DUWAMISH RIVER CLEANUP COALITION
Technical Advisory Group

PEOPLE FOR PUGET SOUND
pugetsound.org

RESources for Sustainable Communities

Northwest Environmental Advocates

January 18, 2012

Martha Hankins
Dave Bradley, Toxics Cleanup Program
Becca Conklin, Water Quality Program
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
Phone: 360-407-6864
Via E-mail: martha.hankins@ecy.wa.gov, RuleUpdate@ecy.wa.gov, swqs@ecy.wa.gov

RE: Revisions of Sediment Management Standards (WAC 173-204) and Water Quality Standards for Surface Waters of the State of Washington (WAC 173-201A)

Dear Mr. Bradley, Ms. Hankins and Ms. Conklin:

We are writing a joint comment letter to you as we were the representatives of environmental organizations who sat on the Sediment Cleanup Advisory Committee for the fall of 2011. We also are responding to the proposed revisions to the Water Quality Standards (WAC 173-201A). We represent RE Sources for Sustainable Communities, People For Puget Sound, Duwamish River Cleanup Coalition/TAG, and Northwest Environmental Advocates. Along with many other community/environmental nonprofit groups, we actively engage on sediment cleanup sites in Washington State – working to ensure that sites are cleaned up thoroughly for the protection of wildlife and human health.

- People for Puget Sound is a nonprofit, citizens' organization whose mission is to protect and restore the health of Puget Sound and the Northwest Straits

- Resources for Sustainable Communities' mission is to promote sustainable communities through recycling, education, advocacy, and conservation of natural resources. The North Sound Baykeeper, one of RE Sources programs, focuses on protection and restoration of water quality and nearshore habitat.

- The Duwamish River Cleanup Coalition/Technical Advisory Group (DRCC/TAG) is the Environmental Protection Agency's Community Advisory Group for the Lower Duwamish Waterway Superfund Site.

- Northwest Environmental Advocates is an Oregon nonprofit environmental organization established in 1969 whose mission is to work through advocacy and education to protect water quality, wetlands, and wildlife habitat in the Pacific Northwest.

We greatly appreciate the time and effort that Ecology staff has taken in working on the Sediment Management Standards (SMS) rule-making process in the past two years. You have done a great job of presenting the material, synthesizing information and informing the stakeholders. We recognize that the water quality standards revision process is just beginning and we have only attended the one meeting so far, which similarly was very well organized.

Our general comments follow and we have attached specific text comments (sediment only) using Ecology's comment form (Attachment 1):

Overall approach

We are very concerned that many aspects of the proposed rule changes represent easing of standards for the benefit of ports, industry, and developers with no real payback for the environment. Will these revisions help the overall health of the sediments of our region? Will we see a larger group of businesses or municipalities stepping forward to take responsibility under these new rules? Will this improve the public process and engage the communities that are most impacted by the legacy of pollution in their areas?

- We oppose the creation of "regional background." Creating a bay-wide regional background number will weaken cleanup standards in the long run. Overall, we know that as Puget Sound gets cleaned up and restored, the concentration levels in the sediment will gradually decline. The target for cleanups, therefore, should be natural background, even if it will take some years before we get there. Further, Ecology does not have the staff or resources to properly create "regional" background numbers and likely the project responsible parties will use their consultants to propose regional background numbers which will be slanted towards their client's interests. We already see this approach under the current cleanups. Moreover, the sanctioning of lesser regional standards will disproportionately affect lower-income citizens who reside in more polluted areas and species which are already struggling due to habitat encroachment and stormwater contamination (the coho in Longfellow Creek, for example).

- The "Site units" approach is also problematic. We acknowledge that cleaning up any contamination is valuable; perhaps a site unit approach would accomplish this to some degree. We believe that the drawbacks with a site unit approach, however, outweigh any positives that may develop. At present, the interim cleanup approach is being used in the same manner as the "site unit" approach would be. Interim cleanups are being done without ensuring that the worst contamination is addressed, without the benefit of full remedial investigations and feasibility studies, and without ensuring that the entire site is cleaned up in a timely manner. Interim cleanups are being done not for clean up purposes and protection of human health and the environment, but because there is a financial impetus for the responsible parties. We believe that financial redevelopment incentives need to be matched with full cleanup. If individual site units get closure and release from liability, then there is the danger that the burden of the remaining cleanup will fall to cities and counties and thus, taxpayers. If Ecology wants to retain the site unit approach, there must be a codified method to ensure full and timely cleanup of the entire site. Without these safeguards, the site unit approach is a give-away to development/industrial interests.

