



October 25, 2024

*Via Online Comment Portal*

Marla Koberstein  
Water Quality Program  
Department of Ecology  
PO Box 47696  
Olympia, WA 98504-7696

Re: Proposed Revisions of State Water Quality Standards  
WSR 24-19-075

Dear Ms. Koberstein:

Thank you for the opportunity to comment on the draft revisions to the state human health water quality criteria.

The City of Tacoma is concerned that Ecology is proposing to withdraw certain state standards and adopt federal standards without complying with the requirements for significant legislative rulemaking. While we understand that Ecology believes that it is exempt from these requirements, there would be a benefit in a thorough life cycle cost-benefit analysis and implementation plan for the proposed standards. This is especially true for the environmental justice assessment that Ecology must complete as part of this rulemaking process.

The lack of cost-benefit analysis is especially problematic for Ecology's proposed polychlorinated biphenyl (PCB) criterion, as most wastewater treatment plants (WWTPs) and receiving waters in Washington exceed the EPA criterion. It appears that compliance with the proposed PCB criterion will potentially require adoption of tertiary wastewater treatment systems. However, it is doubtful that current technology even exists to achieve said standard.<sup>1</sup> Ecology cannot adopt this standard without an implementation plan that allows it to assess the cost and impact of additional treatment on overburdened communities. Additionally, there is a need for integrated planning to understand the scope and timing of implementing tertiary treatment and how it may or may not address multiple regulatory requirements, including nutrients and emerging contaminants of concern. Moving to this level of treatment will require significant investments in capital and operating expenses with corresponding impacts on higher utility rates as well as impacts on the ability of our wastewater utility to maintain and expand wastewater treatment within our service area.

For these reasons, it is further problematic that Ecology has failed to provide an environmental justice assessment to inform and support its consideration of overburdened communities and

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<sup>1</sup> HDR, Treatment Technology Review and Assessment for Association of Washington Business, Association of Washington Cities and Washington State Association of Counties (May 24, 2022)



vulnerable populations and to assist the agency with the equitable distribution of environmental benefits, the reduction of environmental harms, and the identification and reduction of environmental and health disparities. RCW 70A.0.060(1)(a). By increasing compliance costs to WWTPs, the proposed human health water quality criteria will have a profound impact on utility rates and housing affordability; these consequences will create environmental justice disparities. The level of treatment required for compliance is likely to require substantial new construction of wastewater treatment facilities. Ecology cannot evaluate environmental justice without an assessment of where those facilities would be located and the impact of building new WWTPs. The EPA criteria may also limit the ability of WWTPs to accept additional influent. In that event, communities may not be able to meet their obligations under the Growth Management Act and may face adverse impacts on housing, affordable housing, low-income housing, and the ability to address homelessness. It is also important for environmental justice to be assessed in a coordinated manner with efforts to address nutrients and contaminants of emerging concern.

The Washington State Court of Appeals has acknowledged how a similar requirement (or necessity to comply with a state regulation) for advanced treatment technology may result in the unintended consequence of halting development, including affordable housing, shelters, and accessory dwelling units, while a WWTP raises funds necessary to implement the technology (quoting Chris Bacha, counsel for the City of Tacoma) in its opinion:

The costs of such full-scale improvements are estimated to range from \$250 million to over \$750 million and would likely take at least six years or longer to fund, plan for and implement. In the interim, implementation of the TIN [total inorganic nitrogen] load cap would have the unintended consequence of halting development, in effect a de facto moratorium. Projects could not be approved because sewer capacity would not be available. The City will be exposed to substantial risk if it does not qualify all sewer availability notices with the right to rescind the assurance of sewer availability in the event Ecology's permit caps sewer capacity. Adding this condition will impair lending and effectively halt most development, including affordable housing, shelters, and accessory dwelling units. Further, funding of capital improvements needed to meet the new permit requirements has the potential to more than double or triple sewer rates, disproportionately affecting low-income populations.<sup>2</sup>

Several factors play into housing affordability; the cost of monthly, recurring bills such as wastewater bills can place housing in jeopardy if increased. In the utility industry, rates are established based on the cost of service, which is heavily influenced by treatment costs.<sup>3</sup> Any increased costs incurred by municipal utilities to comply with an Ecology rulemaking will be paid by their respective customers in the form of increased wastewater rates.<sup>4</sup> There are many

<sup>2</sup> *City of Tacoma v. Department of Ecology*, 28 Wash.App.2d 221, 234 (Ct. App. Wash. Div. III, 2023).

<sup>3</sup> Brief for the Washington Association of Sewer and Water Districts as Amicus Curiae, pp. 11-12, *City of Tacoma v. Ecology*, 28 Wn. App. 2d 221 P.3d 462 (2023) ("WASWD Amicus Brief").

<sup>4</sup> *Id.* at 13.



WWTPs that do not currently have the advanced treatment that will likely be necessary for compliance with the proposed PCB criterion available at their plant, and do not have the current infrastructure to add the treatment technology without passing on significant costs to the customers they serve unless there is state or federal funding available. These rate increases and resulting increase in housing costs will inevitably have the greatest impact on vulnerable communities that likely already struggle with utility costs and housing affordability.

It is also certain that advanced treatment will require additional energy consumption, additional use of chemicals, generate excess residual biosolids, and result in increased Greenhouse Gas emissions known to impact climate change. Ecology has previously recognized the potential environmental impacts of requiring WWTPs to adopt additional treatment technology, including the likelihood that tertiary treatment will not only generate more effluent sludge that will require disposal, but will also require two to three times the amount of electrical energy currently used in WWTPs.<sup>5</sup> Yet, Ecology has not evaluated the potential impact of its proposed human health water quality criteria on greenhouse gas emissions or community health. Ultimately, Ecology has failed to evaluate the proposed criteria's implementation, cost of compliance, and impact on vulnerable communities, despite the fact that the answers to these questions will significantly impact WWTPs throughout the state.

The City of Tacoma respectfully requests that Ecology withdraw the proposed rule and only proceed with this action under the significant legislative rulemaking requirements under RCW 34.05.328.

Thank you for this opportunity to comment on the draft revisions to the state human health water quality criteria. We trust our comments are useful. If you have any questions or would like additional information please contact Teresa Peterson, P.E. at 253.591.5766 or [tpeterson@cityoftacoma.org](mailto:tpeterson@cityoftacoma.org).

Sincerely,

Signed by:

A handwritten signature in black ink that reads 'Geoffrey M. Smyth P.E.'.

Geoffrey M. Smyth, P.E.

Interim Director, Environmental Services

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<sup>5</sup> *Nw. Env't Advocs. v. Dep't of Ecology*, 18 Wn. App. 2d 1005, 2021 WL 2556573, at \*9 (2021) (unpublished).