

From: [Hotchkiss, Doug](#)
To: [ECY RE TCP Rule Updates](#)
Subject: Port of Seattle comments on SMS rule update
Date: Wednesday, January 18, 2012 3:07:08 PM
Attachments: [SMS Rule Comment Form.docx](#)

Attached are the Port of Seattle's comments on the proposed rule revisions. The specific wording comments are driven by the concern that the proposed changes will only confirm and reinforce the unachievable goals, unresolvable compliance issues, and unworkable situation we find ourselves in today. The unintended consequences of that will be rather than the clarity and incentivizing of high risk/high priority cleanup sites that is hoped for, these changes will result in more effort spent in delay and litigation rather than cleanup. As such the following comments are not a complete tight package of rule modifications, but rather an attempt to look at places where wording can be modified and inserted to open the process to allow sites to be completed within the practicable reality of complex urban areas. To do this we need to look at all the tools potentially available for modifying regulations to incentivize meaningful actions rather than promote regulatory gridlock, because that is the only path that will most efficiently, cost effectively, and quickly reduce the existing risk from contaminated sediments.

Sincerely,
Douglas A Hotchkiss
Senior Environmental Program Manager

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

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

Reviewer Name:		Douglas A Hotchkiss, Port of Seattle
Sections of Document Reviewed:		SMS sections 173-204-200, -500 - 590
Document Version/Date:		Draft Revisions SMS, October 2011
Page Number	Line Number	Comment
9	16	A definition of Area Background needs to be added. The area background will become, at many sites the practicable limit of cleanup, and is important in defining what will happen in a workable regulation.
10	58	Defining as “contaminated” anything above “natural background” has potential impacts that will have unintended consequences since you are defining such a large portion of the sediments as contaminated.
11	99	Natural Background should be defined in this document for the specific purposes used in this document.
14	178	“to the maximum extent practicable.” Should be added to the end of this definition. If you are trying to incentivize cleanups especially at high risk/high priority sites, as you have stated in the advance materials, having an unattainable objective makes no sense at cleanup sites and leads to unintended consequences because of the way “sediment cleanup objective” is used throughout this rule. There is currently no way to reach finality except for those sites that are isolated, or have specific unique contaminant and are in an area that regularly gets inputs of new pristine sediment. Few if any of the high priority/high risk sites fit this criteria.
15	214	“Technical impracticability waiver” needs to be defined here and added to this document
13	137	“recontamination” needs to be included and defined as sediment over the site specific cleanup standard, not over the natural or regional background,
18	98	“to the maximum extent practicable.” Should be added to the end of this sentence. If you are trying to incentivize cleanups especially at high risk/high priority sites, as you have stated in the advance materials, having an unattainable objective makes no sense at cleanup sites and leads to unintended consequences because of the way “sediment cleanup objective” is used throughout this rule. There is currently no way to reach finality except for those sites that are isolated, or have specific unique contaminant and are in an area that regularly gets inputs of new pristine sediment. Few if any of the high priority/high risk sites fit this criteria.
27	55	“Technical impracticability waiver” needs to be included here to allow finality at a site that has done all that is practicable to achieve the cleanup standard, but has not been able to meet it, similar to federal Superfund.
40	36	“to the maximum extent practicable.” Should be added to the end of this sentence. If you are trying to incentivize cleanups especially at high risk/high priority sites, as you have stated in the advance materials, having an unattainable objective makes no sense at cleanup sites and leads to unintended consequences because of the way “sediment cleanup objective” is used throughout this rule. There is currently no way to reach finality except for those sites that are isolated, or have specific unique contaminant and are in an area that regularly gets inputs of new pristine sediment. Few if any of the high priority/high risk sites fit this criteria.
41	57	The 10 year compliance time frame needs to come back in to the rule.
42	20-22	The allowable range of cancer risk needs to be expanded to cover from one in a million to one in ten-thousand similar to federal Superfund.
42	25	Should be “regional background”
43	38-40	The allowable range of cancer risk needs to be expanded to cover from one in a million to one in ten-thousand similar to federal Superfund.
43	51	The RME shall take into account the origin of the fish consumed, the species life cycle of the fish, the dietary fraction from the site, and other factors that influence how much risk is due to the sediments being regulated.

