



Clean River ♦ Healthy Community

September 9, 2016

ATT: Shara-Li Joy

Washington Department of Ecology, Eastern Region
4601 N Monroe
Spokane, WA 99205-1295
Spokane, WA

RE: Kaiser Aluminum Draft NPDES Permits # WA0000892, City of Spokane Riverside Water Reclamation Facility and Combined Sewer Overflows Draft NPDES Permit #WA0024473, Liberty Lake Sewer and Water District Draft NPDES Permit # WA0045144

Dear Shara-Li Joy,

These comments were written by the Spokane Riverkeeper and made on behalf of the Spokane Riverkeeper, The Lands Council, and Kootenai Environmental Alliance (Coeur D'Alene Waterkeeper).

As Spokane River and Coeur D'Alene Waterkeepers, we are citizens advocates charged with ensuring that state, tribal and federal clean water laws are followed, and that policies are developed that promote a "fishable, swimmable" Spokane River Watershed. As members of the international Waterkeeper Alliance, we are deeply concerned about the integrity and viability of the world's waters and their ability to bring value to the people and communities who depend on them. We are providing comments on this process as these three National Pollution Discharge Elimination System (NPDES) permits will have a profound and lasting impact on the quality and health of our watershed.

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The Lands Council is an organization dedicated to the preservation and revitalization of Inland Northwest forests, water, and wildlife through advocacy, education, effective action, and community engagement.

All three organizations are voting members of the Spokane River Regional Toxics Task Force.

Spokane River Background:

The Spokane River has been impacted by numerous human activities that have left its water quality and its aquatic communities degraded. In 1998 the upper section of the Spokane River was listed as impaired for lead, zinc and cadmium. Much of this was due to historic mining activities in the headwaters. In addition, pollution from nutrients like phosphorus have degraded the ability of the river to hold dissolved oxygen (DO) which has led to a Total Maximum Daily Load (TMDL) for DO in 2010. Toxics such as polychlorinated biphenyls (PCBs) and others have been discharged into the river and caused problems for aquatic communities and the people who are entitled to use the river and eat the fish harvested there. Currently there is not a TMDL for PCBs.

Phosphorus Background

As early as the 1970s, water quality problems in the Spokane River and its reservoirs were identified by scientific authorities¹. These issues caused toxic blue-green algae blooms in the summer, and depleted the dissolved oxygen necessary to support aquatic life in the summer months of the year. In the years 1996, 1998 and 2004 the river was included on the States 303 (d) list for dissolved oxygen impairments. In 2010 a DO TMDL was finalized and the parameters of phosphorus, and Carbonaceous Biochemical Oxygen Demand (CBOD) were addressed through Waste Load Allocations and Load Allocations.

Spokane river PCB pollution background:

The Spokane River was only very recently one of the most polluted rivers in Washington State for PCBs. This pollution is due to multiple sources and pathways. The older, “legacy” Aroclor PCBs marketed by Monsanto Corporation, and banned in 1979, as well as the newer, inadvertently produced PCBs that are present in pigments and dyes have recently become a concern and consistently pose a problem with the public enjoyment and use of the river. PCB pollution deprives the public of the clean water that they are entitled to under state, tribal and federal law. Kaiser Aluminium, who used the Aroclor branded PCBs for its aluminium rolling operations has sections of ground water under its facility that are tainted with PCBs and reaching the river.

¹ Soltero, R.A., A.F. Gasperino, and W.G. Graham, 1973, An investigation of the Cause and Effect of Eutrophication in Long Lake, Washington. Project Compliance Report to OWRR. 86pgs

In 2008 a Source Assessment was done in which several sections of the river were characterized for their PCB impairments².

Fifteen waterbody segments of the Spokane River and Lake Spokane (also known as Long Lake), and one segment of the Little Spokane River are on the § 303(d) list for not meeting (or exceeding) Washington State's human health water quality criterion for PCBs in edible fish tissue. In addition to ground water inputs, discharge inputs, the PCB pollution of our river has been complicated by non-point sources such as runoff from storm drains, areas that have been treated with hydroseed, contain road paints, and/or the application of de-icer. All of these products are found to contain inadvertent PCBs. Many sections of the rivers water column do not yet meet the Washington State Water Quality Standard or Criterion for PCBs. In Washington, the water quality criterion for total PCBs is 170 picograms per liter (pg/L). 40 C.F.R. 131.36(b)(1) & (d)(14). Although some reaches of the river do meet the WQS. However, the mere presence of ambient PCBs at sub lethal levels in the water column means that PCBs enter the food chain, bio-magnify in the fish that are in these food chains. As a result, these pollutants and deprive the public of clean, safe fish to eat. According to the EPA Water Quality Standards Handbook § 3.1.3 "EPA WQS Handbook, The consumption of contaminated fish tissue is of serious concern because the presence of even extremely low ambient concentrations of bio-accumulative pollutants (sub-lethal to aquatic life) in surface waters can result in residue concentrations in fish tissue that can pose a human health risk".

