June 8, 2012

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

RE: Comments regarding the document "Determination of Significance and Request for Comments of Scoping Environmental Impact Statement (EIS), Revisions to the Sediment Management Standards (Chapter 173-204 WAC)"

Sent electronically to: ador461@ecy.wa.gov

Dear Mr. Pendowski:

Thank you for this opportunity to comment on the Department of Ecology's ("Ecology") threshold determination and proposed scoping notice concerning revisions to the state's Sediment Management Standards. Ports have enjoyed a dynamic conversation with both Ecology and the larger stakeholder community over the long course of this process.

The purpose of this letter is to provide background related to our concerns and to suggest additional adverse environmental effects that may result from Ecology's current policy proposal. We appreciate the ongoing dialogue and opportunities for participation and we look forward to continuing our participation in this dialogue.

Background: the role of ports in environmental and economic sustainability

Ports occupy a unique space in the physical and regulatory landscapes related to the proposed sediment management framework. Economic development is a primary mission of more than 75 public port districts statewide. However, as local governments, ports have the benefit of approaching economic development with a focus on long-term investment and sustainability, rather than quarterly or annual

profits (as many private entities are required). Even so, ports experience strict public scrutiny that requires responsible investment of every public dollar spent.

Whether large or small, each port fulfills an important role in its surrounding community and, together, ports play an important role in the regional economy – which is often recognized as one of the most trade dependent in the United States.

Geographically, our state's marine and freshwater ports are located precisely at that point where land and water meet. These are the shallow, nearshore areas that comprise the benthic communities described in the scoping notice and other documents related to the proposed sediment management standards.

In the last two decades, ports around the state have invested many millions of dollars in site cleanups and stormwater infrastructure upgrades that have measurably improved environmental quality in these productive near shore areas. Continuing investment in this kind of activity is absolutely essential to fulfilling our common goals of improving the health of Puget Sound, improving human health and longevity, and passing along a high quality of life to our children.

Additionally, ports participate in maintenance activities – such as dredging marine terminals and marinas – which also provide environmental benefit by moving sediments of low toxicity from productive nearshore areas to areas of less biological activity. Sediments that meet strict definitions of low-level toxicity are deposited in deep-water sites specifically selected (by a panel of state and federal agencies) because of their low biological activity. In other cases, sediments are deposited upland at significantly higher cost. In either case, these dredging activities are absolutely essential to:

- continuing commercial shipping activity;
- providing the high wages and benefits associated with waterfront labor jobs;
- supporting the state's fishing fleets;
- promoting recreational boating and related tourism in our state; and,
- sustaining the various activities and businesses occurring along our state's working waterfronts, which comprise the heart of our state's vibrant and historic maritime sector.

Through this perspective of balancing long-term economic opportunity with sustainable environmental practice, ports seek sustainability. The economic activity occurring along our working waterfronts allows ports to invest in habitat restoration, environmental cleanup projects and stormwater infrastructure upgrades. These resources are limited. They are not infinite. So, we must support policies that allow these finite resources to be used in a way that maximizes environmental benefit for the largest segment of our local, state and regional communities.

A Third Category of Adverse Impact

The scoping document conceives two broad categories of "adverse impacts": those related to residual concentrations and those related to cleanup actions. We respectfully submit that a third adverse impact is imminently possible – that being "Impacts Due to the Loss of Cleanup Actions."

This third possibility comes from the linkage between consumption rates and risk level range. In the past, Ecology and the Environmental Protection Agency ("EPA") have used a consumption rate that the

general public as a whole would not often exceed. In order to protect higher consuming populations, the agencies paired this number with a very protective risk level (10^{-6}). In this way, the agencies achieved a balanced consumption rate that protected consumers across the spectrum and also provided reasonable targets for environmental cleanup and clean water standards.

The current approach decouples consumption rates from risk range. While intelligent people may disagree on exactly how many grams of fish per day represent an acceptable level of risk, everyone must agree that by dramatically increasing the consumption rate while maintaining an extremely protective risk level, Ecology is embarking on a profoundly different and much more conservative standard. This approach invariably shifts consideration from a risk factor based on the consumption patterns of the average consumer to one based overwhelmingly on a small number of individuals who consume inordinately high levels of fish (presumably from a single, small geographic area). The result of this profound policy shift is that Ecology will effectively define large areas of the state as unacceptably contaminated.

But will defining these areas as "contaminated" actually result in them being cleaned up? Sadly, it seems likely that adopting what could be the most rigid fish consumption standard in the United States will not result in sites being cleaned up or in additional stormwater investments being made. In fact, it seems likely that this new, more rigorous standard could have a chilling effect on investment.

For sediment and cleanup projects, a higher standard would mean that our limited cleanup resources would be committed to a small number of projects that would be cleaned to a much higher standard at significant additional cost. Yet, these results would be fleeting because through time these sites cleaned to a virtually pristine condition would be silted over with tainted sediments that would inevitably arrive from upstream. In short, the best case scenario might be one where more state and local tax dollars would fund a smaller group of projects which would create only marginal, short-term environmental benefits.

Ecology has attempted to provide tools that would help address this on a site-specific basis through the creation of a framework that considers "regional background." We recognize this effort and support the flexibility that we hope it achieves. However, the overarching problem of (what many have described as) a virtually unachievable standard remains despite this untested new concept. If the standard really is unachievable (or is even perceived that way), then the timeline for such a project would be "infinite." It is difficult to imagine that the few remaining entities suited to take on large-scale cleanup projects would see any benefit in even pursuing a multi-million dollar, long-term, high-liability project that would entail cleaning a site to an unachievable standard over a timeline without end.

When the new standard is applied to water quality, it becomes even more disruptive. In the context of water quality, many public and private entities around the state are investing tremendous effort and substantial resources to meet the state's current, ambitious standards. If Ecology dramatically increases the regulatory expectation on these entities or adopts a standard that ends up proving unachievable, then the local governments and businesses that would otherwise invest in treatment systems would be exposed to lawsuits under the citizen suit provision of the Clean Water Act. Again, resources would be diverted from achieving environmental protection resulting in little if any environmental benefit to endangered fish and mammal populations, the Puget Sound as a whole, water quality or any of the other environmental goals we all hope to achieve.

Conclusions

Washington's unique environmental assets are critical to the quality of life shared by all of our state's citizens. Yet, in our united effort to enhance and preserve this unique natural heritage, we must be careful to promote policies that support *protection* rather than those that seeks the more illusory standard of *perfection*.

In considering the proposed Environmental Impact Statement, Ecology should expand the scope to evaluate the possible adverse impacts of adopting a more conservative fish consumption rate, especially if this rate of consumption is set without a related easing of the associated risk level, which was originally established specifically to protect high fish-consuming populations. In its consideration, Ecology should study the very real likelihood that such a profound shift in policy could disincentive already tenuous investment in cleanup activities. Such a shift could also result in additional bureaucracy and potential litigation that would stifle or postpone cleanup projects and stormwater investment that our state needs. Finally, this regulatory venture could prove detrimental to the maintenance dredging that is essential to preserving our state's navigable waterways and working waterfronts.

In conclusion, we suggest that Ecology add the following third consideration to the existing list of probable adverse effects on the quality of the environment: "Impacts Due to Delayed Cleanup Actions: Environmental impacts may also be caused by a lack of overall public resources needed to meet more stringent standards and requirements resulting in significantly more remediation than what is called for in current policy. Short- and long-term impacts are directly related to the relative stringency of the cleanup standards for a particular site."

We look forward to working with you as this discussion continues.

Sincerely,

Johan Hellman
Assistant Director