

NORTHWEST ENVIRONMENTAL ADVOCATES



September 13, 2013

The Honorable Jay Inslee
Governor of the State of Washington
Office of the Governor
P.O. Box 40002
Olympia, WA 98504-0002

Re: **Informal Advisory Group on Human Health Criteria for Toxics**

Dear Governor Inslee:

Northwest Environmental Advocates would like to thank you for your close attention and careful consideration of the Department of Ecology's human health criteria rulemaking. As you are aware, Washington State's failure to comply with the Clean Water Act in a timely fashion is an issue of the utmost import. Unfortunately, it has come to our attention that your engagement in this issue is enabling closed door negotiations, which we fear may circumvent Washington's own Administrative Procedure Act (APA). It has also come to our attention that hand-selected "informal" advisors will likely have undue influence on the fate of the rulemaking. These concerns are further exacerbated by the fact that your informal advisory group contains only a single token representative of the "environmental community," who was neither vetted with environmental organizations, nor can be said to be truly representative of the organizations that have long been engaged in the pre-rulemaking process. Following are the details of our concerns and, in the spirit of cooperation, we offer some suggestions at the end of this letter.

In a letter dated July 11, 2013, you invited Rod Brown of the Cascadia Law Group, as a "leader[] from . . . the environmental community," to help guide your decision making on rulemaking for human health criteria in Washington's water quality standards. A substantial part of this undertaking is, as your letter points out, the development of "new implementation and compliance tools for regulated dischargers." Every one of these contemplated new tools is a tool of *de-regulation* – of exemption and postponement – from the very water quality standards sought to be improved to better protect public health. As a consequence of this fact, the discussion you are convening is one of detailed legal significance. As one environmental organization involved in this regulatory process, Northwest Environmental Advocates objects, not only to Rod Brown's being the sole representative of the environmental community but to the process itself.

Let me say at the outset that there is nary a cross word spoken about Mr. Brown. There is, however, no explanation of why an attorney whose *only current clients on matters concerning toxic pollutants are pollution sources* was chosen as your sole advisor ostensibly representing environmental interests. Frankly, an industry attorney would not be the first choice of any

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environmental organization which was seeking to represent the public interest. Without question, Mr. Brown's regulated clients might benefit from his playing such a role, particularly because it is to the exclusion of other environmental community leaders.

It is difficult to understand why Mr. Brown was chosen. Certainly, his close connections to the former Gregoire and now the Inslee administration offer compelling reasons. We are aware that Mr. Brown practices in the same firm with Mr. Jay Manning, former Director of the Department of Ecology and former Chief of Staff for Governor Gregoire. We are also aware that Mr. Manning is logically connected to Mr. Ted Sturdevant, recent Director of the Ecology and your current policy director. According to this logic, one can understand why Mr. Brown might appear to you to be a very harmonious choice. Most environmental organizations, however, would strongly prefer to have an *independent* voice rather than someone who has so many strong political ties to this and previous administrations, as well as extensive business and legal ties to the regulated industry.

Moreover, the very involvement of the Governor's office in rulemaking strikes us as contrary to the spirit, if not the law, of the state's Administrative Procedure Act. Not only will your informal advisory group's meetings be held behind closed doors, and without opportunity for public input, but your stated intent is that this group's efforts will affect the outcome of the future Ecology rulemaking. Such a heavy thumb on the rulemaking scale suggests that the subsequent public notice and comment process for the rules will be merely a fig leaf, to leave an impression the public had a say in the matter.

If, in fact, the informal advisory group will play such a significant role in the rulemaking outcome, that is all the more reason for environmental organizations that have long been involved in this process to choose their own representative. And it is all the more reason that they not be represented by someone who can best be described as an industry attorney, despite his impeccable personal credentials. However, should the advisory group have no impact on rulemaking, we are only left to speculate as to the true purpose and intent of this Governor-led effort.

In light of our concerns, we would like to make the following suggestions. First, the discussions of this advisory group should be transparent in some fashion, ideally open to observation (or muted phone lines), at a minimum with detailed minutes available to the public. Second, we propose that you allow environmental organizations that have been engaged for years in this process to choose their own representative to join your informal advisory group to ensure their views on the integrity of the Clean Water Act are incorporated into the discussion. Third, we suggest that your office explain precisely how the results of your advisory group will be integrated with Ecology decision-making and the input the agency is seeking from its own advisory committee ("The Delegates' Table"), on which there are no environmental or tribal representatives. Last, we urge you to direct Ecology to broaden its discussion of so-called "implementation tools" to include tools that will require pollution reductions from currently un- or under-regulated pollution sources rather than to focus exclusively on ways to let currently regulated sources off the hook, as the current plan stands.

In closing, we reiterate our appreciation for your involvement in what has become a political football. We are confident that Washington can adopt scientifically valid human health criteria and use those criteria in regulating polluting activities with enough flexibility to prevent hardship

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to the State's pollution sources and, most importantly, without gutting the efficacy and integrity of the Clean Water Act to do it.

Sincerely,

A handwritten signature in black ink, appearing to read "Nina Bell". The signature is fluid and cursive, with a large initial "N" and a long, sweeping underline.

Nina Bell
Executive Director

cc: Ted Sturdevant *via email*
JT Austin *via email*
Maia Bellon *via email*