

August 20, 2010

Via E-mail to: Federal eRulemaking Portal, <http://www.regulations.gov>

Document Control Office (7407M)  
Office of Pollution Prevention and Toxics (OPPT)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington D.C. 20460-0001

Re: CTUIR DNR Comments on Docket ID No. EPA-HQ-OPPT-2009-0757, Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations (Federal Register/Vol. 75, No. 66/Wednesday, April 7, 2010/Proposed Rules)

Dear Sir or Madam:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) offers the following comments on the U.S. Environmental Protection Agency's (EPA's) proposed rules referenced above regarding Reassessment of Use Authorizations for Polychlorinated Biphenyls (PCBs). As to "Reconsideration of the Use of the 50 ppm Level for Excluded PCB Products[,]," we ask that you reduce the level to zero. There is no adequate justification for maintaining the 50 ppm level for these products. Specifically, the CTUIR DNR supports the elimination of PCBs from all dyes, pigments and inks, and encourages EPA to adopt rules mandating such a requirement.

As the proposed rules state:

"The level of 50 ppm has been used in PCB use regulations since 1979. Based on regulatory history, this number is based almost entirely on economic considerations. There are no traditional exposure and risk assessment calculations . . ."

The current federal regulations allowing PCB levels of up to 50 ppm in dyes, pigments and inks are particularly problematic. Such PCB-tainted components, used in newspapers, magazines and other printed materials, eventually add to the toxic contaminant burden in wastewater discharges when those products are recycled. As persistent bioaccumulative compounds, even miniscule amounts can add up over time and ultimately pose "an unreasonable risk to human health and the environment." Paper recycling should be encouraged; allowing trace PCBs in dyes, pigments and inks could threaten the practice if it becomes impossible or cost-prohibitive to decontaminate wastewater streams sufficiently to meet applicable water quality standards.

Clean water and healthy fish are among the CTUIR's First Foods. Our ancestors, and those of three other tribes (the Nez Perce Tribe, the Warm Springs Tribe and the Yakama Nation), signed virtually identical treaties with the United States over 150 years ago. In those treaties we secured our pre-existing right "of taking fish," a right which by necessity encompasses a right to have fish to take *and to take fish that are safe to consume*. The federal government and its various agencies, including the EPA, are obligated to uphold and respect those rights, and have a separate but related Trust Responsibility to safeguard the resources on which those rights depend.

Since those treaties were signed, the Columbia River Basin and its resources have suffered from major environmental loss and damage. One of the most obvious indicators has been Pacific salmon, one of our most significant First Foods. In the early 1990s, the first of over a dozen salmon species was listed under the Endangered Species Act (ESA). Much turmoil and many struggles have ensued, often revolving around the "Four Hs" of salmon mortality: the hydrosystem, degraded tributary habitats, poor hatchery practices, and harvest.

Many improvements have been made in addressing these factors, and recent years have seen some salmon populations begin to rebound, at least temporarily. Nevertheless, no salmon species has been de-listed under the ESA. Other important fish resources, such as Pacific lamprey, are disappearing precipitously. Most importantly, while all these more visible salmon recovery issues have been the focus of attention, there has been a growing awareness, supported by mounting empirical evidence, of the alarming fact that fish in the Columbia River and its tributaries are exposed to a wide range of dangerous toxins in addition to all the other threats to their existence and survival.

PCBs are among those contaminants. EPA and the Columbia River Inter-Tribal Fish Commission (CRITFC), in their *Columbia River Basin Fish Contaminant Survey*, found toxic chemicals (including PCBs) present in varying amounts in multiple fish species throughout the Columbia River Basin.<sup>1</sup> Furthermore, tribal members (including those of the CTUIR) eat substantially more of these fish than the general non-Indian population,<sup>2</sup> which so far has been the reference point for determining water quality standards. Thus, we are at greater risk from increased exposure to these toxins. As the proposed rules state:

"ATSDR has concluded that there may be an adverse impact on the health of persons who eat fish contaminated with PCBs. Disadvantaged populations may be more exposed to PCBs in contaminated fish than members of the general population. Some disadvantaged communities, such as Indian tribes, have subsistence lifestyles and rely on fish and mammals that may be caught in PCB contaminated waters and environs, as a primary source of nutrition. Fish in these waters may have been contaminated by both PCB wastes disposed of prior to the use authorizations, as well as releases that have

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<sup>1</sup> See <http://yosemite.epa.gov/R10/OEA.NSF/webpage/Columbia+River+Basin+Fish+Contaminant+Survey>.

