



October 29, 2012

Washington Department of Ecology
Toxics Cleanup Program
Attn: Adrienne Dorrah
P.O. Box 47600
Olympia, WA 98504-7600

Sent electronically to: RuleUpdate@ecy.wa.gov

Dear Ms. Dorrah:

Thank you for this opportunity to comment on the Department of Ecology's ("Ecology") recent draft rule concerning Sediment Management Standards. Thank you as well for extending the comment deadline by two weeks from October 15 to October 29. For more than two years, port representatives have participated in discussions about the proposed rule change regarding sediment management standards. Ports around the region participate in sediment cleanups and the staff people who manage these projects are experts on this very technical subject matter. The comments herein are meant to compliment the individual comments you will likely receive from specific ports.

Sincerely,

A handwritten signature in blue ink, appearing to read "Johan Hellman", with a long horizontal flourish extending to the right.

Johan Hellman
Assistant Director

Name of Commenter:		Johan Hellman, Washington Public Ports Association
Version of Document Reviewed:		<u> X </u> Review Version (Reader Friendly) <u> </u> Official Version
Date:		
Page Number	Line Number	Comment
General Comment	N/A	<p>In reviewing the draft rule, we were encouraged by the following:</p> <ul style="list-style-type: none"> ▪ The definition of “sediment site unit” (pg. 36-37, lines 443-450) incentivizes cleanup that might not otherwise occur by allowing smaller portions of a site to be expedited. This seems like a helpful and reasonable approach. ▪ The “cleanup process expectations” set out in WAC 173-204-500 (pg. xciv-xcvi, lines 1480-1525) provide helpful context, particularly regarding recontamination. However, the use of a sediment recovery zone should only occur if a cleanup cannot achieve cleanup standards within 10 years after the completion of active cleanup as explained later in this document. ▪ The concept of “incidental cleanups” is retained in the rule draft. We encourage Ecology to link this section to WAC 173-322-070 in order to allow ports and other local governments to offset the cost of incidental cleanups by using grant funds.
General Comment	N/A	<p>While we appreciate the process and the inclusion of specific measures that may prove helpful to cleanup partners moving projects forward, we remain concerned about larger provisions in the draft rule which inevitably make many cleanups impossibly expensive. In some cases, cost considerations have been specifically removed from rule language. This kind of approach would inevitably create a rule that is theoretically beneficial but fundamentally unworkable meaning that many projects simply would not progress or even begin. An approach that disincentivizes cleanup projects in this way would inevitably result in reduced environmental benefit.</p>
11	N/A	<p>Figure 1, illustrating the two-tier framework for establishing cleanup standards, raises the following two issues, which must be resolved:</p> <ul style="list-style-type: none"> ▪ “Technical possibility”: the phrase “set as close as practicable to sediment cleanup objective based on technical possibility and adverse environmental impact” introduces significant ambiguity into the cleanup standards framework. <p>Looking to definitions within the document, “practicable” is defined as “able to be completed in consideration of environmental effects, technical feasibility and cost.”¹ However, “technically possible” is defined as “capable of being designed, constructed and implemented in a reliable and effective manner, regardless of cost.”²</p> <p>Given these definitions, the rule creates an extremely broad framework where one of the determining factors in establishing cleanup level is whether a remedy meeting that level can be designed, constructed and implemented <u>regardless of cost</u>. This recasts the framework into one where cleanup level is determined by any number of solutions that are theoretically possible, although wholly impractical. Not only is such an</p>

