



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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OFFICE OF THE
REGIONAL
ADMINISTRATOR

JUN 17 2011

The Honorable Gregory J. Abrahamson
Chairman Spokane Tribe
P.O. Box 100
Wellpinit, Washington 99040

Dear Chairman Abrahamson:

Thank you for your letter of May 27, 2011, expressing the Spokane Tribe of Indians' concerns about National Pollutant Discharge Elimination System permitting and the implementation of the dissolved Oxygen Total Maximum Daily Load (TMDL) along the Spokane River. The U.S. Environmental Protection Agency appreciates the Tribes continued involvement, as both an active stakeholder and regulator, in these actions that are important to achieving water quality standards in the Spokane River. On Wednesday June 8, 2011, my staff met with staff and managers from the Washington Department of Ecology to discuss the three issues raised in your letter. As work continues on both the Ecology permits and permits for the State of Idaho, I wish to provide you an update on these important issues.

The Tribe raised concerns regarding the timeline for issuing the NPDES permits to Washington dischargers. The primary concern is that under the current schedule, the permit for the new Spokane County wastewater facility would be issued in advance of the Idaho permits. The Tribe's position is that issuance of the permit for the new facility prior to issuance of the Idaho permits would be contrary to federal NPDES regulations (40 CFR 122.4(i)) and the recent Ninth Circuit court case regarding the issuance of NPDES permits for new dischargers in impaired waters.

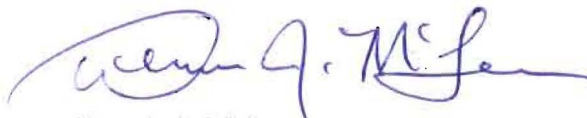
The EPA intends to issue the final Idaho permits in early 2012. However, we do not agree with the Tribe's position that the issuance of the Spokane County wastewater facility prior to issuance of the Idaho permits is contrary to 40 CFR 122.4(i). The portion of that regulation referenced in your letter applies to existing dischargers into a segment where the State has performed a pollutants load allocation (i.e., a TMDL). The Idaho dischargers do not discharge into the segment of the Spokane River for which the State of Washington completed a TMDL, nor did the TMDL contain wasteload allocations applicable to the State of Idaho dischargers. The EPA will assure that the Idaho dischargers NPDES permits will fully comply with downstream water quality standards as required by federal regulations at 40 CFR 122.44(d)(4). Issuance of these permits does not need to precede Ecology's issuance of a permit to the Spokane County wastewater facility.

The second issue raised in the letter concerns polychlorinated biphenyl discharges and the method of addressing PCBs in the point source discharge permits. This subject has been the focus of conversation over the last two weeks between the EPA, Ecology, and the Tribe. Ecology has a detailed plan in each of its Spokane River permits for monitoring, identifying, and reducing PCB discharges. Input from the Tribe has helped to strengthen the requirements of Ecology's permits. The EPA will continue to work with your staff and Ecology permit writers to establish permit requirements that meet the common goal of reducing PCB discharges and ultimately achieving in-stream water quality criteria. We will continue to work closely with your staff on this topic and keep you informed as the permit process proceeds.

The final issue involves bioavailable phosphorus. The permits that Ecology proposes to issue do not deviate from the TMDL's assumption that all phosphorus discharged by point sources is either bioavailable immediately when discharged or becomes bioavailable over time. The adjustments to effluent limits that were proposed by the Spokane River Stewardship Partners and found by the EPA and Ecology to protect water quality do not involve any changes to the way the model addresses the bioavailability of the phosphorus in the discharges. The water quality impacts of any increased effluent limits are balanced by decreases in effluent limits for other oxygen-demanding pollutants and/or extending phosphorus treatment into February, when the TMDL does not require it.

Again, thank you for your letter and for raising these important issues regarding the NPDES permits. I have appreciated the Tribe's (Brian Crossley and Ted Knight) involvement in the permit process and look forward to ongoing conversations between the three parties. We will be reissuing our Idaho permits and initiating another round of stakeholder input and government-to-government consultation later this summer and look forward to Spokane Tribal review and input during that process. If you have any questions, please contact Michael Lidgard, the EPA, Region 10 NPDES Permits Unit manager at (206) 553-1755.

Sincerely,



Dennis J. McLerran
Regional Administrator