

Human health Criteria and Implementation Tools Rule-makings for the Water Quality Standards for Surface Water of the State of Washington (WAC 173-201A)

**Discharge Scenarios
Policy Forum #2**

Introduction and Context

These hypothetical scenarios were developed to assist in discussions surrounding the development of new human health criteria and new implementation tools for Washington’s Surface Water Quality Standards (WQS). The scenarios are best estimates of likely permitting outcomes, but have not undergone thorough legal and technical review, thus in some cases alternative approaches or different approaches might be available. In addition, as with all permitting decision, discharge-specific information affects final requirements.

The scenarios were developed in large part to prompt discussion of *difficult* permitting situations (except Scenario 1a). The majority of permitting situations in Washington are not as difficult as those highlighted here. Additionally, while the scenarios focus on only a few key parameters, most criteria parameters for the majority of dischargers are not found at levels that result in the need for effluent limits.

The scenarios will be used at Policy Forum meetings to explore how changes in human health-based criteria could change discharge requirements. For instance, the current scenario drafts examine permitting using the implementation tools in the current water quality standards, and the human health criteria issued to Washington in the National Toxics Rule. When risk levels are discussed at a future Policy Forum (currently planned for meeting #3) the scenarios will be used to compare NTR-based requirements with the requirements based on possible future human health criteria set at a different risk level.

The scenarios will help facilitate discussion of implementation tools. Situations contrasting current variance and compliance schedule regulations can be compared with variances and compliance schedules with extended time lines, as discussed in the Implementation Tools Rule-making.

The scenarios are not directly based on any individual discharger in Washington. Instead, they are representative of discharge and waterbody situations that have occurred, are occurring, or are likely to occur in Washington waters. The scenarios that will be discussed at Policy Forum #2 are:

Scenario 1a	
303(d) listings:	None
TMDL status:	NA
Discharges:	POTW Stormwater 5 Industries

Introduction to Draft Scenarios for Policy Forum #2, 12/10/12

PERMITTING UNDER THE CURRENT REGULATIONS

Scenario 1b	
303(d) listings:	Mercury and PCBs
TMDL status:	Completed and loads allocated, The water is no longer on the 303(d) list
Discharges:	POTW Stormwater 5 Industries Contaminated sites

Scenarios 1a and 1b show the same waterbody and discharger information, but differ in whether a 303(d) listing exists and TMDL has been required.

Scenario 2	
303(d) listings:	Temperature
TMDL status:	Completed and loads allocated The water is no longer on the 303(d) list
Discharges:	POTW

Scenario 3	
303(d) listings:	DDT
TMDL status:	Completed and loads allocated The water is no longer on the 303(d) list
Discharges:	POTW 1 Industry

What about waters that are on the 303(d) list but a TMDL is not started or completed?

Permitting when waters are 303(d) listed but a TMDL is not completed

The NPDES permit process that is used in Washington when a waterbody segment is 303(d) listed, but a TMDL is not completed, contains the following three components:

- Confirm water quality impairment at the point of discharge
- Impose interim effluent limits where the water quality at the point of discharge is not meeting standards to prevent an increase in loading (likely performance-based limits)
- Facility required to develop and implement a pollutant minimization plan.

See Ecology publication 05-10-006 for a more complete summary of this approach, as well as information on new discharges and general permits:

<https://fortress.wa.gov/ecy/publications/SummaryPages/0510006.html>.

New discharges - The Pinto Creek decision:

In simplified terms, the Pinto Creek decision says that a new source of the pollutant causing the impairment cannot discharge to a 303(d) listed segment until a TMDL is completed.

The Pinto Creek decision is at EPA's website:

[http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/EAB%20Decisions%20Pending%20Federal%20Court%20Review/223FDB61DD09834A85257082003F0D03/\\$File/Friends%20of%20Pinto%20Creek.pdf](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/EAB%20Decisions%20Pending%20Federal%20Court%20Review/223FDB61DD09834A85257082003F0D03/$File/Friends%20of%20Pinto%20Creek.pdf)

For the details of this approach see the *Water Quality Program Permit Writer's Manual*, Section 3.3.11 TMDL'S, WLA'S and 303(d) – Discharges to Impaired Waters, pages VI-35 to VI-41, at <https://fortress.wa.gov/ecy/publications/summarypages/92109.html>.

Variations for National Toxics Rule Criteria

Can a state issue a variance for a National Toxics Rule criteria?

A state does not have authority to waive a federal regulation. Washington's human health-based criteria are contained in federal regulation - the National Toxics Rule (NTR). Submitting a variance to EPA for a NTR criteria would likely have a very low probability of resulting in federal rule-making to approve the variance via modification of the NTR (See 1992 NTR at pages 60860-60861, columns 3 and 1 respectively, and, page 60891, column 3, Comment # 94 and accompanying Response; or, see NTR <http://water.epa.gov/lawsregs/rulesregs/ntr/> for the text of the federal rule)

What about a variance adopted:

- under the **current WAC language on variances**; and
- **after new human health criteria** are adopted and approved by EPA?

If Washington adopts new state-specific criteria, then Washington's human health criteria would no longer be found in federal rule and Ecology could propose a 5-year variance for the water body based on 40CFR131.10(g), 40CFR131.10(g), and WAC 173-201A-420 (<https://fortress.wa.gov/ecy/publications/publications/0610091.pdf>). If supportable, Ecology could formally revise the WQS to incorporate the variance, and submit the revised standards to EPA for CWA approval. If the variance is approved by EPA, and under the current regulations, Ecology would need to repeat this rule-making process every 5 years as each variance expires. Current WAC 173-201A-420(1)(c) states that "*Variations may be approved by the department when: ... (c) Reasonable progress is being made toward meeting the original criteria.*" Under the current water quality standards this language would help guide the permitting requirements for the specific pollutant for which the variance is adopted.