These forms of pollution have led to the Washington Department of Health putting fish advisories in place for several sections of the Spokane River. These advisories serve to warn the public as to the consumption of a wide array of species such as rainbow trout, mountain whitefish, yellow perch, largescale suckers, black bass as well as other species of fish. Additionally, studies as recently as 2015 have found Carp tissue sample as that are as high as 1.3 parts per million³. This is orders of magnitude more polluted that samples of rainbow trout or whitefish in other sections of the Spokane River⁴. It is well know that the lower parts of the river as well as the middle sections of the river are being used on a routine basis for sport fishing and the consumption of fish is common among sport fisherman. The Spokane Walleye Club, in fact, has a section on their website displaying and sharing recipes for cooking walleye, a top predator known to bio-magnify pollutants in the watershed⁵. Fish consumption is also a regular and persistent cultural trait among Spokane Tribal members on the lower Spokane River as well as the immigrant community in urban Spokane. The Spokane Tribal uses a fish consumption

² Spokane River PCB Source Assessment 2003-2007– Washington Department of Ecology Publication No. 11-03-013, May 2011

³ Lake Spokane: PCBs in Carp, Washington Department of Ecology Publication No. 15-03-022 July 2015

⁴ Washington State Toxics Monitoring Program: Contaminants in Fish Tissue From Freshwater Environments in 2004 and 2005 Publication No. 07-03-024

⁵ <http://spokanewalleyeclub.com/cookoff-recipes/>

rate of 865 grams of fish/day. It is a fair assumption to make that these pollutants put these and other communities at disproportionate risk. Nearly 15 years ago, just after EPA issued its 2000 guidance on fish consumption and human health criteria, a Federal Advisory Committee to EPA issued a report regarding the need for states to ensure that all populations are protected, including those that have particularly high fish consumption rates for cultural, religious, social and/or economic reasons. National Environmental Justice Advisory Committee, Fish Consumption and Environmental Justice (2002) (“Environmental Justice Report”). The Environmental Justice Report also emphasized the need to consider that some consumption rates may currently be suppressed due to reduced fish availability and other factors⁶.

Health issues from PCB pollution have been understood to include reproductive disorders, cancers and endocrine disruption.⁷ These are all serious health issues that have implications for the permits that are currently opened. All of the permits that will be discussed below are for discharges that contribute to this form of bio accumulative pollution.

In 2008 a Source Assessment for the Spokane River PCB pollution was conducted⁸. This was in preparation 2008 – draft Total Maximum Daily Load (TMDL) for PCBs. The TMDL was never finalized and in lieu of a TMDL, a direct to implementation process, was envisioned to bring stake holders together to address the complex nature of PCB pollution. This project is known as the Spokane River Regional Toxics Task Force. This group represents stakeholders from water quality advocates to dischargers and agencies that regulate aspects of public life. Within the MOA the stated vision of the SRRTTF follows:

“The Regional Toxics Task Force will work collaboratively to characterize the sources of toxics in the Spokane River and identify and implement appropriate actions needed to make measurable progress towards meeting applicable water quality standards for the State of Washington, State of Idaho, and The Spokane Tribe of Indians and in the interests of public and environmental health.”⁹

To that end, the SRRTTF is developing a Comprehensive Plan to bring the Spokane River into compliance with water quality standards for PCBs. This process includes the presence and guidance of both the Washington State Department of Ecology (Ecology) and the Environmental Protection Agency (EPA). Both parties, while not signatories to

⁶ https://www.epa.gov/sites/production/files/2015-02/documents/fish-consump-report_1102.pdf

⁷ International Journal of Occupational and Environmental Health 1998;11(4):291-303.

Polychlorinated biphenyls and human health. Carpenter DO1. Department of Environmental Health and Toxicology, School of Public Health, University at Albany, Rensselaer, New York 12144, USA.

⁸ Spokane River PCB Source Assessment 2003-2007, Washington State Department of Ecology Publication No 11-03-013

⁹ <http://srrttf.org/> (Vision Statement of SRRTTF Memorandum of Understanding as approved 1/23/12)

the MOA as voting members of the SRRTTF, they are in fact interested in the success of the process. Additionally, Ecology is responsible for determining Measureable Progress. This is a process wherein inputs, outputs and (water quality) outcomes are documented and used as a metric for SRRTTF success or failure. If Measurable Progress is not made in five year increments, (the SRRTTF could be dissolved and) a TMDL process undertaken. It should be noted that the requirement to attend and contribute to the SRRTTF is written into the NPDES permits for every entity discharging into the Spokane River.

