



April 6, 2018

Ms. Susan Braley
Water Quality Program
WA Dept. of Ecology
Olympia, WA 98504-7600
Phone: 360-407-6180
Email: Susb@ecy.wa.gov

Re: Comments on Washington's Water Quality Assessment Policy 1-11 Draft

Dear Ms. Braley:

The undersigned organizations work on environmental issues that impact the water quality of the Puget Sound Watershed.

Puget Soundkeeper Alliance's mission is to protect and preserve the waters of Puget Sound, a mission that brings us out on the water on weekly patrols to identify, report, and stop pollution. This mission forms the basis of our policy, education and outreach, and enforcement work under the Clean Water Act. We are committed to fighting water pollution at the source, and to working to ensure that our water quality continuously improves so that Washington's waters will one day be swimmable, fishable, and drinkable. Soundkeeper was pivotal in creating the strongest industrial and municipal stormwater regulations in the country as well as the nation's most protective fish consumption standard of 175 grams per day, a more accurate and protective rate of consumption that informs our current water quality standards and policies.

We appreciate the opportunity to participate in the update process for Washington's Water Quality Assessment Policy 1-11, the Policy used for assessing water quality data, determining if water bodies are impaired, and deciding if further action is needed. Below are our comments and suggested revisions regarding this important Guidance.

Primary Concern

Soundkeeper is particularly alarmed that for all carcinogens, Ecology's new impairment designations per this Guidance won't be triggered except at levels greater than (less protective than) the effective water quality standards for Washington. This is a fatal flaw and must be corrected. Ecology plans to apply a 10x multiplier across the board for carcinogens. (Draft p. 67). What is the scientific basis for use of a multiplier? Applying a functional 10x multiplier was a fundamental flaw in Ecology's earlier proposed Human Health Criteria and it was the basis of its sound rejection by tribes, NGOs, community members and the US EPA. How does this proposed multiplier square with that clear message received by Ecology? How was this particular multiplier derived? For PCBs, although the TECc is 0.23 ppb, this means that a water segment would only be listed as Category 5 if the median of 3 composite samples was 2.3 ppb or higher, which is under-protective for PCBs. For medians between 1x and 10x the TECc, only a Category 2 listing would result. This is unacceptable. Ecology cannot change the treatment of data to effectively render the human health criteria less protective, especially where the carcinogenic effects of chemicals are concerned. By adding a 10x multiplier, Ecology is weakening existing water quality standards.

General Comment

Overall, the new sections that reference "helpful documents" are useful.

Additional Concerns

A. Section 1F. Category Descriptions

1. Category 4B requirements appear weaker than in existing Policy
 - a. In describing Category 4B, the existing Policy states: "A 303(d) listing is not required because the pollution control program is designed to improve and attain water quality in a manner comparable to a TMDL and is in the process of being implemented. This will not include cases when Ecology determines that the program is not being successfully implemented. *Progress on water quality improvements is an essential element of a successful pollution control strategy.* Any Category 5 listings that are proposed by Ecology to move to Category 4b will need involvement by EPA to ensure that the pollution control program meets requirements in the following outline." (Policy 1-11, p. 15) [Emphasis added]. The new Draft policy does not include language requiring that 4B programs be designed to improve and attain water quality "in a manner comparable to a TMDL." (Draft p. 20). It also does not have a requirement, as does the current Policy 1-11, for "enforceable pollution controls or actions stringent enough to attain compliance with the water quality standards." (Draft p. 20). It is essential that a 4B program be designed in a manner comparable to a TMDL and that pollution controls are enforceable.

- b. Policy 1-11 requires that a 4B program “show progress on water quality improvements in accordance with the plan.” Where is this requirement to improve water quality in the Draft? Indeed, the word “improvement” does not appear in the Draft at all.

2. Concerns regarding Category 5 listing and delisting

- a. The Policy requires that “Waterbody segments impaired by a pollutant as determined by the methodology described in this policy, or by well-documented narrative evidence of impairment, will be placed in Category 5.” (Policy 1-11, p. 18). Ecology intends to lower the standards to match EPA 2006 Integrated Report Guidance. (Draft p. 24). Per the Draft, the EPA Guidance requires that “AUs must be placed in Category 5 when, based on existing and readily available data and/or information, technology-based effluent limitations required by the Act, more stringent effluent limitations, and other pollution control requirements are not sufficient to implement an applicable water quality standard and a TMDL is needed. 40 CFR 130.7(b)(1).” (Draft p. 24). The existing Policy language is clearer: if a waterbody is impaired, it must be listed. That is the better standard. The proposed revision is confusing and appears to be a higher bar to listing waters. The language quoted here from page 24 of the Draft implies that if other methods might implement an applicable water quality standard the waterbody does not need to be listed. However, listing is not dependent upon how the water might be cleaned up, or indeed, if it can be cleaned up at all. If a water is polluted it is impaired and must be listed as such on the 303(d) list.
- b. The Draft at page 24 includes a new paragraph about “Delisting from Category 5.” It should be clearly articulated that waters can only be delisted from a category 5 to 1 if they now meet water quality standards.

B. Section 1H. Prioritizing TMDLs

1. The Draft eliminates criteria from Policy 1-11 that formerly gave a waterbody priority for listing, including: “Risk to threatened and endangered species,” and “Vulnerability of water bodies to degradation.” (Draft p. 27). Why are these changes proposed? Threatened and endangered species should still be given careful consideration when prioritizing TMDLs - particularly salmonids. Vulnerability to degradation is another important consideration that should not be removed.
2. The Draft adds “local support and interest in a watershed” as an additional criterion for prioritizing TMDLs. We object to the addition of this criterion. This is an extremely subjective criterion. This criterion could lend bias in favor of higher socio-economic status areas when prioritizing TMDL’s. Similarly, this criterion could have detrimental impacts on communities that may not have the ability to lobby harder for prioritization of their waterbody, including those who might not speak the dominant language, etc.. This

could result in a TMDL prioritization structure that further harms communities traditionally left to deal with the social and economic costs of pollution by assigning impaired waterbodies a lower priority due to perceived lack of “interest.” Due to these strong environmental and social justice implications, this criterion should be eliminated. As an additional suggestion, please consider adding another criterion which could read: “Ecological risks, especially where Endangered Species Act [ESA]-listed species are present and exposed to an impaired water body”.

