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Via Email - fishconsumption@ecy.wa.gov

Ms. Adrienne Dorrah
Washington State Department of Ecology
Toxics Cleanup Program
PO Box 47600
Olympia, WA 98504-7600

Re: Comments on Ecology Publication No. 12-09-058
Fish Consumption Rates Technical Support Document: A Review of Data and Information about Fish Consumption in Washington, Public Review Draft (August 27, 2012)

Dear Ms. Dorrah

These comments are provided in response to Ecology's publication of the August 2012 public review draft of "Fish Consumption Rates Technical Support Document" (Publication No. 12-09-058). Although the preface states that the Technical Support Document does not address policy questions, the document will nonetheless have direct and profound implications for the Sediment Management Standards (SMS; WAC 173-204), the State Water Quality Standards (WAC 173-201a), and the Model Toxics Control Act (MTCA; WAC 173-340), changes to all of which are being or will be considered by Ecology. Because of the pending rule SMS amendments, this letter discusses more extensively the implications of the Technical Support Document for the SMS process, however, as further explained below, the implications for the State Water Quality Standards are equally significant and troublesome. In addition to the comments specifically set forth in this letter, Georgia-Pacific is a member of the National Council for Air and Stream Improvement, Inc. and fully supports the October 24, 2012 comments submitted by that organization.

Extensive public comment and stakeholder input has been provided previously on earlier SMS rule development and fish consumption rate documents. Multiple federal and state sediment cleanup sites have already addressed human health protection using fish consumption rates protective of high-consuming populations where appropriate to site conditions. Current rules allow for this to be considered as part of risk assessment and cleanup decision-making.

As the draft document correctly points out, there is no need at this time to impose a set of default fish consumption rates in order to progress SMS cleanups or to finalize the SMS rule revision. During previous comments on the SMS rule revision, several alternative methods

to address human health protection and fish consumption rates were considered. Four options were discussed in previous stakeholder comments:

- 1) An updated SMS narrative standard for human health protection.
- 2) Guidance materials for use with SMS decision-making.
- 3) Criteria for site specific determinations.
- 4) Default fish consumption rates and modifying factors.

The current draft Technical Support Document does a better job than previous Ecology documents in providing information on the complexity of the fish consumption rate issue. Some of these important issues include:

- The challenge of reflecting the different types and quantities of seafood noted in various surveys of fish consumption;
- The importance of site use factors and fish diet fraction in MTCA and SMS cleanup decision-making;
- The differences among the various regulatory programs;
- The importance of the “salmon problem” in converting gross fish consumption rates for use in site-specific decision-making.

Requiring the use of high fish consumption rates (e.g., above 100 g/day) would represent a significant change to current default assumptions under the MTCA rules, and such high rates are inappropriate to apply at many SMS cleanup sites. These high rates would also result in dramatically more stringent surface water quality standards, many of which would be impossible or infeasible to achieve, thereby almost certainly plunging Washington’s regulatory programs into gridlock as more and more of our stated performance criteria result in unattainable standards. Moreover, for pollutants whose principal sources are outside the state’s regulatory control—for example, legacy and naturally occurring pollutants and pollutants that originate outside the state’s borders—these more stringent standards will impose disproportionate burdens on regulated sources without substantially reducing environmental concentrations or benefitting human health.

We do not use the word “gridlock” lightly. We believe that the State’s setting of standards that are literally impossible to achieve will open the floodgates to litigation that will result in no benefit to human health or the environment, but which will result in the redirection of resources away from truly beneficial measures to the legal battlefield. As has been pointed out in previous stakeholder comments provided during the SMS rule-making process:

- No rule changes are required to address protection of high-consuming populations, as sufficient flexibility is already included in MTCA to address this concern.

- Existing standards are based on conservative factors, such as the use of a 1-in-1-million risk level, to ensure the protection of both average and high-consuming populations. If regulations and regulatory decisions will now be based on the exposure level of high-consuming populations, the justification for these conservative factors will be undermined and must be reconsidered.
- If Ecology's goal is to better clarify agency expectations and streamline cleanup decisions, this can be addressed with an updated narrative standard accompanied by development of appropriate regulatory guidance.

If -- despite the serious challenges they will pose -- Ecology decides to incorporate higher consumption rates into the regulations, then sufficient detail will be required to clarify the different types of seafood associated with each consumption rate for a variety of potential receptor populations and site conditions, and site-specific adjustments of the consumption rates (both upward and downward) and diet fractions may be required. For example, we offer two specific recommendations to limit the damage caused from the unintended consequences of such an action:

- 1) Overall Fish Consumption Rates, Sources and the "Salmon Problem": The fish and shellfish consumption rates should be specific to the species being consumed and the origin of the fish. For example, the discussions of consumption of fish purchased in stores, fish markets and restaurants contain no underlying data on the origin of the purchased fish. The document presents no data that the fish and shellfish sold at local stores and restaurants come exclusively, or even significantly, from Washington waters. Additionally, as the draft document correctly points out, salmon make up the overwhelming portion of the total fish and shellfish consumed in the Pacific Northwest, and numerous studies have shown that salmon accumulate much of their body burden of bioaccumulative contaminants such as PCBs and dioxins/furans during the portion of their life cycle while they are at sea. Therefore, changing Washington's regulations will not improve the quality of our salmon. The appropriate focus of the fish and shellfish consumption rate for both the water quality and cleanup programs should be on shellfish and non-migratory finfish species that will potentially benefit from managing our water quality. This distinction in emphasis between salmon and shellfish/non-migratory finfish needs to be made very clear in Ecology's document.
- 2) Need for Reasonable Diet Fraction and Modifying Assumptions: Any use of fish consumption rate values needs to appropriately consider the context for those numbers, and reasonable diet fraction and other modifying assumptions must be considered along with the gross fish consumption rates. The water quality and cleanup programs need to adopt consumption rates that are relevant to the geographic areas that are the focus of these programs. In most cases, it is not realistic to assume that an individual would obtain 100 percent of their diet of these species from a single, small geographic area. At many of the cleanup sites addressed under SMS, the sites could never support the types and quantities of fish and shellfish production

contemplated by the high consumption rates proposed as the new default range. The document should explicitly emphasize the importance of diet fraction and other modifying assumptions in ANY application of a fish consumption rate.

In the interest of continuing real progress towards improving environmental quality in the region, we urge Ecology to revise the draft Technical Support Document to address the issues identified above. Moreover, Ecology should reconsider making any changes to the current fish and shellfish consumption rates. The proposed changes will likely result in regulatory gridlock and drastically impact businesses and local public agencies while producing no real-world benefit for human health or the environment.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Traylor Champion". The signature is written in a cursive, flowing style.

Traylor Champion
Vice President – Environmental Affairs
Georgia-Pacific LLC

cc: Clay Patmont, Anchor QEA, LLC