

**Washington State Department of Ecology
Sediment Management Standards Rule
Review/Comment Form**

Please submit all comments to RuleUpdate@ecy.wa.gov

Reviewer Name:		Alex Smith
Sections of Document Reviewed:		SMS sections 173-204-200, -500 - 590
Document Version/Date:		October 2011 Preliminary Draft
Page Number	Line Number	Comment
OVERALL COMMENT		<p>My primary concerns are with: (1) the definition of Regional Background, (2) clarifying what constitutes "active cleanup" and how a ten year restoration time frame fits in to that definition, and (3) the language regarding Sediment Recovery Zones in Section 590 -- the way the language is written, sediment recovery zones will be required at most cleanups, which is more than a little problematic given the onerous requirements associated with them.</p> <p>Overall, I think Ecology has done an amazing on the framework, creating the potential for incentivizing sediment cleanups while still working towards stringent human health protections, with the goals of near term and long term risk reduction. However, I want to emphasize that much of the flexibility in the approaches Ecology contemplates will be meaningless if (a) regional background is defined or implemented in a way that it ends up being at or near natural background, and/or (2) the source control requirements associated with even a small sediment cleanup unit cleanup are so onerous as to be a disincentive to signing on to do cleanup.</p>
9	6-10	The definition of "active cleanup" includes "enhanced natural recovery" – did Ecology mean to only include the act of placing a thin layer of capping material as part of "active cleanup," or is it meant to include the placement of material AND the recovery time period? It may be easier to draw a similar line to EPA's "construction complete" --- in which "active" cleanup only includes true in-water work, as opposed to recovery.
10	58-60	"Contaminated sediment" is defined as surface sediments exceeding "natural background" as that term is defined in WAC 173-340. Should that be changed to define "contaminated sediment" as surface sediments exceeding the "Sediment Cleanup Objective"? There may be situations where the Sediment Cleanup Objective is higher than natural background, and it doesn't seem right to define sediments below the Sediment Cleanup Objective as contaminated.
13	138-158	The definition of "Regional Background" is unclear as to whether it can include ubiquitous contamination from stormwater inputs, in particular municipal stormdrains. I think the definition should allow for the possibility that regional background in some areas may include contaminants from diffuse stormwater inputs. For example, if the stormwater inputs in an embayment include a couple of large municipal storm drains, the current definition, with its exclusion of contamination from "specific sources," could be read to exclude widespread historical from these large stormwater pipes in defining regional background. Perhaps, the language can either (1) state that regional background cannot include samples taken within the depositional zone of outfalls, but may in certain circumstances include contamination from stormwater inputs; and/or (2) state that for the purposes of this section, the terms "specific sources;" "specific sources or releases;" and "known or suspected contaminant sources" do not include stormwater outfalls that drain stormwater from areas outside individual shoreline properties or facilities?
15	208	This definition of "Site" here has the potential to confuse. The rules indicate that the definitions in 173-340-200 govern if there is no definition in 173-204 – and 173-340-200 already defines "Site" so no additional definition is needed here. And, the definition here doesn't reference the MTCA regulation's definition of "Site," but instead refers to the regulation's definition of "facility," which has the potential to confuse. It is clearer to NOT define "Site" here and simply defer to the definition in 173-340-200.
16	27	To accommodate situations where a sediment cleanup unit is being remediated (as opposed to a full site), section (f) should read "Determining the <i>applicable</i> sediment cleanup standard (WAC 173-204-570)."
18	69	Agree with others that the restoration time frame should start when active cleanup is complete, not when cleanup starts. As with the comment associated with the definition of "sediment cleanup standard" below, some confusion arises with how "active cleanup" is defined and how that fits into achieving sediment cleanup standards. It seems that "active cleanup" should end when active construction ends, and the restoration/recovery time frame should begin then. The sediment cleanup standard should be achieved by the end of the 10 year period (if not before).
	73-78	I am concerned that the "expectation" for sediment recovery zones set out here does not appear to be consistent with the language in proposed section -590. The language here indicates Ecology only

Washington State Department of Ecology Sediment Management Standards Rule Review/Comment Form

