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Grant Pfeifer
Director, Eastern Regional Office
Washington State Department of Ecology
4601 N Monroe
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December 12, 2017

RE: Transboundary Permitting Concerns

Dear Mr. Pfeifer:

The Upper Columbia United Tribes (“UCUT”), which consists of the Coeur d’Alene Tribe, the Confederated Tribes of the Colville Reservation, the Kalispel Tribe of Indians, the Kootenai Tribe of Idaho, and the Spokane Tribe of Indians, is deeply concerned about HiTest Sands, Inc.’s (“HiTest”) proposal to build a silicon smelter in Newport. Although this facility would be located outside of our member tribes’ present reservations, it has the potential to harm their sovereign interests in protecting the health of their people and natural resources. The purpose of this letter is to ensure that Ecology makes its air quality permitting and SEPA decisions on the basis of accurate data and in a manner that is responsive to our member tribes’ sovereign concerns.

Although HiTest maintains that the permitting process will resolve our member tribes’ concerns, applicable laws may allow a level of air pollution that can make people sick, damage natural resources, create a haze over lakes and rivers, and diminish property values. The permitting process also does not guarantee that transboundary pollution concerns will be resolved to the satisfaction of affected tribes. Although SEPA requires consideration of impacts in other jurisdictions, WAC 197-11-060(4)(b), it does not prescribe specific guidelines for evaluating those impacts.

To avoid conflicts in the assessment of transboundary impacts, our member tribes request an opportunity to review Ecology’s proposed methods of determining impacts within their territory prior to any analysis being performed. This will help avoid a scenario in which our member tribes cannot agree with Ecology’s assessment of impacts within their jurisdictions. If, for instance, Ecology were to allow HiTest to use improper meteorological data to describe smelter-caused health risks or haze conditions over our member tribes’ reservations, a serious inter-sovereign conflict could arise.

This hypothetical is a very real concern for our member tribes in light of HiTest’s attempt to use inappropriate meteorological data in its draft air quality modeling protocol. UCUT appreciates Ecology’s decision to reject the use of this data, but it appears that HiTest is now trying to persuade Ecology to support the use of prognostic meteorological data

instead of taking the time to collect site-specific data as required by EPA regulations. UCUT urges Ecology to require HiTest to perform the requisite air quality monitoring. HiTest's proposed shortcut is inappropriate given the weight of the sovereign interests involved and the regulatory prohibition on the use of prognostic data where collecting adequately representative site-specific data is neither cost prohibitive nor infeasible, 40 C.F.R. Pt. 51, App. W, § 8.4.5.1. Neither of these contingencies is applicable here; HiTest only wants to save time.

UCUT is also unclear whether the smelter's contribution to regional haze will be analyzed in the air quality permitting process, or SEPA. This is an incredibly important issue to our member tribes given our cultural, economic, and aesthetic interests in clean air. Even if HiTest is not technically required to analyze visibility impacts through the air permitting process, UCUT urges you to instruct the company to consolidate that analysis with its air quality modeling consistent with WAC 197-11-640.

UCUT would appreciate written confirmation of Ecology's intent to honor these requests at your earliest convenience. We are available to help organize a follow-up meeting if necessary. Please contact D.R. Michel, UCUT Executive Director (509-954-7631; dr@ucut-nsn.org) if you have any questions.

Respectfully,



David Browneagle, Chair
Upper Columbia United Tribes