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Adrienne Dorrah
Department of Ecology
Toxics Cleanup Program
P.O Box 47600
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Subject: Comments on Scope of EIS for Possible Revisions of Sediment Management Standards (Chapter 173-204 WAC)

Dear Ms. Dorrah:

Ecology's announced decision to include a default fish consumption rate in the coming Sediment Management Standards revisions is not specifically mentioned in the agency's five self-defined alternatives for "Human Health Alternatives." Weyerhaeuser would encourage Ecology to create a sixth "Human Health Alternative" specifically focused on the merits and "probable adverse impacts" associated with including a default FCR in the SMS vs. not including a default in the SMS and continuing to rely on the default FCR and other site-specific considerations provided for in MTCA.

Ecology might consider sponsoring an "Expanded Scoping" effort per WAC 197-11-410 to articulate the relevant features of this alternative. These considerations come to mind:

1. Are there "probable adverse impacts" associated with a default FCR in the Sediment Management Standards that then will be reviewed and must be approved by the Environmental Protection Agency as a Clean Water Act water quality standard. For example, what are the implications of an adopted FCR Clean Water Act standard on Ecology's implementation of WAC 173-201A-240 *Toxic Substances* across the full range of Clean Water Act regulatory programs and activities.
2. Ecology's articulation of "probable adverse impacts" is framed around "Impacts Due to Residual Concentrations" and "Impacts Due to Cleanup Actions." An assessment on whether these impacts would be materially different with/without an adopted SMS FCR should be completed.

We expect the regulatory policy choice on adoption of a default FCR in the SMS, or not, will be fully evaluated as part of the required Significant Legislative Rule analysis. Specifically, RCW 34.05.328(1) envisions that Ecology will consider "alternative versions of the rule" to ensure that the least burdensome alternative is adopted that will achieve the general goals and specific objectives of the statute. The possible hidden consequences of a default FCR as an adopted

CWA standard will certainly need full examination. Additionally, the statute expects the development of a “rule implementation plan” which itself will require an assessment of implications of any promulgated rule across other regulatory programs. The Washington business community will insist upon an alternative rule assessment of “no FCR default.”

The analysis on default FCR will be required. This SEPA EIS scoping activity provides the initial opportunity to define or frame the relevant issues as an “alternative.” Ecology should consider the value of enlisting the public in this activity.

Sincerely,

Ken Johnson
Corporate Environmental Manager