

Human Health

Comments Submitted via Discussion Forum

4/14/2008 – 5/9/2008

From: Naki Stevens

Date: 05/06/2008

Comment: Institutional Barriers to Implementation of Puget Sound Plans and Programs
People For Puget Sound strongly recommend that the Partnership include in the revised topic forum issue papers detailed analyses of, and recommendations to remove, the institutional barriers to action, asking - and answering - the truly hard questions of why the many plans to save the Sound since 1986, and the many related regulatory programs, have not been fully implemented. Such social science work will contribute more to the effort than nuances on problem definition from a biological, chemical, or oceanographic perspective. We suggest nine key areas for focus, although a thorough examination of the history of partial and failed implementation will no doubt reveal many more. We don't need a time-consuming study; we do need acknowledgement that major institutional barriers have prevented success - and why - if we are to have any hope of overcoming them and achieving full implementation of the 2020 Action Agenda.
The challenge for the Partnership and the Leadership Council is to learn from to past and not reinvent the efforts of the last twenty-five years but to bring forth leadership that will move us past these institutional barriers, will educate people and get them engaged, leadership that will see that existing laws are enforced, leadership that will put real money to these tasks, and leadership that will make the hard decisions on actions that the Sound needs now.

1. Funding and Budgets

The funding provided by federal, state and local governments, while considerable, has never come close to the amount actually needed to fully implement the Puget Sound Water Quality Management Plan, and related programs, and recover the Sound to health. The 2006 Partnership, in its final report to the Governor (December 2006) noted that "Based on the estimates of current unmet needs, achieving a healthy Puget Sound will require a doubling or tripling of current expenditures" (\$689 million per year).

For example, the Ecology NPDES water quality permit program is in the process of laying off nine FTEs and not filling the equivalent of 16 additional positions due to shortfalls in revenues from permit fees. Most of these reductions are in compliance work. Ecology's oil spill program has been operating in the red and required a short-term bailout of \$2.5 million this year alone. These are examples of how we are moving backwards, experiencing shortfalls and reductions in programs that are already underfunded.

The Partnership should assess why funding has never been provided at the needed

levels - what have been the barriers to adequate funding? It is worth noting that the 2006 Partnership's public opinion poll found that 76% agree "we should do everything we can to protect the Sound, even if it requires us to spend more money through taxes or fees." What led numerous legislatures to so seriously under-fund Puget Sound plan implementation, including the many regulatory programs that are the backbone of the effort? What lessons can be learned that will help us be successful in fully finding the Action Agenda? State agency budgets have never been aligned with priorities in the Puget Sound plan, making the limited dollars available less effectively spent.

2. Enforcement of Existing Programs

Positive steps to clean up the Sound have been overshadowed by further deterioration due to lack of sufficient funding and weak enforcement of regulatory programs. The 2020 Action Agenda must be grounded on a fresh and thorough examination of the institutional barriers to achieving full compliance with environmental programs. For example, the law that creates the State Hydraulic Code allows only criminal penalties, which has resulted in virtually no enforcement of this crucial program for protected nearshore habitat, since it falls to county prosecutors to prioritize Hydraulic Code infractions over, say, domestic disputes. There is no funding or will at the local level to use such a big hammer. The legislature has failed to pass legislation over many sessions to correct this by establishing civil enforcement authority for the Department of Fish and Wildlife.

Even where the tools are in place for effective implementation and enforcement, state and local agencies have either reduced or eliminated funding for compliance positions. For example, Ecology used to have an entire enforcement program. It was eliminated about seven or eight years ago. The legislature in 2000 funded 3 FTEs at Ecology for water quality/nonpoint source compliance for salmon recovery efforts, positions that were subsequently lost to budget reductions. In a recent analysis by Soundkeeper Alliance, out of 80 industrial stormwater permits, at least 20 had compliance failures, including no discharge monitoring reports, benchmark exceedences with no Action Level responses, and very large discharges of zinc. Soundkeeper also estimates that 78 percent of boatyards fail to comply with the Boatyard General Permit. According to Ecology's Water Quality Program Annual Compliance Report - Calendar Year 2003, 37 percent of all industrial, municipal, and general permit holders violated their effluent limits. Municipal sewage treatment plants had the lowest compliance rates with 44 percent violating limits. An analysis of enforcement shortfalls is essential to fulfilling the Partnership's accountability responsibilities. Without a level playing field of even-handed enforcement, those businesses that comply with environmental regulatory programs feel taken advantage of by those that don't comply and get away with it and by the system itself.

