



Donny Neel

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Sent via upload to: <https://wq.ecology.commentinput.com/?id=PYcJ7i5sk>

Ms. Marla Koberstein
Water Quality Program
Washington State Department of Ecology
P.O. Box 47696
Olympia, WA 98504-7696

Re: WSPA Comments on Proposed Updates to WAC 173-201A Table 240

Dear Ms. Koberstein,

Western States Petroleum Association (WSPA) appreciates this opportunity to provide feedback on the Department of Ecology (Ecology) proposed updates to the human health criteria (HHC) and associated footnotes in Table 240 (Toxics Substances Criteria) of WAC 173-201A-240, pursuant to the September 17, 2024 CR-102 notification. WSPA is a trade association that represents companies that provide diverse sources of transportation energy throughout the West, including Washington. This includes the transporting and marketing of petroleum, liquid fuels, natural gas, and other energy supplies.

WSPA and its member companies understand the importance of ensuring that Washington's surface waters are protected for human health, and it is important to stress that WSPA member companies fully support efforts to ensure safe and clean water across Washington state. We commend the Department's dedication to establishing and maintaining stringent standards in alignment with federal regulations.

It is our understanding that in updated Table 240 WAC 173-201A-240, Ecology proposes to replace 173 state-adopted HHC for 73 pollutants that were disapproved by the U.S. Environmental Protection Agency (USEPA). In addition, Ecology plans to adopt into state law three HHC for two pollutants that USEPA put into effect for Washington, but Ecology had not previously adopted as state HHC.

Concerns with Ongoing Litigation

On November 15, 2022, USEPA announced a final rule to reestablish federal HHC for water bodies in the State of Washington.¹ Subsequently, litigation has been ongoing regarding the USEPA's 2022 revisions to Washington's HHC.² The central issue involves the USEPA's reinterpretation of the Clean Water Act (CWA), and its subsequent rulemaking, which legal experts have argued overreaches USEPA's statutory authority and imposes unrealistic standards based on speculative assumptions about fish consumption rates and pollutant exposure.³

While Ecology has consistently implemented the federal criteria, per USEPA directives, the ongoing legal battle places the regulatory framework under significant scrutiny. The outcome of the litigation could result in substantial changes to the current criteria, potentially invalidating or altering the standards that Ecology is preparing to adopt. Implementing rules now, while key aspects of

¹ <https://www.epa.gov/system/files/documents/2022-11/WA-HHC-Final-Rule-Fact-Sheet.pdf#:~:text=Protect%20Human%20Health%20in%20the%20State%20of%20Washington%20On%20November.>

² <https://www.awb.org/wp-content/uploads/Assn-of-Wash.-Bus.-v.-EPA-23-cv-3605-Complaint.pdf>

³ [https://www.awb.org/washington-employer-groups-file-lawsuit-over-new-epa-water-quality-standards/.](https://www.awb.org/washington-employer-groups-file-lawsuit-over-new-epa-water-quality-standards/)

USEPA's rulemaking are in dispute, risks introducing regulatory uncertainty that could burden both Ecology and the regulated community with potential revisions in the near future.

One of Ecology's stated objectives in adopting the federal HHC into state law is to provide "*durability and regulatory certainty*" for these pollution limits.⁴ We strongly agree that regulatory certainty is critical for businesses and communities alike. However, proceeding with rule adoption under the cloud of ongoing litigation undermines this goal. If the federal courts overturn or modify USEPA's rule, Ecology will face the difficult and costly task of revisiting and potentially rewriting the state standards.

WSPA suggests that it may be prudent for Ecology to wait until these federal legal challenges are resolved before finalizing any changes to state water quality standards.

Concerns with Technical Basis

WSPA believes that any regulatory change must be both based in sound science and be achievable in practice. As highlighted by the recent challenges, the HHC revisions (particularly the fish consumption rate and exposure assumptions) create standards that experts in the field believe are unattainable given the current technological and economic landscape.⁵ These standards could have far-reaching implications, especially for industries that are vital to the state's economy, such as energy, manufacturing, and agriculture. WSPA remains committed to supporting robust, science-based environmental protections that strike the right balance between human health and economic sustainability. We believe that continued work on sound, achievable HHC while waiting for the resolution the federal litigation will result in a more legally sound and effective regulatory framework for Washington.

WSPA would like to reaffirm our appreciation for the Department of Ecology's efforts in addressing human health risks associated with toxic substances in Washington's surface waters. We encourage Ecology to reach out for any clarification regarding these comments. Please do not hesitate to contact me directly at (253) 525-0700 or via email at dneel@wspa.org.

Sincerely,



Donny Neel

Cc: Jessica Spiegel - WSPA

⁴ <https://apps.ecology.wa.gov/publications/documents/2410054.pdf>

⁵ <https://www.awb.org/wp-content/uploads/Assn-of-Wash.-Bus.-v.-EPA-23-cv-3605-Complaint.pdf>;
<https://crsreports.congress.gov/product/pdf/R/R44646/4>