condition require those things to be
18 implemented or addressing of eliminating these or
19 something?
20 A Spokane County is going to submit an annual toxics
21 management report to the Department of Ecology on or
22 before April 15th, and in that report, I am expecting
23 to see references to these types of BMPs if they are in
24 fact necessary, if the information supports it, and at
25 some point we'll want some specific actions and some

1 deadlines for implementing these actions.
2 Q Right. What I understand this to say is that the
3 county is supposed to submit an annual report with a
4 plan, these bullet points are some things that are to
5 be considered, but what the county is actually going to
6 undertake to do is something that Ecology and the
7 county are going to agree on; is that what this says?
8 I'm looking at the first paragraph under S12.A:
9 "Activities planned for toxics reduction in the
10 subsequent year of operation shall be jointly reviewed
11 and agreed upon."
12 Am I missing something here?
13 A I see the language in that first paragraph, yes.
14 However, I would also add that as part of my regulatory
15 responsibility, I ultimately would need to decide what
16 needs to be accomplished, what needs to be done.
17 Whether or not we agree or not remains to be seen.
18 Q Okay. So, again, let me ask you, is there something in
19 the language of S12 that requires the county to do
20 something besides come up with an annual report that
21 addresses some specific things?
22 A Well, as I said earlier, I'm expecting to see specific
23 action items in their toxics management plan and dates
24 for implementing and the information that they provide
25 in support thereof.

1 Q Does this permit condition say anything about dates for
2 implementing? It doesn't, does it?
3 A I don't see a reference to dates, no.
4 Q Okay. What it says is that the "Activities planned for
5 toxics reduction in the subsequent year of operation
6 shall be jointly reviewed and agreed upon"; right?
7 That's the operative part about what the county has to
8 do besides submitting a plan; right?
9 A Correct.
10 Q You testified that you signed this permit and you
11 didn't insist that Mr. Koch come up with numeric --
12 with PCB numbers. I presume you meant PCB effluent
13 limitations when you said that, numeric PCB effluent
14 limitations; right?
15 A Right.
16 Q And because you were abiding by Mr. Koch's
17 recommendations to put a narrative limit because there
18 was no PCB data; is that -- have I restated that right?
19 A Mostly.
20 Q Okay. Do you agree that this permit allows the county
21 to discharge PCBs to the river?
22 A If the data that we see supports PCBs in the discharge,
23 then I would say that it does include PCB, but in terms
24 of allow, it has a narrative limit.
25 Q And the narrative limit doesn't say no PCBs can be

1 discharged; right?
2 A Not that I am aware.
3 Q Right, so the county facility could be discharging PCBs
4 and that wouldn't represent a violation of the permit;
5 right?
6 A Could be.
7 Q Okay. Now, you also testified about the source
8 assessment and the 2006 draft TMDL and about the
9 picture that they together paint of the PCB problem in
10 the river. Is it your testimony that the Spokane River
11 is in compliance with state water quality standards for
12 PCBs?
13 A No.
14 Q Is it your testimony that the Spokane River is in
15 compliance with tribal water quality standards for
16 PCBs?
17 A Not that I am aware of.
18 Q Are the Washington Department of Health fish
19 advisories, are those still in effect?
20 A Yes.
21 Q Has the clean-up activities that have happened in the
22 past couple of years that you talked about, have those
23 changed the Washington Department of Health fish
24 advisories at all?
25 A Not that I am aware.

1 Q Okay. Is there an area around the Spokane County plant
2 outfall that the Washington Department of Health fish
3 advisory doesn't apply to?
4 A Not that I am aware.
5 Q Are there effluent limitations, numeric effluent
6 limitations, for PCBs on any of the dischargers to the
7 Spokane River in Washington State?
8 MR. LAVIGNE: Objection. Relevance.
9 MR. SMITH: I think we have broadly discussed
10 the Department of Ecology's activities to address PCBs
11 and this is within the scope of that.
12 JUDGE MARCHIORO: With the Spokane River we
13 have talked about --
14 MR. SMITH: Yeah, that's what I'm talking
15 about, the Spokane River.
16 JUDGE MARCHIORO: You said statewide.
17 MR. SMITH: I'm sorry, I meant Spokane River
18 if I said statewide.
19 JUDGE MARCHIORO: If you want to restate the
20 question.
21 Q Let me restate the question. For any of the
22 dischargers to the Spokane River, are there PCB numeric
23 effluent limitations in any of the permits?
24 A I don't know this for sure, but I believe that the
25 Kaiser permit may have some numeric permit effluent

