

Date: December 28, 2011
To: Craig and Martha Hankins
From: Nancy Winters
Subject: Comments on Fish Consumption Rates – Technical Support Document

I am preparing these comments as a private citizen who is both health conscious and a frequent consumer of fish. I very much appreciate the Toxics Cleanup Program's willingness to take on the difficult issue of establishing an updated fish consumption rate for sediment remediation. I think you for the opportunity to comment.

My comments can be divided into two general categories: Ecology's Two-Part "Parallel" Rule-Making Approach and Specific Fish Consumption Rate Report.

Ecology's Two-Part "Parallel" Rule Making Approach

I am deeply concerned about what Jim Pendowski, Program Manager of the Toxics Cleanup Program (TCP), referred to at the first meeting of the Sediment Management Standards Advisory Committee as the "parallel" rule-making approach that Ecology's two programs are taking in promulgating water quality and sediment cleanup standards. This approach is certainly NOT parallel, but is sequential, at best. My concern over the sequential approach has a number of bases. First, the current FCR under the SMS is almost an order of magnitude higher than that which is the basis for the water quality standards. The two programs have functioned with the two disparate FCRs for more than two decades years. In those years, the Water Quality Program has not been persuaded, encouraged, cajoled, or legally forced to grapple with this difficult issue and amend the water quality standards to come into line with the cleanup standards. No amount of rhetoric, even at the level of the Director can assure the public that the Water Quality Program (WQP) will deviate from their historical approach.

I also note that under the parallel approach, the WQP will not promulgate water quality standards based on more protective FCRs until after the next gubernatorial election. With changes of administration come inevitable delays, and depending on the outcome of the election, may ultimately result in no promulgation of water quality standards based on protective FCRs.

Third, no science or logic can support a system that continues to allow dischargers to add pollutants at a level that requires an infinite do-loop of cleanup.

Finally, the WQP program is not acting in compliance with the policy enunciated in RCW 90.48

"to maintain the **highest possible** standards to insure the purity of all waters of the state consistent with **public health** and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington."

Acting on behalf of the citizens of the state and in compliance with the policy, the WQP would recognize and act immediately to promulgate rules that are protective of its citizens. In promulgating human health based standards in the past, the WQP has based standards on

protecting from carcinogenic risks at a level of one in a million incremental risk of cancer. It has used the 90% of exposures when making assumptions about period of exposures to protect the vast majority of Washington's citizens. With the FCR report it is clear that the 90%ile of FCR in Washington is 210 g/d – a factor of 32 greater than the protection Washingtonians are now receiving.

It is time for the WQP to take a similar “can do” to approach TCP, deal with this thorny issue straight on, and promulgate water quality standards **simultaneously** with the TCP cleanup standards.

Specific Fish Consumption Rate (FCR) Report

This FRC Report is an excellent report, which establishes a scientific framework for the decision-making required by the TCP in their SMS rule-making efforts. The report is thoroughly researched, well written, and well presented. My comments deal with the next steps – deciding on the appropriate FCR.

I agree with the inclusion of consumption of salmon into the establishment of a FCR. Its inclusion makes good policy sense for a state that is dependent on the commercial salmon fishery.

In promulgating earlier regulations (under MTCA, SMS, and Groundwater Quality Standards), the Department has taken seriously its charge to protect human health by making conservative assumptions in calculating the standards to be met. For example, in the Groundwater Quality Standards, the criteria are based on a one in a million incremental risk of cancer. Both the Groundwater Quality Standards and the MTCA Cleanup standard are also based an assumption of a 30-year exposure to drinking water (the 95%ile of the frequency with which the population moves) and a consumption rate of 2 liters/day (the 90%ile). Promulgated fish consumption rates should seek to protect no less than the 90%ile of our population. Data from EPA's 2002 report indicate that 90% of the population consumes 250 g/day or less. The more Washington-specific estimates indicate that 90% of the Washington population consumes 210 g/day or less. Either of these values is technically-defensible and would follow Ecology's earlier policy established across programs. I urge TCP and WQP to adopt a FRC of no less than the 90%ile of our population (i.e., 210 g/day)

Finally, TCP should promulgate a single **minimum** default FCR, rather than a range of rates. From a pragmatic standpoint a single FCR will reduce the amount of legal haggling over cleanup levels. A minimum standard will allow for higher FCRs to be negotiated where specific populations would receive higher exposure based on higher population specific consumption rates.

Thank you again for your consideration.