

SMS Rule Revisions – Human Health and Background Issues
Draft Summary of Advisory Group Feedback – General Concepts
April 2010

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Note – due to working on the freshwater standards, I have not had time to review in detail the MTCA working group's meeting notes. Therefore, the comments below come from the perspective only of the SMS working group and what I have heard and contributed to there.

General Guiding Concepts

- **Source Control.** This is good as far as it goes, but I think it needs to go further. What you've heard is that source control is not just a tool for furthering cleanups. The issue of cross-program coordination, consistency, and planning is key to being successful in reducing concentrations of contaminants in sediments and the aquatic food chain. The Water Quality Program needs to be actively involved, and Clean Water Act authorities actively used, in accomplishing the objectives we are discussing. Source control sections of the rule need to be revised in concert with cleanup sections of the rule, and designed to work together. This needs to occur with the active involvement of relevant Ecology and EPA programs, as has occurred throughout the history of the sediment program.
- **Feasibility.** Reading this makes me think that concepts expressed by the workgroup have become reworded or reconceptualized into MTCA language in ways that were not originally intended. The following are specific examples:
 - Avoid the use of the term "hot spot." This implies an area that has not met MTCA cleanup standards and cannot be considered a final cleanup. Even "high concentration" is misleading – these are areas that exceed regional background concentrations, which are generally lower than we have ever required cleanups at before. Stick to terms that accurately describe the facts, e.g. call the first sub-bullet, "Cleanup to regional background."
 - I wouldn't try to call everything above regional background a single site just because they're contiguous. This is nothing new – even using the SQS/CSL standards we had large contiguous areas of multiple sites in Elliott Bay, for example. Define sites just as they were originally – areas exceeding cleanup standards that have a similar chemical signature. It's OK to have multiple sites directly adjacent to each other, that together

make up the area that exceeds regional background. Even if there is overlap, it is helpful to define specific boundaries between them for liability/cleanup purposes.

- The following sub-bullets show a bias for retaining everything under the MTCA framework, which I do not believe is the recommendation you're hearing from the workgroup. A PLP should get a full settlement for cleaning up a site to regional background. Additional areas exceeding the long-term goal for sediments (e.g., SQS/natural background) should be arrived at through source control and/or natural recovery. Yes, it's true that monitoring will be needed to ensure that this takes place. However, this can be done just as easily through the source control programs whose ongoing sources are necessitating taking these steps. Or through EAP, as has traditionally been the case, or through ambient monitoring, or disposal site monitoring, or any number of other ongoing monitoring programs. The only way (IMO) in which it would be reasonable to hold PLPs on the hook for future decades-long monitoring is if they could pay their piece in advance, appropriately discounted, and Ecology could put it in a fund somewhere to use as needed.

- The remaining principles are good, if a bit general.

Potential Decision-Making Framework

- I would change the title of the first section to “Sustainable reductions in concentrations of contaminants in sediment...” to indicate that this is not all about remediation, but includes source control as well.
- **Short-term vs. long-term goals.** This is a good distinction, but I think it should go further in assigning the short-term reductions to MTCA and the long-term reductions to CWA and other authorities, as an overall, coordinated, cross-program strategy. MTCA is for legacy contaminants. Whatever is contributing to regional background is more likely ongoing sources that have yet to be controlled, along with some contributions from legacy areas that have not yet been cleaned up. Use MTCA for what it is intended, and don't push it into things that it is not easily designed to handle. The complexities of liability in those low-level areas are too difficult and are what have slowed down or stopped cleanup in many areas – already – never mind when we introduce much lower cleanup levels based on bioaccumulation.
- **Terminology.** The above recommendation requires some changes in terminology throughout the rest of the paper.
 - What you are calling “early remediation of hot spots” is really cleanup of contaminated sites to regional background. This would earn the PLP a final buyoff of liability (with or without a contribution to a future

monitoring fund). Remove “PLP” from the long-term monitoring. The long-term goal would not be a cleanup standard under MTCA. Instead, it would be under the SQS or “long-term goal” for sediments in Puget Sound and other areas of the state, to be met using a wide variety of programmatic tools. This avoids entangling MTCA in these very low concentration, very mixed-together areas, while still acknowledging that this is our goal for source control and recovery.