1 limits.
2 Q You're not sure?
3 A I'm not sure. I would have to look it up.
4 Q Are there any compliance schedules with end dates for
5 reduction of PCB loading by any NPDES permittee
6 discharging to the Spokane River?
7 A Not that I am aware.
8 Q Are you aware during your time and your position as the
9 water quality section head in the Eastern Regional
10 Office, are you aware of any enforcement actions that
11 the Department of Ecology has taken against NPDES
12 dischargers concerning PCBs in a discharge to the
13 Spokane River?
14 A My understanding is that we have a consent decree and
15 amended order with the Kaiser facility.
16 Q Is that pursuant to the Clean Water Act NPDES permit?
17 A Correct.
18 Q And when was that finalized?
19 A It was recently amended.
20 Q Now, if there were to be a TMDL finalized for the
21 Spokane River for PCBs, would you expect it to address
22 the circumstances in the whole Washington part of the
23 river, Washington State part of the river, rather than
24 just those sections that are 303(d) listed?
25 MR. NELSON: Calls for speculation.

1 JUDGE MARCHIORO: Would you restate the
2 question, please.
3 Q If there were to be a TMDL adopted for PCBs in the
4 Spokane River, would you expect it to address
5 conditions throughout the Washington portion of the
6 river rather than just the sections that are 303(d)
7 listed?
8 JUDGE MARCHIORO: I am going to allow the
9 question. I think Mr. Lavigne asked some questions
10 that were forward looking.
11 A So the PCB TMDL, if we were to do one, would cover the
12 entire river.
13 Q And it would set load allocations for all the
14 dischargers, not those that are just in some proximity
15 to the 303(d) listed sections; right?
16 A Yes.
17 Q Thank you. No further questions.
18 JUDGE MARCHIORO: Mr. Lavigne.
19
20 REDIRECT EXAMINATION
21 BY MR. LAVIGNE:
22 Q I just have a couple questions related to Condition S12
23 on page 46 of the permit, Ecology Exhibit 1. The first
24 paragraph Mr. Smith asked you about the sentence that
25 reads, "Activities planned for toxics reduction in the

1 subsequent year of operation shall be jointly reviewed
2 and agreed upon." Do you see that sentence?
3 A Yes.
4 Q Is it your expectation that the county will implement
5 the agreed upon source control action plans?
6 A Yes.
7 Q And, you know, it's always an interesting exercise when
8 we get to this part of a permit and every word gets
9 nitpicked. In hindsight, would you maybe have asked
10 Mr. Koch to add the words "and implemented" at the end
11 of that sentence?
12 A Yes, that would make sense.
13 Q And even without the words "and implemented," if
14 Ecology believed there was a source reduction activity
15 the county should be undertaking and the county
16 wouldn't agree to do that, are you powerless to direct
17 them to do it anyway?
18 A No, we would be able to direct that.
19 Q You would have the authority to issue an order
20 directing them to do it; correct?
21 A Correct.
22 Q Thank you. I have nothing further.
23 JUDGE MARCHIORO: Board questions.
24 ////
25 ////

1 EXAMINATION
2 BY MS. MIX:
3 Q Thank you for your testimony. Just a couple of
4 questions back pretty much on the permit terms on S12
5 and S13, but in follow up to one of the questions you
6 were asked about whether there were numeric limits in
7 any of the other permits, and you said maybe in the
8 Kaiser, but you weren't sure, do you know if any of
9 those other permits or permittees are discharging to
10 segments of the river that are impaired or listed as
11 impaired under 303(d)?
12 A Yes. My understanding is that there are other
13 permittees in the Spokane River that are discharging to
14 impaired waters.
15 Q That don't have numeric limits --
16 A Correct.
17 Q -- for PCBs?
18 A Correct.
19 Q Are those the same group that have, we heard testimony,
20 that have a similar requirement as S13, to participate
21 in the Regional Toxics Task Force?
22 A Correct.
23 Q So are their permits on the same time frame then as
24 this permit, essentially 20 -- whatever it is -- 2011
25 to 2016?

