

These are general comments my specific comments are included on the preferred form.

SMS COMMENTS

After researching the issue I was unable to locate a cleanup which was truly a bay wide effort. Since cleanups in the marine environment end up being essentially hotspot removal and various monitoring methods, it seems that making it an official rule may be the best solution. To do this I see some language change from what was presented at the SMS review.

Unit cleanups do make sense in embayments. The wording about consent decree settlement for a sediment cleanup unit or individual site is good and I think would move PLP's to action. I do have a problem with the "de minimus" contribution language for settlement. Though it may take a more active involvement from other PLPs, I think that the minimal contribution language should be struck. What does it really provide other than additional work and cost to identify contamination that will most likely not be dealt with in the cleanup. If more effort were put forward to understand the processes in the areas of cleanups a more reasonable and potentially comprehensive cleanup may be able to be affected. All bays have an area that is totally or nearly totally depositional and if the natural processes are re-established to a greater degree that area should end up containing the majority of the unapportioned source contaminants which may be able to be capped, using the contribution fund moneys.

For a unit cleanup it should be made clear that a settlement for a unit cleanup will require active removal of the high level contaminants to get a settlement, merely capping doesn't remove the contaminants from the marine environment, which is necessary to move towards the goal of ultimate bay wide improvement. It appears that industry is willing to dredge to clean sediments if they are not held for any recontamination for which they are not responsible. Ecology would need to confirm that the unit is sufficiently large to address what would be considered most of the PLPs liability.

The concept of credit in lieu of financial contribution in a bay is interesting, NRDA settlements are sometimes dealt with in this way and if the additional cleanup is appropriately large this may work, but it should be dealt with on a case by case basis.

Source control needs to be addressed as part of the settlement issue, sources are a difficult issue, though if it enters the site by a pipe someone has control of it and it should be restricted by regulations. To address the issue of multiple permitted sources in a bay in which cleanup has occurred, if there is a

contaminant of concern for the cleanup it should become a monitored chemical for the bay and added to the permit, unless it can be established that the cleanup chemical is truly a legacy chemical with no current source.

Pathways VS Sources seems to be a chicken and egg circular argument. If the source is storm water then the owner of the outfall is responsible to assure that the effluent is clean. If there are questionable potential contributors that are not cooperating then block their access to the outfall system until they resolve their issues. If their system backs up they have a motivation to work on the storm water.

All outfalls in Washington State should be regulated by water quality to assure that they are in compliance with the state water quality rules.

Regional background is problematic in definition and application. Regional background if too small would effectively be area background as defined in MTCA which would be unacceptable as a cleanup standard. The BOLD survey results could reasonably be argued as regional background for Puget Sound, but in some areas would be over restrictive and others under restrictive. This does not address the freshwater areas. Regional background in the eastern part of the state is even more difficult to address. It would not be appropriate to include areas with identified sources of contaminants, such as mines, industrial sources, agricultural resources and municipal sources. Legacy chemicals are a further problem in the Columbia due to the Hydro-electric dams. The water table in Eastern Washington is such that separating out the potential sources would be difficult much less assessing the international and interstate implications. In an area where nearly all water sources feed other sources one may have to deal with every site as an individual background assessment.

The freshwater standards need to be designed so that once the waters enter an estuary the marine sediment requirements are met, this may make river and stream cleanups particularly complex in assessing the sources and establishing the standards. It has to be recognized that these systems are not disconnected independent systems, but integrated interactive systems, actions in one affect the others both directly and indirectly.

On the issue of human health as the state uses cancer based risk levels of $10e5$ and $10e6$ I don't think that a level of $10e4$ could be legally defended. It was also brought up that non-cancer end points may end up driving cleanup levels. Human health is truly the issue of cleanups whether SMS or MTCA we live in an area which has always relied on the fish and marine resources for food, it is not reasonable to try to regulate the amount that people consume. Studies have shown that institutional controls are ineffective in regulating fish consumption, particularly in tribal, Pacific Islander and Asian communities. These communities have a disproportional number of people that live below the poverty level making fish and shellfish their primary source of protein. The state has a mandate to protect human health, fish advisories have been shown to fail in meeting that mandate. Institutional controls such as no anchorage areas are acceptable to protect a cap but to regulate something as significant as human consumption they are neither reasonable nor are they effective.

On the issue of fish consumption other than making no change in the water quality fish consumption rate and forcing EPA to assign a rate Ecology is going to have to at a minimum match the Oregon DEQ

rate of 175 grams per day. This rate would at least make Washington's water quality match that of Oregon in the Columbia River. The science really does support a rate of about 250 grams per day for Puget Sound which though not protective of tribal consumers is protective of most other fish consumers and therefore a reasonable standard. Further there is significant research evidence to support the inclusion of salmon in the fish consumption rate.

It was suggested that restricting fishable use might be a solution, trying to restrict fishable use in a water body would open up a treaty issue with the tribes which they would most likely litigate. Previous attempts at challenging treaty rights by the state have proven unsuccessful; I would expect the results in this issue would be the same.

There clearly needs to be some program integration between the Toxics and the Water Quality programs on the source control issues and the chemicals of concern.

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