UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF THE
REGIONAL
ADMINISTRATOR

JAN 19 2017

Mr. David A. Condon
Mayor, City of Spokane
808 W. Spokane Falls Boulevard
Spokane, Washington 99201-3335

Dear Mr. Condon:

Thank you for your letter dated December 22, 2016. I appreciate you taking the time to express your concerns regarding the U.S. Environmental Protection Agency's partial approval and partial disapproval of the Washington Department of Ecology's water quality standards, and the EPA's corresponding federal rule promulgating human health criteria for Washington. In response to your letter, the EPA acknowledges the concerns you raise regarding the achievability and costs, particularly with respect to PCBs, in implementing the new water quality standards. The EPA firmly believes that its partial approval of the Department of Ecology's standards submittal, in combination with the EPA's final rule, will protect the health of all Washingtonians from exposure to toxics, including those who consume large quantities of fish, while also accounting for the needs of the regulated community and supporting a thriving economy. The EPA supports Ecology's and the City of Spokane's significant investments in keeping pollutants out of the Spokane River and remains committed to assisting the State and City in successfully implementing the new water quality standards.

Pursuant to the Clean Water Act, states adopt water quality standards to protect public health or welfare and help restore and enhance the quality of our nation's waters. Accordingly, the CWA and the EPA's regulations require human health-based water quality standards to be developed using the best available science to ensure that all people can safely fish and swim in U.S. waters. The last time the majority of Washington's toxics human health water quality criteria were updated was when the EPA originally promulgated toxics criteria in the National Toxics Rule in 1992. Subsequently, the EPA and Ecology worked to establish new water quality standards based on a more realistic estimate of the amount of fish Washingtonians eat and exposure to pollutants through fish consumption. Data on fish consumption in the contiguous Pacific Northwest now demonstrate that a rate of 175 grams per day better represents fish consumers in Washington, including tribal members and others who consume large amounts of fish.

The EPA routinely works closely with states and tribes as they update their water quality standards to achieve a mutual goal of state and tribal water quality standard regulations that the EPA can approve as consistent with the CWA and the EPA's regulations. The EPA's 2016 actions largely support the hard work that Ecology completed over the last two years, particularly their efforts to address tribal concerns and input from a wide range of stakeholders. As noted in the EPA's action on Ecology's submittal, the EPA approved Ecology's human health criteria where they were based on the best available science and protective of human health. The combination of the EPA's final rule and the EPA's action on the state's submittal ensures that criteria are in place at levels that will adequately protect fish consumers in Washington, including tribes with treaty-protected rights, from exposure to toxic pollutants.

The EPA is very appreciative of the challenging work that Ecology has undertaken to adopt human health water quality criteria, and remains committed to supporting Ecology's efforts to implement

criteria that are protective of human health. As you know, the EPA approved the majority of Ecology's revisions to its variance provision and compliance schedule provision. Implementation tools like these can provide a means of making reasonable progress in improving water quality while supporting the economic viability of state industries and communities. Additional information regarding attainability and costs associated with EPA's final rule have been addressed in more detail in the EPA's response to public comments and the Economic Analysis for the final rule. We encourage you to review that information at the following website: https://www.epa.gov/wqs-tech/water-quality-standards-regulations-washington#fed.

Your letter raises specific concerns with respect to the difficulties in implementing the revised criteria. The EPA acknowledges that practical difficulties exist in implementing the PCB criteria given PCBs' widespread distribution in the environment at low levels. The EPA's regulations for water quality standards and implementing programs offer a range of options to manage these circumstances (such as variances, compliance schedules, and implementation of pollutant minimization plans to help identify and reduce PCB sources). The EPA also appreciates the concerns you raised regarding Idaho's adoption of revised human health criteria based on a fish consumption rate that is less than half the amount used by Ecology and the EPA for Washington, and a cancer risk level that is an order of magnitude less protective than that used by Ecology and the EPA. The EPA is currently reviewing Idaho's revised human health criteria and has not yet taken a CWA action on those criteria. Consistent with the CWA, EPA's regulations, and the EPA's recent actions on human health criteria for Washington, the EPA will analyze whether Idaho's criteria are protective of fish consumers in Idaho, including tribes with treaty-reserved rights to take fish for subsistence purposes, based on the best available science, and ensure the attainment and maintenance of downstream water quality standards, including Washington's human health criteria.

Regarding your comments about the process under 40 CFR 131.21, CWA section 303(c)(4)(B) specifies that the EPA Administrator shall promulgate a final rule no later than 90 days after publishing the proposed rule, unless prior to finalization, the state has adopted revised or new water quality standards that meet CWA requirements. The EPA published its proposed rule on September 14, 2015. Ecology submitted revised water quality standards to the EPA on August 1, 2016, almost one year after the EPA issued its proposed rule. As noted above and in the EPA's action on Ecology's final submittal, some of Ecology's water quality standards were in accordance with CWA requirements; therefore, the EPA approved those criteria. For those criteria that did not meet CWA requirements, the EPA disapproved and promulgated its final rule in accordance with CWA section 303(c)(4)(B) and the terms of a court order. As noted in the EPA's final rule, Ecology continues to have the option to adopt and submit to the EPA revised criteria that are consistent with CWA section 303(c) and the EPA's implementing regulations at 40 CFR part 131. In the meantime, the EPA's final federal rule and partial approval of the state's water quality standards ensure that protective criteria are in place now.

Again, thank you for contacting the EPA with your concerns. If you or your staff have additional questions, please feel free to contact Dan Opalski, Director of the Office of Water and Watersheds. He can be reached at (206) 553-1855 or by email at opalski.dan@epa.gov.

Sincerely,

Dennis J. McLerran
Regional Administrator