- Then, under the multi-prong strategy heading, item 1) becomes “Regional background concentration cleanup standards or remediation levels for MTCA cleanups.” Then have item 2) be “Baywide or watershed integrated source control and natural recovery to natural background and SQS concentrations.”

- Item 1b below that becomes “Sites within the urban area ...” and so forth for those sub-bullets.

- Item 3c – again, this strikes me as feasible only if the PLP can pay up front in a discounted manner as part of their settlement of liability upon cleanup to regional background.

Hypothetical Scenarios

I’m still not finding these scenarios that useful, but the questions that go with them are. Some thoughts on those:

1. Recontamination.

a. I thought that most of these types of sources were included in the definition of natural background. If not, a PLP should still be able to conduct a cleanup and resolve their own liability under MTCA for their own legacy contamination and ongoing sources. We need to accept and better communicate to the public that sometimes we can only deal with the legacy issues and not solve all ongoing problems.

b. I would prefer not to see the concept of Area Background from MTCA introduced at all. This is complicated enough as it is. Aside from that, I’m not sure I really understand the question.

2. PLP Liability Resolution.

a. Yes. Separate cleanup of historical contamination from ongoing source control programs and this should not be an issue.

b. Identify ongoing sources of potential contamination that are unrelated to the historical site and do not include them as CoCs for which that PLP has liability. If you don’t bring that into MTCA to start with, there shouldn’t be a liability issue for the PLP. Simultaneously, begin working with the Water Quality program to achieve as much

source control as possible, but don't allow that to slow down cleanup of legacy contamination.

c. No, I don't think so. This is exactly what PLPs are afraid of and will fight to avoid. There is no technical means of determining whether the PLP has contributed to the larger regional levels of contamination or what their proportion of liability would be. Keeping them on the hook for decades does not seem like a workable proposition. As noted above, a contribution to a future monitoring fund may be appropriate under circumstances where it seems highly likely that there has been some contribution.

Technical Feasibility.

This approach tries to hold every last bit of contaminant reduction in the MTCA program, all the way down to natural background. As noted in my comments above, I don't think that's workable at all, and it's not what MTCA was designed for. Rather than some kind of technical feasibility waiver, deal with this through source control and monitoring programs, product legislation, reductions in air pollution, etc. It will be a lot more effective.

Site Definition.

I suggest identifying sites as they always have been, but using Regional Background as the outer boundary (instead of the previous SQS or CSL). Where sites are adjacent, define the boundaries using chemical signatures. Reserve the use of "site units" for its original purpose – remediation units based on features of the site or technologies to be used. This approach is consistent with the existing rule and cleanup guidance documents and provides the most workable separations for PLPs. We should remember that we already have workable solutions for many of these things and we should use them whenever possible rather than adding even more complexity.

Regional Background.

a. I could see a process going something like this:

- 1) Identify the natural background distribution for Puget Sound,
- 2) Identify the areas within each urban bay that already fall within this distribution and exclude them from the regional background calculation,
- 3) Identify the areas within each urban bay that do not meet the narrative definition of regional background (some numeric definitions will be needed) and exclude those,
- 4) If there is area in between, identify the distribution of concentrations within that area (including a robust outlier analysis for any point sources or other issues that may have been missed) and call that the Regional Background distribution,
- 5) Identify an appropriate metric for defining a reasonable upper bound on that distribution to use as a cleanup standard and/or site definition tool

b. Again, please avoid the use of MTCA Area Background altogether. Aside from that, I am not aware of any actual situations like this. Can you give an example?

c. See a) above. In any case, based on our previous sampling, it would be unlikely to extend much outside of any urban bay (if any)

d. It would have to include uncontrolled CSOs and stormwater, as those are real contributions that have nothing to do with MTCA legacy contamination.

e. Adequate source control would have occurred once regional background declines to natural background. This could be accomplished through any combination of source control measures that gets the job done.

f. Naturally occurring sources should be considered as contributing to natural background. Other sources would be considered as contributing to regional background, if higher in concentration (if lower, it doesn't matter, since there would be no practical gain from further source control).

I hope these comments are helpful in considering how to further refine this framework, which I do believe is a useful starting point (or middle point).