Complicating this situation is the lack of Waste Load Allocations and Load Allocations for PCBs in the Spokane River. Without a TMDL, the path forward towards cleaning up the river has been in dispute. The City of Spokane RPWF Fact Sheet explains this in the following:

“In October 2011, the Sierra Club brought a citizen suit under provisions of the Clean Water Act against EPA (Sierra Club, et al. v. McLerran, No. 11-CV-1759-BJR), claiming EPA failed to perform a nondiscretionary duty of establishing a TMDL for PCBs in the Spokane River. In an Order issued by the U.S. District Court on March 16, 2015, the Court directed EPA to consult with Ecology and file a schedule for the measuring and completion of the work of the Task Force, including quantifiable benchmarks, plans for acquiring missing scientific information, deadlines for completed scientific studies, concrete permitting recommendations for the interim, specific standards upon which to judge the Task Force’s effectiveness, and a definite endpoint at which time Ecology must pursue and finalize its TMDL.

EPA submitted its plan (<http://srrttf.org/wp-content/uploads/2015/07/EPA-plan-for-PCBs-inresponse-to-court-order.pdf>) to the Court on July 14, 2015. EPA’s plan included a December 15, 2020 date for meeting an instream concentration of PCBs in the Spokane River of 200 pg/L; and a December 15, 2024 date for meeting an instream concentration of PCBs of 170 pg/L.”

This directive from the court has led to the inclusion of the following language in the City of Spokane RPWF Fact Sheet, (page 64):

The proposed permit includes specific tasks for the Task Force to accomplish:

- 1. Complete the Comprehensive Plan by December 2016, including targets and milestones for achieving water quality standards.*
- 2. Create a 5-year Strategic Plan with short term goal and strategies, needed financial and technical assistance, and adapt BMP Implementation Plans (based on former TMPs) towards achieving these goals.*
- 3. Measure Progress through a monitoring program, annual reports, and adaptive measures.*

Ecology maintains its regulatory authority to require a TMDL if this approach does not work.

As such, Ecology will evaluate whether the Task Force has made Measurable Progress to meet applicable water quality criteria for PCBs at the next permit renewal. These documentable milestones for measurable progress works toward the obligation Ecology has with bringing the Spokane River into compliance with State Water Quality Standards.”

Spokane County NPDES Permit for WWTP was issued in 2011. With no TMDL in place and without WLA or LA for the Spokane River Sierra Club, with the Spokane Tribe as interveners, challenges the permitting of this facility. Additionally, the notion of a SRRTTF as a legally viable means of cleaning up the river is under challenge. As this case has unfolded, a number of communications between the EPA and Judge Rothstein provide clarification and guidance to stakeholders in terms of goals; benchmarks and timelines for achieving water quality standards for PCBs in the Spokane River¹⁰ (see Page 22). Additionally, in response to US District Court Order in Sierra Club et al v. McLerran, No 11-CV-1759-BJR, the EPA issued a series of recommendations for NPDES permit writers and permit holders that if incorporated into the permits, will ensure the eventual, effective clean-up of our river (Doc 129 – 1, Appendix B). We find these communications and the recommendations to be extremely helpful in providing effective standards to guide the development of the permits and guide discharge operations. Consequently, these comments and recommendations are frequently invoked and/or referenced. In fact, Waterkeeper and The Lands Council comments on the draft NPDES permits for Kaiser Aluminium, Spokane Waste Water treatment Plants, and Liberty Lakes Waste Water Treatment Plant’s draft NPDES permits are all informed by the EPA’s comments, and the over-arching efforts of the SRRTTF to make measurable progress in bringing the Spokane River into compliance with Water quality standards for PCBs. This is in keeping with a vision to allow the public to enjoy the entitlements of the clean water and healthy fish owed to them Washington State Law RCW WWPCA and under the Federal Clean Water Act, 33 U.S.C. 1313(c)(4).

A note about the organization of the comments below:

There are four sections to the following comments. Part I are comments that are aimed at all three for the draft permits that are open for comment. Part II are comments specific to the NPDES permit for Kaiser Aluminium. Part III are comments specific to the NPDES permit for the City of Liberty Lake Sewer and Water District. Part IV are comments specific to the NPDES permit for the City of Spokane Riverside Water reclamation Facility and CSO permit.

