

# Washington Toxics Reduction Strategy Group Meeting #1

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*Friday, September 28, 2012*

## Welcome and Introductions

Ted Sturdevant, Director of the Washington Department of Ecology, welcomed and thanked everyone for coming to the first meeting of the Washington Toxics Reduction Strategy (TRS) Workgroup. The group will offer ideas for how to improve toxic chemical management in Washington. Workgroup members introduced themselves and explained their interest in improving toxics management in Washington.

## Toxic Chemicals and Toxic Chemical Management in Washington

Carol Kraege gave a presentation on toxic chemicals and toxic chemical management in Washington. The presentation provided workgroup participants with information on the data that is available regarding the presence of toxic substances in the environment and in human tissue in Washington, and an overview of Washington's programmatic approaches to reducing the presence of those substances. The purpose of the presentation was to offer participants some background information on the tools currently available to cleanup, manage and prevent toxic contamination. The presentation and background paper are available online: [www.ecy.wa.gov/toxics/policy\\_trs.htm](http://www.ecy.wa.gov/toxics/policy_trs.htm)

Participants discussed the relative costs of toxic pollution prevention versus cleanup including the effort needed to pass legislation related to toxics management or prevention. Participants made the following points:

- The burden of proof needed to legislate preventive action is very high, making preventive action difficult to effect.
- This political reality can result in contamination occurring for long periods of time before action is taken.
- This situation is made more difficult in part by the challenge in establishing direct linkages between specific chemical exposures in the environment and human health impacts.

A participant requested additional information on human health trends and the current state of knowledge and understanding about human health impacts of environmental exposure to toxic chemicals. Another participant requested information on the relative spending that Ecology dedicates to prevention as compared to cleanup. Ecology and Ross Strategic will provide this information for the next workgroup meeting.

## Challenges and Opportunities Related To Current Approaches

Ted Sturdevant presented a series of narratives about toxic contamination in Washington and the challenges that those scenarios illustrate about addressing toxics under current approaches.

**Inverted Spending on Prevention versus Cleanup:** Toxic pollution prevention is the smartest, cheapest, and healthiest way to address toxic contamination. The investment array is currently inverted, such that the bulk of spending is dedicated to cleanup with comparatively little to prevention. This spending reality could be illustrated as an "inverted pyramid."

**Inverted Burden of Responsibility:** Another challenge to effective policy on toxics in Washington is the disconnect between the people who make decisions on whether to include toxics in products and manufacturing and those who are accountable to consumers and the government (if the chemical is regulated). A strategy to address toxics should consider linkages such that people who make decisions about toxics in products and manufacturing bear responsibility for reducing the impact of these toxics on people and the environment. Participants also discussed use of the precautionary principle and whether chemical manufacturers should have a burden of proof to establish that the chemicals they produce are safe for their intended uses.

