

The Boeing Company  
P.O. Box 3707  
Seattle, WA 98124-2207

January 18, 2012  
9L-22-N410-WDE-013

**BY EMAIL**

Mr. James Pendowski  
Toxics Cleanup Program Manager  
Washington Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600

Subject: Sediment Management Standards Rule Update

Dear Mr. Pendowski:

The Boeing Company appreciates the opportunity to submit preliminary comments on the Washington Department of Ecology's ("Ecology") proposed Sediment Management Standards ("SMS") rule revision. Boeing recognizes the substantial work performed by the Agency in preparing for and proposing draft rule language, and we value the opportunity afforded the SMS Advisory Committee to review and discuss this work.

Before moving to formal SMS rulemaking, Boeing strongly encourages Ecology to take a more coordinated approach to updating the various interrelated rulemakings and guidance documents. Boeing believes that a more integrated approach will allow for consideration of several key policy issues and will result in a more effective, efficient and sustainable means for achieving a cleaner environment and improved levels of human and environmental health.

Boeing agrees with Ecology that an update to SMS policies and rules would be beneficial in many respects. We also agree with Ecology that such revisions must be closely integrated with other rule revisions currently being contemplated including the water quality standards and implementation tools, source control efforts and the fish consumption rate. Sediment, water quality, fish consumption and source control issues and their collective impact need to be addressed and resolved simultaneously. A bifurcated approach to these interrelated policies and rules will undermine the objective of improving the environment and human health. For example, a coordinated definition of source control policies and implementation methods is integral to successful implementation, administration and enforcement of the SMS. The SMS revisions also rely extensively on to-be-developed background values, and these background values in turn rely on common approaches and tools for source control to be relevant. In addition, the SMS revisions rely on a statewide fish consumption rate; however, it does not appear that Ecology has considered and resolved the full implication of setting a fish consumption rate relative to the SMS rule and other pending initiatives. For these



January 18, 2012  
9L-22-N410-WDE-013  
Mr. James Pendowski

reasons, we encourage Ecology to take the time to fully consider and develop revisions to the SMS rule in a manner reflective of all such interrelationships.

Similarly, it is impossible to reliably evaluate impacts to the State or to stakeholder groups by only focusing on the SMS rule revisions. A piecemeal approach is likely to significantly understate the true cost impacts of collectively implementing the various rule revisions and policies. For example, the current impact assessment specific to the SMS rule represents only a fragment of the issues and impacts that will occur from implementing water quality standards, a fish consumption rate and source control in concert with SMS revisions. The collective requirements being considered will impose significant costs on both the regulated community and several offices in Ecology. The impact of these requirements on counties and municipalities, state and federal agencies, industry, and Ecology's own budget should be rigorously evaluated and communicated to all stakeholders as part of the rulemaking process.



As expressed in this letter and during the Advisory Committee meetings, we encourage Ecology to reconsider its current schedule and take the time necessary to fully align the current SMS rulemaking initiative with the emerging rule and policy revisions regarding water quality standards, fish consumption rates and source control before proceeding to formal SMS rulemaking. We are concerned that proceeding according to Ecology's current schedule will result in disjointed rules and guidance, an understatement of the impacts involved, and confused and ineffective implementation.

We appreciate the opportunity to have participated in the SMS Advisory Committee process to date. Boeing remains committed to continuing work with Ecology and other stakeholders to ensure that meaningful progress is made on all of these important issues in a comprehensive, timely and efficient manner. The attachment to this letter submits several comments on specific rule language that may be directed to Ecology staff. Please do not hesitate to contact me at (206) 290-6577 or Will Ernst at (425) 891-7724 on this important matter.

Sincerely,

Steven Tochko  
Senior Manager, Environmental Remediation

Attachment

cc: Dave Bradley – Washington Department of Ecology

Boeing Comments on Sediment Management Standards  
Attachment: Comments on specific SMS draft rule language

**1. Definition of “Sediment” - WAC 173-204-200(35)**

*“Sediment”<sup>15</sup> means particulate matter settled or present as particles on the bed or bottom of a body of water to which biota or humans may potentially be exposed and:*

*(a) The surface water is present in the water body for a minimum of six contiguous weeks on an annual basis; or*

*(b) The sediment is located at or below the ordinary high water mark*

*(c) Sediment can include particulate matter located in the biologically active zone or exposed to the water column by human activity (e.g. dredging), pore water flux, or other hydrological or natural action.*

