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POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

LIBERTY LAKE SEWER & WATER DISTRICT,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No.
NOTICE OF APPEAL

1. Appellant information:

Name of Appellant: Liberty Lake Sewer & Water District
Mailing Address: 22510 E. Mission Avenue
Liberty Lake, Washington 99019
Telephone Number: (509) 922-5443
E-Mail Address: bijay@libertylake.org

Name of Representative: Norman M. Semanko, WSBA #23951
Lisa A. Kirschner¹
Mailing Address: Parsons Behle & Latimer
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2. Review is sought of a final decision of the Washington Department of Ecology:

This is an appeal of National Pollutant Discharge Elimination System ("NPDES") Waste Discharge Permit No. WA0045144 (the "Permit") issued by the Washington Department of Ecology ("Ecology") to Liberty Lake Sewer and Water District (the "District") on June 30, 2022,

¹ The identified attorney is duly qualified and entitled to practice before the highest court of a state (Utah) and is therefore qualified to represent Appellant in this proceeding. WAC 371-08-365(2)(a).

1 effective August 1, 2022. A copy of Ecology's transmittal letter (Exhibit A), the Permit (Exhibit
2 B), Fact Sheet (Exhibit C), and Response to Comments (Exhibit D) are attached.

3 3. Statement of Grounds for Appeal:

4 (a) The Permit does not comply with the federal Clean Water Act (the "CWA"),
5 33 U.S.C. 1251 et seq., and Washington's Water Pollution Control Act (the "Water Pollution
6 Control Act"), Chapter 90.48 RCW, including the implementing regulations and rules promulgated
7 pursuant to the same. The District reserves the right to later supplement its grounds for appeal.
8

9 (i) The Permit includes conditions that do not accurately reflect
10 requirements of the CWA and Water Pollution Control Act.

11 (ii) The Permit includes conditions that are arbitrary and capricious
12 including: those related to PCB limits and other related requirements; and temperature limits and
13 other related requirements.
14

15 4. Statement of Facts and Detailed Grounds for Appeal.

16 (a) Statement of Facts Related to District's Operations and Obligations to Meet
17 Permit Limits:

18 (i) The District is a relatively small provider of sewer services with a
19 customer base of fewer than 5,000 customers. It discharges treated effluent to the Spokane River
20 approximately 3.5 miles downstream from the Washington/Idaho border. The District was
21 established in 1973 in direct response to residents' concerns over water quality issues in and around
22 Liberty Lake. The District has successfully adhered to its mission to preserve and protect the
23 regional aquifer, the Spokane River and Liberty Lake. Among other improvements, the District
24 has completed numerous updates to its Water Reclamation Facility ("WRF"). Because the District
25 has aggressively targeted improvements to water management and treatment of its effluent, it has
26 substantially improved the quality of its discharge relative to numerous constituents.
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(ii) The ongoing improvements to the WRF require substantial resources. The most recent upgrade (completed in 2018) cost \$17 million which figure does not account for operations and maintenance expenses. As discharge requirements become increasingly stringent warranting additional treatment or management, the District has to seek additional funds from its small customer base.

(iii) The District has worked with Ecology and the community to conduct numerous studies on its effluent and the Spokane River. As part of the District's long-standing environmental stewardship role, it has been an active participant in the Spokane River Regional Toxics Task Force (the "Task Force"). The Task Force was initially created as a voluntary alternative to a traditional Total Maximum Daily Load ("TMDL") process with a goal of identifying and reducing PCB sources impacting the Spokane River. The Task Force work has provided some good technical information regarding PCB sources; its work has been supplemented by the District's 2013 Toxics Management Plan aimed at evaluating PCB sources, which has been updated every year since then with new data and additional evaluation.

(b) Ecology's inclusion of PCB limits in the Permit should be deleted and replaced with the PCB conditions in the District's current NPDES permit.

(i) The Permit identifies average monthly and maximum daily PCB limits of 170 pg/L and 341 pg/L, respectively. Permit at S1.A.Table 4. Ecology has recognized, based on a robust data set, that the District has no reasonable potential to violate the numeric criteria for PCBs. Permit Statement of Basis at 36.

(ii) Ecology has stated, without any supporting information, that PCBs in the District's effluent could impact the receiving water's designated use of fish harvest. Absent additional data to support those statements, there is no basis for numeric PCB limits.

