

**Draft Sediment Management Standards Chapter 173-204 WAC Amendments  
Public Comment Form**

<b>Name of Commenter:</b>		Gary Chandler, Association of Washington Business 1414 Cherry Street SE, Olympia, WA 98501
<b>Version of Document Reviewed:</b>		<input checked="" type="checkbox"/> Review Version (Reader Friendly) <input type="checkbox"/> Official Version
<b>Date:</b>		October 29, 2012
<b>Page Number</b>	<b>Line Number</b>	<b>Comment</b>
General	-----	<p>The Association of Washington Business (AWB) is Washington’s oldest and largest statewide business association, and includes more than 8,000 members representing 700,000 employees. AWB serves as both the state’s chamber of commerce and the manufacturing and technology association.</p> <p>Several AWB members have worked with the Department of Ecology (Ecology) on its proposed Sediment Management Standards (SMS) amendments and related guidance documents. AWB would like to acknowledge the time and effort of Ecology staff in working with knowledgeable professionals and stakeholders to bring forth the proposed SMS rule amendments. AWB members have been following the development of the SMS rule revisions for a number of years.</p> <p>While the current draft SMS rule demonstrates Ecology’s commitment to address many of the technical and policy concerns in the existing SMS rule, there are still opportunities for improvement. AWB has solicited feedback on the draft SMS rule from its members. The following comments do not necessarily represent the viewpoint of our entire membership, but are offered to help Ecology in making further revisions prior to final adoption. In places where there are conflicting comments, both have been included for consideration by Ecology. Thank you for your consideration.</p>
General	-----	AWB supports Ecology’s decision not to add a default fish consumption rate to the SMS rule.
General	-----	Maintaining site-specific flexibility to establish sediment cleanup levels with a range using the existing two-tiered framework and to identify and implement site-specific remedies that are protective and practicable is critical to achieving successful sediment cleanups.
General	-----	A predisposition on dredging can increase the risk to affected populations (e.g., subsistence fisherman) contrary to environmental justice considerations. In some cases, removal of sediments causes a greater health risk than leaving in place or capping or partial removal and capping.
17	65-69	<p>Some of our members have expressed concerns over the requirement to establish sediment recovery zones at sites and cleanup units where cleanup levels cannot be met within ten years of the start of the cleanup. They report that this requirement is highly problematic.</p> <p>AWB’s understanding is that members of the Sediment Cleanup Advisory Committee made it clear to Ecology that including the sediment recovery zone standards of WAC 173-204-590 in the SMS rule revisions would present challenges to cleanup, as this element of the current SMS regulations has proved unworkable in the real world due to technical impracticability. Given that the highly conservative background or practical quantitation limit (PQL)-based sediment cleanup levels for bioaccumulative chemicals such as PCBs, PAHs, and dioxins/furans are anticipated to be exceeded at nearly every sediment cleanup site (in part because of uncontrollable, diffuse non-point source inputs of these regional contaminants), this requirement should be deleted.</p> <p>Other members support maintaining the provision for sediment recovery zones for areas where it is not practicable to achieve sediment cleanup standards within a ten-year restoration time frame; however, the time frame should begin at the <u>completion</u> of active cleanup actions rather than at the start of such actions. (See Comment on Page 36 below).</p>
26	223-227	<p>The proposed language of WAC 173-204-200(1) is problematic because it establishes “active” cleanup as the presumptive remedy at all sites. AWB’s understanding is that the Sediment Cleanup Advisory Committee addressed this issue and had a consensus view, consistent with EPA’s current sediment guidance, that there is no presumptive sediment remedy.</p> <p>The proposed amendment inappropriately codifies a presumptive remedy and incorporates a bias</p>