- We have no evidence that responsible parties will start cleaning up sites more quickly due to the environmental reliefs being proposed in the changed rule. To date, we only see site cleanups proceed if the property owner or leasee has a financial reason to move forward (for example, dredging needed for berthing or navigation projects or they want to redevelop the site). When questioned in the September committee meeting, the consultants could not come up with a solid comment that the current standards have truly caused site cleanups to be roadblocked.

- The proposed Sediment Standards seem to give into potentially liable persons (PLPs) without appropriate balancing to the public interest. Ecology needs to improve the public process not only from the aspect of affected communities but also to the amount of public monies that seem to be the only way most of these projects get finished. Most importantly for urban areas where most of the cleanups occur this proposed rule revision gives insufficient attention to the concept of environmental justice.

Source Control

Source control is one of the largest challenges to successful clean-ups in Washington.

- We do not see all sources being identified in a timely manner so that all PLPs are included up front for any given sediment cleanup site. This especially relates to owners of the stormdrains that come into a site.

- Ecology's proposal for a new sediment management approach and rules is very much rooted in its stated premise that controls will be exerted over pollution sources to a greater degree than they are now. Because source control is not the specific purview of the Toxics Cleanup Program and therefore perhaps not much reflected in the proposed rule changes, our comments are much focused on the document entitled "Framework for Sediment Cleanup Decisions" (hereinafter "Framework") that underlies and justifies the approach that Ecology is taking in the SMS rulemaking proposal in collaboration with the Water Quality Program. That document claims to "describe[] key policy, technical and implementation features of the draft updated SMS decision framework for cleanup *and source control*." Framework at 1 (emphasis added). But we find there is very little discussion concerning source control other than vague allegations that source control will somehow be accomplished. This is an inadequate basis upon which to proceed because it is a false premise that source controls will be instituted, particularly over heretofore not regulated sources.

  The problem statement establishes a compelling basis as to why source control is a key issue, specifically noting that "[i]n embayments with urban or industrial shorelines, concentrations [of toxics] are frequently much higher due to a mix of permitted and unpermitted stormwater, atmospheric deposition, and historical releases from site-related activities." *Id*. Ecology seems, however, to have given little thought to what could and should be done to ensure source controls are placed on both currently regulated and unregulated sources. For example, there is a regulatory solution to unregulated sources of stormwater, that Ecology flags as an important source in developed embayments, through use of Clean Water Act (hereinafter "CWA") section 402(p)(2)(E) & (6) which would allow Ecology to expand the geographic scope and jurisdiction of regulated stormwater. We urge that in such embayments as described by Ecology that the agency take that specific action and that this action be described as a required action in the proposed rules.

- Likewise, one source of information which Ecology already has concerning potentially under-regulated sources of contaminants is the Toxics Release Inventory (hereinafter "TRI"). That multi-media releases are a problem is identified correctly by Ecology. This is underscored by the recently-released 2010 TRI data that demonstrate a 27 percent increase in toxic chemical releases in Washington (far greater than the 16 percent increase nationally). Ecology's rules should require a series of actions to be taken based on TRI and other data. First, Ecology should be required, or require PLPs, to identify significant air deposition sources. Second, Ecology should allocate a load allocation to air contaminant sources in any Total Maximum Daily Load (hereinafter "TMDL") that it develops. Third, Ecology's Air Quality Program should begin rulemaking to regulate otherwise unregulated significant sources of air deposition due to gaps in the federal Clean Air Act.

- As Ecology notes, there is a reality of "widespread, ubiquitous, anthropogenic contamination." Framework at 1. The solution to this reality is not to keep repeating, as this document does, the unreality

of source control but to identify the sources that are causing this problem and to regulate them appropriately. We already have strong examples of successfully addressing some of these "ubiquitous" chemicals, such as the legislation to phase out copper in brake-pads and in bottom paint (on vessels) and phthalates, lead and cadmium in children's products. Ecology's comment that the approach to cleanup of contaminated sediments must be "protective, technically feasible, and cost effective" points to the necessity of preventing re-contamination of cleaned-up sites.

