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AGO Rec'd 07/14/2022

POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

SPOKANE COUNTY,

Appellant,

PCHB No.

v.

NOTICE OF APPEAL

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Respondent.

I. APPEALING PARTY

1.1 Spokane County
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II. IDENTIFICATION OF PARTIES

- 2.1 Spokane County, Appellant.
- 2.2 Washington State Department of Ecology, Respondent.

III. ORDER OR DECISION APPEALED FROM

3.1 Spokane County appeals National Pollutant Discharge Elimination System (NPDES) Permit (“the Permit”) No. WA0093317 issued on June 13, 2022, by the Washington State Department of Ecology (“Ecology”). A copy of the Permit is attached as Exhibit “A” and available at the following Ecology link: <https://ecology.wa.gov/issues-and-local-projects/Environmental-projects/Improving-Spokane-Watershed#permits>. A copy of Ecology’s transmittal letter is attached as Exhibit “B.” The Permit’s Fact Sheet is attached as Exhibit “C.”

IV. STATEMENT OF FACTS AND GROUNDS FOR APPEAL

Spokane County (the “County”) is fully committed to preserving and protecting water quality in the Spokane River. This commitment is demonstrated by the fact that the County was the first Spokane River municipal discharger to construct filtered wastewater treatment technology at its sewage treatment plant, at a cost of approximately \$150 million. Since December 2011, all wastewater at the County’s Regional Water Reclamation Facility (“SCRWRF”) has been treated with MBR (membrane bioreactor) filtration treatment, with chemical phosphorus removal. The SCRWRF removes 99% of phosphorus and polychlorinated biphenyls (“PCBs”) from the County’s influent prior to discharge.

Ecology has recognized the County’s commitment to improving the quality of the Spokane River. From 2018 through 2021, Ecology has awarded the SCRWRF the Outstanding Wastewater Treatment Plant Award. This award recognizes facilities that earned the

1 Outstanding Performance Award, which means that the facility regularly met pollution limits,
 2 conducted monitoring, turned in reports on time, planned for spill prevention, pretreated waste,
 3 and fulfilled operational demands outlined in its NPDES Permit. The County's receipt of this
 4 award, four years in a row, demonstrates its strong and continuing commitment to the quality of
 5 the Spokane River.

6 Additionally, the County voluntarily participated in the development and administration
 7 of local community-based toxics reduction via the Spokane River Regional Toxics Task Force
 8 ("Task Force"). The County has provided significant, voluntary in-kind services to the Task
 9 Force, including leading and administering the Task Force for over a decade. The County also
 10 developed a Toxics Management Plan, has collected PCB influent and effluent data associated
 11 with the SCRWRF, and has collected samples in the County's sewer collection system in order
 12 to better understand sources of PCBs. The County is fully committed to improving the quality of
 13 the Spokane River. However, for many reasons, the Permit should not be issued at this time and
 14 in its current form.
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 17 The County appeals the Permit on the basis that the following provisions are unlawful
 18 and/or unreasonable for the reasons set forth in this Notice of Appeal and other reasons that will
 19 be proved at the hearing of this matter:

20 4.1 The timing of this permitting process is unreasonable and inefficient for, among
 21 others, the following reasons:

22 4.1.1 In April 2019, at Ecology's request, the County submitted to Ecology a
 23 complete application for a PCB variance. In June 2020, Ecology issued preliminary draft
 24 rule language for PCB variances for the five permitted dischargers to the Spokane River,
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1 along with a technical support document for the variances. Ecology has not finalized the
2 variance rules.

3 4.1.2 To settle ongoing litigation with Ecology regarding human health criteria
4 for certain parameters, including PCBs, EPA entered into a stipulated motion to initiate
5 federal rulemaking for human health criteria for Washington State. Stipulated Mo. and
6 Proposed Order to Hold This Case in Abeyance Pending Voluntary Recons. and
7 Rulemaking at 3-4, *Washington v. U.S. Envtl. Prot. Agency*, No. 2:19-cv-00884-RAJ
8 (W.D. Wash. June 30, 2021) (ECF Dkt. No. 84). In accordance with the stipulation, EPA
9 issued a proposed rule on March 28, 2022 to adopt new human health criteria for PCBs at
10 7 ppq (parts per quadrillion). 87 Fed. Reg. 19,046 (Apr. 1, 2022). The current PCB
11 water quality criteria is 170 ppq. The public comment for the proposed rule closed on
12 May 31, 2022. EPA estimates that it will require up to nine months to finalize the
13 proposed rule.
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16 4.1.3 To resolve another litigation matter, in November 2021, EPA agreed to
17 issue Total Maximum Daily Loads ("TMDLs") for PCBs for segments of the Spokane
18 River. Consent Decree, *Sierra Club v. McLerran*, No. 2:11-cv-01759-BJR (W.D. Wash.
19 Feb. 11, 2022) (ECF Dkt. No. 253). Under the Consent Decree, EPA will develop these
20 TMDLs by September 30, 2024. The TMDLs will include waste load allocations for
21 permitted discharges containing PCBs, such as the SCRWRF and the other dischargers to
22 the Spokane River.
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24 4.1.4 Finally, the portion of Ecology's Water Quality Permit Writer's Manual
25 that allows permit writers to use PCB test methods 1668C and 8082A for certain
26

1 purposes in NPDES permits is the subject of a case pending before the Washington
 2 Supreme Court. Order Granting Pet. for Review, *Nw. Pulp & Paper Ass'n v. Dep't of*
 3 *Ecology*, 199 Wn.2d 1010, 508 P.3d 671 (May 4, 2022). The only PCB test method that
 4 EPA has approved for NPDES Permit compliance is Method 608. 40 C.F.R. § 136.