3. Accountability for Results and Regulatory Effectiveness

Accountability is the watchword of the legislation creating the Partnership for a

reason: for more than 20 years, the state has had a management plan for Puget Sound with no system of accountability for results. Therefore, most of the indicators of the health of the Sound are in decline. For example, no system of accountability has been in place to ensure that regulatory programs and other aspects of the Puget Sound recovery effort have achieved their intended results.

And regulatory programs do not necessarily achieve their statutory goals. For example, Ecology's Fact Sheet for the Phase II Stormwater Permit (page 31) makes clear that "...the permit does not require strict compliance with water quality standards for municipal stormwater discharges...[and] Ecology acknowledges that it may take decades or longer to address the water quality impacts of existing municipal stormwater discharges."

At the local level, an example of lack of accountability of great importance is that Critical Areas Ordinances require buffers adjacent to creeks or the Sound, but in many jurisdictions, so many waivers are issued that the buffers become meaningless. The number and location of these waivers are not tracked, there is no accountability for impacts to the Sound or tributary waters.

4. Soundwide Consistency, Clarity, Fairness

The lack of minimum standards that apply Soundwide for protection of habitat and water quality has resulted in a confusing, inconsistent and conflicting hodge-podge of buffer widths and variances, exemptions, exceptions and other ways to get around land use restrictions, depending on the county or city. With little or no incentive and no requirement to do what it would take to truly protect the Sound, jurisdictions do the minimum to save money and time and avoid politically tough decisions on local land use.

5. Permit System Fragmentation, Cumulative Impacts, Mitigation

For major projects, Puget Sound protection often falls through the gaps when five or six agencies each have a small piece of a project to permit, but no one is looking out for the health of Puget Sound. The cumulative impacts may be small for each permit and/or for each project, but added up they account for the "death from a thousand cuts" that is killing the Sound and the drainages. No one agency is responsible for addressing cumulative impacts on the Sound. The lack of consideration of cumulative impacts also is imbedded in many of our regulatory programs. Air quality permits, for example, are not required to assess cumulative impacts to an airshed.

Compensatory mitigation is touted as the solution, despite study after study revealing the near-complete failure of mitigation projects, and the repeatedly-cited conclusion that protection of resources and habitat is more cost-effective and ecologically successful than trying to compensate, mitigate or restore.

6. Monitoring and Adaptive Management

While the long-standing Puget Sound Ambient Monitoring Program has produced useful data and reports over the years, the monitoring system, including compliance monitoring, currently in place is wholly inadequate to support real adaptive

management of plan implementation, including revisions based on new information from monitoring. Monitoring and assessment programs have been subject to shifting agency priorities, significant budget cutbacks and lack of a fully coordinated overarching governance structure. A credible, transparent and well-funded regional monitoring program that addresses key ecosystem questions is critical to the success of the Action Agenda.

7. Planning over Action

A great deal of time has been spent over the years on planning, to the detriment of action, indicating weak funding support and a stronger interest in process than actual implementation. This has occurred at both the state and the local government level. Repeated planning efforts have also contributed to public cynicism, which in turn makes it harder to mobilize public support. A recent study of a Puget Sound county showed that of 278 recommendations in 43 current adopted plans, only 10 are being funded and implemented.

Local government officials have noted in testimony in the 2007 state legislature that the constraints on local action to protect the Sound include lack of funding, lack of technical expertise and data, lack of staff for inter-jurisdictional coordination of planning and implementation, competing priorities, conflicting laws (such as growth management and water quality), and disincentives.

8. Education, Communications, Public Engagement

No one has undertaken the massive marketing campaign that will be needed to bring the public up to speed and get them on board with doing what needs to be done to save the Sound. Little effort has been invested in getting the public engaged. The Puget Sound Action Team's Public Involvement and Education (PIE) program was always oversubscribed and the projects were all one-time, short-term affairs that, while often creative and effective on a very small scale, did not help build capacity in the non-governmental sector for sustaining efforts to save the Sound.

9. Economic Incentives and Disincentives are Misaligned

Public policy in Washington does not reflect the tremendous economic value that Puget Sound provides to our economy. One recent assessment of ecosystem services in the Green River watershed showed that King County residents gain between \$1.7 and \$6 billion in value every year. Another 2004 study showed that the ecosystem services provided by the shoreline of Maury Island are worth \$90,000 per acre per year.

Yet regulations are tagged as "onerous" by some businesses and land developers - with no regard to quality of life, economic, and other underlying values that makes the Puget Sound region such a superb place to live. While developers complain that local government impact fees are too high to make development profitable, deeper digging into the facts reveals that development comes nowhere near paying for itself, and taxpayers are subsidizing developers. A 2000 study of the costs of sprawl in Pierce, King and Snohomish counties shows that for every new single-family house,

the average cost to taxpayers was \$56,000 for roads, \$9,815 for schools, \$8,127 for electric power generation, \$6,000 for parks, \$1,900 for sewerage, \$665 for libraries, \$348 for water supply and \$331 for fire protection - \$83,000 in taxpayer subsidies for each new house. And the costs of stormwater control, flood protection, police and other services were not calculated. GMA impact fees come nowhere near covering these costs.

