March 23, 2015

Via Email

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Via Federal Express, Tracking No. 773169130808

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RE: **(Proposed) Water Quality Standards for Surface Waters of the State of Washington—Chapter 173-201A WAC (WQS): Comments of Waterkeepers Washington and Pacific Coast Federation of Fishermen's Associations and Institute of Fisheries Resources**

Dear Ms. Niemi:

The attached comments and supporting documents on Washington's proposed Water Quality Standards for the protection of Human Health for Surface Waters of the State of Washington, are submitted by Earthjustice on behalf of Waterkeepers Washington (Columbia Riverkeeper, Puget Soundkeeper Alliance, Spokane Riverkeeper, and North Sound Baykeeper), the Pacific Coast Federation of Fishermen's Associations, and Institute for Fisheries Resources (collectively "Waterkeepers Washington"). The commenters are all non-profit organizations dedicated to protecting the environment and natural resources of Washington State and the Pacific Northwest region; ensuring that all communities of Washington and the Pacific Northwest have fishable and swimmable water; protecting the family-wage jobs that depend on fishing in Washington waters through scientifically sound policy; and seeking positive solutions to the challenge of water pollution and its human health implications. These joint comments supplement, and are in addition to, any individual comment letters submitted by each signatory group.

Over forty years ago, Congress made the promise to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. §1251(a). To that end,

Congress established a national goal to *eliminate* discharges of pollutants into navigable waters by *1985*. Congress also set the national goal of achieving levels of water quality necessary to protect all human contact uses of the Nation's waters and quality necessary for the protection of fish, shellfish, and wildlife by *1983*. 33 U.S.C. § 1251(a)(1) and (2). Congress further established national policy *prohibiting* the discharge of toxic pollutants in toxic amounts. 33 U.S.C. § 1251(a)(3).

Unfortunately, those promises and goals still await fulfillment. *See, e.g.,* EPA, *Nat'l Rivers and Streams Assessment* (Feb. 2013) where EPA reports that well over 50% of the waters assessed exhibited poor conditions and only 20% were classified as "good." *See also*, EPA summary of states' reported water quality data at http://ofmpub.epa.gov/waters10/ attains_nation_cy.control, showing that states have a poor record of assessment, but of the waters assessed, 53% of assessed rivers and streams, 68% of assessed lakes, and 66% of assessed bays/estuaries are *failing* to meet one or more water quality standards. In Washington, this problem is abundantly evident from Washington's most recent Section 303(d) list of impaired waters. According to EPA's state summary data for 2008, the latest year EPA has summarized the available information, Washington has assessed only a tiny fraction—2.8%—of total river and stream miles in the state. http://ofmpub.epa.gov/waters10/attains_state.control?p_state= WA#total_assessed_waters. That means the pollutant load and water quality status of 97% of the state's rivers and streams is currently unknown. Of the assessed rivers and streams, over 79% are listed as impaired—failing to meet one or more water quality standards. *Id.* Over 60% of those impaired streams still need Total Maximum Daily Load ("TMDL") cleanup plans. *Id.* Many of the impairments listed are for toxins subject to this rulemaking, such as metals and PCBs.

Recently, Ecology has published its latest proposed list of impaired waters. While some minimal progress is made, the list of waters needing cleanup grows and the data still only reflects 10% of the freshwaters in the state.

Further, the Government Accountability Office ("GAO") recently reviewed the water quality standards program and the use and implementation of TMDLs. In its report, the GAO found that states are not adequately implementing these programs—either at the front end or in following through and ensuring TMDLs are adequate and getting the job done. U.S. Government Accountability Office, *CLEAN WATER ACT: Changes Needed If Key EPA Program Is to Help Fulfill the Nation's Water Quality Goals*, GAO-14-80 (December 2013).

Plainly, discharges of pollutants into our nation's water have not been eliminated and the nation and the state of Washington must do better, much better. Almost thirty years after the deadline set by Congress, the nation still uses its waters as disposal sites for a vast number of pollutants, including toxic pollutants in toxic amounts. The proposed rulemaking presents a valuable and important opportunity for the state of Washington to advance protections for water and human health by setting more protective water quality standards than Washington's currently outdated standards, but Waterkeepers Washington finds that under the current proposal, the Washington Department of Ecology ("Ecology") has squandered that opportunity.

On January 12, 2015, after over a decade of delay, Ecology proposed revised human health criteria water quality standards for Washington State's surface waters. Unfortunately, these changes leave the status quo of polluted conditions and under-protective standards unchanged, constructing in many instances only a façade of protections while providing compliance off-ramps and loopholes for industry polluters. Ecology has proposed a fish consumption rate that is closer to accurate for fish consumers in Washington, but it has paired that progress with changes in the method of setting standards that ensure few standards will become more protective of Washington consumers, the entire point of the exercise. Indeed, Ecology itself has identified that there will be no costs and no benefits from the new rule because nothing will change in practice.

As a result, Waterkeepers Washington objects to finalization of these rules as proposed and requests Ecology (or the U.S. Environmental Protection Agency) to revise and finalize more protective rules that utilize an accurate fish consumption rate, that retains a protective 10^{-6} cancer risk rate, and that eliminates unlawful and inappropriate compliance off-ramps. Waterkeepers Washington submits the attached detailed comments and supporting documents in support of its objection and request. Our attachments are available for download at https://earthjustice.sharefile.com/d/s4a22029e9064e6d8 and will follow by hard copy on a compact disc.

Thank you for the opportunity to comment on this important rulemaking. Please feel free to contact the undersigned with any questions. We look forward to working with Ecology in ensuring that compliant, more protective standards are developed quickly.

Sincerely,

Janette K. Brimmer
Matthew R. Baca

cc: Administrator Dennis McLerran, EPA Region 10
Dan Opalski, EPA Region 10
Angela Chung, EPA Region 10

Lauren Goldberg, Columbia Riverkeeper
Chris Wilke, Puget Soundkeeper Alliance
Jerry Margolis, Spokane Riverkeeper
Wendy Steffenson, North Sound Baykeeper
Glen Spain, PCFFA and IFR

Northwest Indian Fisheries Commission
Columbia River Intertribal Fish Commission