



Association
of Washington
Business

Washington State's Chamber of Commerce

January 18, 2012

Ted Sturdevant, Director
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-47600

Dear Director Sturdevant:

This letter is in response to the Department of Ecology's request for comments on its *Fish Consumption Rates Technical Support Document (TSD)*. The Association of Washington Business (AWB) appreciates the opportunity to review and provide comments on the TSD.

As you know, Washington uses fish consumption rates as a basis for environmental cleanup and pollution control. The current rates, 6.5 grams per day (in water quality standards) and 54 grams per day (in the Model Toxics Control Act regulation), provide default values used in setting regulatory standards. Under the TSD, the Department of Ecology (Department) contends that the preliminary analysis shows that data about fish consumption in the Pacific Northwest supports the use of default fish consumption rates between 157-267 grams per day.

The Department's decision to review and update fish consumption rates for Washington residents is a decision that will result in significant policy and regulatory implications. Ultimately, a new fish consumption rate (FCR) will be used in updates to Sediment Management Standards (WAC 173-204), Surface Water Quality Standards (WAC 173-201A), and the Model Toxics Control Act (WAC 173-340). The Department should establish and implement human health-based regulatory requirements that are protective for Washington citizens while taking the time necessary to develop regulatory requirements that are both meaningful and achievable.

As the Department prepares to amend both sediment management standards and surface water quality standards, the Department must comply with all of the

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requirements of RCW 34.05.328 (significant legislative rule evaluation). An analysis under RCW 34.05.328 requires the Department, among other things, to consider alternatives to rule making, and the costs and benefits of implementation. This analysis can be used to educate the Department, the public, and the Legislature on both the science and policy choices used by the Department to update these regulations. The Department's analysis under RCW 34.05.328 should fully evaluate the policy decisions and their effects on Washington's citizens, the Department, and the regulated community.

While the AWB has not submitted comments of a scientific/technical nature, we suspect that many of the comments received by the Department on the TSD will be of a technical nature and raise questions as to the science and risk management policy used by the Department in developing a proposed FCR range of 157-267 grams per day. We respectfully request the Department to respond in writing to the substantive science/technical and risk management issues that are raised in the comments to the TSD prior to moving forward on any related rule-making activities.

Sound environmental policy requires integrated risk assessment strategies that draw on a range of disciplines, including science, technology, economics, and public policy. Actions taken by the Department to update the FCR and water quality criteria and sediment management standards should be based on credible science and avoid absurd results. Selecting a FCR that yields human health-based water quality criteria or sediment management standards to levels below natural background concentrations creates uncertainty for the regulated community to achieve compliance.

The Department should continue to explore strategies and regulatory mechanisms that allow wastewater discharges and potentially liable parties to comply in good faith with the Clean Water Act. The AWB supports the Department's decision to pursue its water quality "implementation tools" prior to updating human health-based water quality criteria. These tools and other compliance mechanisms must be in place before adopting more stringent water quality criteria, if the updated criteria are to have any meaningful impact on water quality in Washington.

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As rule making proceeds, the Department should be thoughtful in how it communicates the current risk, if any, to public health and the public health benefits derived in updating the FCR and related environmental regulations. This information is necessary to provide a context for any revision to water quality criteria and also protect against misinformation about the current risks of consuming fish or shellfish.

We thank you for the opportunity to submit comments on the TSD for your consideration. The AWB will continue to closely monitor the efforts of the Department in updating the FCR and related regulations. We appreciate your thoughtful consideration of all the comments received on the TSD.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary Chandler".

Gary Chandler
Vice President of Government Affairs