WASHINGTON PORTS

March 23, 2015

Cheryl Niemi
Washington State Department of Ecology
Water Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Dear Ms. Niemi,

On behalf of the Washington Public Ports Association (WPPA), please accept the following comments on the proposed water quality standards rule.

In general, WPPA has been pleased with the outcome from the long process that produced this rule. We believe that both the fish consumption rate and the excess cancer rate chosen by the Governor are allowable and appropriate under the federal Clean Water Act and provide ample protection to the varied communities in our state.

We remain deeply concerned with how Ecology will choose to implement the rule in permits. New detection technologies, monitoring activities and treatment capacities are likely to result from implementation of the draft rule. Ecology and its Water Quality Program will need to exercise care and judgement to successfully balance between public health benefits and the costs of compliance. There is little margin for error.

The decision to overlay the National Toxics Rule (NTR) standards with the values calculated by Ecology's risk model and to use the most conservative (lowest) number as the draft rule standard is problematic. In some cases, the NTR values are actually more stringent than the recent values calculated using Ecology's risk model because the NTR risk parameters are based on "old science." The most technically justifiable approach would be to use the calculated values only which represent the best available science, and not consider the NTR. This is the most significant technical issue with the proposed rule.

WPPA would like to see language added to the draft rule that codifies the conclusion that human health criteria should not be applied to stormwater discharges. The single largest direct impact to Ports of the draft rule is how it may impact stormwater permits, which are held in some capacity by many ports in the state. Excluding stormwater discharges from the

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human health criteria portion of the rule requires no changes to the standards themselves, but would provide great certainty in reducing impacts to permittees holding stormwater permits. WPPA agrees, as Ecology points out, that there is technical justification for excluding the intermittent and variable inputs of stormwater from the human health criteria.

WPPA observes that the draft *Rule Implementation Plan* does not provide many details on how Ecology will implement the rule. Ecology's comment about how the draft rule will impact current permittees suggests that the difficulties our members will face are understood. At the same time, Ecology's track record has been to be aggressive in its interpretations of rule language and use very conservative methods to develop permit limits considering the standards. Ecology should consider final development and approval of detailed implementation tools prior to final adoption of the proposed rule.

The following are additional issues/comments that should be considered by Ecology regarding the draft rule and its future implementation:

- **WPPA strongly supports** the adoption of a different acceptable risk value in developing a standard for polychlorinated biphenyls (PCBs). The acceptable risk value is 4 x 10-5, which is within the acceptable range allowable by EPA for risk management decisions.

- **WPPA supports** deferring adoption of a new criterion for methylmercury, allowing Washington to remain under the NTR for mercury.

- **WPPA supports** the proposed standards for arsenic, copper, and asbestos based on the values promulgated for drinking water under the Safe Drinking Water Act. This just makes common sense. Since arsenic is naturally occurring and ubiquitous, the use of the drinking water standard is appropriate and benefits permittees compared to adopting a more conservative value. Other states have promulgated this same approach, and it has been approved by EPA.

- Ecology's Draft Environmental Impact Statement (EIS) for the proposed rule suggests that revised standards will have little to no impact on permittees. Of course, any impacts will not be realized until permits are reissued or new permit applications are initiated. We believe that the evaluation and conclusions presented in the Draft EIS do not reflect how Ecology has evaluated the existing standards for many pollutants and that the standards in the draft rule will likely impact current and future permittees. **WPPA comment: the assertion in the draft EIS that the revised standards will have little to no impact on permittees reflects a welcome change from Ecology's past practice. WPPA looks forward to working with Ecology's permit writers to implement this understanding.**

- Ecology's analysis of potentially impacted facilities did not include facilities holding industrial stormwater general permits because these permits do not currently include numeric effluent limits based on human health criteria. **WPPA comment: While ports are not currently implementing numeric effluent limits, newly adopted standards may trigger numeric effluent limits or benchmarks in the future, particularly as additional monitoring (of discharges and receiving waters) become available. WPPA is concerned about the potential for ports to be required to meet numeric standards.**

- As more monitoring data for toxics becomes available for water bodies around the state, we believe that Ecology will likely require dischargers (both wastewater and stormwater) to monitor for those chemicals. As water body segments become listed as impaired, Ecology will be forced to require effluent limits in permits, including stormwater permits. **WPPA comment: These costs will almost certainly be borne by permittees. We expect Ecology to consider the cost of new treatment requirements against the human health benefits they achieve.**

- In their Preliminary Cost-Benefit and Least Burdensome Alternative Analysis developed for the draft rule, Ecology stated how the draft rule may affect stormwater permits. Ecology states, "because most human health-based criteria are based on lifetime exposures, direct comparisons of receiving water criteria with pollutant concentrations in intermittent stormwater discharges are not appropriate. This and the high variation in stormwater pollutant concentrations and discharge volumes, between storms and during a single storm, make the application of human health criteria to stormwater particularly problematic." **WPPA comment: We will monitor future stormwater permit development and expect Ecology's views to be integral to the agency's implementation of stormwater permits in the future.**

- Many of the existing NTR standards, as well as the new standards developed as part of the draft rule, are not measurable using current laboratory methods, and cannot be achieved through application of best management practices, including best available treatment technology. **WPPA Comment: Much depends upon how Ecology generates new limits or benchmarks. Because permittees may not be able to achieve ever more stringent requirements, Washington can expect business closures, relocations, and associated economic hardship to result. We encourage Ecology to develop effluent limits and benchmarks for permits in close partnership with the regulated community and to consider the costs and benefits of their proposed actions.**

- One impact that appears clear and that will affect WPPA members and their interests is in development and implementation of remedies under Model Toxics Control Act (MTCA), specifically regarding migration of contaminants

to surface waters and discharges of surface water or water treatment effluent to receiving waters. Ecology concluded that the proposed standards will not impact future cleanups because the attributes of these cleanups will be identical to current cleanups; however, Ecology acknowledges that past cleanup activities would have been impacted by the proposed standards. **WPPA comment: It is unrealistic to conclude all future cleanups will be the same as current cleanups; there are bound to be conditions similar to past cleanups, as well as conditions or chemicals not encountered previously. Ecology must proceed carefully to avoid creating disincentives to the cleanup of toxic contaminants in our state.**

- The proposed changes for compliance schedules and variances provide more flexibility to Ecology and permittees. The additional detail specifying the criteria for granting variances reportedly reflects current EPA guidance and policy, although we are not aware of EPA's current guidance and policy. The requirements to obtain a variance are extensive and will be costly. **WPPA comment: Ecology should consider the cost of its proposed variance process against its consequences. Economic harm will need to be balanced against the benefits of the policy.**

- The new intake credit provisions of the rule provide flexibility to permittees and Ecology by considering the quality of intake water in establishing effluent limits. The draft rule adds specific restrictions on concentration and mass of pollutants that can be discharged by permittees using intake credits. Ecology considered an alternative on restrictions to concentration only, which in our opinion would still be protective because water quality standards are concentration-based rather than mass based. **WPPA comment: Ecology should reconsider the concentration only restriction. Changing this provision will give permittees a little more flexibility than needing to additionally consider its pollutant mass contribution.**

Thank you for considering these comments.

Sincerely,

Gerry O'Keefe
Assistant Director for Environmental Affairs
Washington Public Ports Association