- Ecology poses the question of how to clean up contaminated sediments within a more flexible framework that allows PLPs to settle liability "while also contributing to cleanup and source control for the larger bay-wide or area-wide site[.]" *Id*. at 1. A large part of the answer to this question is answered by Ecology's having the appropriate goals for that source control. The CWA provides just such a tool in the TMDLs that are intended to attain and maintain water quality standards. To date, Ecology has shied away from performing TMDLs for toxic contaminants and may be inclined to continue this approach in the future due to the difficulty of completing the TMDLs and the need for data. However, the benefit of completing such TMDLs in the near term is having a regulatory accounting of what sources are contributing loads currently and what reductions are needed from which sources in the future. This not only creates accountability for sources, and Ecology itself, but provides a framework for allocating responsibility that can be incorporated into the liability settlements. The cost of doing such TMDLs in the near term could be significant and that cost could and should be passed on to PLPs. In the absence of TMDLs, Ecology has not stated how it intends to ensure the allocation of responsibility for the area-wide source control that it states is necessary.

  Similarly, Ecology should immediately place those sites that are subject to clean-up activities but no source control actions back on the 303(d) list of waters that are impaired and require TMDLs. Heretofore, Ecology has used the Category 4b designation as an off-ramp to remove 151 parameter-segments from the 303(d) list despite the fact that, to the best of our knowledge, not a single one includes source controls. This delisting action on Ecology's part belies its representation that source control is a necessary action to provide the environmental and public health benefits of toxic clean-ups.

  These TMDLs associated with toxic clean-up actions, along with other regulatory actions to control currently regulated, under-regulated, and unregulated sources, will ensure that sufficient source controls are in place for all relevant sources to obtain the result that Ecology states is desirable public policy. If state law does not currently allow PLPs to financially support the development of TMDLs so that they can be done early and be the basis of clean-up-related source controls, Ecology should request that the legislature create such authority.

- Ecology uses the Framework document to discuss the relationship between the Toxics Cleanup Program and the Water Quality Program. Framework at 2. Here it makes a statement that "Ecology's goal is to define one or more default fish consumption rates" to be used across the agency. Ecology should clarify why it might have more than one fish consumption rate once it has completed rulemaking in both programs, if that is its intent. Presumably at a minimum Ecology can confirm that the current 6.5 grams per day fish consumption rate in the water quality program, established in the National Toxics Rule, is inappropriately low as compared to EPA's recommendations to states and to information from Washington State. Likewise, if Ecology decides to create one default rate for Columbia River Basin watersheds and one for Puget Sound watersheds, for example, it should explain why and whether the distinctions in fish consumption warrant this approach. Similarly, if Ecology decides to use the same data but to protect at a different percentile level, the policy rationale must be explained. And, finally, there must be a scientific and policy rationale for using different default fish consumption rates in the same geographic area for two separate programs. Instead of providing information on its direction, Ecology simply asserts an ill-defined goal of "one or more default fish consumption rates," a goal that may take the agency into actions or inactions we believe has the potential to undermine the stated public health protection goals of the two programs. In any case, the document states that both programs share

an overall philosophy of the agency that "source control, and water quality permitting . . . achieve meaningful improvements in sediment and water quality *in the near term*." *Id*. at 2. Oddly, the Water Quality Program has embarked on a rulemaking process for the inaptly-characterized "implementation tools," the specific purpose of which is to suspend water quality standards in both the short and long term and, simply put, to not implement standards. WQS Implementation Tools and Planned Changes to Address Short and Long-term Pollution Control Activities, January 11, 2012, Powerpoint (hereinafter "Powerpoint") at 3. For example, the Powerpoint states that modifications are needed to current regulatory programs because "[c]urrent tools are limited to [delaying achievement of water quality standards to] 5 and 10-year time frames." *Id*. at 4. Likewise, it states that "TMDLs and regular permitting situations sometimes result in permit-required control activities that will require more than 10 years to attain compliance," specifically citing toxics as one example. *Id*. Belying its statement that it intends to focus on near term improvements, Ecology goes on to discuss its proposed changes to the compliance schedule rule to allow up to 20 years to achieve compliance. Ecology's presentation does not include any examples related to toxic contaminants but, rather, focuses on temperature, nutrients, and dissolved oxygen as being related to nonpoint source controls and NPDES trading. Yet the stated purpose of the entire implementation tool process is to relax permitting requirements prior to Ecology's adopting new toxic criteria for human health in the water quality standards program.

