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Via: *electronic transmission*  
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Dear Ms. Braley:

The Boeing Company appreciates the opportunity to comment on proposed revisions to Water Quality Policy 1-11 Chapters 1 and 2. These policies provide critical guidance for the creation of the biannual assessment of the status of Washington waters, including which waterbody segments require the completion of a formal TMDL prepared by Ecology under the Clean Water Act section 303(d) for approval by EPA.

It is crucial, now more than ever, that this assessment process and the data relied on to make the category determinations, are credible, scientifically defensible and provide the best assessment of the status of our waters as possible. In particular the placement of waterbody segments into Category 5-Impaired Needing a TMDL has significant consequences for all the parties impacted.

- Ecology must prioritize and fund the preparation of a TMDL for the listed pollutant(s);
- Existing point source dischargers must assess their discharges and if required, install additional treatment or take additional corrective actions such as improved source control in order to “not cause or contribute to the impairment”.
- New discharges may only be allowed if a set of strict pre-conditions exist, These include an approved TMDL and control plans for all other sources.
- Non-point sources must also demonstrate that they are not causing or contributing to the impairment.

Ecology evidently will be finalizing the proposed revisions to the Policy soon after the closure of the public review period in order to rely upon the revised Policy for the 2012 freshwater assessment. Workshops on the freshwater assessment are already scheduled for this fall. These workshops may provide an opportunity to begin soliciting input on how the WQ Policy 1-11 has been developed and whether a more rigorous approach such as rulemaking is favored. Although Ecology has solicited comments on the previous and current proposed revisions to the Policy, as a policy it is not subject to the public review requirements and other regulatory controls required for rulemaking. Ecology should consider whether now is the time to convert the Policy into a rule through the formal regulatory process. We understand that this is a time consuming and expensive process and that it will take a considerable effort to make this change.

The included attachment contains our detailed WQP 1-11 comments on the proposed revisions. Please contact Mel Oleson 253 988-0378 ([mel.oleson@boeing.com](mailto:mel.oleson@boeing.com)) if you wish to discuss any aspect of these comments.

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## Attachment to Boeing Comments on 303(d) listing policy

The Boeing Company (Boeing) provides the following comments on the proposed revisions to Water Quality Policy 1-11 with particular emphasis on the following four key areas:

- Clarifications made to the descriptions of the five assessment categories.
- Clarifications of assessment information and specific data requirements for several pollutant parameters, including the new section on “Assessment of Waterbody Segments Within a TMDL”, describing when it is appropriate to move waterbody segment listings in and out of Category 4a (Has an Approved TMDL).
- Support for the clarifications proposed to the bio-assessment, pH and toxics criteria sections.
- Public Participation and Submitting Information for the Water Quality Assessment.

### Comments

#### 1) Clarifications made to the descriptions for the five assessment categories.

Many of these proposed “clarifications” appear to be significant revisions which will result in major changes in how waterbody segments are classified and EPA’s role in approving these classifications. Ecology does not provide reasons for these revisions or the regulatory basis. Specific comments on several of the proposed revisions to these categories follow.

- Subcategory 4a. “Has an Approved TMDL”

This subcategory allows Ecology to assess the implementation of an approved TMDL before it can be placed in Category 1-Meeting Water Quality. The sufficiency of data needed for this reclassification should be described in more detail and be referenced to the goals of the applicable TMDL. The difficulty of “delisting” a waterbody segment highlights the need again for careful consideration of the adequacy of data used to support a Category 5 listing. It appears that the process for placement in Category 1 is far more rigorous than the initial categorization process.

- Subcategory 4b. “Has an Approved Pollution Control Program”

The proposed revisions to Category 4b “Has an Approved Pollution Control Program” are significant and problematic. Ecology is proposing to add language to the definition of Category 4b to require approval by EPA of an Ecology determination that a segment belongs in this category. EPA has historically been limited to approval of Category 5 “Needs a TMDL”. Please explain the regulatory basis for requiring EPA “approval” of pollution control plans used to support a Category 4b decision and how this federal review process would be conducted. These changes appear to give EPA specific authority under the Clean Water Act to approve “other pollution control programs” recognized as the qualified basis for the 4b designation. The proposed Policy suggests that qualified state “pollution control programs” includes such state-only programs such as MTCA cleanups and Habitat Conservation Plans. However, EPA does not have independent Clean Water Act authority to otherwise approve or oversee these programs.

