

GOVERNOR'S INFORMATIONAL BRIEF

Reviewed by Chief of Staff ✓

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ISSUE: UPDATING FISH CONSUMPTION RATE IN SEDIMENT & WATER QUALITY STANDARDS

PURPOSE: INFORMATIONAL

ALSO REVIEWED BY:

Executive Summary: The state's current assumptions about fish consumption – those that drive our standards for sediment cleanup and for surface water quality – are outdated. Scientific studies support the use of a significantly higher rate. Ecology is moving forward on three rules:

- 1) Updating fish consumption rates in the Sediment Management Standards; and
- 2) Improving NPDES compliance implementation tools in the Water Quality Standards to help dischargers comply with more protective pollution limits.
- 3) A third rule would follow the completion of the NPDES implementation tools rule to update the fish consumption rates in our Surface Water Quality Standards.

In response to the high level of interest in this subject, I and my staff have been meeting and holding workshops with industry representatives, legislators, tribes and environmentalists. As we agreed, my message is that we are taking the time to do this right, even if we don't finish everything this year. Accordingly, we have extended our timelines in order to allow full engagement on technical and policy issues. To convey this message, I sent letters to legislators and others (see attached).

A budget proviso originating at AWB is under consideration in the Senate that would require Ecology to present our rule package and supporting material to legislative committees prior to filing the CR 102 updating our Sediment Management Standards.

Rep. DeBolt would like to just see this issue go away.

GOVERNOR'S INFORMATIONAL BRIEF

BACKGROUND: Washington's surface water and sediment standards are set to protect human consumption of fish and shellfish. This benefits recreational and commercial fish and shellfish industries and many families and communities that utilize fish resources for subsistence purposes based on cultural practices. These standards rely on accurate information about fish consumption rates.

State standards currently use two default fish consumption rates. For water quality standards, the current rate is 6.5 grams per day, which equates to less than one-half pound of fish and shellfish per person per month. For sediment cleanup standards, the rate is 54 grams per day, which is less than four pounds of fish and shellfish per person per month. At the Centennial Accord meeting, tribes served 6.5 grams of smoked salmon to all attendees, about the size of two sugar cubes.

Pressure from tribes and others to update these standards has been building for years. Since tribal communities are among the highest subsistence users of fish and shellfish, tribes view this as a treaty, cultural and environmental justice issue. Federal regulations require that the standards and criteria be updated as needed based on new information. Given what we know and progress made by other states, we believe we may be legally vulnerable if we do not pick this issue up and start moving it forward.

Industry and municipalities with NPDES permits are understandably concerned about potentially being held to unattainable standards. We have been trying to channel the high concern we are hearing into the rulemaking process rather than legislation. A budget proviso is under consideration in the Senate that would have Ecology present the case for fish consumption rate changes to legislature before filing the CR 102. We are working to ensure that any proviso does not unduly sidetrack our process timeline.

Boeing's Mary Armstrong told me, as other industry representatives have, that she recognizes the number must change and that implementation is the key. Hence our decision to move ahead on a rule to improve our NPDES discharger compliance tools first, before we update the fish consumption rate used in the Surface Water Quality Standards.

Republicans are responding to what they're hearing from business and are watching this closely. Democrats have not been engaged as much. Enviro and Tribes have engaged with the agency, concerned about the prospect of loopholes in the compliance tools, but have not engaged effectively with the legislature.

I recently sent a letter to stakeholders and legislators extending our timelines for public and stakeholder involvement. I have been making legislative visits explaining the policy questions before us and that we are engaging closely with the business community. I have asked AWB to assemble a working team to engage closely with us, but this has not happened yet.

From what we have heard about the Oregon experience so far, industries are not happy with Oregon's implementation approach, although no businesses have been seriously held back

GOVERNOR'S INFORMATIONAL BRIEF

following Oregon's update of their standards to 175 g/day. Idaho has proposed a state-wide default rate of 17.5 g/day, which we expect EPA to disapprove.

We believe that, while compliance with more protective standards will pose new challenges for both regulators and the regulated, we can provide dischargers with a predictable compliance path while providing better protection for sensitive communities. This is why we have embarked on a new rule to improve our compliance implementation tools, before we update the Water Quality Standards.

Current compliance tools are limited to 5 and 10-year time frames. TMDLs and permitting situations sometimes result in permit-required control activities that will require more than 10 years to attain compliance pollutant controls. And in the future, this is will be particularly important with contaminants in the environment that we know will take decades to reduce, such as PCBs and mercury.

This rule will benefit current dischargers, as well as those discharging under future more protective standards. In my view, it fits well within the "public health" exception to the extended moratorium.

Under the current schedule, the earliest new surface water quality standards would go into effect for dischargers is Spring 2014 and would be phased in with their permit renewal cycle.

TALKING POINTS:

- The state's current fish consumption rate is plainly wrong and needs to be updated
- It's long overdue.
- It's the right thing to do, it's important to the health of our high risk, high fish consuming families.
- We believe we can provide dischargers with a predictable compliance path while providing better protection for sensitive communities.
- Recognizing the concerns of industry/ municipalities and learning from Oregon's experience, we are working on a rule to improve our compliance tools first, before beginning a rule to update our water quality standards.

NEXT STEPS:

- Complete technical and science documents – by June 2012
- Stakeholder engagement and public process – ongoing
- Sediment Management Standards Update – CR 102 by Summer 2012
- Surface Water Quality Standards Implementation Tools Update – CR102 by Summer 2012
- Surface Water Quality Standards Update of Human Health Criteria – begin after completion of Implementation Tools rulemaking, completed spring 2014.

GOVERNOR'S COMMENTS: