



Washington State Senate

Republican Caucus

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January 18, 2012

Ted Sturdevant, Director
Washington State Department of Ecology
Post Office Box 47600
Olympia, Washington 98504

RE: Comments on Publication No. 11-09-050, *Fish Consumption Rates Technical Support Document, A Review of Data and Information about Fish Consumption in Washington*

Dear Director Sturdevant:

This letter is in response to Ecology's proposal to increase the default fish consumption rates for the State of Washington which are assumptions about how much fish and shellfish residents eat. Since the default fish assumption rates will be used to update water quality and pollution control standards in the near future, we would urge Ecology to carefully analyze this proposal, including thoroughly evaluating the science used to justify it, before proceeding with changing the default rates.

Although Ecology's review of the fish consumption rates is not official rulemaking, the default fish consumption rates will have significant regulatory ramifications because they will be used in updating the following water quality and pollution control standards: (1) Sediment Management Standards (WAC 173-204); Surface Water Quality Standards (WAC 173-201A); and 3) the Model Toxics Control Act (WAC 173-340).

While future water quality and pollution control regulations must be updated in compliance with the significant rule requirements of the Administrative Procedure Act (RCW 34.05.328), it is unclear whether citizens would have the opportunity to debate the science used to justify the new default fish consumption rates during the subsequent rulemaking because the default rates would have already been adopted.

This is problematic for a couple of reasons. First, the fish consumption default rates will be the basis for determining the appropriate level of environmental protection that is needed when updating these regulations and need to be thoroughly vetted before adoption. Second, formal rulemaking would require Ecology to follow certain procedures that we do not believe are being followed currently for this proposal. Examples are: responding in writing to all comments (including on the science), justifying its final decision in writing, analyzing whether its standard is stricter than federal law, and performing a cost-benefit analysis.

Without engaging in these procedures, Ecology's future rulemaking will be undermined because the basis for their rulemaking, the fish consumption rates, will not have been adopted in a deliberate and open manner. Because of the significant regulatory impact these default rates will have, we urge Ecology to follow the rulemaking process identified above so that the science on this issue is thoroughly vetted before the rates are set. This approach will have the benefit of giving credibility to future rulemaking on water quality and pollution control standards.

We also believe it is important to proceed cautiously because Ecology's proposed range raises the likely possibility that we could have the highest fish consumption rates in the nation. Specifically, Washington's current rate is 6.5 grams a day for water quality standards and 54 grams per day in the Model Toxics Control Act regulation. Ecology recommends increasing that rate at a range of 157-267 grams per day. This is at least 24 to 41 times the current amount for water quality standards and 2.9 and 4.9 times the amount for the MICA standards. Since Oregon currently has the highest fish consumption rate at 175 grams per day, the range offered by Ecology could render our state's rates the highest in the nation. This is a remarkable increase in the rates and must be scientifically justified and thoroughly debated before adopted.

We are also concerned about the economic impacts from this proposal. Higher fish consumption rates mean few toxic pollutants would be allowed in state waters and result in stricter environmental standards. We want to ensure that stricter environmental standards are scientifically justified and do not negatively impact our state economy.

Just recently, it was reported in the media that Kimberly-Clark's Everett mill was closing after negotiations broke down with a potential buyer over compliance with environmental issues. The mill's closure resulted in the loss of 750 jobs. Performing a cost-benefit analysis on this proposal will provide important analysis to help determine the appropriate rate that should be set in Washington.

We all want clean water to protect healthy fish and Washington citizens, but we want to make sure a deliberative process is followed in developing regulations to ensure that such regulations are scientifically justified. We urge Ecology to incorporate the processes we have listed above to make sure this is accomplished with the default fish consumption rates.

Sincerely,



Senator Mike Hewitt
16th Legislative District



Senator Doug Ericksen
42nd Legislative District



Senator Mike Carrell
28th Legislative District



Senator Mark Schoesler
9th Legislative District



Senator Jim Honeyford
15th Legislative District



Senator Don Benton
17th Legislative District



Senator Dan Swecker
20th Legislative District



Senator Joe Zarelli
18th Legislative District



Senator Curtis King
14th Legislative District



Senator Val Stevens
39th Legislative District



Senator Bob Morton
7th Legislative District



Senator Linda Evans-Parlette
12th Legislative District



Senator Randi Becker
2nd Legislative District



Senator Jerome Delvin
8th Legislative District



Senator Mike Padden
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Cc:

Governor Chris Gregoire