¹⁰ Case 2:11-cv-01759-BJR Document 120 Pg 22 of 25

Part I – Comments common to all three NPDES permits:

1. **Final Effluent Limits for PCBs at all three (Spokane, Liberty Lake and Kaiser) outfalls to the river:** We are pleased to see numerical effluent limits for these permits and these facilities. This is noted in Part ii, III and V. However we will provide the general rationale for our opinion here as it is common to all three facilities and their permits.
 - a. The Effluent limit for PCBs will be established that the City of Spokane operations will ultimately be meeting the Measurable Progress Determinations in the SRRTTF process (at a defined point in the future).
 - b. This numerical PCB Effluent limit will comport with the goals and objectives of the EPA, the WDOE and the SRRTTF as they work to clean up PCBs in the Spokane River.
 - c. This numerical limit will have a direct and lasting impact on protecting the designated uses of the Spokane River and protecting the public from the harmful effects of contacting PCBs. The Clean Water Act requires states to protect designated uses of the Spokane River. Those designated uses encompass the “fishable and swimmable” protections of the Clean Water Act: “protecting and cleaning up our nation’s waters so that they are clean enough for drinking, for direct human contact for fishing and recreation, for healthy aquatic resources, and for catching and consuming fish and shellfish” 33 U.S.C. § 1313

2. **Meeting Downstream Water Quality Standards for PCBs:**

The final PCB effluent limits for dischargers in the Spokane River needs to ensure that the water quality of downstream users is not compromised. The Clean Water Act specifically requires this. In *Arkansas v. Oklahoma*, 503 U.S. 91 (1992), the Supreme Court stated that upstream point source dischargers must comply with downstream water quality standards. The current Spokane Tribal standard is 1.3 pg/L, a significantly more protective standard than Washington State’s PCB WQS of 170 pg/L. The permits must ensure compliance with the Spokane Tribe’s water quality standards.

3. **10 year compliance periods to meet final effluent limits for PCBs:** In the draft permits, interim limits are seen as the ceiling for PCB discharges for a compliance period of ten years from the date of the issuance of a final permit. We feel that the Spokane River represents a unique case wherein the compliance period should be shorter. This is for the following two reasons:
 - a) First, compliance schedules are recognized as an acceptable tool in permitting under limited circumstances. 40 C.F.R. § 122.47. Ordinarily,

compliance schedules are appropriate where an existing permittee needs time to comply with a new standard, such as a new water quality standard or a new technology standard or both. Ecology's rules already provide for the use of compliance plans (TMP or BMP) plans in permitting. The justification for compliance schedules is that compliance with a new standard cannot happen instantly, and so a plan may be created that includes interim, enforceable milestones with a firm date by which time permit requirements must be met. While EPA's regulations do not set a maximum allowable time for compliance schedules, they must ensure compliance "as soon as possible." *Id.* at § 122.47(a)(1). Case law has warned that compliance plans cannot exceed the five-year term of a permit. *Citizens for a Better Environment v. Union Oil Co. of Cal.*, 83 F.3d 1111, 1120 (9th Cir. 1996). Further, "schedule of compliance" as defined in the Clean Water Act plainly contemplates a period of time constrained by the four corners of a five-year permit. 33 U.S.C. § 1362(17). See also 40 C.F.R. § 122.2.

- b) Second, a shorter 7 year compliance schedule would conform to the larger SRRTTF effort outlined above rather than the conventional period of a decade. In the document 129-1, the EPA submitted its plan (<http://srtrtf.org/wp-content/uploads/2015/07/EPA-plan-for-PCBs-inresponse-to-court-order.pdf>) to the Court on July 14, 2015. The EPA's plan included a December 15, 2020 date for meeting an instream concentration of PCBs in the Spokane River of 200 pg/L; **and a December 15, 2024 date for meeting an instream concentration of PCBs of 170 pg/L.** This schedule was outlined by the EPA and submitted to the Judge Rothstein as a statement made presumably in good faith about the goals and outcomes of the SRRTTF. This being the case, the WDOE, NPDES holders and members of the SRRTTF should be committed to the EPA schedules and benchmarks as documented in Doc 129-1 to achieve the WQS of 170 pg/L PCB concentration in the Spokane River by 2024. If a Washington State water quality "cookie cutter" compliance period were used, we could be out to 2026 or 2027 before meeting final effluent limits of 170 pg/L concentrations of PCBs in the Spokane River. We strongly urge the final NPDES permit to conform to the goals set out by the EPA and submitted (in doc 129-1, page 11/12) to the Judge Rothstein as true measure of the outcomes for the SRRTTF and the stakeholders at work in this process.

