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January 18, 2011

Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Comments on Department of Ecology's
"Fish Consumption Rates, a Technical Support Document"
Publication no. 11-09-050

To Whom It May Concern:

General Metals of Tacoma, Inc., dba Schnitzer Steel of Tacoma (Schnitzer) appreciates the opportunity to provide comments on the Washington State Department of Ecology (Ecology) report entitled *Fish Consumption Rates, a Technical Support Document* (FCR report).

Schnitzer is a key stakeholder in the rule revision processes that will ultimately be affected by Ecology's decisions regarding proposed revision of the Fish Consumption Rate (FCR). Schnitzer has been an active participant in Ecology's ongoing efforts to revise the Sediment Management Standards (SMS). We have also been an active participant in the Water Quality rule revision meetings and fish consumption workshops. Our primary Washington facility is located on the Hylebos Waterway in Tacoma. Discharges from our Tacoma facility are governed by an Ecology-issued Individual National Pollutant Discharge Elimination System (NPDES) Permit. The Hylebos Waterway has also been the subject of many investigations and subsequent remedial actions. Schnitzer is a member of the Head of Hylebos Cleanup Group (HHCG) which conducted sediment assessment and remediation activities in coordination with the U.S. Environmental Protection Agency (EPA). The HHCG continues to work with the EPA to conduct post remediation monitoring within the water way. The development of a new FCR has the potential to significantly affect Schnitzer's numerous compliance activities associated with these important regulatory requirements and on-going remedial activities.

Schnitzer understands that development of a new FCR is a sensitive issue with broad implications. It is indeed challenging to develop a realistic and appropriate FCR which accurately represents the approximate 6.7 million residents of the State of Washington. While it is understood that the current FCR may not appropriately represent current fish consumption patterns, defensible scientific methods should be used to ensure a FCR, or range of FCRs, are developed that are technically defensible, based on strict scientific principles, feasible, and lead to cost effective cleanup/remediation levels, and regulatory compliance objectives. Schnitzer commends Ecology for embarking down this path to update current FCR values, and offers some brief comments on the aforementioned document, as well as a possible option for implementation that conforms to components

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of the Model Toxics Control Act (Washington Administrative Code [WAC] Chapter 173-340) and the proposed draft SMS (WAC 173-204).

Specific Comments

Schnitzer offers the following comments on the FCR report:

1. FCR Should be Based on Representative Studies

The current FCRs (Water Quality Standard of 6.5 grams per day) are based on studies that were conducted in the mid-1980s (National Toxics Rule) and a MTCA value (54 grams per day) established in 1991. Ecology states in the FCR report that a goal is to develop a new FCR based on up-to-date information. We agree that it is appropriate to revise the FCR based on current fish consumption information. The studies cited in the FCR report were conducted in 1994, 1996, 1999, and 2000. While this information is more current than the information used to develop the existing rates, it is still relatively old data and may not be representative of current fish consumption patterns. In addition, the surveys evaluated the consumption patterns of 1,188 adults within a focused sample group. Based on a Washington State population of over 6.7 million, only 0.02% of the State was surveyed regarding fish consumption rates. The data presented in the reports is not up-to-date, and the FCR developed based on a survey of 0.02% of the population represents a tightly focused survey of a small sample population. We believe survey efforts should be expanded to ensure that regulatory decisions are based on a broad evaluation of all fish and shellfish consuming populations within the State of Washington.

2. The FCR Studies should be Scientifically Peer-Reviewed by an Independent Third Party

Peer review plays an important role in evaluating data, conclusions, and recommendations in any publication; especially a scientific document that could be used to develop regulations or guidelines. The peer reviewed document becomes the foundation by which the regulations are built upon. The fish consumption surveys conducted from 1994 through 2000, and used for this FCR report, should be peer reviewed by an independent third party selected by an unbiased neutral party to determine the scientific validity of the study conducted and the appropriateness of its conclusions. The FCR report should also undergo a similar scientific peer review process. It is critical that the peer reviewer(s) be a third party without ties to the primary author or group to avoid any potential biases. It is unclear based on the information provided in the FCR if the older fish consumption surveys were appropriately peer reviewed, and if so, what the findings of the peer reviews were.

3. One Fish Consumption Rate Does Not Fit Every Site

MTCA (WAC 173-340) is an excellent set of regulations that outlines a relatively streamlined approach which could also be of value if applied to the question of

appropriate FCRs. One of the core principles of this approach is its built-in flexibility to allow cleanups to be addressed on a site-specific basis, based on each site's unique risk profile. For example, Section 173-340-357 (Quantitative Risk Assessment of Cleanup Action Alternatives) states that "... modifications, adjustments to the reasonable maximum exposure (RME) scenario or default assumptions may also be made." In addition, Section 173-340-708(3)(a) states that "Cleanup levels and remediation levels shall be based on estimates of current and future resource uses and reasonable maximum exposures expected to occur under both current and potential future site use conditions..." There are other components of the MTCA approach that allow for site-specific information to determine cleanup levels. The proposed draft SMS revision also states in Section 173-204-500(1) that one of the steps to be followed is "...to determine a site-specific cleanup standard." Section 173-204-571(4)(a) of the proposed draft SMS revision also states that "The department may approve a site-specific fish consumption rate [emphasis added]."