Ecology's discussion then turns to NPDES-related water quality standards variances – which EPA describes as short term and which EPA has never allowed to be longer than five years – which Ecology shockingly proposes to make last "up to 3-4 decades." *Id*. at 17. Unlike a compliance schedule, a variance is renewable and provides no certainty of outcome or timing. It is considered the alternative to a compliance schedule which is inflexible because it is both effluent quality- and time-certain. Here, Ecology specifically cites to toxics as an example for the need for such long-term so-called variances because of "widespread" sources needing an "integrated strategy" which will "take decades." *Id*. at 19. A variance, however, is not a suspension of water quality standards to all sources; it is a source-specific suspension of standards applicable to individual NPDES permittees. Nowhere does Ecology explain why NPDES sources would require suspension of water quality standards up front of several decades. Nor does Ecology explain how this approach comports with its alleged interest in obtaining "near term" "meaningful improvements," as stated in the Framework document. Reduction of toxic contaminants from regulated sources that will take decades is a strong indication that Ecology intends no near term meaningful improvements whatsoever. That it might take decades to reach standards in the environment is not the relevant assessment because the issue here is the actions of the individual source. In fact, the Powerpoint demonstrates that Ecology would not even begin implementing "source investigation and control" until after the first decade. How is this "near term" improvement let alone "meaningful improvement"?

In other words, when Ecology states in the Framework that its near-term goal is to "[s]ignificantly reduce risk to human health and the environment," Framework at 3, it means that it seeks to cleanup highly contaminated sites while allowing, in many cases, no source control until after the passage of at least a decade. It is only when the "longer-term goal" of reducing toxics levels "towards human health-risk based or MTCA natural background-based concentrations," *id*., is underway that Ecology intends to protect the gains achieved by previous expensive sediment clean-up actions by taking concurrent source controls actions. This strikes us as extraordinarily poor public policy.

- The agency is also internally inconsistent. Its inter-program collaboration has the Toxics Cleanup Program stating that "controlling PLP sources [is] an essential component of settlement for the sediment cleanup unit or individual site" and that global cash out settlements "will fund well-defined agency-wide measures, including source control" while the Water Quality Program is seeking to postpone – for decades – the taking of any source control actions for toxics. And these delays are against the backdrop of water quality criteria for toxics that are currently based on 6.5 grams per day of fish consumption, no assurance that Ecology will complete the rulemaking to revise the assumed level of fish consumption in

water quality criteria, and quantification limits for many toxic constituents which have the practical effect of assuming a lower level of fish consumption because protective levels cannot be measured with current technology.

The phrase "well-defined agency-wide measures" is given prominence in the Framework document. *See, e.g.*, at 3. Yet apart from the specific reference to clean-up of orphaned sites, there is nothing well-defined about these measures, nothing to give assurance that Ecology will even consider any source control beyond whatever it is doing now, which all parties agree is inadequate. In the discussion of coordination between programs there is no reference to the role of TMDLs to assess and allocate responsibilities. There is nothing to assure that greater controls over nonpoint sources of all types will be instituted and references to "prevention and product reduction," *id*. at 4, while valid approaches seem to indicate that education programs rather than mandatory controls are the ideas that Ecology has in mind. References to "non-point source reduction" and "toxics prevention and product reduction," *id*. at 9, without any reference to what program at Ecology will take responsibility and what approach will be taken that is not already being taken now – with little or no effect – is nothing more than words on a piece of paper. It's meaningless. With so much at stake environmentally and financially, business-as-usual is not appropriate or acceptable.