4. **Compliance Monitoring Methods:** We urge all three of the permits to require compliance monitoring using EPA approved method 1668c. The use of EPA

method 608 – modified, for compliance monitoring is not as effective as 1668c in that method 608 can only establish Potential Quantitation Limits for PCBs in concentrations far in excess of 170pg/L.

5. **Next level of treatment.** We support running the next level of treatment at all facilities all year around (as it becomes available). This ensures the greatest level of nutrient and toxics removal.

6. **Measurable Progress sections inside the permits:** Because making Measurable Progress is the key to effectively getting to clean water and bringing the river into compliance with applicable water quality standards, it essential that every NPDES permit in the Spokane River include the following language, excerpted from the Spokane NPDES Draft permit fact sheet, Page 65. ***“Results from the BMP Implementation Plan required in this permit cycle shall be used in the measurable Progress cycle.”*** (Pg 65, Spokane Fact Sheet). We urge the inclusion of the language in all three of the permits under a Measurable Progress Determination Section. Additionally, we suggest adding the language from Spokane Permit to all draft permits (page 45 of 71, S14):

“Ecology will continue the measurable progress determination through this permit cycle.

The permittee must submit data collected during activities required in this proposed permit needed for Ecology’s next measurable progress assessment. Information collected and presented in the BMP Implementation Plan will be used in the next assessment period which began on January 1, 2015 and will extend though the 4th year of this proposed permit. Ecology will work with the Kaiser (and Spokane and Liberty lake) to identify and collect additional information as needed to help complete the assessment of inputs, outputs and outcomes. The determination will assess progress toward meeting the State’s Water Quality Standards.

Kaiser (Spokane and Liberty Lake) must also maintain their active roll on the Spokane River Regional Toxics Task Force as part of the measurable progress effort. Ecology considers continued involvement with the Task Force part of maintaining the comprehensive approach to address point and non-point sources of PCB in the Spokane River. This proposed permit requires the Kaiser to work with the Task Force in accomplishing the following:

1. *Complete the Comprehensive Plan by December 2016, including targets and milestones for achieving water quality standards.*
2. *Create a 5-year Strategic Plan with short term goal and strategies, needed financial and technical assistance, and adapt BMP Implementation Plans (based on former TMPs) towards achieving these goals.*
3. *Measure Progress through a monitoring program, annual reports, and adaptive measures.*
The Permittee must share data collected through the Kaisers (and liberty Lake and Spokane's) BMP Implementation Plan with the Task Force and other point source dischargers. This includes quantitative data in addition to feedback on which BMPs are found to be most effective and which ones did not perform as anticipated. (add this language to all three permits)
Results from the BMP Implementation Plan required in this permit cycle shall be used in the measurable Progress cycle. (Excerpted from Page 65, city of Spokane RWRTP Fact sheet)

7. **Arsenic standards inside all three Fact Sheets/permits:** Ecology's decision to rely on 10 ug/L as an arsenic standard is not adequate to meet the requirements of the Clean Water Act. Please defer to the more stringent and protective EPA recommendations of .0018 ug/L.

Ecology adopts the "drinking water standard," for arsenic in this and other NPDES permits, but in doing so fails to meet its Clean Water Act section 304 obligations. EPA has directly addressed this issue and has made plain that Safe Drinking Water Act ("SDWA") standards are not to be used as a substitute for Clean Water Act section 304(a)(1) human health standards:

The section 304(a)(1) criteria also [should] include fish bioaccumulation and consumption factors in addition to direct human drinking water intake. These numbers were not developed to serve as "at-the-tap" drinking water standards, and they have no regulatory significance under the SDWA. Drinking water standards are established based on considerations, including technological and economic feasibility, not relevant to section 304(a)(1) criteria. Section 304(a)(1) criteria are more analogous to the maximum contaminant level goals. . . of the SDWA. .

.[which] do not take treatment, cost, and other feasibility factors into consideration.¹¹

As noted by EPA, drinking water standards are standards that a municipal entity has to meet “at the tap” for community water, and that statute allows cost and other factors to be taken into account. Nowhere does the Clean Water Act allow for cost and technology and economic feasibility to be considered when setting standards. Those factors might come into consideration in permitting, but have no place in setting the standards for human health. Congress directed consideration of cost and/or feasibility in other environmental laws like the Clean Air Act, but pointedly omits those considerations here. Ecology’s Rule is based on incorrect interpretation and application of the Clean Water Act and the SDWA. If Ecology has data demonstrating that the Spokane River has natural levels of arsenic at or above 10 ug/L the proper and legal route for Ecology is to propose a standard for that water that is based upon that actual data and to include a public process and EPA review for that waterbody-specific standard. So in the Kaiser Permit and Fact Sheet (pg 35), Arsenic monitoring is deferred because of the regulatory “uncertainty of the freshwater human health criteria”. The State proposes 10 micrograms per liter – (10 ug/L) as a drinking water standard and the EPA has established 0.018 micrograms per liter based upon the human health risks of ingesting fish and shellfish. It is inappropriate to avoid a permit limitation given that both agencies agree that there should be limits, and, there is no confusion of the human health risk established by the EPA. The permit should reflect as discharge limit corresponding to the EPA standard of 0.018 micrograms per liter at the very least. Additionally, the permit should include a schedule for compliance in S1 under effluent limits for outfall 001.

