

King County Wastewater Treatment Division,
Department of Natural Resources and Parks



King County

Department of Natural Resources and Parks

Wastewater Treatment Division

Water and Land Resources Division

King Street Center, KSC-NR-5500

201 South Jackson Street

Seattle, WA 98104-3855

July 24, 2024

Marla Koberstein

Department of Ecology

Water Quality Program

PO Box 47696

Olympia, WA 98504-7696

RE: Chapter 173-201A WAC (Natural Conditions) Proposed Rule Draft – King County Comments

Dear Ms. Koberstein:

Thank you for the opportunity to submit comments on the draft public rule to revise Chapter 173-201A of the Washington Administrative Code (WAC) regarding Natural Conditions provisions. King County is committed to meeting our regulatory obligations and implementing clean water and healthy habitat protections to achieve high quality environmental outcomes and equitable benefits for communities.

In 2022, King County expanded our decades-long Central Puget Sound marine monitoring to include data collection from Whidbey Basin, focusing on areas that are both sensitive to human influence and difficult to model. Additionally, King County continues to fund research at the University of Washington, Puget Sound Institute, and the University of British Columbia to complement the Department of Ecology's scientific modeling work. We believe that robust scientific research will help all agencies better understand the ecological dynamics of Puget Sound and that it should inform effective policy and regulatory decisions.

We acknowledge Ecology's considerable effort to develop the proposed natural conditions rule and we have attached detailed comments for your consideration. A top-level issue for King County is concern regarding Ecology's proposed public notice and comment process. Specifically, we recommend that the performance-based approach include a clear, easy to use public notice and comment process for developing natural conditions criteria. We are concerned that the absence of a clear public notice and comment process makes the subsequent permitting decisions applying natural conditions the only opportunity for raising scientific or technical concerns. Providing a pre-permit opportunity for public notice and comment on natural conditions determinations would help all parties best address scientific issues earlier and more effectively.

Chapter 173-201A WAC (Natural Conditions) Proposed Rule Draft – King County Comments


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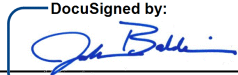
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Establishing an effective public notice and comment process is especially important for the Puget Sound dissolved oxygen water quality issue. According to the Puget Sound Nutrient Reduction Project website, we understand that Ecology intends to undertake regulatory action for nitrogen by creating a Nutrient Reduction Plan, as an alternative to the more traditional total maximum daily load (TMDL) process, which has structured public notice and opportunities for input on science. We recommend that the performance-based approach be modified to reflect the public review steps in the TMDL process by providing opportunities for early notice and comment. Doing so will promote dialogue and collaboration across interested parties, reduce unnecessary and costly appeals, and improve environmental outcomes.

We appreciate Ecology's consideration of these comments and would welcome the opportunity to further discuss this important work. If you have questions or need more information, please contact Jacque Klug, WTD Nutrient Management Coordinator at Jacque.Klug@kingcounty.gov or (206) 477-4474.

Sincerely,

DocuSigned by:

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Kamaron Gurai, Division Director
Wastewater Treatment Division
Department of Natural Resources and Parks

DocuSigned by:

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Josh Baldi, Division Director
Water and Land Resources Division
Department of Natural Resources and Parks

