



Snohomish County
Public Works

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County Executive

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May 15, 2015

Mr. Patrick Lizon, Water Quality Planner
Water Quality Program
Washington State Department of Ecology
P.O Box 47600
Olympia, WA 98504-7600

Subject: Proposed Fresh Water Quality Assessment and 303(d) List for Washington State

Dear Mr. Lizon,

Thank you for the opportunity to provide comments on the Department of Ecology's ("Ecology") draft proposed Water Quality Assessment and 303(d) list for Washington State. Ecology and Snohomish County ("the County") share a commitment to protecting and where necessary, restoring, the quality of County waterbodies and Water Quality Assessments ("Assessments") are integral to this endeavor.

The Assessment process must be transparent and use data that is credible, representative of current conditions and generally acceptable to the scientific community. The bulk of our concerns with the latest Assessment process and results revolve around these fundamentals. Upon review of the freshwater stream and river proposed listings, we found:

- Proposed listings based on data that is over 10 years of age. We question how this data can be considered representative of current conditions or be generally accepted by the scientific community.
- Proposed listings for bioassessment that use a numeric threshold not stated in State Water Quality Standards or policy. It is unclear how this threshold was determined, including whether or not the numeric threshold underwent a transparent and scientifically credible public review process.
- Proposed Category 5 bioassessment listings within Snohomish County are not associated with a pollutant. Ecology policy states that if the source of a bioassessment impairment is unidentified and likely not due to a pollutant, the waterbody segment should be placed in Category 4c (habitat-related impairment), not Category 5.
- Proposed listings that have a greater than 90% probability of non-impairment based on an analysis of the entire dataset. While the County recognizes that Ecology is not required to use probability-based methods to determine impairment, the listing of waterbodies that are more than likely not impaired reduces overall confidence in assessments and could divert limited resources from higher priority waterbodies.

Listing decisions result in economic, political and social repercussions, including the establishment of Total Maximum Daily Loads (TMDL). Significant financial resources are required to meet new TMDL requirements in the County's National Pollutant Discharge Elimination System Phase I Municipal Stormwater permit. The County believes its limited financial resources must be used to remedy actual problems and given the concerns listed above; the current Assessment will misdirect County resources.

The County looks forward to working with Ecology to remedy these issues. General and listing ID specific comments follow in Attachment A. Comments will be submitted in both electronic and hardcopy form for Ecology's consideration.

If you have questions, please feel free to contact Steve Britsch at s.britsch@snoco.org or by phone at 425.388.3464 x 4668.

Regards,

A handwritten signature in black ink that reads "Karen R. Kerwin". The signature is written in a cursive style with a large, looping "K" and "R".

Karen Kerwin, P.E.
Interim Co-Director / Engineering Manager
Snohomish County Surface Water Management

Attachment A General Comment:

The County has significant concerns that Ecology's Category 5 listings of certain waterbody segments, as identified below, are contrary to one or more of the following: (1) RCW 90.48.570 - .585; (2) chapter 34.05 RCW; (3) chapter 90.48 RCW; (4) chapter 173-201A WAC; (5) chapter 173-204 WAC; (6) relevant Environmental Protection Agency guidance and policy documents; (7) relevant federal statutes and regulations, including but not limited to the Federal Clean Water Act and 40 CFR Parts 25, 130, and 131; and (8) relevant Ecology guidance and policy documents, including but not limited to Water Quality Policy 1-11. The County provides general comments related to these concerns below and listing ID specific comments in the chart that follows.

General Comments

1) Issue: Credibility of data, assessment methods and interpretations used to infer true impairment.

To ensure compliance with requirements of the Federal Clean Water Act (33 U.S.C. Sec. 1251 et seq), Washington State's Water Pollution Control Act (chapter 90.48 RCW) requires Ecology to establish water quality standards and policies to ensure the use of credible data as the basis for identifying and cleaning up polluted waters and to ensure financial resources of state or local governments are prioritized to address our most important water quality issues.