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(iii) The regulatory framework associated with the human health criteria for PCBs and the assessment of PCBs in the Spokane River are currently in flux underscoring the need to eliminate unsupported PCB limits in the Permit particularly with a multitude of possible near-term changes to the foundation for developing PCB limits.

(A) EPA has recently proposed revised human health criteria for Washington including for PCBs. 87 Fed. Reg. 19046 (April 1, 2022). EPA's spring 2022 Unified Agenda identifies January 2023 as an anticipated date for issuance of a final rulemaking.

(B) In 2019, the District submitted a PCB variance application to Ecology (along with the other permitted dischargers to the Spokane River). That variance application will likely be material depending on the future status of PCB criteria. Ecology has not finalized the variance regulatory language that is relevant to evaluation of that application.

(C) EPA has indicated that it will be developing PCB TMDLs for portions of the Spokane River and that those TMDLs are currently scheduled for completion by September of 2024. See generally Consent Decree, *Sierra Club et al. and The Spokane Tribe of Indians v. EPA et al.* (Case No. C11-1759BJR) (February 11, 2022). The current listing data for the reach associated with the District's discharge consists of five samples that are over fifteen years old; the data do not demonstrate any relationship between PCBs in the river and the District's discharge.

(iv) Ecology's inclusion of non-EPA approved test methods (1668) for monitoring PCBs in wastewater influent and effluent should be deleted pending the outcome of litigation related to that methodology. Permit at Condition S2 (Tables 9 and 10). Ecology's Water Quality Permit Writer's Manual includes a provision that suggests permit writers can require unapproved methods in certain limited circumstances. Litigation over that assertion is currently

1 before the Supreme Court of the State of Washington. *Northwest Pulp & Paper Association et al.*
2 *v. Department of Ecology* (Case No. 100573-3).

3 (c) The interim and final temperature limits should be eliminated as
4 inconsistent with Ecology's approach to establishing limits.

5 (i) The Spokane River is included on the CWA 303(d) list as impaired
6 for temperature, an impairment that appears to be directly related to the natural conditions
7 associated with an upstream water body, Lake Coeur d'Alene. The Permit includes a performance-
8 based limit for temperature and a final water quality-based limit. Permit at Condition S1.A. (Table
9 4). While the final "end-of-pipe" limit (of 20 degrees C) is not effective until August 1, 2032, it
10 is premature and improper to impose that limit in a Permit without completing a TMDL study
11 since natural conditions associated with the receiving waters already exceed the identified final
12 limit.
13

14 (ii) The temperature listing is also based on data from summer months.
15 The receiving water is generally compliant with water quality standards throughout the remainder
16 of the year. The Permit conditions should be reconsidered to evaluate seasonal temperature limits
17 that could account for mixing in the receiving water outside the summer months.
18

19 (A) The Permit requires that the District conduct a temperature
20 receiving water study. Permit at S13. In light of all the data already collected by the District, that
21 study obligation should be removed from the Permit or limited to the period when the data are
22 needed to support the developing TMDL, July 1 through September 31.
23

24 (d) The cadmium permit limits should be revised to reflect existing water
25 quality of the receiving water. Permit at S1.A (Table 4). The Spokane River is meeting cadmium
26 water quality criteria so the end-of-pipe limits are no longer appropriate.

27 The District reserves the right to include additional grounds for appeal consistent
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with the Board's rules of procedure.

5. Request for Stay:

(a) The Appellant requests an immediate stay of the effectiveness of the Permit, pursuant to RCW 43.21B.320 and WAC 371-08-415, based upon the grounds and factual basis set forth above, and further requests that the existing permit be continued during the pendency of this appeal. Without such a stay and continuation, irreparable harm will occur to the District as it is not able to comply with certain portions of the Permit, including the temperature limits, upon the effective date of the Permit (August 1, 2022).

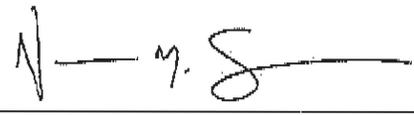
6. Relief Requested:

That the unlawful or unnecessary provisions of the Permit be set aside and remanded to Ecology for further proceedings consistent with applicable law.

7. A copy of this petition was served on the Department of Ecology on the 29th day of July, 2022.

DATED this 29th day of July, 2022.

PARSONS BEHLE & LATIMER



Norman M. Semanko
Lisa A. Kirschner
Representative for Appellant
Liberty Lake Sewer & Water District