



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

July 16, 2012

Open Letter to Interested Parties

RE: Ecology's Approach to Fish Consumption Standards in Washington State

Dear Ladies and Gentlemen,

Over the last several months, I have participated in a wide range of discussions about Ecology's current approach to updating our assumptions about fish consumption in Washington. As many already understand, fish consumption is important because we use this information to support regulatory decisions to protect clean water. I have heard a number of varying and strongly held viewpoints on the issue.

I've heard significant concerns about the potential costs of complying with new standards driven by new fish consumption rates, and questions as to whether those standards will be technologically possible to meet. Some have questioned our process, and asserted that more time is needed for engagement, understanding and input. Others have voiced concerns that technical fish consumption data will dictate policy decisions, or that we are making policy decisions outside of the rulemaking process and skirting the Administrative Procedures Act.

Others believe we are moving too slowly, because Washington's fish consumption rates for years have not reflected actual consumption here. Many fear that our implementation tools rule will create loopholes so polluters can skirt their responsibility to minimize toxic pollution.

Many believe that if we add a default fish consumption rate to our Sediment Management Standards (SMS), we will necessarily adopt the same number when we later update the Surface Water Quality Standards. As a result, questions that more appropriately belong in the Surface Water Quality Standards process – which we had planned to start next year – are being raised in the SMS process, without an effective way to address those questions.

After listening to these concerns, I have concluded that our current process is not building a foundation that will lead to the successful conclusion of these efforts. Revising Washington's standards for clean water and sediments is critically important and enormously complex. It will never be easy or simple, but it does need to be understood and supported by the public to set us on a durable and credible path. Consequently, Ecology will modify its approach to adopting appropriately protective fish consumption rates.

I want to be clear – we are not slowing down or backing away from this important work. The question is not *whether* we update the standards, but *how* we best update them. We will proceed in a way that is transparent, inclusive, responsive and technically credible.

Given the concerns associated with Ecology's current approach, I have concluded that making the following adjustments to the process and timeline will more effectively advance this issue.

Revised Ecology Approach

The updated approach includes the following actions:

- **Establish a clear understanding of Washington fish consumption data.**
Ecology will distribute a second draft of the Fish Consumption Rate Technical Support Document, including a response to comments, for further public input in August 2012. We will convene a series of technical meetings to discuss the revised report in September and October of this year. Ecology expects to publish a final document by the end of the year. This is a technical document. It is designed to compile and evaluate available information on fish consumption in Washington State. It is not designed to resolve the policy issues associated with using that information to make regulatory decisions. Those issues will be dealt with in separate rulemaking documents and processes. We will change the document to more clearly highlight this distinction.
- **Begin the process of adopting new human health criteria in the Surface Water Quality Standards based on an appropriately protective fish consumption rate.**
Ecology will move up the start date for this process by filing a CR-101 that announces this rulemaking in August 2012. This will start the process for adopting the Surface Water Quality Standards for human health criteria for Washington, including a fish consumption rate that reflects real consumption patterns in Washington. Ecology will establish a policy forum where the larger questions related to water quality standards will be discussed in an open, inclusive manner.
- **Continue work on updating the Sediment Management Standards, but without a default fish consumption rate.** Ecology will continue working on revisions to the Sediment Management Standards rule, and plans to publish a formal rule proposal (called a CR-102) for public review and comment in August 2012. Ecology will hold several public hearings on the proposed changes. Ecology has decided not to include a default fish consumption rate in the cleanup standards section of the rule. However, Ecology will propose in the draft rule that site-specific cleanup standards must be established using a *reasonable maximum exposure* standard. This will be based on protecting Washingtonians at the high end of average fish consumption, which in turn will protect all those who eat fish.
- **Continue with implementation tools and link discussion to broader Surface Water Quality Standards discussions.** Ecology's work on implementation tools is intended to

provide options to permit holders for complying with water quality standards. This work will continue, although the pace will slow and Ecology will not issue a draft rule until 2013. Ecology plans to re-file the first step of this rulemaking (the CR-101) to clarify that the implementation tools and human health criteria adoption are two separate – but concurrent – rulemaking processes.

