



Northwest Pulp & Paper Association
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VIA E-Mail: ruleupdate@ecy.wa.gov

October 25, 2012

Ms. Adrienne Dorrah
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

*Re: NWPPA comments on proposed amendments to Chapter 173-204 WAC,
Sediment Management Standards (SMS)*

Dear Ms. Dorrah:

Please accept the Northwest Pulp and Paper Association's (NWPPA) comments on the above-referenced rulemaking. NWPPA is a 58-year old regional trade association representing eight (8) member pulp and paper mills in Washington State. We appreciate the opportunity to comment on this matter.

As you know, this rule making represents several years of diligent work by Department of Ecology staff. Throughout this rule making process, the agency has been committed to an open and transparent process with a variety of stakeholder interests. We believe, generally, that there has been much good work accomplished in this process and offer the following specific remarks.

First, we support the Department of Ecology's recent decision, as outlined in Director Ted Sturdevant's letter of July 16, 2012, to sever the human health based water quality criteria issue (and a corresponding increased numeric default limit on fish consumption rates) from this rulemaking process. We support the more inclusive and deliberative process outlined in Director Sturdevant's letter and look forward to participating in that process.

As we've stated in the past, the ability of our members to comply with any new SMS standards or surface water quality standards is of paramount importance. Given that a significant increase in Washington's fish consumption rate (FCR) would have very likely created water quality standards that could not be met (by public and private sector NPDES permittees alike) with any existing or reasonably foreseeable technology, compliance and implementation tools became a critical part of that discussion. For this reason, adopting an increased default FCR in advance of necessary implementation tools

that are acceptable to both Ecology and EPA, would likely have established a bad precedent and resulted in an unacceptable outcome in this process and, ultimately, in Ecology's new rulemaking for surface water quality standards.

Second, the Department of Ecology should base the sediment cleanup objective in WAC 173-204-560(3) on the regional background concentrations of a chemical of concern as defined in WAC 173-204-200(5). In most clean up actions it will be impracticable, if not impossible, to achieve a level of clean up below regional background levels. By definition, regional background represents concentrations of chemicals attributable to diffuse non-point sources such as atmospheric deposition and storm water. Typically, a cleanup action is not going to be able to address these sources of re-contamination. This is particularly important where the revised draft rule eliminates any consideration of ongoing sources, practicability, or cost in the selection of a sediment cleanup level in WAC 173-204-560(2)(a).

Third, NWPPA supports Ecology's intent to promulgate the SMS revision solely under the authority of the Model Toxics Control Act (MTCA). WAC 173-204-500(a) clearly provides that the provisions of Part V are to be used to set sediment cleanup standards and not sediment quality standards used for source control in Part III, and presumably Part IV, of the SMS. Ecology should make clear the Sediment Cleanup Standards provisions in Part V are not considered implementation tools for the state Water Quality Standards in Chapter 173-201A of the WAC. If not, Ecology should defer final adoption of the SMS revision until it has completed the public policy review process it has initiated for development of water quality human health criteria (HHWQC). Ecology should not take any action that would result in EPA review and approval of the SMS that would in any way prejudice the consideration of HHWQC in the State Water Quality Standards. Further, if Ecology in fact determines that the SMS revision constitutes a water quality implementation tool, then the agency is obligated to consider the implications of that determination in its compliance with requirements for significant legislative rules under RCW 34.05.328 including a Small Business Economic Impact Analysis and Preliminary Cost-Benefit Analysis and Least Burdensome Alternative Analysis.

Fourth, pursuant to draft WAC Section 173-204-561(2)(b)(i), it is apparent that Ecology may adjust fish consumption rates based on site-specific factors, and WAC Section 173-204-561(2)(b)(i)(D) implicitly acknowledges that species-specific ecological factors (e.g., home range) are relevant in this context. Although this language lacks detail, we fully support this concept and the associated flexibility it affords Ecology in addressing site-specific conditions. It also leads us to reiterate our position that anadromous fish should not be included as part of the FCR as the science clearly shows that a majority of the contaminant body burden is accumulated in the open ocean, and not in fresh or estuarine waters.

On this point, NWPPA supports the October 24, 2012 National Council for Air and Stream Improvement (NCASI) comment letter submitted to Ecology on this matter relative to its recommendation of non-inclusion of salmon as part of any fish consumption rate used in risk assessments associated with site-specific sediment cleanups. Please see NCASI's specific comment to the draft language for WAC 173-204-561(2)(b)(i)(D).

Fifth, in accordance with WAC Section 173-204-564(2)(iii), we do not believe that Ecology should arbitrarily expand the definition of what a "bioaccumulative chemical" is beyond the criterion set forth in WAC 173-333-320(2)(b).

Finally, it is apparent that WAC Section 173-204-560(2)(b) of the draft rule allows the Department of Ecology to create cleanup targets that are more stringent than those provided in the existing rule, based on site-specific information (e.g. fish consumption). However, it is also apparent that the same sections of the draft rule explicitly exclude development of less stringent targets, regardless of the circumstances. We believe that it is contrary to good science and policy to disallow adjustments which result in less stringent targets when science shows this is justified. In order to correct this, we believe that all sections of the draft rule addressing adjustments to the default risk assessment that presently disallow any adjustments leading to less stringent targets should be modified to allow adjustments based on good science, regardless of the impact on clean up targets.

Thank you again for the opportunity to provide comments on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Christian M. McCabe". The signature is fluid and cursive, with the first name being the most prominent.

Christian M. McCabe
Executive Director
Northwest Pulp and Paper Association