### Specific Examples

- **Inland Empire Paper and PCBs in Spokane River:** When PCBs levels in the Spokane River were investigated, it was found that one of the sources is the Inland Empire Paper Company, which recycles newspapers from around the region. Inks and dyes in the paper were leaching PCBs into effluent water. This situation raised the question of whether there is a driver to encourage manufacturers of pigments to engage in solutions to toxics in their products. Local stakeholders have come together to form the Spokane River Regional Toxic Task Force, which has committed to a five-year process to implement actions to reduce toxics loading in the river, but they have so far been unsuccessful in effectively engaging ink and dye manufacturers, many of whom are outside the United States. Partly inspired by this narrative, the Environmental Council of the States (ECOS) recently passed a resolution to pressure ink and dye manufacturers to address this problem.
- **Recontamination in Commencement Bay:** The Commencement Bay Nearshore/Tideflats Superfund Site, added to the National Priorities List in 1983, illustrates the challenges of preventing recontamination after substantial resources have gone toward a site's cleanup. The sediments of the Thea Foss Waterway were found to have been recontaminated with PCBs, and those in city waterways with mercury. Those contaminants could continue to cycle in the environment for years.
- **Pharmaceuticals and Endocrine Disruptors:** Pharmaceutical contaminants in Washington waterways cannot be removed using existing technologies. State water quality standards have not established criteria for most of these compounds. Lacking adequate tools, the State faces an uncertain path to confront the impacts of endocrine disruptors in the environment.
- **Copper in Brake Pads:** In the early 1990s, after South San Francisco Bay was listed as impaired under the Clean Water Act for copper, an investigation revealed that copper from brake pads was a major source of copper in the Bay. By 2008, brake pad manufacturers concluded that legislation banning copper in the pads was imminent and began to voluntarily limit copper in their products. In 2011, California passed a ban on copper in certain products. Even with the support of industry, the burden of proof to convince the legislature to pass a ban was very high. This narrative illustrates the challenges of inefficiency in using legislative pathways to reduce toxic contamination.
- **Seattle Street Sweeping Pilot Project:** Seattle identified a street sweeping strategy to better collect toxics in street dust/dirt, before they enter waterways and move further in the environment. This method of cleanup has shown to be superior to any other technology to collect dispersed contaminants and may serve as a model for elements of toxics reduction strategies.

## Participants' Thoughts and Perspectives

The TRS Workgroup participants discussed the challenges confronting toxic chemical management in Washington and their ideas for a path forward. The insights and suggestions that participants raised are summarized below.

**Precautionary Principle and Shifting the Burden of Responsibility:** Shifting the burden of responsibility for demonstrating the safety of toxic chemicals is an important paradigm change in reducing toxic chemicals in the environment.

- The approach used in Europe under the Registration, Evaluation, Authorization, and Restriction of Chemical Substances (REACH) regulation may be a good example of the precautionary principle in action.
- This approach could be implemented on the state or regional level; creative ideas will be necessary to implement these ideas.
- A regulatory entity potentially would need to be responsible for verifying that chemical manufacturers were producing safe substances using this approach, similar to the European Chemical Agency that ensures accountability under REACH.
- The shift in paradigm at the level of something like REACH may be too big an effort to put into place at the state level. For example, a state-level chemical ban can have the effect of encouraging chemical manufacturers to market a specific product for that market, instead of changing their practices at a broad level. However, several participants expressed that this route is part of the most appropriate path for this group and for Washington State to take to develop more effective toxics management strategies.

**Importance of Safest Alternatives Requirements:** When the PDBE ban in Washington took effect, some manufacturers chose to market a chemical replacement that was equally harmful; replacing a neurotoxin with a carcinogen. Without a requirement that manufacturers use the safest alternative to a toxic chemical, a toxic treadmill persists. The power to effect change lies in large part with chemical manufacturers. Product manufacturers generally are not proponents of using toxic chemicals when safer alternatives are available, but information is lacking on both the toxicity of chemicals and on safer alternatives.

**Importance of Creating Incentives:** In creating the Model Toxics Control Act, the key principle was the creation of liability that provided a private sector incentive to clean up toxic contamination. The public sector can define the goals, but the private sector can provide an efficient way to accomplish the goal.

**Importance of Managing Transaction Costs:** Much effort and time is often spent on crafting perfect cleanup plans when actions may be more effective. The Duwamish Superfund site was managed using an early action approach to cleanup. The intention of this was to dedicate resources primarily to easily identified early cleanup actions that could provide real environmental and human health benefits and serve as laboratories for the larger cleanup effort. Despite this intention, the Duwamish cleanup parties ended up spending over \$20 million to confirm approximately \$12 million of early cleanup actions. After twelve years, it became apparent that this strategy was not only prudent, but that if taken further, two more sites could have been cleaned up if conducted on available data instead of engaging in scientific research.

