REGION 10
SEATTLE, WA 98101

May 22, 2025

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

Dear Ms. Koberstein:

Thank you for the opportunity to provide comments on the Washington State Department of Ecology's *A Performance-Based Approach for Developing Site-Specific Natural Conditions Criteria for Aquatic Life in Washington*, *Second Draft, March 2025, Publication 25-10-022,* which describes the state's methodology for establishing natural conditions criteria for marine dissolved oxygen in *Chapter 1: Marine Dissolved Oxygen*.

Pursuant to Clean Water Act section 303(c), the U.S. Environmental Protection Agency has the duty to review and approve or disapprove new or revised water quality standards submitted by states and authorized Tribes. The EPA notes that the draft methods document references Washington's rule provisions at WAC 173-201A-470, which were recently updated but have not been submitted to the EPA for review and action under CWA section 303(c). The EPA recommends that after finalizing the performance-based approach, Washington submits the rule language and PBA document together so that the minimum submission requirements at 40 CFR 131.6 are addressed for both documents in a single submittal.

As articulated in the EPA's comment letter, dated July 26, 2024, on the first draft of the state's *A Performance-Based Approach for Developing Site-Specific Natural Conditions Criteria for Aquatic Life in Washington,* May 2024, Publication 24-10-017, "[a] performance-based approach relies on adoption of a process (i.e. a criterion derivation methodology) rather than a specific outcome (i.e. concentration limit for a pollutant) consistent with 40 CFR 131.11 & 131.13. When such a "performance-based" approach is sufficiently detailed and has suitable safeguards to ensure predictable, repeatable outcomes, EPA approval of such an approach can also serve as approval of the outcomes as well." The performance-based approach should specify "methodologies, minimum data requirements, and decision thresholds," and should be "binding, clear, predictable, and transparent" to be consistent with 40 CFR § 131.11 requirements.

The EPA has reviewed Ecology's second draft performance-based approach and finds it to be organized, concise, and clear. The EPA has coordinated closely with Ecology throughout this process and supports the state's efforts to narrow the scope of parameters in the performance-based

approach to establish natural conditions criteria. We believe narrowing of the scope of the second draft performance-based approach to establish dissolved oxygen criteria for marine waters, including referencing existing documentation and guidance for modeling marine dissolved oxygen in Chapter 1, have provided the needed specificity to ensure the performance-based approach is binding, clear, predictable, and transparent. The EPA is encouraged by the state's draft methodology and offers several comments in the enclosure for your consideration. The EPA's comments on the PBA are essential to ensure that the PBA is applied appropriately to reflect natural conditions.

The EPA appreciates Ecology's commitment to update Washington's water quality standards and the collaborative approach to resolving the agency's comments and refining the methodology. We look forward to continuing to engage with you throughout this process. If you have any questions, please contact Rochelle Labiosa of my staff at (206) 553-1172 or labiosa.rochelle@epa.gov.

Sincerely,

HANH SHAW

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Hanh Shaw
Manager
Standards, Assessment, and Watershed Management Branch
Water Division

ENCLOSURE: EPA Comments on Washington's *A Performance-Based Approach for Developing Site-Specific Natural Conditions Criteria for Aquatic Life in Washington, Second Draft, March 2025, Publication 25-10-022*

cc: Kalman Bugica, Washington State Dept. of Ecology

EPA Comments on Washington's *A Performance-Based Approach for Developing Site-Specific Natural Conditions Criteria for Aquatic Life in Washington*, *Second Draft, March 2025, Publication 25-10-022*

Comment 1

Step 2: Compile data; Table 1. The EPA recommends ensuring that the wording and terms across the table columns for the current and natural conditions scenarios are clear and consistent to reflect what is intended for each scenario. For example, there are instances where the term "As applicable" is used or double dashes (--) are indicated; we recommend providing a definition as to what these depictions mean.

As another example to illustrate inconsistencies in the table, there are conflicting approaches to "Hydrodynamics" and "Other Human Activities" in the natural conditions column. For the row titled "Hydrodynamics," the current conditions column includes data requirements and the natural conditions column does not. However, Step 8, Estimating the Natural Conditions, identifies activities affecting hydrodynamics that will be evaluated and removed which should be summarized in the natural conditions column as well. In contrast, the "Other Human Activity" row includes other human activity information in both the current and natural conditions columns. The EPA recommends clarifying the wording in the natural conditions column to specify that the data needs are for the removal of anthropogenic sources to determine the natural conditions estimates.

Comment 2

Step 2: Compile data; Site characterization data. The EPA recommends folding this section into Table 1, or into a separate table, and describing the current and natural conditions. We also recommend including the following additional data types for completeness, and if necessary, adding a clause describing situations where the data are not relevant for a given simulation.

- Surrounding vegetation and riparian conditions
- Submerged aquatic vegetation
- Atmospheric deposition data (e.g. nutrient deposition)
- Non-numeric data (e.g. GIS data, site survey data, site photographs, records from federal, state, and tribal agencies, and traditional knowledge)

Comment 3

Step 8: Estimating Natural Conditions; Other Considerations. Please revise the first sentence to make it clear that the freshwater hydrology will reflect natural conditions.

Comment 4

Step 9: Determining natural conditions criteria values; Criteria magnitude. Please revise the first two sentences to read as follows: "Step 8 estimates the natural conditions of marine DO at a site. These model outputs are then used to determine natural conditions criteria for the site." The suggested revisions ensure that determining the applicable criteria is part of the PBA.