Likewise, references to needing PLP settlement contributions for source control, *id*. at 11, are meaningless without any way to determine what the source control needs are and therefore their costs. The proposed rule changes have a sprinkling of ill-formed source control thoughts as well. In proposed WAC 173-204-500(4)(a)(iii), regarding cleanup process expectations, Ecology proposes that "[u]se of aggressive source control measures to minimize future contamination" should be one of three possible approaches to address widespread contamination caused by multiple sources. What Ecology has in mind for such allegedly aggressive source control measures is a mystery however. Nor is it clear when Ecology has in mind that aggressive source control is not an approach it endorses, as this appears to apply only to "widespread contamination." Similarly, source controls are a part of the highest priority cleanup actions in "assessing the relative degree of long-term effectiveness," in proposed WAC 173-204-580(4)(l), yet as demonstrated by our previous comments, Ecology appears to have given no thought to the range of source control options that should be considered and how it intends to go about ensuring they are taken. This is odd considering that another presentation by the Water Quality Program states that "[w]orking with Toxics Clean-up Program on Sediment Management Standards issues that have CWA connections . . . Source Control," which implies that such discussions have been ongoing. Water Quality Standards and other Ecology Activities – the Context for this Meeting, Powerpoint, January 11, 2012, at 2. In summary, there is no evidence that Ecology has given enough consideration to improving source control and there is certainly no rulemaking proposal that would have such an effect. Without such actions, the discussion of source control is wishful thinking.

- In addition to the suggestions made above – namely, to (1) expand jurisdiction over unregulated stormwater, (2) develop near-term TMDLs to assess needed levels of source control and responsibilities for implementing source reductions, (3) use TRI data to identify significant air deposition sources, (4) engage in rulemaking through the Air Quality Program to regulate significant sources of air deposition through state authorities, and (5) re-list on the 303(d) list those parameter-segments that were de-listed to Category 4b despite not having any source control – we make the following additional suggestions:

  Control nonpoint sources by:

  - Using early TMDLs to identify nonpoint sources of toxic chemicals that require controls;
  - Establishing minimum forested riparian buffers on all waterways under Tier I of the antidegradation policy (protection of existing uses) as the primary mechanism to prevent erosion and runoff;

- If tile drains are a significant source in some areas, requiring discharges from tile drain fields of contaminated groundwater or agricultural materials applied to fields in excess of agronomic rates to obtain NPDES permits;
- Requiring agricultural sources to use an enhanced Universal Soil Loss Equation to derive Tolerable Soil Loss (the total amount of soil lost by all recognized erosion types), augmented with estimates of gully erosion;
- Limiting fertilizer applications to agronomic rates;
- Developing BMP manuals for control of toxics from nonpoint sources to address other controls needed in addition to forested riparian buffers.

- Control indirect discharges to municipal sewage collection systems from industrial, commercial, and residential sources by:
  - Requiring municipalities to increase regulation of federal pretreatment "categorical discharges" by regulating pollutants that are not regulated under the federal pretreatment program;
  - Requiring municipalities to regulate those sources without EPA-issued total toxic organics limits under the federal pretreatment program;
  - Evaluating existing federal pretreatment total toxic organics limits for categorical dischargers for their sufficiency in the following sectors: electroplating, metal finishing, metal molding and casting, coil coating, aluminum forming, copper forming, electrical and electronic components;
  - Regulating industrial dischargers not deemed to be "significant" (process water under 25,000 gallons/day) or "categorical" under the federal pretreatment program but which discharge toxics, focusing on priority sources or pollutants of greatest concern;
  - Regulating commercial facilities, such as radiator shops, car washes, hospitals, laundries, and photo processors with an initial focus on priority sources of high priority pollutants;
  - Developing BMP manuals for indirect dischargers (industrial and commercial, as necessary);
  - Requiring local governments to adopt local ordinances (e.g., local bans) on use of certain products to prevent toxic pollution from sewage treatment plants, combined sewer overflows, sanitary sewer overflows, and stormwater;
  - Adopting a pollution prevention or technology-based approach to indirect dischargers rather than only developing local controls under the federal pretreatment program where triggered by pollution levels in effluent; and
  - Requiring upgradient investigation work for identification and control of sources such as is done by Tacoma and Spokane.

These are only some ideas to address currently unregulated sources of toxics. While Ecology bemoans the increasing levels of toxic contaminants in Puget Sound and the problems of recontamination of cleaned-up sites, at least 171 local governments of all sizes in Canada have instituted local bans on some pesticides. If Ecology is serious about the widespread source control work that it seeks to rely upon in its new approach to sediment management standards rules, it needs to consider this type of approach rather than the somewhat vague approach that has been described so far.

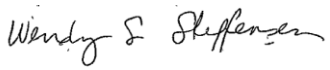
Thank you for your consideration. Our contact information is listed below.