1 A Yes, same time frame.
2 Q So they were amended to add that but not to add a
3 numeric limit even though they discharge to an impaired
4 segment?
5 A Correct.
6 Q On S12 of the permit, at the very last section of S12,
7 it says, "The goals of the Toxics Management Plan are"
8 -- do you see where I'm at?
9 A Yes.
10 Q And it has one for influent concentrations to the
11 plant, and it says, "To reduce toxicant loadings...to
12 the maximum extent practicable realizing statistically
13 significant reductions in the influent
14 concentration..." What is the definition of that; what
15 does that mean?
16 A Well, actually, I would need to rely on the input from
17 my staff to be able to answer that question in terms of
18 defining what is statistically significant.
19 Q How is Spokane County supposed to know what that means?
20 A Well, the people that I would go to to ask for their
21 input are the ones that manage the Spokane County
22 permit.
23 Q Okay. And then with respect to the second piece, I
24 think it's probably self-evident, but there is no time
25 frame for the effluent not contributing to PCBs in the

1 Spokane River, the second section of that, you didn't
2 put any time frame. The influent you have a ten-year
3 time frame and then the effluent you don't have any
4 time frame.
5 A There is no time frame listed there.
6 Q Is there a reason that you didn't put a time frame when
7 you had the expectation that you would have a
8 performance- based PCB limit in the next permit cycle?
9 A I don't know why we don't have a time frame in there.
10 Q Okay. And then sort of the same question about time
11 frames, on the Regional Toxics Task Force, which I
12 asked earlier, you have this November 2011
13 get-the-task-force-up-and-running kind of deadline, but
14 then you don't have any other requirements along the
15 way related to these goals that the task force is
16 supposed to achieve. Why aren't there any interim
17 goals or deadlines in the course of this five-year
18 permit to drive the conclusions of the task force
19 along?
20 A Well, to a certain extent, we're relying on the county
21 and other permittees to develop their toxics source
22 control plans and be able to figure out, you know, go
23 through the source identification and control, and
24 ultimately the Department of Ecology has to answer the
25 question about what is measurable progress within this

1 permit cycle, and I expect that we will be doing that
2 in the next year or so, and I will be doing that in
3 consultation with the EPA and with the tribe.
4 Q And then one last question back on the Toxics Source
5 Control Action Plan, where it says that the plan must
6 address source control and elimination of PCBs from
7 contaminated soils and sediments, stormwater,
8 industrial and commercial sources, and this may be kind
9 of an obvious question, but what do you expect the
10 county to do if they identify a site with contaminated
11 soils or an industrial source, what steps do you expect
12 them to take, and how is that set out anywhere?
13 A So if through their process they identify sources of
14 PCBs that need to be removed from the system, I would
15 expect the same approach or similar approach as what
16 the city is doing right now in terms of removing,
17 physically removing that sediment from sediment basins
18 and things like that, physically removing them from the
19 system, keeping them from ever getting to the river.
20 Q Okay. That's all I have.
21
22 EXAMINATION
23 BY MR. McDONALD:
24 Q That's why I like Chairman Mix going first because she
25 asks some of the questions I would ask, so I won't

1 repeat them, but I do want to walk through it a little
2 bit more again.
3 On page 8 of the permit it does provide that the
4 PCB effluent limits are described in S9.C, S12 and S13,
5 so just to make sure I know, you're looking at S12 as
6 being a narrative effluent limitation; is that correct?
7 A Correct.
8 Q So going to S12, and this goes to language that was
9 brought up before, and I just want to make sure I am
10 clear on it, on page 47 where I think it's kind of an
11 odd sentence, I think there is something missing or an
12 extra word in there, "The action is to address..."
13 From what you testified before, is the word "action"
14 the report is to address, or is there another action
15 beside the report?
16 A So I'm trying to find the reference.
17 Q I am sorry, top of 47.
18 A Top of 47. Okay. "The action" --
19 Q It says, "The action is to address" --
20 A Right.
21 Q Is there something other than the report? I think your
22 testimony was that that was the report is to address,
23 is that correct, or is there --
24 A That would be the first place I would expect to see --
25 the report itself would be a reference to an action

that needs to be implemented, so the action to address would be the documentation and then the actual implementation would be the action that I would be looking for.

Q Okay. Is the implementation, in the next paragraph down, is the permittee is to consider changes to address such as construction material. I just see that as almost the same as the four bullets above where some are repeated.

A Right.

Q So maybe go through those for me and tell me how it's going to work.

A Okay. So the permittee is to consider changes in procurement practices. Depending on their source identification and the results of their work, we would expect to see some information or reference to whether or not they found any evidence of sources of PCB in their procurement process as they purchase materials, and be able to act on it, be able to actually figure out whether or not what they're purchasing has PCBs, and then be able to look at alternatives to be able to avoid purchasing things that had PCBs in them, would be an example.

Q Okay.

A Does that make sense?