Tax exemptions reward businesses and local governments for bad Puget Sound behavior, rather than incentivizing good behavior. For example, real estate tax exemptions amounted to \$153 million in FY 2005, while tree removal and other land development practices are a key contributor to stormwater pollution of Puget Sound - a serious misalignment of incentives. Fertilizer and chemical spray sales tax exemptions amounted to \$41 million in FY 2005. Both these examples are from the Washington Department of Revenue, as cited in *Lost Revenue, Lost Opportunities: Tax Exemptions in Washington State*, Economic Opportunity Institute, Seattle, April 2004, Appendix B.

Other examples abound. The state's hazardous substance tax does not apply to chemicals sold for home use, which includes the majority of pesticides sold in the Puget Sound region. As John Lombard notes in his recent book, *Saving Puget Sound*, "...correcting current subsidies for environmental degradation could easily pay for an ambitious regional conservation program.."

Conclusion. The law establishing the Partnership requires that the Action Agenda include an analysis of how the current condition of the Sound arose from past actions:

Describe the problems affecting Puget Sound's health using supporting scientific data, and provide a summary of the historical environmental health conditions of Puget Sound so as to determine past levels of pollution and restorative actions that have established the current health conditions of Puget Sound; [ESSB 5372 Section 13(1)(b)]

The legislature clearly intended for the Partnership to benefit from a lessons-learned approach to the Action Agenda. In that spirit, People For Puget Sound is working to ensure that the Partnership and the Action Agenda are successful, and we are ready to provide any assistance required. Thank you for the opportunity to comment.

From: Fred Felleman

Date: 05/05/2008

Comment: No mention was made of the challenges associated with having ports pursue navigational dredging projects within Superfund sites but outside of Superfund oversight.

With regards to the adequacy of the Cruise Ship MOU to address the increasing threat of cruise ship discharges, Majority Whip, Senator Durbin (D-II), recently introduced the Clean Cruise Ship Act (S. 2881) which bans discharges near shore among other things. Durban's press release stated, "Cruise ship wastewater threatens the very environments that family vacationers want to visit. Current regulations and voluntary guidelines for the cruise ship industry just aren't good enough."

The Senator's efforts are bolstered by the findings of EPA's recently released Draft Cruise Ship Discharge Assessment Report which found that cruise ship discharges often far exceed federal effluent and water quality standards. Cruise ships calling on Seattle have better sewage treatment than the national average because of requirements in their Alaskan destination but the EPA found these ships still could do more to remove metals, chlorine or nutrients such as ammonia.

In addition cruise ships are breeding grounds for viruses. According to the Center for Disease Control (CDC), in 2006 there were 54 cases of Norovirus reported industry-wide involving 6815 people. In 2007 there were 34 cases involving 4166 people.

From: Fred Felleman

Date: 05/05/2008

Comment: Under the current MOU cruise ships are still allowed to discharge to surface waters while they're at the dock. This bodes ill for the new cruise terminal being built at Pier 91, across for the swimming beach by the sculpture garden since Elliot Bay's water quality is already characterized as being poor due to very high fecal coliform levels, low oxygen and a low degree of mixing. It has also long been recognized that Puget Sound has a limited ability to flush itself of wastes and is vulnerable to algae blooms from nutrient inputs during June through September. The 2007 State of the Sound report recommended that greater attention be paid to vessel discharges, noting, "The increase in cruise ship and recreational boat traffic may lead to establishing no-discharge zones." This is something for the Partnership to champion while awaiting federal action.

From: Gordon Thomson

Date: 04/17/2008

Comment: The discussion of regulatory tools under Policy Question 1 does not address the effectiveness of those tools. Threats may be addressed by a particular legislation (e.g. Clean Water Act). The effectiveness of that regulation, however, needs to be addressed. The issue is addressed indirectly in section B. Where does the current

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our sound, our community, our chance

condition meet, exceed, or not meet these reference conditions? At some point, however, regulatory effectiveness issues need to be acknowledged and dealt with. Not an easy nut to crack by any means, but the issue is a "gap" in our knowledge.

From: Judy Pickens

Date: 04/17/2008

Comment: The paper accurately summarizes what is happening with algal blooms in Fauntleroy Cove and other embayments. We are hopeful that the state-funded project under way here and at Dumas Bay in Federal Way will cast more light on what can be done in the near term to reduce this threat to marine and human health and then what might be long-term actions that will significantly reduce nutrient loading.