



October 4, 2012

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Martha Hankins, Toxics Cleanup Program
Washington State Department of Ecology
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OCT 03 2012

Dept of Ecology
Toxics Cleanup Program

SUBJECT: Draft Sediment Management Standards

Dear Ms. Hankins:

The Department of Natural Resources (DNR) has reviewed the Department of Ecology's Draft Sediment Management Standards Rule Proposed Amendments, including the Draft Sediment Cleanup Users Manual II, the Draft Environmental Impact Statement, the Draft Small Business Environmental Impact Statement, and the Preliminary Cost-Benefit and Least Burdensome Alternative Analyses. DNR commends and supports the Washington State Department of Ecology's (Ecology) goal to implement stricter sediment cleanup levels, and the development of region wide cleanup models with individual cleanup units and sites within a region (bay or watershed) to accomplish this goal. This proposal is an important step forward that acknowledges the nature of widespread sediment contamination.

Specific Comments:

Page 27, Lines 247-253: DNR requests clarification regarding the "beneficial reuse" definition in relation to the dredge material management program definition regarding "beneficial use." Specifically, DNR does not understand the limitation "to replace another uncontaminated material" used in the definition.

Page 31, Lines 330-340: In determining natural background, older data for an area may have a much higher limit of detection of PQL. Statistical bias may be introduced if a significant amount of older data is used to determine the PQL. What methods will Ecology use to ensure that bias from higher detection limits in older data will not be introduced?

Page 33, Lines 373-378: Since the Practical Quantitation Limit (PQL) goes down as methods improve, and can vary from method to method, when PQL is used to determine cleanup screening level or objectives, it is possible that very different concentrations will be quantifiable in the time between identification of a site and the eventual remedy, especially for contaminants that are toxic at very low concentrations, i.e. dioxin. How will Ecology handle a lowered cleanup screening or objective level in those cases?



Page 59, Lines 818-825: DNR is concerned that sediment testing is rarely, if ever, required for water quality standards, and that effluent is not necessarily tested for sediment management standards chemicals of concern, even under industrial and stormwater permits. Will Ecology use the sediment impact zone requirements to better coordinate sediment management and water quality standards, especially NPDES standards?

Page CXXI, Lines 1989-1992: As part of the RI/FS, the site boundary map should also display ownership boundaries in relation to delineations for concentrations of contaminants.

Page CXXIII, Lines 2030-2032: As part of the land use characterization in the RI/FS, the information collected should also include state/DNR use authorizations, as well as information relating to the state land classifications at a site that determine the present and proposed land uses that DNR may allow under its statutory authorities. DNR is concerned that the impacts to SOAL management have not been addressed in the rule, in the Draft Sediment Cleanup Users Manual II, and in the Environmental Impact Statement. The Legislature recognizes that the state owns these aquatic lands in fee and has delegated to DNR the responsibility to manage these lands for the benefit of the public, finds that water dependent uses will be important into the future, and that "revenues derived from leases of state-owned aquatic lands should be used to enhance opportunities for public recreation, shoreline access, environmental protection, and other public benefits associated with the aquatic lands of the state." DNR is directed by statute to manage these lands in a sustainable manner in order to provide a balance between public use and access, water dependent uses; environmental protection and utilizing renewable resources.

Page CXXIII, Lines 2034-2038: As part of the RI/FS, it should be noted that DNR manages many of these natural resources and habitat under statutory requirements. These requirements should be recognized as applicable local, state, and federal laws, or ARARs.

Page CXXXV, Lines 2275-2287: The establishment of a regional background based on older data for an area may have a much higher limit of detection of PQL. If a significant amount of older data is used to make the determination, it could introduce statistical bias. What methods will Ecology use to ensure that bias from higher detection limits in older data will not be

introduced? Once Ecology defines a regional background area, will Ecology have a process to amend regional background areas due to either increasing atmospheric deposition worldwide or decreasing due to improved source control of non-point sources i.e. storm water?

Page CLXXV, Lines 2905-2912: The state/DNR will require use authorizations for active cleanup actions where institutional controls will be located on SOAL managed by DNR. Port Districts may require authorizations for active cleanup actions that occur on state-owned aquatic lands that they may manage under a Port Management Agreement. Additionally, DNR, as any other landowner, may be required to enter into an environmental covenant, and record that covenant with the appropriate County of jurisdiction, for any active cleanup action that requires controls to ensure long-term integrity.

Page CLXXVII, Lines 2948-2949: Any cleanup use will have to be made subject to these existing authorizations.

Page CLXXXIV, Lines 3086-2093: DNR is concerned that a permit authorizing Sediment Recovery Zones issued by Ecology for the state may conflict with the legislative land classifications under which DNR manages state-owned aquatic lands and resources, and state use authorizations issued by DNR. Ecology and DNR should meet to resolve any potential conflicts.

Conclusion:

DNR recognizes that this amended rule provides Ecology with much discretion in implementing the cleanup process. The revised sediment management standards propose expanded land use controls for cleanup actions. These land use controls may conflict with existing state aquatic land laws, as well as existing state authorizations for uses on those lands. DNR recommends that Ecology and DNR meet to revise the 1992 Memorandum of Understanding between Ecology and DNR to resolve any such potential or actual conflict between the revised Sediment Management Standards and state aquatic land laws. Such areas of coordination could include information sharing, bay wide planning, source control, sediment impact zones, sediment recovery zones and liability.

Thank you for the opportunity to comment. If you'd like to discuss these comments, please contact John Bower at john.bower@dnr.wa.gov or at (360) 902-1084.

Sincerely,



Kristin Swenddal, Manager
Aquatic Resources Division