5 4.1.5 The Permit will likely be affected by the outcomes of the above noted
 6 legal and regulatory matters and will require significant effort for Ecology, Spokane
 7 County, and the other Spokane River dischargers to reopen and modify the permits.

8 4.2 Based on years of PCB data from the SCRWRF, and as calculated in the draft
 9 Permit Fact Sheet prepared by Ecology, there is no reasonable potential for the County's current
 10 effluent to exceed the PCB water quality standard and no PCB effluent limit is required.

11 4.3 The Permit imposes influent and effluent PCB monitoring (Condition S2) using
 12 non-EPA approved test methods. Moreover, the Permit's PCB influent and effluent monitoring
 13 provisions that require the use of non-EPA approved test methods fail to include any statement
 14 acknowledging the inherent variability and unreliability of the required test methods and fail to
 15 allow the County to make adjustments to the data through blank correction or other methods.
 16 Finally, between the draft and final Permit, Ecology added quarterly effluent monitoring with
 17 Method 1668.
 18

19 4.4 Ecology improperly estimated the Spokane River critical season flows by, among
 20 other things, failing to fully account for the minimum river flow provisions contained in the
 21 Avista Federal Energy Regulatory Commission ("FERC") license issued to the Avista Post Falls
 22 Dam on June 18, 2009. Also, Ecology's river flow estimate does not include all available
 23 Spokane River flow data.
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1 4.5 The total ammonia limits for average monthly and maximum daily imposed in the
2 Permit (Condition S1.A Table 2) are improper because, based on actual data from the SCRWRF
3 and the receiving water, there is no reasonable potential for effluent ammonia to cause or
4 contribute to a violation of receiving water quality criteria. Ammonia discharged is
5 appropriately limited in the Permit by seasonal effluent limits (Condition S1.A Table 3) making
6 the average month and maximum day limits unnecessary, unreasonable, and improper.

7 4.6 Based on existing SCRWRF effluent data and receiving water quality data from
8 the Spokane River, there is no reasonable potential for cadmium to cause or contribute to an
9 exceedance of the water quality criteria. Moreover, the Spokane River currently meets the
10 cadmium water quality criteria. Moreover, the Spokane River currently meets the
11 cadmium water quality criteria. The cadmium limits in the Permit should be deleted and
12 replaced with the cadmium limits in the prior Permit.

13 4.7 Condition S11 of the Permit requires a Receiving Water and Effluent Study of
14 Temperature even though ten years of low flow summer season temperature data already exist,
15 which makes the study unnecessary. In any event, the monthly reporting frequency requirement
16 is excessive and unreasonable. Access to the monitoring location is unsafe during high river
17 flow periods. Theft of the monitoring equipment has been and remains a problem. Moreover,
18 Ecology unreasonably increased the reporting frequency between the draft and final Permit.
19

20 4.8 Condition S16.B of the Permit improperly includes a requirement that the County
21 continue to work with the Spokane River Regional Toxics Task Force or an unidentified citizen
22 advisory organization or committee to identify strategies to reduce toxics in the Spokane River
23 Watershed even though this is an individual NPDES Permit, not a watershed-based permit, and
24 even though another condition in the Permit (S16.A) requires the County to develop a Toxics
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Reduction Best Management Practices Plan to reduce toxicant loading to the Spokane River.
Moreover, because EPA is developing a PCB TMDL, it is unreasonable to impose a Regional
Toxics Task Force requirement in the Permit.

4.9 Ecology improperly revised General Condition G3 by stating that Ecology will
reopen the permit should the Human Health Criteria for PCBs be revised but failed to also allow
the Permit to be reopened when Ecology finalizes the PCB variance rulemaking on the County's
PCB variance application that is currently pending before Ecology.

Spokane County reserves the right to include additional grounds for appeal at a later date
and also reserves the right to add or clarify the grounds and issues for this appeal for a prehearing
order or amendment of the prehearing order as allowed by the Presiding Officer and the Board's
rules of practice and procedure.

V. RELIEF REQUESTED

Appellant, Spokane County, respectfully requests that the Board grant the following
relief:

5.1 An Order invalidating all provisions of the Permit that are unlawful or
unreasonable; and

5.2 For such other and further relief as the Board deems appropriate.

DATED this 12th day of July, 2022.

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