



January 18, 2012

Washington State Department of Ecology  
Attn.: Toxics Division  
PO Box 47600  
Olympia, WA 98504-7600

Delivered electronically to the following address: [RuleUpdate@ecy.wa.gov](mailto:RuleUpdate@ecy.wa.gov)

Dear Washington State Department of Ecology, Toxics Division:

Thank you for this opportunity to comment on the Department of Ecology's (the "Department's") publication entitled "Fish Consumption Rates – Technical Support Document," which was offered in draft form for public review in September of 2011. The Washington Public Ports Association (the "Association") is a public agency trade association representing more than 75 port districts statewide. These comments are intended to provide a broad policy perspective that compliments the specific technical issues raised by individual ports and by subject matter experts with expertise working on environmental cleanup and water quality projects along our state's working waterfronts.

#### **Potential negative impact on water quality and cleanup projects**

For more than 30 years, ports in our state have worked with the Department to accomplish significant environmental improvements through Washington's water quality and cleanup programs. In many ways, these mutual accomplishments have helped to establish our state as an environmental leader. However, the new recommendations put forth in the technical document threaten to undermine some of our state's most important regulatory programs, including Sediment Management Standards ("SMS"), the Model Toxics Control Act ("MTCA"), and state Water Quality Standards.

Specifically, the Department's recommended fish consumption rate – in the range of 150 to 275 g/day – represents a significant expansion beyond existing default assumptions under MTCA or Water Quality Standards and is inappropriate to apply to many SMS cleanup sites. As a result, it could render these programs essentially unusable by exposing them to litigation over a standard that is virtually impossible to achieve. This litigation could take years to resolve. In the meantime,

environmental cleanups that are currently under way would grind to a halt, beneficial ecosystem recovery projects would be postponed, and jobs related to these recovery projects would be put on hold.

Stakeholder comments offered during the rulemaking process suggest the following:

- MTCA already provides sufficient flexibility to address the protection of high-consuming populations, so rule changes are not necessary.
- If the Department's goal is to clarify agency expectations and streamline cleanup decisions, then this can be addressed with an updated narrative standard accompanied by development of appropriate regulatory guidance.
- If higher consumption rates are directly incorporated into the regulations, then sufficient detail will be required to clarify the various types of seafood associated with each consumption rate, potential receptor population and site condition. Also, site-specific adjustments of the consumption rates and diet fractions may be required.

For these reasons, we question the need to make any changes to the current fish and shellfish consumption rates at this time because the proposed changes would likely have a profound negative impact not only on jobs and economic activity, but also on positive efforts to clean up and protect our state's marine areas and working waterfronts. If changes must occur, then they will require additional clarification beyond that suggested in the document.

#### **Addressing salmon life cycles and diet fraction**

If Ecology chooses to amend the existing fish and shellfish consumption rates, then additional consideration must be given to the following two factors: salmon as an aspect of overall fish consumption rates; and, reasonable assumptions regarding diet fraction and modifying assumptions.

Salmon make up an overwhelming portion of the total amount of seafood consumed in Washington state. Numerous studies have shown that salmon accumulate a very large proportion of their total body burden of bioaccumulative toxins during the period of their life cycle when they are at sea, outside waters of our state. This includes their consumption of PCBs, dioxins and furans. As a result, any regulatory change in our state will only have a negligible impact on salmon, if it has any impact at all. Changing the state's regulations, therefore, seems very unlikely to improve the health of our salmon or those who regularly consume them. A more targeted approach, focused on consumption of shellfish and non-migratory finfish species, seems like an approach more likely to result in success.

Regarding diet fraction and other modifying assumptions, we would suggest that any use of fish consumption rates must also consider context. In most cases, it is not realistic to assume that an individual would obtain 100 percent of their diet from one small geographic area. Many of the sites addressed under SMS simply could not support the types and quantities of fish and shellfish suggested by the high consumption rates proposed in the new default range. Therefore, the recommendations section should explicitly emphasize modifying assumptions (including diet fraction) in any application of fish consumption rates. This is especially important given the very high rates recommended by Ecology in the draft document.

## Definitional concerns related to “regional background” and “active cleanup”

The definition of regional background on page 13, lines 138-158 is unclear on the question of whether or not it includes ubiquitous contamination from stormwater inputs, particularly municipal storm drains. For example, it is unclear if stormwater inputs in an embayment may include one (or more) large municipal storm drain(s). The current definition, with its exclusion of contamination from “specific sources,” could be interpreted to exclude discharges from these large pipes when determining regional background.

This language should be clarified in either or both of the following ways: first, by stating that regional background cannot include samples taken from the depositional zone of outfalls, but may include contamination from stormwater inputs, in specific situations; and/or, state that 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.

Regarding the definition of “active cleanup” on page 9, lines 6-10, we found this definition ambiguous because it is unclear whether the Department meant to include the singular act of placing a thin layer of capping material as part of active cleanup, or rather intended this to mean the placement of material and recovery time.

## Sediment recovery zones

Finally, we have concerns about language on page 56, lines 15-18 and on page 57, lines 32-34 regarding sediment recovery zones. As we read the language in 173-204-590(2), it appears that most sites and sediment site units would become sediment recovery zones during the restoration and recovery period. Furthermore, it appears to require the establishment of sediment recovery zones whenever a cleanup action leaves sediment that exceeds the sediment cleanup *objective*.

Sediment recovery zones should be the exception rather than the rule. The Department should either clarify and limit the circumstances in which sediment recovery zones will be used to be more consistent with language in -500(4)(d), or it should clarify that the standards only apply when cleanup actions leave sediments in place that exceed the sediment cleanup *standard*.

## Conclusions

In closing, we would like to recognize the Department for its extensive public comment and stakeholder process. The current document does a better job of recognizing the complexity of issues related to fish consumption rates. We believe this improvement is a direct result of the Department’s outreach effort. We would also like to recognize and thank staff for their tireless work regarding this complex issue.

As previously stated, the proposals regarding fish consumption rates could have a significant negative impact on economic activity and ecological progress in Washington state, so we suggest that further consideration is needed on the overall policy approach. If the Department chooses to proceed with this approach, then we believe additional technical issues must be addressed and the port community stands ready to assist future discussions.

Sincerely,

A handwritten signature in black ink on a light pink rectangular background. The signature is cursive and appears to read 'Johan Hellman'.

Johan Hellman  
Assistant Director