1 Q Yes, that makes sense. And then I'm going to go down
2 to what Chair Mix was talking about, under "The goals
3 of the Toxics Management Plan," under the two bullets.
4 A Yes.
5 Q I'm looking at the second bullet, even though the
6 language is also in the first bullet, "Maximum extent
7 practicable." Is that a term of art or do you have a
8 definition of what that is in terms of what the
9 criteria is you are looking at; is that financial, is
10 that something physical, what is that?
11 A I am sure there is a definition of that term. I don't
12 have that off the top of my head.
13 Q Okay. And then Mr. Lavigne went through the analysis
14 on the data that was collected in 2003, 2004, which is
15 provided in the draft TMDL and the source assessment,
16 and then the work that had been done in 2006 on the
17 Upriver PCB removal and the Donkey Island and Kaiser
18 discharge, the work that's been done since that data
19 has been collected. Has there been any data collected
20 since 2004, and, more specifically, maybe since 2007?
21 A Yes, there has been a limited amount of data collected
22 since that time, yes, but specific to particular
23 projects.
24 Q On the river itself?
25 A Yes.

1 Q But not on the effluent, but on the river itself?
2 A Correct.
3 Q Okay.
4 A I can give you one example if you'd like. On the
5 Upriver Dam, the engineered cap that was put in to cap
6 the -- to encapsulate the sediment, they have done some
7 monitoring in the river, looking for PCBs that might
8 have migrated through the cap, and they didn't find
9 any. Now, there is a follow-up monitoring component to
10 some of those projects that the toxics clean-up program
11 does.
12 Q And the program you're working with, with the tribe,
13 that monitoring, sounds like you are in a cooperative
14 effort with them, has that started, has that commenced,
15 the monitoring?
16 A The work plan for that effort was just drafted up
17 recently, yes, so it hasn't started.
18 Q Is that separate from the monitoring that the Regional
19 Toxics Task Force is going to be doing?
20 A Yes, but it is related. I mean, the Regional Toxics
21 Task Force is going to be looking to see that
22 information when it's available, but the Department of
23 Ecology and the Spokane Tribe are the ones that are
24 actually doing the monitoring itself.
25 Q Okay. We've talked a lot about this 57 percent of

1 unknown sources. Could it be that the Upriver PCB, the
2 Donkey Island and the Kaiser discharge areas, could
3 those have been part of the 57 percent unknown?
4 A Yes.
5 Q This question is probably not relevant to a whole lot,
6 but I just wanted to make sure I'm clear on this. I
7 have talked a little bit about and asked questions
8 about the Protocol 1633.
9 MR. SMITH: 1668.
10 MR. McDONALD: 1633?
11 MR. SMITH: 1668.
12 Q Okay. If you go to page, what is it, I think it's page
13 69 of the permit.
14 A Okay.
15 Q I don't know why I keep getting that number wrong.
16 I've done it several times. The recommended analytical
17 protocol for PCB-1260 and 1016 is 608. Are there two
18 different protocols happening here or two different
19 types of -- or has that been replaced with the 1668, do
20 you know? I think you had a footnote in the permit
21 earlier and I tried to find it just before I asked
22 questions. Here it is on page 15, footnote 15. It's
23 not a footnote, but page 15 and then the little square
24 with 15.
25 A Right.

1 Q And you can just say if you don't know, you don't know,
2 that's fine. Is there a difference between these two
3 protocols on 15 and 69? Have there been two different
4 tests going on or is this just --
5 A Yes, those are two different testing methods, yes.
6 Q But your understanding is they're required to do the
7 1668?
8 A Correct.
9 Q Thank you.
10
11 EXAMINATION
12 BY MS. MIX:
13 Q Given that you're dealing with source control and
14 stormwater as two issues in managing the PCBs moving to
15 the river, I just keep wondering if you looked to other
16 permits like the municipal stormwater general permit as
17 an example of a permit that would have terms that deal
18 with source control efforts that local governments have
19 to make as a model or as a way to formulate these
20 terms, and did you look at those and, if not, why
21 wouldn't you?
22 A Yes. We have been actively working with the Phase II
23 municipal stormwater permittees to look for
24 opportunities to identify sources of PCBs and remove
25 them, and the City of Spokane is actively doing that

1 now. I would also say that other communities in
2 Eastern Washington in the Spokane Basin are doing --
3 they're looking at these types of issues closely,
4 especially the Washington State Department of
5 Transportation. As they go and clean out sediment
6 basins that are associated with roads and things like
7 that, they are aware of this issue and working
8 diligently to -- and they are a member of the task
9 force. They're working to find these sources and
10 eliminate them.
11 Q So the city is doing it through the Phase II permit.
12 What about the county?
13 A The county has a Phase II municipal stormwater permit
14 also.
15 Q Same thing?
16 A Correct.
17 Q But part of my question was did you use any of the
18 terms from that Phase II or other municipal stormwater
19 permits, Phase I permit, to attempt to draft this
20 source control approach that you tried to imbed in this
21 particular permit?
22 A So Phase II permits are general permits.
23 Q Yes, I know.
24 A And the language in there is pretty uniform. It
25 doesn't include the same kind of language that we have

