

June 8, 2012

Mr. Jim Pendowski  
Toxics Cleanup Program  
Washington Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

**RE: Comments on Determination of Significance and Scope of Environmental Impact Statement for Revisions to Sediment Management Standards (Chapter 173-204 WAC)**

Dear Mr. Pendowski:

The Association of Washington Business (AWB) appreciates the opportunity to provide comments on the Department of Ecology's (Ecology) threshold determination and proposed scope of the Environmental Impact Statement (EIS) concerning the revisions to Sediment Management Standards (Chapter 173-204 WAC).

AWB offers the following two categories of comments: (1) a critique of the process and opportunity for public participation; and (2) a critique of the proposed scope of the EIS. We thank you for your consideration of our comments.

**I. Opportunity for Public Participation/Input**

AWB and its member companies have spent considerable time and energy working with Ecology on several processes related to: revising the Sediment Management Standards (SMS) rule; evaluating/updating fish consumption rates; identifying Clean Water Act implementation tools; and discussing the future development of human-health based water quality criteria under the state's Surface Water Quality Standards (SWQS). While we appreciate the opportunity to collaborate with Ecology on these issues, the threshold determination made under the State Environmental Policy Act (SEPA) on the SMS rule adds yet another "process" or agency action that requires both time and attention in order to provide useful feedback to assist Ecology in making its policy decisions.

While AWB is not suggesting that a SEPA determination is unwarranted, we encourage Ecology to provide the public with ample notice and time to provide thoughtful feedback. The original comment period expired on May 31, 2012, which gave the public

less time than is permitted to provide comments under SEPA rules. While the extended (and required) comment period added an additional week for public comment, it is likely that many stakeholders will not have an opportunity to provide comments to Ecology given both the lack of public notice and time to evaluate the Department's proposal. Ecology should publicize its SEPA determination and proposed EIS to a larger stakeholder group and extend the time for public comment.

## **II. The Proposed Scope of the EIS**

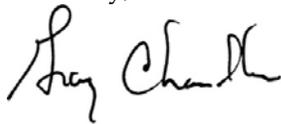
As drafted, the proposed scope of the EIS is too narrow. None of the "Human Health Alternatives" defined in the proposed scope of the EIS make reference to including a default fish consumption rate (FCR) in the SMS rule. On many occasions, including three public workshops on FCR hosted by Ecology last month, Ecology signaled its intent to include a default FCR in the SMS rule revisions. At a minimum, Ecology should create another "Human Health Alternative" for the purpose of evaluating the merits and probable adverse impacts of including a default FCR in the SMS rule versus relying on the default FCR (and other site-specific considerations) provided under the Model Toxics Control Act (MTCA).

As Ecology is aware, the SMS rule is adopted both under the authority of MTCA and as part of the state's water quality standards. Thus, Ecology must expand the scope of the EIS to address the probable adverse impacts associated with adopting a default FCR in the SMS, which must be approved by the U.S. Environmental Protection Agency (EPA) as a Clean Water Act water quality standard.

There is considerable risk that once the SMS rule revisions are adopted and approved by EPA as a water quality standard, Ecology will lose any ability to rely on the National Toxics Rule (NTR). Yet the proposed scope of the EIS does not take into consideration the probable adverse impacts associated with this risk. Ecology should look at the FCR in a more comprehensive way in order to avoid eliminating Ecology's discretion to rely on the NTR. Further, Ecology must acknowledge and review (within the same EIS) the use of the FCR to set cleanup standards and affect water quality standards. These proposals are integrated and should be evaluated using a comprehensive approach. Ecology's own SEPA rules do not allow for the type of segmented review that the Department is proposing.

We look forward to continuing to work with Ecology on this issue. Thank you for considering these comments.

Sincerely,



Gary Chandler  
Vice President, Government Affairs