**Importance of Collaboration:** The effort to reduce PCB contamination in the Spokane River had been a contentious process, but owes its progress so far to an important collaboration effort. The partnership between the conservation community, industry, and tribal partners presented a meaningful display of solidarity from groups that sometimes are adversarial. This sends a powerful message on the importance of progress on the PCB issue. The effort only began to be successful when the disparate stakeholders stepped away from taking legal action against one another and began collaborating constructively toward solving a shared problem in an atmosphere of trust. The TRS workgroup, as a collaborative partnership between stakeholders, holds promise to send another powerful message about the importance of action on toxics.

**Focusing on Toxics in Industry:** Weyerhaeuser established a requirement that every manufacturing facility must have a written chemical management plan. One outcome of this requirement is that all PCB-containing equipment in those facilities was replaced within a four-year period. The focus on chemical storage, use, and approval resulted in a reduction from 100 facilities that were large-quantity generators to fewer than ten. The increase in focus from management on toxic chemical reduction enabled these improvements to be achieved in a relatively short period.

**Simplified Permitting:** A simplified, brief permit for industrial stormwater discharges could have the effect of tracking small-scale emitters much more comprehensively than is currently the case. The structure of the Clean Water Act may be a barrier to innovative approaches to implementation considerations in permitting. However, creating a space for creative demonstration of new ideas, such as Seattle's street-sweeping program, will be an important consideration of the group.

**Role of Public Outreach and Education:** There is an important role for education and information to help people understand what options are available.

**Articulated Target for the TRS Workgroup:** It will be important for the workgroup to establish a specific vision for their product and to develop a product that calls for specific actions if at all possible. Ecology will provide additional information on their vision for a product from the Workgroup. Participants discussed the idea of something like a list of the top ten specific actions to take on toxics reform.

### **Potential elements of a new framework for toxic chemical reform:**

- Shift more responsibility for toxics to chemical manufacturers
- Harness the efficiency of the private sector by establishing incentives or performance standards for reduction in toxics in the environment.
- Invert the pyramid of investment in prevention versus cleanup, so the most investment is made in prevention
- Embrace a precautionary approach to toxics policy
- Establish spaces and incentives for collaboration and innovation
- Manage transaction costs aggressively and promote actions and pilots rather than waiting to develop a "perfect" system

### **Action Items and Next Steps**

- Ross Strategic will call TRS workgroup members for brief interviews to solicit everyone's ideas; this content will help structure the agendas of future meetings

- During the next meeting, the group will discuss what product will be created by the end of this process
- Ross Strategic and Ecology will bring forward additional information on:
  - The approaches that Europe and other states have tried based in the precautionary principle
  - The ECOS resolution on PCBs in products
  - Data on health trends and potential links between harmful chemicals and health
  - Ecology's spending on prevention as compared to cleanup of toxic chemicals
  - Data on the effectiveness of prevention spending as compared to cleanup spending

## Meeting Participants

Name	Organization
<b>Toxics Reduction Strategy Workgroup Members</b>	
Martin Baker	Seattle Public Utilities
Rod Brown	Cascadia Law Group
Howard Frumkin	University of Washington Dean of School of Public Health
Sanjay Kapoor	Washington Business Alliance
Doug Krapas	Inland Empire Paper
Paul Lumley	Columbia River Intertribal Fish Commission
Tom Newlon	Stoel Rives, LLP
Laurie Valeriano	Washington Toxics Coalition
<b>Other Attendees</b>	
Courtney Barnes	Association of Washington Businesses
Dianne Barton	Columbia River Intertribal Fish Commission
Joshua Grice	Washington Department of Ecology
Melissa Gombosky	Inland Empire Paper
Ken Johnson ( <i>alternate for Sara Kendall</i> )	Weyerhaeuser
Carol Kraege	Washington Department of Ecology
Elizabeth McManus	Ross Strategic
Darren Rice	Washington Department of Ecology
Bill Ross	Ross Strategic
Ted Sturdevant	Washington Department of Ecology
<b>Attendees via phone</b>	
Susan Braley	Washington Department of Ecology
Cathy Davis	Washington Department of Ecology
Holly Davies	Washington Department of Ecology
Tom Laurie	Washington Department of Ecology
Cheryl Niemi	Washington Department of Ecology