



STATE OF WASHINGTON

--- AN AGREEMENT CONCERNING THE USE
OF TREATED WOOD IN AQUATIC AREAS ---

AUGUST, 1995

MEMORANDUM OF AGREEMENT BETWEEN
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND DEPARTMENT OF FISH AND WILDLIFE

MEMORANDUM OF AGREEMENT CONCERNING THE USE OF TREATED WOODS IN AQUATIC AREAS

BETWEEN

THE WASHINGTON STATE DEPARTMENTS OF ECOLOGY AND
FISH AND WILDLIFE

PURPOSE

The Washington Department of Ecology (Ecology) administers several state and federal laws and regulations which relate to water and sediment quality and habitat for waters of Washington State. The Washington Department of Fish and Wildlife (WDFW) administers state laws and rules for the protection of aquatic life and habitat in Washington waters. Under the Federal Clean Water Act Section 401, Ecology coordinates state agency review and certification of federal permitted activities for in-water construction to ensure these activities meet all appropriate state laws.

The key purpose of this Memorandum of Agreement (MOA) is to ensure effective coordination and a consistent approach between Ecology and WDFW for the administration of the state's existing authorities to regulate the use of treated wood products in Washington State waters. Ecology and WDFW agree that the effective coordination and integration of these treated wood use requirements will best serve the people of Washington State.

BACKGROUND

This MOA relates to the use of chemically treated wood products in waters of Washington State. Treated wood products refers to products, such as pilings, timbers, panels and the like, that are commercially treated with chemicals according to industry specifications (e.g., the American Wood Preservers Association (AWPA)).

The primary concern with the use of treated wood products in the aquatic environment is the actual and potential release of toxic and persistent chemicals. In the environment, these chemicals may cause and/or contribute to potential adverse biological effects and human health impacts and the degradation of the surrounding habitat. Due to environmental and human health concerns, Ecology and WDFW worked with the Western Wood Preservers Institute (WWPI) and others to improve the quality of treated wood products. The WWPI represents much of the pressure treated wood industry in the western states and provides technical information and recommended standards to its members. This cooperative effort with the wood treating industry led to development of best management practices (BMPs) for the treatment of wood products. The goal was to produce products with reduced potential chemical release and less impact to the aquatic environment.

MOA IMPLEMENTATION

I. Goals

Implementation of this MOA is intended to provide consistency and predictability in the joint Ecology and WDFW regulatory approach for the use of treated wood products in Washington State waters. Ecology and WDFW agree to the use of the regulatory approach and conditions identified below. This approach will be revised to reflect new information, as appropriate. The agencies will remain flexible in applying this MOA in consideration of site and project specific factors. This MOA acknowledges the ability of either agency to independently develop rules or guidelines for treated wood use consistent with agency authorities, mandates and administrative procedural requirements. The agencies agree to closely coordinate during such efforts to ensure continued successful use of this MOA.

Ecology and WDFW intend to ensure that treated wood products are used only where minimal risks to aquatic resources are anticipated. However, the agencies also agree that even with treated wood products that meet industry BMPs, there will still be a reduced but continued release of contaminants into the aquatic environment. Ecology and WDFW will continue to work with the treated wood industry to further reduce the levels of these releases. Ecology and WDFW also agree their implementation actions should serve to preserve, protect and enhance Washington's environment whenever possible. As a preferred management strategy, implementation of this MOA shall be consistent with the existing regulatory authority mandated for each agency and with Ecology's May 23, 1994, Pollution Prevention Action Strategy, the prevention or reduction of pollution when feasible (see attachment).

II. Methods

The basic implementation element of this agreement is to encourage direct interagency staff-to-staff contact in the conduct of daily business. The agency coordinators will be the WDFW Habitat Protection Services Division Manager and the Ecology Environmental Review/Sediments Section Supervisor. Agency coordinators (or designees) shall communicate as often as necessary. As a minimum, they shall meet biennially to review implementation of this agreement, suggesting changes to this document, as necessary. The overall implementation goal of this MOA shall be the coordinated and consistent application of existing regulatory requirements (see Section III) producing maximum benefit to the people of the state.

The conditions of this MOA are mutual expectations and the parties should be able to safely assume that MOA conditions will be followed unless agency coordinators specifically advise otherwise.

Normally, identified issues will be resolved at the agency coordinator level. Those issues which cannot be readily resolved at the coordinator level will be elevated, in writing, in each agency for appropriate and timely resolution.

III. Legal Authorities

The main authorities under which the following conditions will be implemented are:

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|---------|--|
| Ecology | <ul style="list-style-type: none">- State Environmental Policy Act (SEPA), Chapter 43.21 RCW and SEPA Rules, Chapter 197-11 WAC- Water Pollution Control Act, Chapter 90.48 RCW and Water Quality Standards for Surface Waters of the State of Washington, Chapter 173-201A WAC and Sediment Management Standards, Chapter 173-204 WAC- Federal Clean Water Act, Section 401 Certification- Shoreline Management Act of 1971, Chapter 90.58 RCW |
| WDFW | <ul style="list-style-type: none">- State Environmental Policy Act (SEPA), Chapter 43.21C RCW and SEPA Rules, Chapter 197-11 WAC- State Hydraulics Code, Chapter 75.20 RCW and Chapter 220-110 WAC |

Together, these and other authorities provide the regulatory framework to manage for clean water and sediments and to protect aquatic life and associated habitats.