- Category 5. 303(d) List “Impaired by a Pollutant and a TMDL is Needed”

The proposed addition of waterbodies to Category 5 which currently meet water quality criteria but are not expected to meet water quality criteria within the next listing cycle, creates uncertainty for dischargers and a potentially major burden on Ecology and EPA. The placement in Category 5 creates major financial and regulatory burdens on all point and non-point dischargers often for 5-10 years or more. It creates a legal obligation for Ecology to prepare a TMDL or risk lawsuits to

compel the preparation. It can place major impediments to achieving the intended goal of improved water quality since dischargers will delay improvements pending TMDL completion based on the real concern that the improvements will not be consistent with the TMDL when finally completed.

This revision appears to violate the requirement to use credible data in these assessments. It allows Ecology to in effect “override” the sufficiency and adequacy of data required by credible data regulations and replace that process with “trend” information. Ecology already has sufficient authority under the NPDES program and nonpoint source control programs to put measures in place to address these trends. Additionally, if the trend projections prove to be unsupported by additional data it will be difficult to move the segment out of Category 5. These segments are more appropriately placed in Category 3 while additional sufficient credible data is collected and assessed. Please explain the regulatory basis for this revision and how it would be implemented.

- Listing Challenges and Other Situations

Ecology is proposing to delete language which explains how to request removal or reassessment of a listing. Please provide the regulatory or policy basis for this deletion. This is a significant policy revision and should have been summarized in Ecology’s request for comments. The opportunity to request a reassessment of an existing listing provided the only venue for impacted parties to question Ecology’s unilateral application of the Policy to categorize a waterbody. This ability to challenge listing will be particularly important with the proposed change over to the National Hydrography Dataset (NHD) waterbody delineation process.

- Additional proposed revisions of concern

The age restrictions for data submittals appear to be in conflict. The sections in conflict are included below. Data older than 5 years must, in general, meet all current data requirements. However subsequent language in the same section exempts “data submitted for water quality assessments prior to the 2006 water quality assessment.” Since pre-2006 data are now “older than 5 years” this exemption should be removed.

**2) Clarifications of assessment information and specific data requirements for several pollutant parameters.**

- Specific details in the bacteria section on how Beach Environmental Assessment, Communication, and Health (BEACH) Program monitoring data for *Enterococcus spp* is used for listing purposes.

It is difficult to assess the revisions that will result from the proposed changes. The addition of *Enterococcus* sampling for listing purposes will probably result in an increase in Category 5 waterbody segments with associated impacts on all dischargers. Ecology should consult with the potential sources including municipalities and agricultural stakeholders to determine how these sources and others can respond with effective control measures. Ecology should provide an estimate of how both marine and freshwater segments may be impacted

**3) Boeing generally supports the clarifications proposed to the bio-assessment, pH and toxics criteria sections. Ecology should also consider whether it will exclude bio-assessment data not collected per protocol after 2012 from the cumulative assessment used for categorization.**

- Changes in the bio-assessment section appropriately notify data submitters that after the 2012 assessment, all biological data that is used in the assessment must be collected using the protocols outlined in Ecology’s Standard Operating Procedures (SOP) for collecting freshwater macro invertebrates.

- Modifications to the pH section more closely resemble requirements for other conventional parameters.
- Boeing supports the clarifications to the toxics criteria section, including new descriptions for arsenic and endosulfans.

**4) Public Participation and Submitting Information for the Water Quality Assessment (page 11)**

- Sediment Management Standards

How will Ecology incorporate anticipated revisions to the Sediment Management Standards and the latest 2008 update into the assessment process described in this section? The use of sediment data and standards applications to support a waterbody segment assessment is controversial and not well described. Sediment-based Category 5 placements are increasing with each new list submittal. Ecology needs to ensure that the assessment approach is supportable in light of the more complex Sediment Management Standards. For example, a single “exceedance” does not translate to non-compliance with the applicable standards.

- Third Party Submittals

The inclusion of additional credible data requirements for third party submittals is supported. Ecology will need to ensure that it treats these submittals equitably in applying its discretion to reject or accept.

**5) Additional Revisions Related to WQP 1-11**

- Changes in the Map Presentation of River & Stream Data

It appears that Ecology will be conducting a separate public review of the very important proposal to change to the use of the NHD for segmentation of waterbodies “[t]o promote national consistency in measurement and reporting, EPA recommended that states use the National Hydrography Dataset (NHD) for segmentation of waterbodies.” As noted these revisions may significantly revise the status of currently listed segments starting with the freshwater list. Boeing is very interested in working with Ecology and others to make this transition as smooth and consistent with the law as possible.