*Note: <sup>15</sup> Added to clarify the existing term in the SMS rule. Definition was developed from definitions in ASTM standards and the WPCA 173-201A.*

This definition needs to clarify whether particulate matter present within engineered stormwater conveyance, storage, and infiltration structures including catch basin sumps, oil/water separators, bioswales, and stormwater detention basins (lined or unlined) is “Sediment” and subject to the SMS rule. Boeing suggests it should not since stormwater systems are intended to capture particulate matter and prevent its transport to biologically-active sediments in natural water bodies. In addition, conditions (a) and (b) should be qualified by “and” rather than “or” because both (a) and (b) must be true for particulate matter to be considered sediment. An ordinary high water mark could presumably be defined even where water is present for less than six contiguous weeks per year, in which case, as written, condition (a) could never be used to exclude any particulate matter from the definition of sediment. A definition of “ordinary high water mark” that reflects various settings throughout the State should be provided.

**2. Definition “Contaminated sediment” (WAC 173-204-200(14))**

*“Contaminated sediment”<sup>7</sup> means sediment exceeding natural background as defined in 173-340.<sup>8</sup> Footnotes indicate: <sup>7</sup> Revised to be consistent with MTCA for the definition of contaminated media, clarify existing terminology, and incorporate the human health and background framework;<sup>8</sup>*

It appears these changes were made to be consistent with MTCA, Chapter 173-340 WAC. The definition may be overly broad and should be modified based upon the following considerations:

- Referencing MTCA here is inappropriate and creates confusion because it would tie MTCA into purely sediment-type sites that are under the MTCA framework. The approach does not consider cleanup actions that might otherwise be conducted under other regulatory authorities, such as the Resource Conservation

and Recovery Act (RCRA), the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Clean Water Act (CWA), etc.;

- The MTCA “natural background” definition has been difficult to address for upland sites and would be even more difficult to address for sediment sites (especially sites in bays or freshwater systems entering marine areas). A reference to specific risk-based or numerical values would be more appropriate as such values will be the basis for compliance at any site and region.
- No definition exists for “contaminated media” under MTCA per the footnote to the revision. MTCA defines "Contaminant" as “any hazardous substance that does not occur naturally or occurs at greater than natural background levels.” It is unclear why “contaminated sediment” requires definition and what the reference to MTCA is in this case.
- Term “surface” related to “surface sediment” was removed from the definition. However, a definition of “surface sediment” exists in the SMS definitions (WAC 173-204-200(43)). These definitions should be made consistent.

### **3. Sediment Recovery Zones – WAC 173-204-590(3)(d)**

*“All discharges within the area encompassed by the sediment recovery zone shall be treated with all known, available, and reasonable methods of treatment prior to the discharge.”*

It is unclear how “reasonable” is to be defined and determined for source control and treatment of stormwater discharges to sediment cleanup areas. A process for applying a disproportionate cost analysis to source control technologies should be added. WAC 173-204-500(3) states that *“Sediment investigations and cleanups conducted in compliance with this chapter shall be presumed to also meet the substantive requirements in Chapter 173-340 WAC. For example, a remedy selected under WAC 173-204-580 meets the requirements in 173-340-360.”* Despite this directive, the proposed SMS rule revisions do not appear to include the equivalent of a disproportionate cost analysis, beyond mentioning a cost-benefit analysis in 173-204-580(4)(f). Under the current proposed language, it is unclear how a determination be made that costs outweigh benefits for certain cleanup and source control alternatives.

The rule revisions also do not appear to address how freshwater versus marine criteria will be applied in transitional environments, such as at the mouths of streams and rivers discharging to Puget Sound. The rule should establish a clear process for handling transitional environments.

The rule revisions emphasize “source control,” however, no definition is provided for “source control,” and no process or expectations are included for how sources should be identified and controlled. For example, are catch basin and sediment trap sampling

January 18, 2012  
9L-22-N410-WDE-013  
Mr. James Pendowski

programs envisioned to identify specific sources? Are building material sampling programs expected? If so, what are the parameters and guidance for such studies? Should the rule refer to the Water Quality program for source control specifics? Is the rule envisioning use of best management practices for source control from the Water Quality program, or other measures? In short, source control is implicit in the implementation of multiple rules and, therefore, it should be defined and developed as an implementation tool and a means for compliance before a draft revised SMS rule is released for public comment.