8. **Total Phosphorus, CBOD and ammonia interim limits and the final effluent limits:** The Total Phosphorus, CBOD, ammonia interim limits and the final effluent limits and WLAs for all outfalls to the Spokane River, in all three permits, are in line with the DO TMDL. These limits are good news for the Spokane River and good news for the public who uses it. These strong total phosphorus limits will be protective of water quality and aquatic health when they are achieved. We support them.
9. **Receiving Water Study:** We suggest that all three permits and dischargers monitor receiving waters upstream and down-stream of final outfalls to the river for PCB congeners of using method 1668c in both high flow and low flow regimes at a frequency to assess concentrations of PCBs in the water column in

¹¹ EPA WQS Handbook, § 3.2.4

both situations. (See page 3 of EPA guidance, doc 129-3). This is extremely important as the goal of the SRRTTF is to characterize the nature and extent of PCBs in the Spokane River and the degree to which various dischargers are contributing to loads in the river. However, it is important to have the Permittee own this monitoring inside the terms of the NPDES permit rather than rely on the SRRTTF. The future of the SRRTTF and the financial viability of the SRRTTF are, by their nature, uncertain. If the process turns into the development of a TMDL, then funding for this monitoring could go away. To remedy this, the City of Spokane (and all NPDES and MS4 permittees) should include and own this work inside their permit(s). The terms and protocols of the data collection can conform to the over-arching needs of the SRRTTF and certainly the readily available and accessible in a form that is useful to the SRRTTF.

10. **All permits include EPA guidance:** All three permits should include the EPA NPDES permit guidance (for PCBs) that is included in Case 2:11-cv-01759-BJR. This guidance should be taken in *addition to numerical limits for PCBs*. This Document 129-1 is called “EPAs Plan for Addressing PCBs in the Spokane River, July 14, 2015 Appendix B, re: NPDES Permitting recommendations for the Spokane River.

Part II - Kaiser Aluminium Permit # WA0000892 Comments:

1. **Permit Page 26:** In S7, Final Water Quality Based Effluent PCB Limitations for outfall #001 it states that the final effluent limits are 170 pg/L. *This aspect of the permit is very strong; we emphatically support this provision, and see it as an improvement over the 2011 NPDES permit.* We are very pleased to see the permit with a provision that will have the Kaiser Aluminium operations meeting the Washington State Numerical Effluent Limits for PCBs of 170 pg/L. We believe this to be a positive aspect of the NPDES permit and we believe it represents progress in protecting the public and the river. Our rationale is stated above in Part I.
2. **Permit Page 26:** In the permit, it says that “Final Effluent Limitations” for outfall 001 will be “March through October”. We understand that the EPA and the SRRTTF understands that the use of AKART and Kaiser technological innovations should protect the river from PCB discharges all year around, and we ask that this be corrected to be a year around effluent limit in the NPDES Permit.
3. **Permit Page 8:** We appreciate and recognize the importance of the numerical effluent limits for PCBs - both interim effluent limits and the final limit of 170 pg/L. This is a profound improvement from the last permit issued in 2011. We ask the Department of Ecology to keep this standard in the permit. However, it is noted that

the interim limit is based on average monthly and daily maximum out puts of PCBs between September of 2013 and August of 2015. The average monthly interim limit of 129 milligrams/day of PCBs is .5 mg/day over the highest output between 2013 and 2015. This is similar to the maximum daily output measured at 145 mg/day. Upon the issuance of the next NPDES Permit in 2021, we suggest Interim limits should be 95% the maximum average daily and monthly averages between 2021-2024 (see #4 below for discussions on compliance periods and 2024 vs 2026 as a terminal date for meeting final effluent limits). Meeting these limits would demonstrate Measurable Progress on the part of Kaiser aluminium in the years leading up to EPAs benchmark of 2024 for meeting final water quality standards of 170 pg/L.

