

May 31, 2005

Mr. Mason Morisset  
Morisset, Schlosser, Jozwiak & McGaw  
1115 Norton Building  
801 Second Ave.  
Seattle, WA 98104-1509

Dear Mr. Morisset:

Thank you for your public comment letter received on December 17, 2004, regarding Washington State's Water Quality Assessment for 2002/2004. The department received over 45 comment letters during this last review process and is appreciative of the time you took to review and comment on this assessment. We realize that there is an extensive amount of information in the Water Quality Assessment. The scrutiny given by you and other public reviewers has resulted in many changes and corrections that improved the accurateness of the final submittal to the Environmental Protection Agency (EPA).

The Water Quality Assessment is being submitted to EPA as an "integrated report" to meet the Clean Water Act requirements of sections 305(b) and 303(d). EPA will only take approval action on Category 5 of the assessment, which represents the state's 303(d) list. The Water Quality Assessment can be viewed at <http://www.ecy.wa.gov/programs/wq/303d/index.html>.

We understand that you continue to be frustrated with the decision to list the North Fork of the Skokomish River on the new Category 4C for instream flow. This decision is a direct result of following the EPA 2004 Guidance for the Integrated Report. EPA's Guidance for 2004 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act (TMDL -01-03 - Diane Regas-- July 21, 2003) can be found on EPA's website at <http://www.epa.gov/owow/tmdl/policy.html>. The description for Category 4C states:

Waters should be listed in this subcategory when an impairment is not caused by a pollutant. States should schedule these segments for monitoring to confirm that there continues to be no pollutant-caused impairment and to support water quality management actions necessary to address the cause(s) of the impairment.

Pollution, as defined by the CWA, is "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water" (Section 502(19)). In some cases, the pollution is caused by the presence of a pollutant and a TMDL is required. In other cases, pollution does not result from a pollutant and a TMDL is not required. Elevated temperature that results from man-made thermal discharges does require a temperature

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TMDL based on the protection or propagation of a balanced indigenous population of shellfish, fish, and wildlife.

The following are two examples of pollution caused by pollutants. The discharge of copper from an NPDES regulated facility is the introduction of a pollutant into a water. To the extent that this pollutant alters the chemical or biological integrity of the water, it is also an example of pollution. (Copper is not likely to cause an alteration to the water's physical integrity.) Similarly, actions that modify the landscape and may result in the introduction of sediment into a water constitute pollution when sediment (which is a pollutant) results in an alteration of the chemical, physical, biological or radiological integrity of the water. TMDLs would have to be established for each of these waters.

EPA does not believe that flow, or lack of flow, is a pollutant as defined by CWA Section 502(6). Low flow can be a man-induced condition of a water (i.e., a reduced volume of water) which fits the definition of pollution. Lack of flow sometimes leads to the increase of the concentration of a pollutant (e.g., sediment) in a water. In the situation where a pollutant is present a TMDL, which may consider variations in flow, is required for that pollutant.

We want to emphasize that waters listed in the subcategories of Category 4, including Category 4C, are considered impaired. The main difference between 4C and Category 5 is whether or not a specific pollutant has been identified, therefore necessitating a TMDL.

We also note that TMDLs have been established for fecal coliform and temperature on the Skokomish River, and efforts are occurring to improve the water quality of the river. We appreciate your concerns for the Skokomish River and agree that it will take a unified effort to continue to see improvements to the watershed.

Thank you again for taking the time to provide comments to Ecology. If you have questions regarding the above responses, or would like further clarification, please feel free to call me at 360-407-6414.

Sincerely,



Susan Braley  
Unit Supervisor  
Watershed Management Section