In many cases in the current Assessment, data greater than 10 years of age is carried forward from previous assessments. Ecology's Water Quality Policy 1-11 ("WQP 1-11"), Chapter 1, Section Four indicates that Ecology will not consider data greater than 10 years of age for new assessments. Further, the 2005 Environmental Protection Agency's (EPA) guidance document titled *EPA Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Section 303(d), 305(b), and 314 of the Clean Water Act* ("2005 EPA Guidance") describes that assessment methodologies should use analytical approaches to infer true segment conditions. We question how using data greater than 10 years of age is representative of true segment conditions or generally acceptable to the scientific community. Using data greater than 10 years of age as the basis for identifying impaired waters for clean-up does not ensure the limited financial resources of the state and local regulated governments are prioritized to address our most important water quality issues.

In the near term, the County encourages Ecology to review all Category 5 listings based upon data greater than 10 years of age from the proposed draft list and place them in the most appropriate Category. In cases where older data may be considered insufficient or unrepresentative of current conditions, we expect listings may move to Category 2 or 3. Recognizing resource limitations, these measures will help improve the assessment and reduce the volume of data Ecology must evaluate during each assessment cycle thereby

helping to achieve goals of the *2013 EPA and State Vision for Assessment, Restoration, and Protection under the Clean Water Act Section 303(d) Program*.

In the longer term, Ecology should continue working on technical solutions to expedite and improve assessments. The County directs Ecology's attention to approaches taken by other States as summarized in *Recommendations for Improving Water Quality Assessment and Total Maximum Daily Load Programs in Washington State* ("2014 Interagency Report"). It may be appropriate to modify WQP 1-11 to include a new category for old data which would trigger planning for new studies.

2) **Issue: Bioassessment listings**

WQP 1-11 provides that because state water quality standards do not currently contain numeric biocriteria limits that listings for benthic invertebrates (bioassessment) are to be based upon the application of narrative standards. However, bioassessment listings in Snohomish County in this Assessment are based upon numeric criteria of unclear origin. This appears counter to Ecology's statement in WQP 1-11 that Category 5 bioassessment listings are an application of the narrative standards in WAC 173-201a-260 and -300.

In taking actions described above, Ecology appears to have established a water quality standard or rule, as defined by RCW 34.05.010(16), outside of official rule-making and inconsistent with controlling laws, rules and regulations. Ecology's actions will have significant implications for municipal stormwater permittees. Relevant laws, rules, and regulations require that Ecology go through rule-making to establish numeric bioassessment criteria rather than utilize the water quality assessment process. Further, Ecology did not identify or make available the sources of information relied upon in implementing the bioassessment criteria, contrary to RCW 34.05.272.

Additionally, bioassessment methods in WQP 1-11, Chapter 1, state that if a source of impairment is unidentified but is suspected to be from pollution (e.g. habitat alteration, flow, etc.), instead of a pollutant (e.g. toxics, temperature, etc.), the segment must be placed in Category 4c. For example, if bioassessment data indicate an impaired biological community, and pollutant monitoring of suspected pollutants does not show impairment by a pollutant, the waterbody segment will be placed in Category 4c indicating that habitat-related impairment is suspected. There are a number of bioassessment listings in Category 5 without any pollutant listed for that segment, contrary to the WQP 1-11.

Snohomish County recommends all Category 5 bioassessment listings based on a numeric bioassessment criteria be removed from listing or, at a minimum, reconsidered for Category 4c. Ecology should engage EPA and stakeholders in a transparent process, as required by chapters 90.48 and 34.05 RCW, to evaluate and establish credible bioassessment criteria and methods of assessment for establishment in chapter 173-201A WAC and WQP 1-11. Methods of assessment may include a review of category placement to support stressor identification study.

These actions support goals of improved transparency and engagement of stakeholders as identified in the *2013 EPA and State Vision for Assessment, Restoration, and Protection under the Clean Water Act Section 303(d) Program*.

References:

Brown and Caldwell. (2014). *Recommendations for Improving Water Quality Assessment and Total Maximum Daily Load Programs in Washington State*. Report prepared for the Interagency Project Team. Seattle, WA. Retrieved from

<http://www.wastormwatercenter.org/municon-full-day-presentations/>

EPA. (2005, July). *EPA Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act*. Retrieved April 24, 2015 from <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/upload/2006irg-report.pdf>

EPA. (2013). *A Long-Term Vision for Assessment, Restoration, and Protection under the Clean Water Act Section 303(d) Program*. Retrieved from

<http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/programvision.cfm>