Other regulations within the State encourage site-specific evaluation to determine appropriate site specific risk profiles and associated cleanup levels. This risk-based approach is the basis for MTCA and the SMS. We recognize that there are some water bodies that are more heavily utilized for subsistence fishing. Similarly, there are other water bodies that have remained primarily industrial with little to no subsistence fishing since they were first modified over 100 years ago, and other water courses with limited access to allow subsistence fishing. To assume that one FCR, based on a tightly focused consumption survey of 0.02% of the state's population, fits every water body within the State is not realistic based on current and projected site use, and is not consistent with previous Ecology decisions. Simply put, the focused population survey is not representative of the "reasonable maximum exposure" for every water body in Washington.

A Path Forward – Consistent with Other State Regulations

Ecology is in a difficult position as it strives to develop a FCR that can be used to calculate cleanup, remediation and water quality levels that are protective of the reasonable maximum exposure; while at the same time revise two significant sets of regulations (SMS 173-204 and the Water Quality Standards 173-201). We believe the combination of a decision to base a FCR evaluation of a survey of 0.02% of the state's population, and focus upon a group of stakeholders which is not representative of the state as a whole, is contrary to a scientific approach that is more easily defensible from a scientific perspective. We propose an approach that reconciles the site-specific risk evaluation elements of MTCA and the proposed draft SMS rules with Ecology's decision to protect the most highly exposed portion of the State's population that consumes large amounts of fish and shellfish.

In keeping with the language within MTCA and the proposed draft SMS, and consistent with the site-specific risk evaluation approach that dominates these regulations, we recommend that Ecology consider a range of FCRs that are based on "reasonable

maximum exposure.” This approach would develop FCRs which are appropriate for each water body’s unique characteristics based on consideration of site-specific criteria such as:

- How are the local water body and adjacent uplands currently used? Is it pristine (no development or protected), an urban water body (light, non-impacting industry, residential, private mooring), or is the water body industrial (shipping, heavy industrial operations, port activity, etc.)
- What is the potential future use of the water body? Will the water body always be industrial or is it likely to eventually revert to more pristine conditions?
- What is the hydrologic setting for the water body? Is it in a stressed environment (i.e. low dissolved oxygen levels). Is there ample flushing of the environment? Is the area prone to sediment accumulation or erosion?
- Is the water body currently used for fishing or shellfish harvesting?
- Are there any restrictions on the water body imposed by other regulatory agencies (Fish and Wildlife protected areas, existing State or Federal sediment cleanup sites, deed restrictions)?
- What is the *realistic* conceptual site model for the site?
- What is the “reasonable maximum exposure” for the site?
- What is the appropriate FCR for the water body considering all of the parameters identified above?

The decision tree to assess the water body could be defined in the proposed draft SMS rule or under a separate document. Efficiencies could be realized by tying the proposed draft SMS rules with the Water Quality rules currently being revised. While it may take a little more effort to develop the decision tree, in the end it would result in a pathway that could lead to a more realistic approach for evaluating human and ecological risks that could result in cleanup, remediation and water quality levels that reflect reality.

Another benefit of the multi-FCR approach is that it would result in a technically defensible solution; and as appropriately stated in MTCA, “... whose incremental costs are not disproportionate to the incremental benefits.” Basing risk levels on unrealistic exposure scenarios that do not reflect the current or potential use of a specific water body will only serve to drive the cleanup, remediation and water quality levels to concentrations that cannot be achieved or maintained with today’s technology and are based on the protection of a tiny fraction of the population even if they do not actually utilize the site for the suggested purposes. We fear that a “one size fits all” policy decision regarding the FCR would have a damaging economic impact on businesses within the state and further cripple our struggling economy.

Failure to apply a site specific approach would also lead to extended cleanup timeframes for remediation projects as they will be bogged down in debates and negotiations as

potentially liable parties struggle with the realities of cleaning sites up to background concentrations that are not technologically achievable. With every delay of cleanup implementation the potential threat of contamination remains.

Conclusion

Ecology must develop a regulatory framework that ensures the protection of human health, aquatic habitats, and economic viability of the State of Washington. The protection of one element at the expense of the others is not consistent with Ecology's mandate to "protect Washington's quality of life – environmental, economic, and social."

We look forward to discussing these comments with Ecology and to developing a regulatory approach for sediment management and water quality that achieves Ecology's goals while safeguarding both the health of Washington's citizens and the economic viability of industry in Washington. We believe it is possible to accomplish both of these goals, and favor the adoption of appropriate legislation or formal rules that incorporate a site-specific approach to FCRs based on a set of realistic assumptions which build on existing environmental regulatory programs and requirements.

Sincerely,
General Metals of Tacoma, Inc., dba Schnitzer Steel of Tacoma



Bryan S. Graham, LG, LHG

cc: Matthew Parker
Scott Sloan
Louise Bray
Tom Zelenka
Brad Tower