

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

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

Reviewer Name:		Kris Hendrickson, Landau Associates
Sections of Document Reviewed:		SMS sections 173-204-200, -500, - 590
Document Version/Date:		November 2011
Page Number	Line Number	Comment
General		Thank you for the opportunity to comment on the proposed revised SMS regulations. In general the proposed revisions are consistent with discussions of the MTCA/SMS Advisory Group and Sediment Cleanup Advisory Committee.
General		Identification of appropriate source control requirements, especially for stormwater, and how implementation of those requirements will be required is important but has not yet had adequate discussion and consideration. Incorporation of requirements into NPDES permits could be problematic for PLPs and other dischargers in the vicinity of a sediment cleanup site.
General		There were discussions in the MTCA/SMS Advisory Group and Sediment Cleanup Advisory Committee about the importance of providing settlements to expedite cleanups. This was one of the considerations that led to the identification of sediment cleanup units. Although the summary distributed as part of the draft revisions states that section 500 includes a “process for settling cleanup liability ...”, there is apparently no information on settling cleanup liability included in this draft.
10	58-60	Contaminated sediment is defined as sediment exceeding natural background as defined in Chapter 173-340 WAC. Sediment should not be considered contaminated unless it exceeds the Sediment Cleanup Objectives for one or more contaminants. Sediments containing contaminants at concentrations less than the Sediment Cleanup Objectives should not be considered contaminated, even if the concentrations exceed natural background.
13	138-158	Including regional background as a consideration in setting sediment cleanup standards should facilitate protective, cost-effective sediment cleanups. How regional background is identified will be key to the effectiveness of this concept. Low level ubiquitous concentrations of hazardous substances from unidentified stormwater sources that discharge to identified outfalls should not be eliminated from consideration as part of regional background.
14	179-185	Maintaining the current two-tier method of identifying sediment cleanup standards is a reasonable way to facilitate sediment cleanups.
15	201-207	Allowing investigation and cleanup of sediment cleanup units rather than only of sites should expedite sediment cleanups. There are many reasons why a PLP may want to conduct clean up of a portion of a site. Allowing that to occur results in cleanup being conducted and risk being reduced sooner than if only cleanups of complete sites were allowed. However, in order to encourage PLPs to do such cleanups, a process for settlement of liability is also needed.
15	208	Page 9 (lines 3-4) states “in cases where a definition does not exist in this chapter, the definitions in WAC 173-340 will apply.” It is neither necessary nor helpful to define “Site” on page 15.
18	69	Cleanup actions may require several years from the start of cleanup to the completion of active cleanup. The restoration time frame should be within 10 years of the completion of active cleanup, as is allowed under the current regulations [WAC 173-204-570(3)], rather than 10 years from the start of cleanup.
18	73-78	Page 19 (lines 107-111) states that sediment cleanup standards “shall be established as close as practicable to the sediment cleanup objective ...” It is not clear how repeating that as an expectation for sediment recovery zones adds anything to the department expectations.
19	107-111	Requiring compliance with sediment cleanup standards to be only through active cleanup measures is inconsistent with page 19 lines 112-124 and pages 60-63, lines 1-104 which provide cleanup action requirements and selection criteria.
19	129	It would be clearer to say that <u>Sites cleaned up under</u> “cleanup standards determined in (a) of this subsection shall not be subject to further cleanup action...” rather than that “cleanup standards” not be subject to further cleanup.
32	46	It seems like the reference to “cleanup action” in this line should instead be to a “remedial investigation” because at the time of a remedial investigation it is not yet known if a cleanup action will be necessary.
33	69-71	It is not clear how or why the remedial investigation content is determined by the type of cleanup selected under WAC 173-204-550, which provides for department initiated, other party initiated, incidental, and CERCLA cleanups. Does this refer to the level of detail required in the investigation or to something else?
39	11-13	The restoration time frame should be within 10 years of the completion of active cleanup, as is allowed under the current regulations [WAC 173-204-570(3)], rather than 10 years from the start of cleanup.
40	30-33	It is not clear what is meant by “technical limitations by ongoing releases from public or private sources

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		..."
40	34-36	This would be clearer if it were defined similarly to "Maximum allowable level" on page 41 as a concentration and level of biological effects to be achieved.
43	37-40, footnote 99	Allowable total site risk should be 10^{-5} , consistent with MTCA.
43	48-53	It is difficult to comment on these sections without knowing the default fish consumption rate and the content of guidance being prepared by Ecology on how this section will be implemented.
45	40-45	Lettering of subsections needs to be adjusted.
45	55	Analytical laboratories typically provide reporting limits or limits of quantitation but these may not be equal to the practical quantitation limit as that term is defined in MTCA.
45	60-64	The letters (f) and (g) should be replaced by (i) and (ii) respectively.
45-46	65-66	It would be clearer to say that <u>some</u> of the 'listed chemical parameter criteria represent concentrations in parts per million, "normalized," ...' since some of the criteria in Table IV are not normalized.
60-61	20-42	If one of the goals of changing wording in this section is to be consistent with MTCA, suggest you use the same wording as in MTCA (WAC 173-340-360) or simply refer to MTCA requirements and focus this section on the sediment-specific requirements.
60-61	30-34	The restoration time frame should be within 10 years of the completion of active cleanup, as is allowed under the current regulations [WAC 173-204-570(3)], rather than 10 years from the start of cleanup.
64	9, 11, 16, 22, 29	Add "or sediment cleanup unit" after "site"; cleanup action decisions may be made for sediment cleanup units or for sites.
65	15-18	Sediment recovery zones should be required when concentrations in sediments remain greater than the site-specific sediment cleanup standards after completion of active cleanup, not when they remain greater than the sediment cleanup objective.
66	32-36	If there are discharges into the sediment recovery zone by parties other than the PLP conducting the cleanup, it is likely to be difficult to require them to comply with these requirements and will probably encourage them to try to prevent or at least delay a cleanup leading to establishment of a sediment recovery zone.
67	66	Change "sediment cleanup objective" to "sediment cleanup standard". This is consistent with SMS Advisory Group discussions that included the general acknowledgment that reaching sediment cleanup objectives is likely to require much longer than 10 years, especially for chemicals for which the sediment cleanup objective is equal to natural background.