<sup>2</sup> See <http://www.critfc.org/tech/94-3report.html>.

occurred from the currently authorized use, distribution in commerce and disposal of PCBs.”

Pursuant to Section J, Environmental Justice Considerations, in the proposed rules, “PCB use and distribution in commerce for use” *do* have “disproportionate environmental and public health impacts” on tribal populations such as the CTUIR. Allowing continued use of PCBs in dyes, pigments, inks and other products results in significant risks to tribal members and thus raises serious Environmental Justice concerns. As noted above, PCBs bioaccumulate in fish, fish which our tribal members eat at a substantially higher rate than most members of the general public. Because the primary threat from PCBs occurs when they enter our rivers and streams and the food chain, tribal members are disproportionately impacted by allowing any PCBs into the environment. Even though PCB manufacturing and use has been curtailed to a degree, legacy contributions continue and so it is unacceptable to allow additional inputs and discharges that only add to the burden.

For more than six years the CTUIR has been working closely with EPA Region 10 and with Oregon to revise the state’s water quality standards for toxics to account for the disproportionately higher tribal fish consumption rate. We are now working with Washington to do the same thing. In addition, EPA Region 10, in conjunction with multiple stakeholders including the tribes, has developed a *Columbia River Toxics Reduction Action Plan* that will more directly confront the problem by exploring source reduction and cleanup. Finally, the “Columbia River Restoration Act of 2010” has been introduced in the current Congress. It would bring heightened attention and increased resources to our efforts to reduce and eliminate toxic pollutants in the region. Perpetuating the discharge of PCBs by maintaining the 50 ppm level for dyes, pigments and inks would be contrary to, and would undermine, all these positive steps that are now being taken.

The CTUIR and other tribes, in our historic and judicially-recognized role as resource co-managers, have been at the forefront of actions to preserve and enhance salmon, water quality and other tribal First Foods. We have emphasized scientifically sound and rigorous strategies, cooperative working relationships, and cost-effective management. Beyond these immediate approaches, we have always been guided by the wisdom of our ancestors, and concern for the next Seven Generations, as we have sought to maintain and practice our way of life. All this is threatened by the ubiquitous toxins now so widespread in our environment. Every opportunity to diminish the amount of toxins released should be embraced. Failure to do so would be a denial of Environmental Justice, for us and for those who will come after us.

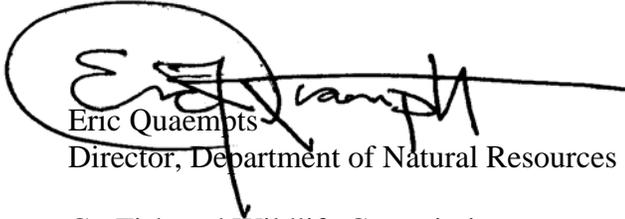
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Therefore, the CTUIR DNR asks that you stop using the 50 ppm level for excluded PCB products, including dyes, pigments and inks, and that you establish the level at zero. Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Quaempts", is written over a printed name and title. The signature is circled in black. A vertical line extends downwards from the signature, ending in an arrowhead pointing to the first line of the distribution list.

Eric Quaempts  
Director, Department of Natural Resources

Cc: Fish and Wildlife Commission

Tribal Water Commission

Dennis McLerran, Administrator, EPA Region 10

Dick Pedersen, Director, Oregon DEQ

Ted Sturdevant, Director, Washington Department of Ecology

Rick George, Manager, Environmental Planning/Rights Protection Program, DNR

EQ: cfm