Attachment

Attachment

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Document Title	Page #	Comment	Recommended Action
WAC 173-201A-020	16	King County supports limiting the de minimis human allowance to local and regional sources of human pollution, which appropriately focuses water quality standards on sources of pollution that can be impacted by the regulation rather than human sources of pollution outside of Ecology's control. At the same time, the county continues to advocate for state and federal regulation of greenhouse gas emissions, and to implement aggressive actions to curb local and regional greenhouse gas emissions.	Retain the proposed limitation of marine dissolved oxygen and temperature de minimis human allowance to local and regional sources of human pollution.
WAC 173-201A-470	22	Could the performance based approach be extended to other aquatic life criteria, such as marine pH? Because the process described in the proposed Performance-Based Approach is relatively generic, it is not clear from Ecology's rulemaking documents why the approach could not be extended to other aquatic life criteria.	Please clarify if other aquatic life criteria, such as marine pH, could use the proposed performance based approach.
A Performance-Based Approach...	9	Unclear whether process-based approach is the same or different from performance-based approach.	Please define process-based approach and distinguish from performance-based approach.
A Performance-Based Approach...	11	"Sources of readily available data include state and federal water quality databases. Washington maintains the Environmental Information Management (EIM) database, which contains environmental monitoring data collected by Ecology scientists and partners."	To achieve stated goal of transparency, consider ensuring consistent inclusion of sampling plans/QAPPs/reports from data submitters alongside the associated data in EIM.
A Performance-Based Approach...	14	The section on Types of Data states that "Data sourced for water quality and site characterization is not limited to numeric datasets."	Please explain how the commitments to credible data are being applied to Site Characterization and Non-numeric data sets?
A Performance-Based Approach...	15	"If combining data across multiple time frames to estimate natural conditions, the methodology used in combining data sets must be documented and will be appropriately conservative to capture the range of conditions that protect existing and designated uses across the scales of aggregation."	Please define "appropriately conservative" sufficient to allow similar or identical conclusions to be independently replicated by others
A Performance-Based Approach...	17	Water Quality Policy 1-11 Chapter 2 (Ecology publication 21-10-032) is referenced with regard to data quality/credibility, but not with regard to the modeling approach to be used.	Ensure that accepted models are employed in the approach. Consider specifying that models employed will be limited to those referred to in WQ Policy 1-11 Chapter 2.

Attachment

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<p>A Performance-Based Approach...</p>		<p>It is unclear from the rule proposal and supporting rule documents if there will be public notice and comment process as part of the performance based approach process. This absence may be less important in the context of a TMDL, where the public process for the TMDL would include implementation of the Performance-Based Approach. However it is unclear how the public would be informed of natural conditions determinations to support permitting or TMDL alternative processes. This could create situations where underlying scientific data or questions are only able to be addressed through subsequent permitting actions rather than earlier in the process.</p>	<p>Include public notice and input in the performance based approach process.</p>
<p>Technical Support Document</p>	<p>86</p>	<p>What is the "design application"?</p>	<p>Please define design application.</p>
<p>Technical Support Document</p>	<p>48</p>	<p>Per this section, "criteria values developed using this [performance-based] approach are applicable to the waterbody immediately following the process." Does this refer to the whole process for a given CWA action, or a single time at which the criteria are set indefinitely?</p>	<p>Clarify the timeline(s) of how the performance-based approach would be used in the context of a single CWA action. Also, would natural conditions criteria determined in the context of one permitting action be applied to other permits authorizing discharges to the same waterbody? How would other permittees be made aware of the determination and be able to participate in the process for making it? A diagram showing the steps, including opportunities for public review, would be helpful.</p>
<p>Technical Support Document</p>	<p>25-28</p>	<p>Federal regulations (40 CFR 131.10(g)) already detail a method for developing site-specific criteria (including aquatic life criteria) if naturally occurring pollution, low flow, or physical conditions prevent attainment of designated uses for a water body, by performing a use attainability analysis (UAA). The technical support document specifies that a UAA includes adoption of site-specific criteria, while the performance-based approach relies on adoption of a process or methodology. However, the performance-based approach still results in adoption of specific criteria.</p>	<p>It would be helpful to have further clarification on which process may be used in specific cases related to aquatic life use criteria, or whether both may be acceptable approaches to developing site-specific criteria.</p>
<p>Rule Implementation Plan</p>	<p>20</p>	<p>Per "Objectively Measured Outcomes", monitoring data "will be used to determine whether designated uses are met." How will Ecology determine what monitoring data will be used?</p>	<p>Providing additional detail on the type of data to be used to measure outcomes would provide greater transparency to the public about the impact of water quality standards to support designated uses.</p>