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June 8, 2012

Adrienne Dorrah
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Toxics Cleanup Program
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Subject: Comments on Declaration of Significance (WAC 197-11-980) and Scope of EIS for Possible Revisions of Sediment Management Standards (Chapter 173-204 WAC) (SMS Rule)

Dear Ms. Dorrah:

The Boeing Company (Boeing) appreciates the opportunity to submit comments on the Washington Department of Ecology's (Ecology's) May 15, 2012 Determination of Significance and Request for Comments on Scope of EIS for the Revisions to the SMS Rule (EIS Notice).

Boeing has shown its commitment to working with Ecology on developing the SMS Rule, including as an active participant in the SMS Advisory Committee. We participate because we recognize that these standards will have a significant impact on sediment cleanup and source control requirements. We also recognize that the SMS Rule must be considered together with the other rulemakings currently being contemplated by Ecology.

Our comments in the attachment to this letter focus primarily on: (1) the adequacy of the EIS Notice under State Environmental Protection Act (SEPA); and (2) the scope of the EIS, including the EIS selection of alternatives.

Boeing remains committed to working with Ecology and other stakeholders to ensure that meaningful progress is made on these important issues. Please contact me or Mel Oleson at (253) 988-0378 if you have any comments or questions.

Sincerely,

Terry Mutter
Director Enterprise Strategy

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Comment 1: Ecology should reissue the EIS Notice to allow for an adequate and appropriate public comment period.

Ecology did not provide for an adequate public comment period. SEPA requires that Ecology allow 21 days from the date of issuance for the public to submit comments. WAC 197-11-408(2)(a)(i). Initially, Ecology only allowed for a 14-day comment period, which it then extended another seven days. The addition of these seven days at the end of the initial 14-day period does not mitigate the inadequacy of the original notice.

Given the complexity and statewide significance of this rulemaking, Ecology should allow for a public comment period of no less than 30 days. Where the project is complex and has extensive geographical impact, SEPA encourages agencies to consider expanded scoping under WAC 197-11-410. This provides for up to a 30-day formal notice of a determination to prepare an EIS. The adoption of revised MTCA sediment cleanup standards that will apply statewide to marine and freshwaters certainly qualifies for expanded scoping.

Comment 2: Ecology should reissue and distribute the EIS Notice to allow for meaningful input from all of the interested parties.

The primary intent of the EIS scoping process is to receive informed and timely input from those impacted and interested members of the public to assist Ecology in the development of the EIS. Ecology states in its own guidance that "any suitable means to promote agency and public communication and participation appropriate to the specific situation is encouraged." SEPA Handbook § 3.1.

Ecology did not follow this guidance in issuing the EIS Notice. Ecology's distribution of the EIS Notice to "agencies, affected tribes and the public" was inadequate because it did not allow input from all of those most impacted by the proposed rulemaking. It appears that the EIS Notice was posted in the SEPA register and online on a related Ecology web page. Ecology failed to send the EIS Notice to the list of interested parties developed by Ecology for the SMS rulemaking (the MTCA/SMS LISTSERV) until June 5th— leaving only three days to comment. In reissuing the EIS Notice, Ecology should provide adequate and timely notice to include all of the stakeholders, including those who have taken an

active role in working with Ecology on the SMS rulemaking.

Comment 3: The EIS Notice is inadequate because it does not address all related rulemakings and guidance.

The EIS Notice must be expanded to include all planned rulemakings and guidance related to the proposed SMS rulemaking. SEPA requires that the SMS rulemaking must be closely integrated with other rule revisions currently being contemplated by Ecology, including the water quality standards and implementation tools, source control efforts and the fish consumption rate. Ecology acknowledged this when it solicited public comment on the proposed SMS Rule.

The EIS Notice fails to comply with SEPA because it fails to properly consider all of the various rulemakings together. These various rulemaking efforts, including the SMS Rule, address the same or similar technical and policy issues as the proposed SMS Rule and must be considered together. WAC 197-11-060(3) provides,

> Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document. (Phased review is allowed under subsection (5).) Proposals or parts of proposals are closely related, and they shall be discussed in the same environmental document, if they: (i) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them; or (ii) Are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.

It is undisputed that these various rulemakings and guidance are a "single course of action." For example, Ecology prepared a draft Technical Support Document for revising the fish consumption rate assumptions. Ecology has indicated the information in the technical report will then be used in the SMS Rule, revisions to the water quality standards and in source control efforts.

Comment 4: The EIS Notice does not include an adequate description of the proposed SMS Rule, including the assessment of potential adverse impacts.

Ecology's failure to provide sufficient detail in the EIS Notice curtails the ability of the public to make appropriate comments and therefore hampers the decision making process. An EIS scoping notice "should give as thorough a description of the proposal as possible and should include information on the areas to be addressed." SEPA Handbook § 3.2.1. A well-drafted notice can result in the identification of potential "areas of concern and controversy" associated with the proposed agency action. SEPA Handbook § 3.2.

The EIS Notice does not provide a sufficiently thorough description of the proposed rulemaking to elicit meaningful comments. Instead, Ecology is asking the public to comment on the scope of the EIS based solely on a cursory description of the "overarching objectives" of the rulemaking. This information, however, is readily available to Ecology. The EIS Notice should include the details from the pre-draft rule issued for public comment in 2011, including Ecology's specific approach for including human health based standards based on fish consumption surveys and policy determinations.

In particular, the EIS Notice does not provide an adequate description of the following two categories of proposed adverse impacts:

1. Impacts due to residual concentrations; and
2. Impacts due to cleanup actions.

For example, there are adverse impacts related to the proposed revisions to human health risk assessment provisions of the SMS Rule that must be assessed in the EIS. These additional categories of potential adverse impacts include, but are not limited to:

- Adverse economic impacts associated with more stringent sediment cleanup standards and the associated higher costs of remediation; and
- Adverse environmental, public health and economic impacts associated with any changes to the sediment management standards that would delay remediation activity.

Comment 5: The EIS Notice does not adequately develop and describe alternatives to the proposed SMS Rule.

The proposed alternatives and descriptions are not specific enough to allow for meaningful public participation. The overly brief descriptions of the five alternatives do not allow for substantive comments on the pros and cons of each option, or on any comparative assessment. This denies the public the ability to identify and comment on both those impacts predicted by Ecology and to note additional impacts Ecology has not predicted. The EIS Notice should discuss the risks of consequences for a particular alternative. For example, the EIS should consider the environmental, public health and economic impacts associated with establishing a statewide default fish consumption rate, and the impacts associated with various alternative default rates. Likewise, the EIS should consider the impacts associated with alternative human health risk standards (i.e. 10^{-6} versus 10^{-5}).

Similarly, as drafted the EIS Notice does not clearly articulate which of the listed alternatives is the preferred alternative. The EIS Notice is misleading to the public because it suggests that Ecology has not selected a "preferred alternative." For example, the EIS Notice does not identify "Human Health Alternative 5" as the proposed SMS Rule and the preferred alternative.