Sincerely,

Nina Bell, Executive Director
Northwest Environmental Advocates
P.O. Box 12187
Portland, OR 97212-0187

(503) 295-0490
nbell@advocates-nwea.org

James Rasmussen, Coordinator
Duwamish River Cleanup Coalition/Technical Advisory Group
1620 18th Ave Suite 10
Seattle WA 98122
(206) 954-0218
james@duwamishcleanup.org



Wendy Steffensen, Lead Scientist
North Sound Baykeeper Team
RE Sources for Sustainable Communities
2309 Meridian St.
Bellingham, WA 98225

Heather Trim, Director of Policy
People For Puget Sound
911 Western Ave, Suite 580
Seattle, WA 98104
206 382-7007 X172
htrim@pugetsound.org

Attachment

Attachment 1

Reviewer Name:		Various
Sections of Document Reviewed:		SMS sections 173-204-200, -500 - 590
Document Version/Date:		
Page #	line	**Comment**
10	36	Definition of Biologically Active Zone. (BAZ) The default of 10 cm does not appear protective enough. Its accuracy needs to be re-assessed. Although site-specific work is most relevant in establishing individual BAZs, work referenced in the following publication, indicates that the 10 cm default value in Puget Sound may not be protective enough. Clarke et al indicates that bioturbation can be predicted to extend 20-60 cm in most coastal or marine environments. (Clarke, D.G., Palermo, M.R., and T.C. Sturgis. 2001. Subaqueous cap design: Selection of bioturbation profiles, depths, and rates. DOER Technical Notes Collection. ERDC TN-DOER-C21. U.S. Army Engineers Research and Development Center, Vicksburg, MS) We request a default value of 20 cm, which could be overridden by site-specific findings, such as the vertical distribution of benthic macroinvertebrates or the depth to anoxic sediments.
10	61	Definition of Control sediment sample. Amend this definition such that the sample also will not have chemical concentrations which exceed cleanup screening levels for any likely pollutant in the area.
13	138	In the event that regional background approach remains; there is a problem with its definition: This needs a definition of "geographic area". Without a definition of geographic area, the area that is prescribed could be too limiting and the concentration of regional background could be set arbitrarily too high. In addition, this definition does not set itself apart enough from area background as found in 173-340-200.
13	146	Amend language from, "Calculation of regional background must exclude areas with an elevated level of contamination due to the direct influence of known or suspected contaminant sources including, but not limited to, areas within a sediment cleanup unit" to "Calculation of regional background must exclude areas with an elevated level of contamination due to the direct influence of known or suspected contaminant sources including, but not limited to, areas within a sediment cleanup unit AND STORMWATER OUTFALLS."
13	153	The use of alternative geographic approach is unclear. The language seems to say that a lesser standard will be imposed on a cleanup site although the geographic demarcations of contamination do not support it.
14	196	The definition "sediment recovery zone" is unclear. Not sure what activity is "authorized by the department"- a cleanup or the releases.
15	208	The definition of site seems to be too narrowly construed and limiting of area. Clean up sites include the area affected by the contamination from one source.
17	50	The use of partial cleanups should be authorized only when there is assurance and a plan to clean the entire site within a specified and limited time period (3-5 years for example), when the most contaminated areas are cleaned first, and when the Department of Ecology and the proponent can be held accountable for the cleanup work