4. **In the Permit, Section S2:** On page 11, we suggest changing PCB congener monitoring of final effluents for compliance from a frequency from twice a year as it is in draft permit, to “at least quarterly using method 1668c”. This would bring the monitoring for PCBs into line with the EPA guidance (Doc 129-1, Appendix B, page 3, bullet 1). We feel that this gives a more accurate and complete understanding of Kaiser as a source of PCB loading to the Spokane River.
5. **Permit Page 22: Permit Special Condition S6 (4.)(5.)**
Economic feasibility is very subjective and does not meet the requirements of AKART (All Known and Reasonable Technology). This is potentially a point at which the permittee can merely call any reasonable technology, “uneconomical” to defer implementing BMP’s. Consequently, we suggest striking “economically feasible” from #5 of S6 (pg 22) when describing implementation of BMPs.
6. **Permit Page 24:** Similarly in the BMP Implementation Plan on Page 24, Section d under PCB Purchasing standards the draft permit states: “Permittee must institute procurement practices with the “goal” of eliminating products. We suggest substituting this language with language that would “REQUIRE” the institution of these procurement practices (as it is in the Fact Sheet, 3rd bullet Page 37).
7. **Permit Page 25, S7, and Schedule of Compliance for Total PCBs:** In EPA Letter to Judge Rothstein (EPAs Plan for addressing PCBs in the Spokane River Doc 129-1, Appendix B Page 7) The EPA states that Ecology estimates the Kaiser ground water remediation to be operational by 2020, four years from now. However, under draft permit conditions S7 “schedule of compliance for total PCBs” give Kaiser 9 years and 6 months to fulfill, in writing, the terms of total compliance for PCBs. We suggest, narrowing this timeframe to be more in line with EPAs statement to Judge

Rothstein. Discussion as to why is identical to our reasoning in above, Part one, #1 of the comments common to all three draft permit section.

8. **Permit Page 8, S1:** The total phosphorus, ammonia and CBOD interim limits and the final effluent limits and WLAs for outfall 001 to the Spokane River in line with the DO TMDL. This is good news for the river and good news for the public who uses it. These strong total phosphorus limits will be protective of water quality and aquatic health when they are achieved. We support them.

9. **Permit Page 21, S5, Phosphorus, CBOD and ammonia “Meet Final Water Quality Effluent Limits – July 2021”:** On page 21 of the permit, Footnote b implies that final WQBELs can be met in (10) years under Permit special condition S5(b): it states “... there is reasonable assurance of meeting the final WQBELS in ten(10) years.” This statement appears to stretch out the compliance schedule in the Spokane River TMDL by over 7 years. The compliance date in the Spokane River DO TMDL is 2020. In the Executive Summary of the Spokane River DO TMDL, page viii, under sub heading Implementation Summary, it clearly states that “*This TMDL clearly contemplates that final waste load allocations will be met no later than 2020*”. Please clarify and correct this aspect of the permit – Kaiser must be in compliance for total phosphorus, CBOD and ammonia by 2020 and this should be clearly stated on page 21 of the permit.

10. **Temperature Page 34 of the Fact Sheet:** “The temperature at the edge of the chronic mixing zone during critical condition(s) appears greater than the allowable amount and may require a limit but is undetermined.” If temperatures at outfall 001 are greater than allowable by Washington State Law, then limits should be set (20 c) with a compliance schedule. If additional monitoring shows different results then the limits can be revised in future permits.

River temps at Barker Road are routinely over the allowable temperature and as a changing climate begins to affect the Spokane River, this issue will become increasingly important aspect of managing discharges. Water Quality Standards for Surface Waters of the State of WA Chp. 173-201A WAC clearly state that for:

WRIA 57, Middle Spokane River - Temperatures shall not exceed a 1 – Dmax of 20 C due to Human activities. When natural conditions exceed a 1-DMax of 20 C, no temperature increase will be allowed which will raise the receiving water by greater than 0.3C, nor shall such temp increases at any time exceed $t=34/(T+9)$

¹².

¹² Water Quality Standards for Surface Waters of the State of WA Chp. 173-201A WAC, page 111

Part III - City of Spokane Permit # WA0024473 Comments:

