



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000  
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January 15, 2013

Open Letter to Interested Parties

**RE: Final Fish Consumption Rates Technical Support Document**

Dear Ladies and Gentlemen:

In the face of new and lingering toxic threats, how do we continue to improve our protection of people who eat fish from Washington waters and our communities who rely on fish for a large portion of their diet? This question is fundamental to many toxic site cleanup decisions and will be crucial as we adopt human health criteria under the Clean Water Act in the state's Water Quality Standards. The Fish Consumption Rates Technical Support Document evaluates available data on fish consumption by Washington residents and provides information indispensable to making these decisions. It tells us how much fish people are actually eating.

I want to offer my sincere thanks to the many people who reviewed and critiqued this document over the past year. This final report provides a firm foundation for a number of important technical and policy decisions ahead. Our state has some of the best fish and shellfish in the nation, and we want to keep it that way. Fish and shellfish are an important part of healthy diet and are part of the natural resource assets that enrich our lives and make Washington State a great place to live and do business.

Along with any new information that becomes available, this report will inform our cleanup decisions as to what the reasonable maximum exposure to contamination from fish consumption is at specific sites. It will also play an important role in our development of human health criteria in our Water Quality Standards.

The Water Quality Standards work underway is especially challenging. Targeting the appropriate fish consumption rate is just one of the many decisions before us. Washington has some of the highest fish-consuming communities in the country, but we are currently using the



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lowest fish consumption rate in our standards based on EPA's National Toxics Rule of only 6.5 grams/day. The studies examined in this report demonstrate that we have communities that eat fish from our waters at much higher rates. We will also need to determine what the appropriate human risk level targets are for each of the regulated chemicals and how to calculate those risks. Much concern has been expressed that using higher fish consumption rates in combination with other conservative public policy choices about exposure and risk could create an impossible burden for regulated dischargers. While these public policy choices have not been made, this is a valid concern. This is why we are concurrently looking at how we can implement any new standards in a way that makes steady progress toward fully protecting our people and the environment, while providing a sensible, predictable compliance pathway for our businesses.

I firmly believe that Washington State can and will find the right balancing point that continues to move us ahead in protecting our citizens and environment from toxic pollution. No state is doing more to protect its citizens from the vast array of modern toxic threats than Washington State, and this is just one more important step in that direction. Using information in this document and applying it through our sediment and water quality standards will help us focus on the proper targets for protecting people and our environment, while our efforts to modernize and improve our available compliance tools will ensure that progress is being made.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ted Sturdevant', with a stylized, cursive flourish at the end.

Ted Sturdevant  
Director



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August 30, 2012

Open Letter to Interested Parties

**RE: Fish Consumption Rates Technical Support Document**

Dear Ladies and Gentlemen:

I am pleased to offer for your review, the Department of Ecology's updated draft of the *Fish Consumption Rates Technical Support Document*. I invite you to read and comment on the draft as we work to finalize the document this fall.

Washington's marine and fresh waters are home to rich stocks of fish and shellfish. Washington-grown fish and shellfish rank among the world's cleanest and healthiest, and they are shipped to markets throughout the world. As the state's population, businesses and industries grow, and as sources of toxics increase, we all need to work together to make certain that this important economic and cultural asset is maintained and protected so that Washington continues to be a leader in the production of clean and abundant fisheries. Likewise, it is essential that Washingtonians are able – now and in the future – to eat locally harvested fish without incurring risks to their health. This means we need to ensure that the limits we place on sources of toxics keep up with the growing potential for toxics to enter the environment.

As one step in a larger effort to protect the quality of Washington's water bodies, Ecology is researching Washington-specific data and compiling information on how much fish and shellfish Washingtonians eat. That data is contained in the updated draft of the *Fish Consumption Rates Technical Support Document*. When the report is finalized, Ecology will use that information in updating regulations that address toxics in fish and shellfish, specifically the process of adopting new human health-based criteria into the state's Surface Water Quality Standards. Deriving water quality standards from more accurate fish and shellfish consumption information will help to maintain the quality of Washington's aquatic environment so that Washington's healthy fish and shellfish resources are protected today and into the future. Protecting the health of these resources is important for the well-being of the state's environment, economy, and people – *all* of its people. Even if you don't eat fish and shellfish harvested from Washington waters, you still share in the benefits those resources bring to our state's economy and the clean water that supports them.