¹ See Section 173-204-200(34), pg. 33

² Section 173-204-200(49), pg. 37

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		<p>approach fundamentally unworkable in many instances, but it also seems destined to derail discussions away from a consideration of tactics for effectively achieving environmental cleanup into a philosophical discussion of possibility without any realistic consideration of resources.</p> <p>Therefore, the chart should be edited to read “set as close as practicable to the sediment cleanup objectives,” and use of this term in other areas of the document (including WAC 173-204-560) should be similarly changed.</p> <ul style="list-style-type: none"> ▪ Cost considerations should be factored in when setting cleanup levels: the original SMS rules and prior drafts of the proposed rule changes allowed explicit cost considerations to be factored in when setting sediment cleanup levels. Factoring in cost considerations when setting cleanup levels provides essential flexibility to ensure that cleanup actions may actually be implemented. The reason is that sediment sites offer few alternatives. They are essentially limited to either: a combination of high cost dredging and/or thick layer capping, or natural recovery (enhanced or monitored). <p>A disproportionate cost analysis will not benefit sediment cleanups in the same way it would benefit upland cleanups because upland site reviews may consider less expensive remedies than the complete excavation of all contaminated materials. In sediment cleanups, alternatives such as isolation under an impermeable cap are simply not available. Therefore, sediment levels set at a low level without explicit cost consideration may create an environment where the only alternatives that would achieve these standards are costly dredging and/or capping. As a result, many potential cleanup partners would have a huge disincentive to move forward on cleanup projects.</p>
36	440	<p>Change trigger for 10-year clock to achieve cleanup standards: ports and other cleanup partners are strongly motivated to complete projects as quickly as possible due to the high cost of mobilizing dredge equipment and crews, barges and other infrastructure. Furthermore, the reality of many modern sediment cleanups is that they occasionally span multiple construction seasons due to factors which are absolutely no fault of the entities engaging in cleanups.</p> <p>Unfortunately, the definition of “sediment recovery zone (SRZ)” indicates that such a zone may be established when Ecology determines that selected actions cannot achieve the designated standard “within ten years after the start of the cleanup action.” By starting the 10-year clock at the start of the cleanup action, rather than at the completion of active cleanup, the agency may not provide adequate time to allow for unforeseen delays outside the control of entities initiating sediment cleanups. Therefore, we respectfully submit that the trigger should be moved from “the start of cleanup action” to the “completion of active cleanup.”</p>

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xcvii	1537-1547	As previously stated, the term “technically possible” is extremely problematic. Although the draft rule would allow cleanup levels to be set within a range, this range is essentially meaningless when the determination is based on “technical possibility” regardless of cost. Therefore, we submit that this language should be amended as follows: “The sediment cleanup level shall be the sediment cleanup objective and shall be adjusted upward as required based on what is technically possible <u>practicable</u> and whether meeting the sediment cleanup objective will have an adverse impact on the aquatic environment, including natural resources and habitat.”
cxxxi	2196-2197	This is another instance where the term “technically possible” should be removed by editing WAC 173-204-560(2)(a)(i)(A) as follows: “Whether it is technically possible <u>practicable</u> to achieve the sediment cleanup level at the applicable point of compliance within the site or sediment cleanup unit.”
cxxxv-cxxxvi	2275-2297	While we appreciate the simplification of the definition for regional background, we remain concerned that the rule does not allow regional background to include low-level contamination from diffuse stormwater collected into a pipe before it is discharged.
clxxv	2897-2900	As previously indicated, the timeline for achieving cleanup standards should be ten years from the completion of active cleanup, not from the “start of the cleanup action.”
clxxv	2906-2910	This section should be changed to read: “Cleanup actions shall not rely primarily <u>exclusively</u> on monitored natural recovery or institutional controls and monitoring where it is technically possible to implement a more permanent cleanup action.”
clxxvi – clxxvii	2920-2938	The hierarchy of cleanup action alternatives should be removed. This another area where sediment cleanups differ from upland and should be treated accordingly. Variations in what material can be deposited at open water sites determine whether it is even possible to treat certain sediment contamination. Therefore, some remedial alternatives that rank high on the hierarchy will be impractical or cost-prohibitive when applied to sediment cleanups. As a result, some otherwise viable cleanup efforts will be abandoned.
clxxxi	3014-3018	As previously discussed, the trigger should be changed to “completion of active cleanup.”