- 1. Permit Page 10: In S1B, Final Water Quality Based Effluent Limitations:** In the draft permit Final Effluent PCB limits for outfall #005 are 170 pg/L (or 0.00017ug/L). This aspect of the permit is very strong, we emphatically support this provision, and is an improvement over the 2011 NPDES permit. We are very pleased to see the permit with a provision that will have the City of Spokane's operations meeting the Washington State Numerical Effluent Limits for PCBs of 170 pg/L. We believe this to be a positive aspect of the NPDES permit and we believe it represents progress in cleaning up and protecting the Spokane River. Our rationale is stated above in Part I.
- 2. Permit page 48, nine minimum controls for CSOs:**
In reference to the Permit requirement for public notification of Combined Sewer Overflows (CSO) events, Point #8, - we recommend social media as a means of communication and be a provision that is added to the permit.
- 3. Permit Page 19, S2.B.**
We urge that Ecology add compliance monitoring using EPA method 1668c for PCBs on each of the twenty CSO outfalls per event. These can be grab samples but a complete congener analysis should be attained and presented in a form that can help the SRRTTF as it evolves to help understand and control PCB pollution in the Spokane River.
- 4. Permit Page 49, S15. C.:** In the Combined Sewer Overflow Annual Report section of the permit (page 49) we urge Ecology to add a 7th point that would summarize and report the PCB load characterization for each and every CSO event to the river. As stated above this should be presented with the TMP to the SRRTTF.
- 5. Permit Pages 8-13:** We support the interim and final effluent limits for total phosphorus, ammonia, and CBOD and appreciate that these adhere to the WLAs as set in the Spokane River DO TMDL.
- 6. SIU monitoring and compliance:** We recommend that all Significant Industrial Users be prohibited from discharging into the Spokane Treatment Plant pre-treatment if their discharge contains over 3 ug/L or they have a pre-treatment permit issued under 307(b) of the Clean Water Act – 40 CFR 761.50(a)(3).
- 7. Permit Pages 8-13 and Fact Sheet Page 54.** We strongly urge that final effluent limits for phosphorus, CBOD, and ammonia be met inside of 2020 as stated they

would be in the Spokane River DO TMDL. In the Executive Summary of the Spokane River DO TMDL, page viii, under sub heading Implementation Summary, it clearly states that “This TMDL clearly contemplates that final waste load allocations will be met no later than 2020”. Please clarify and correct this aspect of the permit – the City of Spokane must be in compliance for total phosphorus, CBOD and ammonia by 2020 and this should be clearly stated on page 10 and page 12 of the permit. Additionally, on Page 55 of the Fact sheet, it states that WLAs must be met by 2021. Please change this to 2020.

Part IV Liberty lake Sewer and Water District Permit #WA0045144

Spokane Riverkeeper comments on the Liberty lake Permit are subsumed under Part I. This includes our strong support of final and interim total phosphorus, ammonia, CBOD and PCB effluent limits as proposed in the draft permit WA0045144 as well as the inclusion of all EPA recommendations for this facility.

1. We recommend meeting these phosphorus, CBOD, and ammonia effluent limits by 2020.
2. Please correct the Liberty Lake Fact Sheet to include Appendix E a “full report of Measurable Progress”. On page 57 it says “*See Appendix E of this fact sheet for a full report of the Measurable Progress made in the Spokane River Watershed through the aggressive toxic source identification, control, reduction, and elimination strategy*”. As it stands at the back of the fact sheet it says that appendix E is a response to comments.

The only comment unique to Liberty Lake Sewer and Water district is that they write into their NPDES permit the provisions for including the input of SIUs into their facility. At this moment, the City of Liberty Lake may only take in residential waste into their pre-treatment system. However, the terms of this permit are five years and it would be prudent to include the EPA recommendations for SIUs that were included in Document 129-1, Appendix B. These recommendations are tailored to the control of PCBs as they may enter the treatment facility from SIUs.

Excerpt from page 4:

1.1.2 Pretreatment POTWs Only

The EPA recommends that:

- *The permits should require sampling of all significant industrial users' (SIU) discharges for PCB aroclors using the most sensitive method approved under 40 CFR Part 136. All PCB aroclor results above the method detection limit (MDL) should be reported to the POTW and to the approval authority.*
- *For any SIU where PCB aroclors are detected using approved methods, follow-up monitoring for PCB congeners using EPA Method 1668C should be performed at least once.*

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- *The POTW should use the results of the required monitoring of SIUs and any other available information to estimate the combined loading of total PCBs to the POTW from all SIUs.*
- *If the POTW estimates that the combined loading of total PCBs to the POTW from all SIUs is at least ten percent of the influent total PCB loading to the POTW, the POTW should either develop numeric local limits for total PCBs or require SIUs to implement BMPs to reduce discharges of total PCBs to the POTW.*

Thank you for the opportunity to comment on these three draft NPDES permits.

Respectfully,

Jerry White Jr.
Spokane Riverkeeper
Center for Justice

Mike Peterson
Executive Director
The Lands Council

Lisa Manning and Adrienne Cronebaugh
Coeur D'Alene Waterkeeper
Kootenai Environmental Alliance

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