## **BACKGROUND**

Ecology distributed the *Fish Consumption Rate Technical Support Document (Version 1.0)* for public review in early October 2011. The technical evaluations in the document were modeled on similar evaluations completed by the Environmental Protection Agency and the Oregon Department of Environmental Quality.

When the initial draft was released, we asked all interested parties – including tribes, industries, municipalities and citizens of Washington – to engage with us in a meaningful dialogue on fish consumption rates. Ecology received several hundred comments on the draft document. I thank each of you who responded to our request by taking the time to review the original draft and provide us with thoughtful comments.

We have reviewed those comments and revised the technical support document. We have performed additional technical analyses to address issues raised during the public comment period. We also prepared a separate document that summarizes the range of public comments and Ecology's response on key issues.

## **REVISED REPORT**

We have made a number of changes to the technical support document in response to public comments and Ecology's revised regulatory process announced in July. You will notice two major differences between the revised report and the document distributed for public review in October of last year.

First, we have revised the document to focus more clearly on the scientific and technical issues associated with estimating the amount of fish and shellfish eaten by people in Washington. Several people commented that they thought the recommendations in the October 2011 document embodied a number of policy choices that should be only be decided through a process. Ecology agrees that policy decisions are appropriately addressed during the process for revising the state's water quality standards, in the sediment management standards, or through the preparation of cleanup action plans for individual sites. Consequently, the recommendations on selecting a default fish consumption rate for one or more programs (Chapter 7) have been removed. Other sections have been revised to better distinguish science issues and regulatory decisions associated with using the scientific data.

Let me be clear – our decision to remove from this technical document, recommendations for a regulatory fish consumption rate, in no way reflects a backing away from the science. The studies we rely upon are clearly cited and meet rigorous standards of scientific credibility, as defined by standard scientific practices and standards for credible data set by the Washington Legislature. Credible science should and will underpin the policy choice of establishing a new fish consumption rate. It is fair and appropriate that this policy choice be made in accordance with the public rulemaking process, established by the Legislature.

Second, we have revised the document to incorporate additional information on fish consumption rates and exposure for the general population and recreational fishers. The revised document includes additional information on salmon consumption rates and life history relevant to contaminant uptake. We have also included two new chapters. Chapter 5 summarizes sources of uncertainty and variability in current fish consumption rate information. Chapter 6 highlights (but does not attempt to resolve) key policy choices that will need to be made when using the scientific information on fish consumption rates to support regulatory decisions.

These changes reflect Ecology's commitment to updating our current regulatory requirements and our revised strategy for fulfilling that commitment. Specifically, Ecology announced in July that we were not going to propose a default fish consumption rate number in the Sediment Management Standards (SMS) rule (Chapter 173-204 WAC). Instead, we propose to use "reasonable maximum exposure" as the standard of protection for fish consumers on a site-specific basis. Ecology also announced that we will begin the process to update our Surface Water Quality Standards for the State of Washington (Chapter 173-201A WAC) with human health criteria which will include a revised fish consumption rate.

#### **NEXT STEPS**

Once again, I ask you to review this document and provide us with your comments. We are accepting public comments through October 26, 2012. Comments may be sent to [fishconsumption@ecy.wa.gov](mailto:fishconsumption@ecy.wa.gov). Ecology will convene technical meetings in September and October to discuss this revised report, and information about these meetings will be posted on the Ecology website.

I have said this before, but it is worth repeating. 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 and afford all our citizens the protections they expect and deserve.

I thank you in advance for playing a part in this effort.

Sincerely,



Ted Sturdevant  
Director



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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**

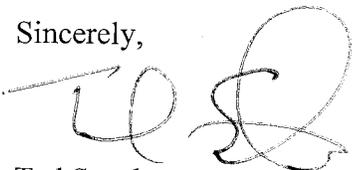
In recent years, one of Ecology's top priorities has been the reduction of toxic threats in our state, and Washington has made significant progress in reducing toxic chemicals in the products we consume, the air, land and water that sustain us, and in other areas. But significant opportunities to prevent 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](http://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 <sup>nd</sup> Draft Report With Response to Comments & associated changes Workshops / Technical workgroup	Report Finalized
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**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)
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**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
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**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
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**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
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