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		against natural recovery or other approaches. Given the differing sediment cleanup situations in Washington, the sediment cleanup remedy should always be the product of careful site-specific evaluations. Thus, the entirety of WAC 173-204-200(1) should be deleted. Similar edits need to be made to related parts of the SMS rule.
29	283-285	<p>The definition of “contaminant” needs to be expanded to recognize that the bioavailability of sediment contaminants may vary significantly both within and between sites based on site-specific geochemistry and other factors. Subsection (15) and other related sections and subsections should be revised to clarify that site-specific bioavailability considerations should be incorporated into the development of site-specific cleanup levels using approaches developed by the Interstate Technology &amp; Regulatory Council (ITRC) and discussed in other relevant agency guidance documents.</p> <p>Note the ITRC’s February 2011 Technical/Regulatory Guidance (which Ecology helped co-author): <u>“Incorporating Bioavailability Considerations into the Evaluation of Contaminated Sediment Sites”</u> states: <i>“Overall, this guidance establishes that bioavailability considerations should be incorporated in the exposure assessment process to obtain a clearer understanding of contaminant toxicity and exposure pathways such that remedy selection decisions can be focused and resources efficiently used. By incorporating bioavailability considerations into the early stages of site characterization, the risk assessment process, and remedy selection, a more effective remediation may be accomplished, which may well optimize overall cost. This web-based technical and regulatory guidance can help the user understand the proper application of these tools to assess bioavailability and more effectively protect human health and the environment.”</i></p>
31	330-340	The definition of “natural background” should be modified to include PAHs and dioxins in the examples of persistent organic compounds that can be found in surficial soils and sediment throughout much of the state due to global distribution of these hazardous substances.
34	389-393	<p>While the general definition of “regional background” in subsection (38) is workable with revisions (see below), the utility of this approach will be entirely dependent on how regional background is ultimately calculated, which presumably will be described in detail in the Sediment Cleanup User Manual. AWB understands that Ecology is developing a pilot study to examine this issue in greater detail, but we have significant concerns that the regional background calculation approaches that Ecology is currently considering are too stringent to be practical. Previous case study applications using approaches similar to what Ecology is now considering do not allow sufficient differentiation between existing or prospective SMS site units and bay-wide contamination problems. This creates gridlock in the processing of the current backlog of sediment sites.</p> <p>Regional background should include contaminants contributed to the region from multiple urban stormwater sources, in order to distinguish those pollution problems from more discrete sediment sites that can be linked to a more specific, and likely historic, past practice. Regional background problems could then be addressed under the appropriate regulatory tool (e.g. Phase II municipal permits) and not site-specific MTCA/SMS enforcement. Finally, calculation of regional background should allow for inclusion of certain contaminants if they are due to the influence of multiple urban sources. The concept of regional background should be specifically used to determine discrete SMS sites or site units.</p>
36	435-442	The proposed revisions significantly and unrealistically shorten the maximum restoration time frame for a cleanup. Informed by the Sediment Cleanup Advisory Committee members’ collective experience with how long many cleanup projects take to implement, the Committee considered and rejected the option of changing the rules from the current requirement that cleanup standards must be met within ten years following completion of cleanup, to requiring that cleanup standard must be met within ten years of <i>initiating</i> cleanup. The August 2012 proposal ignores the Committee’s

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		recommendation.  Thus, the next to last sentence of subsection (46) needs to be revised to read: " <u>within ten years after the completion of the cleanup action.</u> " The last sentence of this subsection referring to sediment recovery zones should be deleted (consistent with the Comment on Page 17 above).
xcv-xcvi	1500-1507	The sentence stating that sediments with limited contamination will be restored within a single construction season using active cleanup actions is unrealistic and should be deleted. The restoration time frame should be expected to be as short as practicable using a remedy selected through the remedy selection process in WAC 173-204-570.
xcvi	1508-1511	See Comment on Page 17 above. This subsection (d) should either be deleted or, at a minimum, revised to read: " <u>within ten years after the completion of the cleanup action.</u> "
cxxxi-cxxxii	2190-2208	The current proposed language does not adequately provide for adjustment of the cleanup level to regional background. Further, the concept of "technically possible" is highly problematic because it specifically excludes any consideration of cost. Without an ability to consider cost, there could be cleanup scenarios where it is "technically possible" to achieve the sediment cleanup level, but the remedy would not be cost-effective. This language should be modified to allow factors such as cost, net environmental effects, and technical feasibility.
clxvii	2761-2768	The table headers states that reference sediments can be used to substitute for control sediments in comparing test sediments to criteria listed therein. The table fails to present this comparison and only presents a comparison to controls. The table should illustrate both applicable comparisons to ensure that when brought into practice, practioners do not simply assume that all comparisons are to be based on the controls.  Controls are designed to ensure that the test is run correctly and not necessary to make comparisons against site (test) sediments. The preference would be to use reference sediments. Selection criterion for reference sediments should be consistent with EPA guidance, which means the following: upgradient in the same watershed as the study site; comparable physical setting as the study site; similar water depth and flow as the study site; similar sediment grain size distribution, sediment TOC content, and water quality as the study site; and relatively uncontaminated or minimally impaired.  The table seems to imply that the selection criteria for reference sediments are based on actual bioassay test results, which is inappropriate and ignores the above selection guidance.
clxxv	2899-2900	The time frame for achieving compliance with sediment cleanup standards should be ten years from the completion of active cleanup actions, consistent with the current rule, rather than from the start of cleanup. The same change should be made throughout the proposed amendments.
clxxv	2906-2908	Evaluation of whether a remedy is permanent to the maximum extent practicable is addressed in WAC 173-204-570(4). That analysis should not be undermined by Ecology in other portions of the rule. The first sentence in subsection (h) should be deleted. It is unnecessary and is inconsistent with the disproportionate cost analysis.
clxxviii	2957 - 2962	Consistent with Comments on Page 17 and 36, this subsection (b) should be deleted.  In the alternative, the time frame for achieving compliance with sediment cleanup standards should be ten years from the completion of active cleanup actions (consistent with the current rule) rather than from the start of cleanup. The same change should be made throughout the proposed amendments.

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clxxxi-clxxxvii	3007-3136	See Comment on Page 17. This section should be deleted.