		done (unlike occurs in Interim cleanups). The terms interim cleanup and partial cleanup need to be made explicit, detailing their overlap, similarities, and differences.
17	55	Aggressive source control should be implemented in every cleanup, and be considered a "binding" expectation, not non-binding as indicated in line 43 (page 17). The meaning of aggressive source control should be defined and the steps to attain such should be listed and codified.
18	73	Sediment Recovery zones should not be allowed or authorized under this provision or any other.
18	84	Add a condition for monitoring when institutional controls are used. These controls should not be considered a part of a valid cleanup unless they can be monitored and shown effective.
18	85	Scope of information: Characterization should include the lateral and vertical extent of contamination for each site. In the absence of this information, a site unit cannot be defined and inadequate cleanup will ensue.
19	115	Appropriateness of "Enhanced Natural Recovery" as a cleanup action. This action simply dilutes the contamination that is present. It should only be potentially considered in an area that is already depositional, to speed up the natural sediment deposition process. In an area that is neither depositional nor erosional- the thin layer cap used as ENR will not be sufficient to suffice as "cleanup". In an area that is erosional, ENR should not be contemplated at all.
19	131	We believe that it is essential that Ecology retains its right to protect human health and the environment through its ability to amend cleanup actions. How will the department make the determination " that the previous cleanup action is no longer sufficiently protective of human health and the environment"?
20	1	This section does not include a good definition or reference to a "station". We need to know how far apart are stations located in order to determine whether the use of a three cluster station is really appropriate. If stations are far apart- one station may have exceedances that deserve cleanup, but its levels may be masked by stations with lesser concentrations. Information in 173-204-350 does not allay these concerns. Please address.
26	15	It is unclear why the references to SEDRANK have been deleted.
27	33	Need information on what the list is called and where it is located. An annual listing should be the minimum regardless of staffing. Please reinstate an annual listing, with the option of more frequent updates.
28	69	Add the following sentence to this section: If aggressive source control has not been analyzed and implemented for a cleanup site, then that site will be relisted until the aggressive source control component is completed.
31	29	In establishing a scope of work, the financial resources of the person(s), entity should not be considered. Thorough characterization, including lateral and vertical extent, of the site must occur in order to ensure a protective cleanup. If financial resources of the person(s) do not permit thorough characterization, then resources from the state should be made available to accomplish this.
32	49	Public Participation Plan: The elements required in the plan focus on getting information from the public and pushing out information to the public. There is no actual dialogue with the public or discussion. These shortcomings in the code are reflected in actual practice. The public, represented by our groups and others,

		experience the disconnect between public concern and agency action and response. Add a requirement for public stakeholders, PLP, and agency discussion that occurs at intervals during RI/FS and work plan development. We find that the initial decisions made between the PLP and Ecology prior to the issuance of the RI and FS, are really quite solid before the public ever gets to weigh in. Thus, the public really does not get to meaningfully participate in decisions. At a minimum, the proposed biologically active zone and the proposed sediment cleanup standards be made available to the public before the RI/FS is issued- such that the public can provide early feedback about whether they believe these standards are acceptable. In addition, the public should have a role in the alternatives discussion and the choosing of a preferred alternative BEFORE the official draft RI/FS comes out for official public comment. Required discussion sessions between all of the stakeholders, including the public, may be the only way to make this happen.
32	55	Amend this phrase "the length of the comment periods", to the "length of the comment periods, being of 30 days at a minimum, for any draft work plan, RI, FS, and/ or CAPs"
33	69	Note that the RI contents does not specifically state the items derived from the RI which are to be included in the FS. These are listed from the "Summary of remedial investigation results including:" as shown on page 35, starting at line 147. These items should be specifically listed in RI contents
35	130	This section is not as clear as it should be. Please change to the following to be more explicit: ~~Where determined relevant by the department,~~ the following information shall be obtained by the department from the responsible discharger: (i) The physical and chemical characteristics, and the biological effects of site sediment contaminant sources, unless these are already known and documented; (ii) The status of source control actions for permitted and unpermitted site sediment contaminant sources; and (iii) A ~~recommended~~ compliance time frame for known permitted and unpermitted site sediment contaminant sources which affect or potentially affect implementation of the timing and scope of the site cleanup action alternatives.
35	136	Why is the term "unpermitted" struck? Please reinstate
35	150	The proposed biologic zone, should be 10 cm or that determined via scientific analysis, whichever is greater. Scientific inquiry into the Biological zone should be made for each site.
36	182	A sediment recovery zone should not be an option for a cleanup action. This simply allows pollution to remain in place; This is an unacceptable solution
39	13	Loophole:This paragraph gives 10 years from start of cleanup to meeting cleanup standard. This is too long. This standard should be 5 years or less. Additionally, there appears to be no timeline after identifying contamination and/ or Agreed Order to actually have a plan for cleanup. These cleanup plans drag on far too long – we need a solution for this! Please institute enforceable timelines for EACH of the steps associated with cleanup, from discovery to final cleanup.
40	30	This condition addresses source control but has little teeth. Why is there a question as to whether source control will or will not occur and to what degree it will occur? Aggressive source control needs to be identified and implemented at each site.
40	40	Clarification: Does this mean that the standard will be the lowest of all of the levels, "a" through "e", except that "e" itself is a choice b/w the highest of the two levels?