1 here.
2 Q So you didn't look to them to help you define what a
3 source control program would look like with respect to
4 this particular permit?
5 A As of yet, no.
6 Q You didn't think they would be helpful, apparently?
7 A Well, we've done -- you know, the City of Spokane has
8 stormwater that's combined sewer overflow plus separate
9 stormwater, and so we're doing everything we can to
10 work within their permit to account for CSO sources of
11 PCBs, and I think we're doing everything we can within
12 the context of stormwater, in addition to what's
13 already in place, PCB source identification control.
14 Q Okay. Thank you.
15 JUDGE MARCHIORO: I just have one question, I
16 think.
17
18 EXAMINATION
19 BY JUDGE MARCHIORO:
20 Q A pretreatment program, could it include a requirement
21 that the entities discharging under a pretreatment
22 permit would monitor their effluent or their discharge
23 to the plant for PCBs?
24 A I think that could be a requirement, but it would be up
25 to the jurisdiction that actually manages that

1 pretreatment program to make that decision.
2 Q Do you know whether that's been done by Spokane County
3 in this instance?
4 A I don't know.
5 Q Thanks.
6 JUDGE MARCHIORO: Questions based on Board
7 questions. Mr. Lavigne.
8
9 EXAMINATION BASED ON BOARD QUESTIONS
10 BY MR. LAVIGNE:
11 Q Mr. Bellatty, Chairperson Mix asked you questions about
12 the other dischargers on the river who also don't have
13 numeric PCB limits. Is the reason they don't have
14 numeric PCB limits in their permit similar to the
15 reason the county doesn't have numeric PCB limits in
16 its permit?
17 A Correct. There's a very limited amount of data.
18 Q And do those permittees have the same kind of
19 monitoring requirements or similar requirements to what
20 the county has?
21 A Yes.
22 Q And is it Ecology's intent to develop numeric PCB
23 limits for those other dischargers in the next permit
24 cycle based on the data they collect this cycle?
25 A Yes.

1 Q You were also asked by Chairperson Mix about the
2 stormwater permits that some of the entities hold. Do
3 you recall when the City of Spokane and the Riverkeeper
4 were resolving the Clean Water Act citizen suit we
5 spoke about earlier, did that involve implementation of
6 actions under any sections of the city's stormwater
7 permit?
8 A I believe that the city is required to develop
9 ordinances that would protect their stormwater from
10 being polluted, yes.
11 Q Does the municipal stormwater permit have a condition
12 that requires permittees to take action when they
13 become aware of discharges that may cause or contribute
14 to water quality exceedances?
15 A Yes.
16 Q And is that S4.F?
17 A Correct.
18 Q And did the settlement agreement between the city and
19 the Riverkeeper implement in any way Condition S4.F for
20 the municipal stormwater permit the city holds?
21 A Yes.
22 Q In fact, that's where the settlement agreement is
23 housed under; correct?
24 A Correct.
25 Q Thank you. I have nothing further.

1 JUDGE MARCHIORO: Mr. Smith.
2 MR. SMITH: I have just one or two.
3
4 EXAMINATION BASED ON BOARD QUESTIONS
5 BY MR. SMITH:
6 Q Board Member Mix and then Mr. Lavigne asked you about
7 the anticipation that with the PCB monitoring data
8 collected under the current round of permits, the
9 Spokane County NPDES permitted sources are expected to
10 be subject to numeric effluent limitations for PCBs in
11 the next iteration of the permits. Do you remember
12 that?
13 A Yes.
14 Q And so the idea there is that that monitoring data
15 would be used to derive performance-based numeric
16 effluent limitations; right?
17 A Yes.
18 Q It's a form of technology-based limitation; right?
19 A Yes.
20 Q It's not a water quality-based effluent limitation;
21 right?
22 A Correct.
23 Q Thank you.
24 JUDGE MARCHIORO: You're excused, Mr. Bellatty.
25 *

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I, Kim Otis, a Certified Court Reporter in and for the State of Washington, residing at Olympia, do hereby certify;

That the annexed and foregoing Transcript of Proceedings was reported by me and later reduced to typewriting by means of computer-aided transcription; that said transcript as above transcribed is a full, true and correct transcript of my machine shorthand notes of said proceedings heard on the 27th day of March, 2013, before the Pollution Control Hearings Board.

WITNESS MY HAND on this 7th day of April, 2013.

Kim Otis, CCR No. 2342

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