

January 18, 2012

Ms. Martha Hankins
Washington State Department of Ecology
Toxics Cleanup Program 300 Desmond Drive
Lacey, WA 98503

Re: Comments on Fish Consumption Rates Technical Support Document, Version 1.0

Dear Ms. Hankins:

The Port of Seattle has been involved in sediment cleanups and sediment regulatory efforts since the early 1980s and we appreciate the opportunity to comment on the Fish Consumption Rates Technical Support Document.

While it is good to acknowledge the wide range of seafood consumption levels in Washington, combining this with the specific conservative risk assessment paradigms of the Water Quality and Sediment Management Standards, will not have the intended consequence of greatly decreasing the seafood consumption risk by lowering contaminants in fish and shellfish in the state. It will instead have the unintended consequence of creating a regulatory gridlock that will slow the process of cleanups and stormwater improvements. This is because neither the technology nor the funds are available to address the resulting new lower standards and much of the Puget Sound will become classified as needing cleanup and all of the stormwater along with much of the flowing surface water will be violating the Water Quality standards. The reaction of many parties to this situation will be to put efforts into legal challenges rather than cleanup because they cannot get to resolution through cleanup. We already have, in the existing regulations, standards that can reduce the major part of the controllable risk (risk from recreational and subsistence fishing consumption, that is amenable to change by remediation), so the actual change in protection will be minimal.

The approach needs to take a wider view of the situation, to understand the facts and context surrounding risks from all types food consumption, and to look at all the tools potentially available for modifying regulations to incentivize meaningful actions rather than promote regulatory gridlock.

Some of the things to consider in this wider view are:

The regulations that specify the methods of risk assessment need to be modified to look more specifically at the origin of the risk. For example, how much comes from commercially available sources, what species are being consumed (are they anadromous, obtaining most of their contaminant load from outside the area), how much of the seafood consumed is from the site or area in question (dietary factor).

One in a million risk, for the highest level consumers, is not the basis for acceptable risk in the commercial food industry (an example is the PCB level allowed in fish sold commercially, and the lack of

warning label on every package of high fat red meat). It sets up an unachievable, unreal expectation to have this as the only option in the Model Toxics Control Act applied to the Sediment Management Standards and the Water Quality Standard. It would be better to have a range of acceptable risks in the state regulations, to fit the appropriate situation, much like Federal Superfund.

The estimate of the number of high fish consumers and the consumption rates in this document are very conservative. The surveys used to determine consumption rates are from the highest consuming populations. The number of people included in any of these surveys is quite small, so that the typical metrics used to delineate the upper end of the population (like 90th or 95th percentile) can be actually be defined by very few individuals, especially if they are “outliers” from the rest of the survey population. So when the upper range of the high end consuming populations, is combined with one in a million risk, for several of the most critical contaminants, you have a default to natural background, which is an unachievable standard. In these situations it would be good to have a range of acceptable risk levels in the regulation, so that the higher consumers would be acknowledged, but an achievable solution could be possible.

On a technical note, the number of adults surveyed in the Suquamish tribal survey is described as 92 adults out of 142 potentially eligible tribal adults, in the write-up in section 4, but in the table in that section it is entered as 284. It is 92 in Table C-3, but 284 in tables 1,21,A-1 and C-1. It is my understanding, that the detailed description is correct, this discrepancy should be corrected.

Thank you for the opportunity to comment, and we look forward to the additional review points as this process progresses.

Sincerely,

Douglas A. Hotchkiss
Senior Environmental Program Manager
Port of Seattle