IV. Conditions

Ecology and WDFW agree the objective of this MOA is to preserve, protect and enhance Washington's environment whenever possible. Consistent with Ecology's Pollution Prevention Action Strategy, the agencies prefer and recommend the use of materials having the least potential impact on the environment. The agencies agree to continue coordinated review of project proposals under SEPA. Approval by the agencies of treated wood products use in marine areas and rivers will continue to be on a case-by-case basis. The agencies agree to review each project for the following factors and may require additional information from the project proponent. The agencies will focus their review on the feasibility of using least environmentally impacting, economically and technically viable construction materials in the proposed project. Generally, the agencies prefer the use of materials (such as untreated wood, precast concrete, steel, or plastic) that have a lower potential to release toxic chemicals. Factors to be considered include:

- a) engineering needs and recommendations;
- b) scale of the project;
- c) type and availability of construction materials;
- d) overall costs;

- e) potential toxic chemical releases.
- f) the aquatic environment in which the project is to be constructed; and
- g) special resources or locational considerations near the project.

Certain waters of the state (e.g., areas with significant shellfish resources, or shallow embayments or marinas with poor flushing) may be subject to greater risk of adverse effects from chemical releases from treated wood products. In these or similar situations, the agencies agree to require a detailed written evaluation of the above factors to be prepared by the project proponent.

Whenever treated wood products are approved for use in state waters the materials shall be produced in compliance with industry BMPs (Best Management Practices for the use of Treated Wood in Aquatic Environments:, USA version, Western Wood Preservers Institute, January 1995).

IV. A. General Conditions for Treated Wood Use in State Waters

1. Treated wood products means commercially pressure treated woods (pilings, timbers, panels, etc.). These include oil-borne (e.g., creosote, pentachlorophenol), water-borne (e.g., ACZA, CCA) and other treatments.
2. Creosote and penta treated woods will not be allowed in lakes (see IV.B.1. below).
3. The agencies will continue working with industry to ensure the development and use of in-plant practices which meet or exceed BMP Manual standards for treated wood products. BMPs shall constitute treatment standards and quality assurances and controls for individual treatment chemicals and processes intended to reduce chemical releases to aquatic areas. To this purpose:
 - a.) Only commercial pressure treatments meeting BMP standards will be allowed.
 - b.) Reuse of sound treated woods salvaged from aquatic areas and manufactured prior to BMP adoption may, however, be allowed.
 - c.) As a minimum, BMPs should include:
 - Chemical loadings minimized for the proposed use, environment, and structure life;
 - Loading rate range standards (i.e., maximum as well as minimum);
 - Assurance of chemical fixation and dryness for water-borne products;
 - Assurance of dryness for oil-borne chemicals;
 - Process and post-treatment practices to minimize surface chemical residue (e.g., chemical cleanness, vacuum steaming, etc.); and,
 - Verification by the producer that materials have been produced in compliance with BMPs; or subsection of materials to a third party BMP

quality assurance program and identification when available.

4. The installation and use of treated wood products shall incorporate practices to minimize chemical and material releases. These practices may include:

a. Chemical loadings tailored (reduced) to meet preservation needs for the specific use, environment severity, and intended structure life. Where appropriate, minimized loadings may be lower than industry (e.g., AWWPA) standards. For example, a much lower chemical loading may be appropriate for a fender piling designed to last 5 years versus a structural support piling designed to last 35 years.

b. Proposed or existing structures built of, or which use, treated wood shall incorporate design features to prevent or minimize the abrasion of the treated wood.

c. Plastic wraps, concrete collars, etc., shall be considered to further minimize potential chemical releases.

d. Construction activities that result in treated wood waste, such as from the cutting or drilling of treated pilings, shall be conducted so as to minimize the discharge of such wastes to the water. If possible, such activities should be done at an upland facility, on a barge, or on the uplands adjacent to the project site. The regional Ecology hazardous waste compliance officer should be contacted regarding disposal alternatives for any treated wood waste produced.

e. Timely removal and/or maintenance of abandoned or degraded structures should occur. The intent shall be to minimize releases of degraded treated wood material and other contaminants associated with removal into aquatic areas. When appropriate, alternatives are available to restore existing piling that still have structural integrity but have suffered surface or cap deterioration. For example, the full length of a piling, even down to and below the mudline, can be coated with a layer of steel-reinforced concrete.

5. Conditions for over water use may be less restrictive but no more restrictive than those for in-water use. In addition:

a.) Only treated wood products that meet or exceed industry BMP standards will be allowed.

b.) The over water use of treated wood shall incorporate installation and use practices to minimize chemical releases through leaching, migration, abrasion, etc., per Condition 4 above.

6. Treated wood waste generated during installation or removal of treated wood products shall be managed in accordance with Washington Dangerous Waste Regulations, Chapter

173-303 WAC. The regional Ecology hazardous waste compliance officer should be contacted for details on designating wood waste and on disposal alternatives.

IV. B. Specific Conditions for Use of Chemically Treated Wood in Marine and Freshwater

1. Freshwater Lakes. The use of wood products treated with creosote or pentachlorophenol shall not be permitted in lakes [as specified in WAC 220-110-060 of the State Hydraulic Code]. The use of other treated wood products in freshwater lakes shall be restricted to those that meet or exceed the Best Management Practices for the Use of Treated Wood in Aquatic Environments (BMP Manual) prepared by the Western Wood Preservers Institute, revised January 1995.

2. Freshwater (Other than Lakes) and Marine Waters. In rivers, estuaries and marine waters of the state, the approval of chemically-treated wood shall be based upon the agencies' evaluation to ensure that project applicants take appropriate actions to avoid, minimize, or compensate for the potential adverse impacts of the project. Avoidance, minimization and compensation are listed in sequential order of preference.

EFFECTIVE DATE AND DURATION

This agreement shall be effective immediately and terminate upon notice by either party.

The Department of Ecology

The Department of Fish and Wildlife

By _____
DJ Patin
Assistant Director
Central Programs and Enforcement

By _____
Martin Baker
Assistant Director
Habitat Management Program

Date _____

Date _____