

Liberty Lake Sewer and Water District No. 1

7/25/2024

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PO Box 47696
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Subject: Comments, Proposed Revisions to Natural Conditions Provision in Chapter 173-201A WAC (Public Comment Draft May 2024) – Liberty Lake Sewer and Water District

Liberty Lake Sewer and Water District (District) is providing comments on Ecology's May 2024 proposed amendments to Chapter 173-201A WAC (Standards for Surface Waters). The following focuses on the proposed changes to assessment of standards for receiving waters that are or could be exceeding applicable aquatic life criteria due to "natural conditions".

Ecology has suggested that a performance-based approach may be a preferred means for addressing natural conditions in receiving water. For example, the proposed rule's Implementation Plan (Publication 24-10-016) acknowledges that criteria established by the performance-based approach do not need to be separately incorporated into the administrative code and are not subject to a site-by-site public comment and EPA review. See Implementation Plan at 10-11. The District is, however, concerned that the difficulties inherent in evaluating natural conditions and calculating criteria that account for those conditions, could undermine the viability of the proposed rulemaking.

Specifically, the performance-based approach is detailed and fact-intensive. Its implementation would require, among other things, numerous analytical steps, including defining a site boundary; collecting data; developing a quality assurance project plan (a QAPP); developing and calibrating a model; using the data to assess whether nonattainment of the aquatic life criteria is due to natural processes, and quantifying known and human-caused impacts. The process would be resource-intensive and technically complicated. See, e.g., Performance-Based Approach (Publication 24-10-017 at 9). The burdens associated with the approach would be substantial, i.e., similar to those associated with the development of site-specific criteria per WAC 173-201A-430 or to performing a use attainability analysis per WAC 173-201A-440. These are processes that only Ecology has the resources to implement, as opposed to the regulated community. Correspondingly, the District requests that Ecology provide more details on how it would utilize the approach for specific receiving waters like the Spokane River which exceeds temperature standards due, at least in part, to natural conditions. Information provided in the proposed rulemaking and at the hearings does not include those implementation specifics particularly related to timing and prioritization.

Ecology indicated in the June 27 and July 2, 2024 hearings that it anticipates looking at natural conditions issues in the context of developing Total Maximum Daily Loads (TMDLs) for receiving waters. However, it is not clear if that assessment is obligatory as part of the TMDL, and the

timing of the natural conditions characterization is unclear. If dischargers to a receiving water need expeditious assessment of the applicable aquatic life criterion (such as for temperature), e.g., to better inform the development of permit conditions, how does Ecology anticipate prioritizing what appears to be a complex, time-consuming process and assessment?

To clarify these issues, the District requests that Ecology's proposed change to WAC 173-201A-260 (1)(a) be revised to state that "When natural conditions constitute the aquatic life water quality criteria, criteria values may (strike) shall be established using site-specific criteria (see WAC 173-201A-430), use attainability analysis (see WAC 173-201A-440), or the performance-based approach (see WAC 173-201A-470). When there is information indicating that nonattainment of aquatic life criteria is potentially due to natural conditions, Ecology shall evaluate natural conditions before developing Total Maximum Daily Loads (TMDLs) for receiving waters and/or before setting new or modified discharge permit effluent limits."

As Ecology has recognized, there are numerous documents supporting water quality standards development that may need to be written or revised to address a performance-based option for evaluating natural conditions in receiving waters. The District understands all supporting material relevant to this proposal will be issued for public review and comment.

Sincerely,

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July 25, 2024

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