A New Toxics Reduction Strategy Is Needed

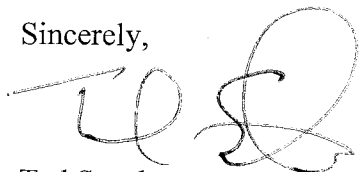
In recent years, one of Ecology's top priorities has been the reduction of toxic threats in our state, and Washington has made significant progress in reducing toxic chemicals in the products we consume, the air, land and water that sustain us, and in other areas. But significant opportunities to prevent toxic releases and exposures are not captured by current laws and resources, and continue to go unrealized. While we are proud of the progress we have made, our work is far from done. At the same time, we are seeing that some regulations can lead to requiring high-cost/low-value measures that serve little purpose while carrying great expense.

Current regulations alone – like the ones we are now revising – won't get the job done. I believe it is time to ask whether we can devise new approaches in Washington State that create a win-win-win for our environment, public health and our economy, by achieving better, faster reductions in toxic pollution, while avoiding those high-cost/low-value scenarios. In the coming weeks, I will be convening an effort to ask and answer this question over the next 6 months with the goal of finding innovative new strategies for further development and, hopefully, implementation in 2013 and beyond. This effort is separate from those processes described above, but is intended to develop new tools for deployment across the toxics landscape.

While there is much work still to do, I am confident that through productive engagement and a focus on solutions, we can come together to create common sense, sustainable solutions that achieve meaningful reductions in toxic pollution in our great state.

You will find the most current information about fish consumption rate rulemaking on our website. I invite you to visit it at www.ecy.wa.gov/toxics/fish.html.

Sincerely,



Ted Sturdevant
Director

**Revised Timeline for
Sediment Management Standards & Surface Water Quality Standards Revisions**

2012

2013

July

Aug

Sept

Oct

Nov

Dec

Jan

Feb

Revised Technical Support Document on fish consumption data in Washington State

In progress- addressing issues raised by comments, stakeholders, tribes; preparing Response to Comments; additional technical analyses as needed	Publish 2 nd Draft Report With Response to Comments & associated changes Workshops / Technical workgroup	Report Finalized
--	---	------------------

Sediment Management Standards Rulemaking for cleaning up contaminated sites in water

Rule pre-proposal Notice-of-intent phase in progress (CR-101)	Notice of Proposed Rulemaking phase (CR-102) formal public hearings and comments	Final Rule Adopted (CR-103)
---	--	-----------------------------

Water Quality Implementation Tools Rulemaking for developing compliance options for dischargers

Rule pre-proposal Notice-of-intent phase in progress (CR-101)	Refine CR-101 in light of Water Quality Standards Human Health Criteria (CR-101)	Continue work on developing compliance options for dischargers to meet increasingly challenging limits. Explore and discuss options with stakeholders and tribes; engage EPA.	Target: Notice of Proposed Rulemaking (CR-102) Spring 2013 Rule adopted Fall 2013
---	--	---	---

Surface Water Quality Standards Human Health Criteria Rulemaking to establish criteria for protecting human health, including a new fish consumption rate

Rule pre-proposal Notice-of-intent filing (CR-101)	Begin process of establishing human health criteria in Surface Water Quality Standards. As part of process, establish facilitated Policy Table to support high-level policy communication with interested parties. Purpose: communication, education, dialogue, possible recommendations, high-level view of related issues & processes. Augment with facilitated public workshops and individual outreach as needed.	Targets: Notice of Proposed Rulemaking (CR-102) Fall 2013 Rule adopted Spring 2014
--	---	--

Toxics Reduction Strategies for Washington State Dialogue

In recognition that toxic cleanups and regulating discharges are only part of the solution, convene a facilitated workgroup to identify innovative concepts for achieving broad toxic reduction goals in Washington State while avoiding high-cost / low-value outcomes. Subjects may include: chemical controls, product improvements, regulatory programs, direct implementation, voluntary actions, and other stand-alone or combined efforts to reduce exposure to toxic chemicals.	Final TRS Product Phase 1
---	---------------------------