Please submit all comments to RuleUpdate@ecy.wa.gov

Reviewer Name:		Alex Smith
Sections of Document Reviewed:		SMS sections 173-204-200, -500 - 590
Document Version/Date:		October 2011 Preliminary Draft
Page Number	Line Number	Comment
		expects sediment recovery zones to be used when “a short restoration time frame is not possible.” Yet, proposed section -590(2) indicates that sediment recovery zones will be used whenever sediment above sediment cleanup <i>objectives</i> is left as part of a cleanup action. As further detailed below, the language in -590(2) appears to require sediment recovery zones at all cleanup sites that meet sediment cleanup standards at the end of active cleanup, (but not sediment cleanup objectives) which is likely to be true at most cleanups. If the requirements associated with sediment recovery zones apply at most sites, it will be problematic, given the onerous nature of the requirements for sediment recovery zones, as opposed to the more typical compliance monitoring contemplated in this section at lines 79-84.
19	107-111	This definition of “sediment cleanup standard” appears to contradict the definition of “sediment cleanup standard” in 173-204-570(2) [p. 39, ll. 11-13]. This definition says sediment cleanup standards are the concentrations of contaminants “that must be achieved through active cleanup measures.” Section -570(2) says a sediment cleanup standard is the maximum allowable concentration “permissible at the cleanup site to be achieved by year ten after start of the cleanup.” It might help clarify the rule if consistent terminology is used in both definitions, or the term “active cleanup” is clarified so it is clear whether “active cleanup” includes a ten-year recovery/restoration period.
39	11-13	See comment re page 19, lines 11-13 above.
53	87-90	This list does not include upland disposal of dredged material, which is likely to be used at many sediment sites in the future. I suggest changing the third bullet to read “Dredging and disposal at a disposal site approved by the department.”
55	9	The language “or sediment cleanup unit” should be included after the word “site” at the end of the first sentence in subsection (1).
	16	Same – the language “or sediment cleanup units” should be included after the word “sites” in the first sentence.
	29	Same in the first sentence of subsection (5).
56	15-18	I have serious concerns about the language in 173-204-590(2), in that it will turn most sites and sediment cleanup units into sediment recovery zones during the restoration time frame/recovery period, as this appears to require sediment recovery zones be established whenever a cleanup action leaves sediments in place that exceed the <i>sediment cleanup objective</i> . The requirements of section -590 are onerous compared to the kind of compliance monitoring contemplated in -500(4)(e). Sediment recovery zones should not be the norm, but rather the exception. The language should be changed to say the standards applicable to sediment recovery zones only apply when selected the selected cleanup actions leave sediments in place that exceed <i>the sediment cleanup standard</i> , rather than the sediment cleanup objective – or Ecology should clarify and limit the circumstances in which sediment recovery zones will be used to be more consistent with the expectation detailed in -500(4)(d). And, even if Ecology intends to require sediment recovery zones only when the sediment cleanup objective will not be reached by year 10 after active cleanup is complete, it could still be problematic if the sediment cleanup objective numbers are as low and unattainable as some fear they will be. If Ecology does not think the glide path will reach the sediment cleanup objective by year 10 after cleanup is complete at most sediment sites, then sediment recovery zones will be the norm, will increase the cost of cleanup, and could well be a disincentive to PLPs who would otherwise be inclined to sign on to do a cleanup.
57	32-34	If sediment recovery zones have to be established at all sites that do not meet sediment cleanup objectives (i.e. the goal at the end of the glide path), then I have serious concerns with the language in this section requiring all dischargers in the area of a sediment cleanup site or site unit to apply treatment to all discharges, including stormwater discharges. This will add a significant cost to these cleanups, and not just for a PLP doing the work, but also to other facilities in the area and municipalities with stormwater outfalls in the area.
	37-41	To the extent this language requires the discharge limitations required for a sediment recovery zone to be incorporated into an NPDES permit, I have concerns about the additional exposure it places on PLPs and other dischargers in the area required to meet the requirements of a sediment recovery zone.
58	66-68	This language indicates that discharge limitations for those in the vicinity of sediment recovery zones