41	59	Clarification: Does this mean that the standard will be the lowest of all of the levels, “a” through “e”, except that “e” itself is a choice b/w the highest of the two levels?
41	61	Numbering is incorrect. This should start at (a) again
41	68	Remove the reference to regional background. By sanctioning cleanup levels at “regional” levels, we are as a community, allowing pollution as status quo, and basically relegating our urban areas to lesser standards. The fish, humans, and other critters that live in or near these areas are not second class citizens and individuals, and should be afforded the same basic protections as all of us.
42	30	Delete the word “both”, the listing is of three conditions, not two
45	65	This first sentence reads as if all chemicals are expressed on a TOC basis.
48	92	How the biological criteria are used- is not spelled out. In practice we have seen that “bioassay passes” can override the MCL. Is this proposed to still be the case? Please be clear about how these tests are used. - Also, these bioassays were used to override the MCL for mercury- a PBT- how will this be addressed? (example from Whatcom Waterway, Bellingham Bay). In the practice of protecting human health and safety, bioassay over-rides should not be allowed. Bioassays rely on test organisms only and cannot be said to account for the variability and sensitivity of the wide diversity of organisms found in Puget Sound. While it is true that bioassays did inform the selection of the SQS and MCL values, these values rely on average expectation in the area; they will not be predictive of every site, just as bioassays with test organisms will not be predictive of every site. Thus, with two inexact measures, it is more conservative and prudent, to neither disallow bioassay or chemical overrides of one another.
49	122	sections need a new paragraph
59	30	It is unclear why an ecological risk assessment MAY be required for BCoC’s and for effects of upper trophic levels- the default statement should be that they WILL be required, in order to protect species at the site. If there is an opt-out option for conducting the ecological risk assessment that should be narrowly defined.
60	29	Need definition of “maximum extent practicable”
61	34	Same comment as before: Loophole: This paragraph gives 10 years from start of cleanup to meeting cleanup standard. This is too long. This standard should be 5 years or less. Additionally, there appears to be no timeline after identifying contamination and/ or Agreed Order to actually have a plan for cleanup. These cleanup plans drag on far too long – we need a solution for this! Please institute enforceable timelines for EACH of the steps associated with cleanup, from discovery to final cleanup.
61	35	An assessment of source control needs should be part of every cleanup. If any chemical exceeds the SQS and can be controlled through source control actions, “aggressive source control” remedies should be implemented. (Aggressive source control to be later defined and codified by Ecology)
61	37	Sediment recovery zones should not be a cleanup option
61	39	See comments referring to page 32, Public participation. The minimum requirements outlined in this section are not adequate.
62	62	The disproportionate cost analysis is a subjective tool and we find that the PLP and Ecology often use it to justify a poor cleanup option which is favored by the PLP. We believe that the DCA needs to be revisited such that it is more balanced and equitable.

		One option may be that an impartial science panel, not influenced by the PLP, uses this tool and provides a recommendation.	
62	70	"Effectiveness of source control" needs to be better defined. Perhaps the definition of "aggressive source control" measures will provide more substance here.	
62	73	Add to this, the ability to monitor institutional controls	
62	85-93	Regarding the ordering of options. Dredging and disposal at an open water disposal site approved by the department; should be listed after disposal in an upland site. Dredging and disposal in an engineered facility that minimizes subsequent releases and exposures to contaminants should be amended to an UPLAND engineered facility and listed 3rd. The use of dredging and disposal in an engineered CAD should also be listed—not sure whether this should be before or after PSDDA site (?) and/or whether this is already included in "containment in situ" Use of Enhanced Natural recovery, should only be used in depositional sites The use of Natural Recovery, Inst controls, and monitoring should be separated out from this list as they are not "active cleanup"—they should be listed with this caveat.	
63	102	This is confusing statement. Are you talking about minimizing exposures to 2 things? It's not clear.	
65	1	Sediment Recovery zone should not be allowed. They merely authorize the pollution of an area above healthful environmental standards.	
67	92	Change the notification requirements. Notification shall be to the public at large. All of the citizens of Washington are affected by lands that are purposely allowed to be polluted. Please spell out how long the comment period is- We request 30 days.	