



## **COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION**

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March 21, 2011

Andrea Matzke  
Oregon DEQ  
Water Quality Division  
811 SW Sixth Ave.  
Portland, OR 97204

Dear Ms. Matzke:

On behalf of the Columbia River Inter-Tribal Fish Commission (CRITFC) and over 20,000 registered members of the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation, and the Nez Perce Tribe, I urge the DEQ to adopt the proposed human health criteria for water quality based on a fish consumption rate of 175 grams per day. The importance of healthy fish to the tribes cannot be overstated.

Each of our member tribes have treaties with the United States that reserved the right to fish at all usual and accustomed fishing places; a right that the United States Supreme Court has upheld many times. The fishery resource is not only a major source of food for tribal members, it is also an integral part of our cultural, economic, and spiritual well-being. As stewards of the resource, we support all efforts to improve water quality to a level that is sufficient to protect the treaty fishery from the harmful impacts of waterborne pollutants.

Seventeen years ago, CRITFC published a report entitled "A Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin." This survey documents the fact that tribal people are not protected by the fish consumption rate used by the State of Oregon to calculate acceptable levels of toxic chemicals in the state's surface waters. Since the survey was published, we have waited for the state to take action on these findings and to protect the health of tribal members and many others who regularly eat fish. Any further delay in setting water quality standards at a level that is needed to safeguard the health of tribal members is unacceptable.

CRITFC's fish consumption survey provides a reasonable estimate of the fish consumption rates and patterns of tribal peoples who are members of the four tribes and reside in, and consume fish from the Columbia River Basin. This survey reports that 97 percent of the people interviewed eat fish and 88 percent of the fish that is consumed by tribal members originates in the Columbia River Basin. This is significant because all of these fish are affected by the quality of Oregon

waters for all or part of their lifecycle. Based on the survey's measure of tribal fish consumption, the human health toxics criteria of 175 grams per day would provide a firm, diet-based rationale for managing contaminants to levels deemed safe for 95 percent of the tribal members at their current consumption rates. It is significant to note that other surveys reviewed by DEQ's Human Health Focus Group in their June 2008 report corroborate CRITFC's findings and demonstrate that Asian and Pacific Islanders and Eastern European communities also consume fish at levels similar to CRITFC's tribes.

The DEQ Human Health Focus Group Report (June 2008) also recognized that EPA's fish consumption rate (USEPA, 2002 *Estimated Per Capita Fish Consumption in the United States*, EPA-821-C-02-003) of 17.5 grams per day was determined on a per-capita basis for the entire U.S. population, in which all non-fish consumers are recorded as having a consumption rate of zero grams per day. When averaging the zero consumption rate of non-consumers with the actual rate of fish consumers, the "resulting rates represent the averages across an entire population, and do not represent the actual fish consumption rate for people who eat fish." When non-consumers are not considered in the calculation of a national average, the mean fish consumption rate of U.S. fish consumers is 127 grams per day, or 8 pounds per month. To compare, the average meat consumption rate in the U.S. is 23 pounds per month according to a 2004 United Nations survey. These data indicate that a fish consumption rate of 175 grams per day or 12 pounds per month is a reasonable value that is consistent with fish and meat consumption habits of the general population.

In 1994, CRITFC initiated a survey of contaminants in fish tissue in the Columbia River Basin. The survey found the presence of 92 contaminants including DDT and its breakdown products, PCBs, PBDE flame retardants, and mercury, all of which pose potential health risks to people, fish, and wildlife. A further study published in 2007 analyzed the level of contaminants in tissue from juvenile Chinook salmon in the Columbia River. The study showed the presence of DDT, PCBs, and some pesticides in juvenile fish, which demonstrates that exposure to toxic chemicals is occurring during the freshwater portion of the Pacific salmon life cycle (Johnson, et. al, 2007, "*Contaminant exposure in outmigrant juvenile salmon from Pacific Northwest estuaries of the United States*", *Environmental Monitoring and Assessment*, 123, 167-194pp.) As the levels of contaminants measured in fish tissues from these studies indicate, the impact of pollution on Oregon's fish is not a theoretical problem. It is essential that steps be taken to lower the level of toxic contaminants carried in our surface waters so that the fish we eat becomes a more healthful food and economic resource for our people.

Today's problems with legacy pollutants and emerging contaminants will not be solved by yesterday's solutions. Fish tissue and water chemistry data clearly show that Oregon's old water quality standards and implementation methods are not protective of the fish we eat and the water we drink. The human health based criteria proposed in this rulemaking is a first step in moving toward a future where surface waters in the state will be once again clean enough that fish consumption advisories are no longer needed. We recognize the difficulties that meeting some of the new standards will create and we would be willing to consider interim measures for cost-effective long term solutions to eliminate toxic chemicals from the waters that we all share. Concerns about quantitation limits and regulatory authority that have been voiced throughout the

public comment period, should be handled through changes to the implementation process. This should not affect the proposed water quality standards.

While some of the calculated water standards can't be met with today's best available technologies and some can't be measured by current quantification limits, the process of setting water quality standards at higher levels will drive affordable, emerging technologies that can meet the standards into the marketplace. According to Dan Reicher, executive director of the Steyer-Taylor Center for Energy Policy and Finance at Stanford University, experience since the 1970s has made clear that well conceived and executed regulation ultimately stimulates technological innovation. This would not only benefit the region's leadership role in green technology development, but could also provide a means to address the issue of legacy contaminants in our nation's waters, thereby enhancing health for future generations.

DEQ has developed a workable process that includes intake credits, background pollution allowances, and an amended variance process. These implementation tools are reasonable and provide a workable system that will allow the state's business and wastewater sectors to adapt processes to meet the current standards. Working for clean water requires a partnership between all stakeholders, and we will continue to work with DEQ and the EPA to find ways in order to clean up our waterways and protect the majority of people who eat fish.

Oregon has an obligation to future generations to protect the tribes' treaty reserved fishing right. This requires the proper investment of time and resources needed now to solve the difficult issues of legacy and emerging contamination of our watersheds. I ask you to believe in a future where Oregon's waters are once again free of harmful contaminants. I urge the DEQ to adopt this ruling as it will allow all Oregonians to enjoy the benefits of living in a land where it is healthy and safe to eat our local fish because the water we all share is protected from toxic pollutants. Thank you for the opportunity to express my opinion on this ruling.

Sincerely,

A handwritten signature in blue ink that reads "Babbist Paul Lumley". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

Babbist Paul Lumley  
Executive Director