3. The Draft adds a section that implies that the State’s forest practices rules are assumed to provide equal protection as that required under a TMDL. (Draft p. 27). How do the State’s forest practices account for point sources? How do they mandate and enforce pollution controls on point source dischargers? If a waterbody is impaired in a forest area, clearly the forest practices rules are not sufficient and a TMDL should be implemented.

C. Section 2A. Bacteria

- The Draft indicates that the Department of Ecology will defer to the Department of Health (DOH) regarding its determinations whether to close shellfish beds. (Draft pp. 32-33). We agree with Ecology’s decision to reassign a Category 1 listing as a Category 5 if DOH has determined that a waterbody must be closed for shellfish harvest. However, conversely, the Draft seems to indicate that a Category 5 waterbody might be administratively moved to Category 2 upon consultation with DOH if shellfish beds in the area are closed to harvest. This does not make sense. Just because a shellfish bed is closed in a waterbody does not necessarily mean people will not be otherwise fishing in or consuming fish from that waterbody. If a waterbody is impaired for a designated use it should be listed for the impairment of that use.

D. Section 2B. Benthic Biological Indicators

- Why is only freshwater guidance for benthic biological bioassessment shown? We would suggest adding useful guidance for estuarine and marine benthic bioassessment as well.

E. Section 2C. Dissolved Oxygen

- Ecology should not require two exceedances of D.O. to trigger a Category 5 impairment finding.

F. Section 2D. pH

- We are very concerned that the acceptable error is 0.2 units for pH. This is a huge amount of error and instruments exist that can cheaply measure pH to 0.02 or 0.03. What is Ecology’s rationale for this large unit of error?

G. Section 2F. Temperature

- The Draft now requires 2 exceedances of the 7-DADMax instead of 1 to list a waterbody as impaired for temperature. (Draft p. 53). The 7-DADMax is already a 7 day average, one exceedance should trigger a finding of impairment for temperature. Temperature is a particularly problematic pollutant in Washington where our salmonids rely on cooler waters for survival. Washington State spends millions each year on salmon recovery. We must take temperature seriously as a pollutant and strive to protect our salmonids. What is the rationale for increasing the number of exceedances necessary to trigger a finding of impairment, and how does this weigh against the urgency to address our declining salmon populations?

H. Section 2H. Toxics- Aquatic Life Criteria

1. Overall, Soundkeeper agrees with Ecology’s approach to the toxics – aquatic life criteria. However, we are concerned by the amount of caveats in place which may make the Policy confusion to users. We understand that obtaining all of the necessary data can be difficult; however, we are concerned about how exceptions might be used. The Policy should be clearly written so that listing decisions are not discretionary or left to interpretation.
2. On the discussion concerning hardness-dependent metals and helpful documents to support this discussion, please add reference to the Biotic Ligand Model, which considers dependency on numerous key water quality factors in addition to simple hardness, including dissolved organic carbon, pH, temperature, and numerous other factors. The BLM model is considered by EPA and the scientific community to be more advanced and protective when considering toxicity of these specific metals (e.g. copper, zinc, lead, chromium, and others). See guidance at <https://www.epa.gov/wqs-tech/copper-biotic-ligand-model>.
3. In addition, it would be also helpful to add a discussion on using aquatic life criteria for specifically protecting ESA-listed aquatic life, which must be considered individually rather than combined with all other potentially exposed aquatic species.

I. Section 2I. Toxics – Human Health Criteria

1. In the Draft, the definitions of the “edible portions” of species that will be used for analysis may not mesh with what people are actually eating. (Draft p. 65). For example, some individuals or populations may consume more than just the fillet of a finfish. Some individuals or populations may consume the entire fish, therefore the entire fish should be considered “edible” – not just the part of fish that the dominant culture prefers to consume.

2. We previously raised concerns during the summer of 2017 regarding the types of fish that will be used for tissue sampling. We remain concerned. The Draft states that marine tissue samples must generally be from species with high site fidelity. What about salmon? What about other anadromous fish or species that do not have high site fidelity? People eat many kinds of fish including those that do not remain in one location. People also eat fish of many ages. In particular, older fish tend to be larger and thus more prized in some species. People can and do eat older fish, and in some instances prefer a larger, older fish. If people eat it, it should be tested and considered with equal weight for listing purposes.
3. We also object to Ecology raising the bar to a 3-composite sample requirement for carcinogens and non-carcinogens at the TECn. It is not always possible to collect this many samples, which are expensive both to collect and to analyze.

J. Parameter Specific data requirements and information

- Ecology's plan for dioxins and arsenic is harmful and insufficient to protect human health. (Draft pp. 73-74). Ecology can and should immediately calculate and implement a TECc and DWECc for these compounds. Until that time, Ecology should apply the NTR standards. Because TCDD is so toxic both as a non-carcinogen and as a carcinogen, perhaps a single detection or exceedance in fish tissue (TECn or TECc) should result in a Category 5 listing instead of a Category 2 listing.

We thank you for the opportunity to submit comments and for reviewing our comments on the Water Quality Assessment Policy 1-11 Update. We look forward to participating further in the design and review process for this important policy. Please feel free to contact me if you have any questions or require clarification regarding our comments.

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