



March 30, 2016

Patrick Lizon
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Pierce County Water Quality Policy 1-11 Comments

Dear Mr. Lizon:

Pierce County appreciates the Washington State Department of Ecology's (Ecology) opening of Water Quality Policy 1-11 to a comment and scoping process for stakeholders' revision and clarification. We recognize this comment solicitation is one outcome of our *Recommendations for Improving Water Quality Assessment and TMDL Programs in Washington State*, (2014, Clark, King, Kitsap, Pierce, and Snohomish Counties and Washington Department of Transportation, incorporated by reference). We believe that our comments represent the constructive dialogue that Ecology intended to solicit through this open process.

There are several overarching themes we believe Ecology needs to address. These and other issues are included in an attachment to this letter.

1. Pierce County requests Ecology revise its procedures to demonstrate the same level of rigor and burden of proof for delisting waterbodies as for listing waterbodies.
2. Pierce County requests Ecology include listing and TMDL specifications only for criteria fully adopted and EPA-approved water quality standards.
3. Pierce County requests Ecology "refresh" the 303d list at least every five years by including only those waters in Category 5 with data reflective of current conditions.
4. Pierce County requests Ecology make available its 5, 10 and 15 year plans for its water quality program that will require adjusting its listing and TMDL procedures.
5. Pierce County requests Ecology commence that formal rule making before finalizing this internal guidance document to adopt its listing and TMDL procedures, including appeal procedures, under the State's Administrative Procedures Act.



Thank you for the opportunity to comment. Please feel free to call me at (253) 798-4672 if you have any questions.

Sincerely,



Dan D. Wrye
Water Quality Manager
Surface Water Management Division

DDW:kj

Attachments: Pierce County Detail Comments, WQP 1-11
July 28, 2015, Dan Wrye Letter to David Croxton, EPA concerning Bioass

Enclosure: *Recommendations for Improving Water Quality Assessment and TMDL Programs in Washington State, (2014, Clark, King, Kitsap, Pierce, and Snohomish Counties and Washington Department of Transportation*

Attachment

Pierce County Detail Comments, WQP 1-11

Section 5. Categories

- According to the goals laid out in Environmental Protection Agency's "A Long-Term Vision for Assessment, Restoration, and Protection under the Clean Water Act Section 303(d) Program" (2013) a Category 4 listing should include more flexibility than Ecology's current 4b approved programs. Therefore, Pierce County requests Ecology explicitly incorporate language that encourages alternative restoration plans, adaptive management strategies, closure response plans, or other suitably equitable substitutes as alternatives negotiated between a jurisdiction and Ecology into Category 4.
- Pg. 13 *"Where a TMDL has been approved, data results for a monitoring location within the TMDL boundary may indicate that the listing should be placed in Category 1 based on data alone. However, in certain cases the waterbody listing will be placed, or remain, in Category 4a (has a TMDL) until the TMDL is completely implemented or data provides conclusive evidence that sources in the vicinity of the monitoring location are not contributing to further water quality standards impairment in the rest of the basin."* This finding could be construed to mean that the listed segment cannot contain detectable concentrations of the pollutant(s) of concern, even when applicable water quality standards are consistently being met, which is unreasonable. Moreover, it is not appropriate to defer any delisting until 100% of the water body segments under the TMDL meet applicable water quality standards. Assessment determinations should be based on performance (meeting WQ standards), not just completing a TMDL and assuming that will achieve compliance with standards. Pierce County requests Ecology incorporate a clear and explicit set of conditions designed to move a waterbody from a Category 5 listing to a Category 1 listing at a level of proof consummate with a decision to list a waterbody as Category 5.

Section 6. Assessment Methodology

- Pierce County strongly opposes using data that are 10 years old or older for listing decisions. Those data are not an appropriate measure of the current condition of a receiving waterbody or for any current Water Quality Assessment. Pierce County requests that Ecology constrain the acceptable sample collection dates to within 5 years of the call for data. Listing decisions based on data older than 10 years may result in initiating TMDLs that are not reflective of current conditions. Pierce County recommends that waterbody segments with data older than 5 years be placed in a Category 2, "Waters of Concern" and be flagged as needing additional, more contemporary monitoring data.

- Pierce County recommends that *Assessment of Information using Narrative Standards* (pg.20) be expanded to include more detail of the objective measures and criterion used to identify which water quality standards are not being met and what specific measures will be used for delisting.

Section 7. Other Assessment Conditions

- Pg.23 "Moving waterbody segments within a TMDL boundary from Category 4a to Category 1 will not necessarily end further implementation of the TMDL. That will be determined by the terms of the TMDL." In general, Pierce County opposes development of TMDLs for waters other than Category 5 waters. This is because even under the current TMDL program, Washington is not meeting its 303d responsibilities for polluted waters. We recognize this is a national problem, as evidenced in the 2013 *GAO Report, Clean Water Act – Changes Needed if Key EPA Program is to Help Fulfill the Nation's Water Quality Goals*. That report concluded that over 50,000 TMDLs had been completed since 2002 nationwide, but still the list of polluted waters grows. While we are open to consider instances of which non-Category 5 waters could benefit from a TMDL, we believe there should be an explicit, documented Ecology justification for deviating from the Clean Water Act's standard of TMDL development needs.
- Further, waterbody segments that meet water quality standards for listed parameters should be exempt from further TMDL requirements for those parameters. TMDL requirements are expected to be only temporarily more stringent than water quality standards in order to bring the waterbody into compliance. Pierce County strongly recommends Ecology define a clearer and more consistent path for allowing the permittee to move from the intense, temporary focus represented by a "pollution diet" as contained in a TMDL and transition into a water quality maintenance program with an adjusted program focus and investment portfolio consistent with a delisted Category 1 waterbody.
- In addition, Pierce County recommends that when TMDL requirements have been implemented and water quality standards have been achieved, an anti-degradation standard should prevail as the guiding mandate going forward. If a TMDL implementation program is restrained or prevented from changing intensity and focus, then adaptive management cannot occur because the program is held hostage to the simple budgetary approach required by the TMDL. Once compliance is achieved, the permittee's program should be encouraged to shift its' limited investments and resources to addressing improvements and water quality standard compliance in the next impaired watershed.

Section 8. Specific Submittal and Basis for Assessment Decisions

General Comments:

- Water Quality Policy 1-11 uses the terms "critical period" which is not defined in WAC 173-201A, and "critical condition", which is defined in WAC 173-201A, as if they were interchangeable. This is a major determinate of the magnitude of the remedy sought. As a result, Pierce County strongly recommends Ecology identify and distinguish the

operational formulae for determining each water quality parameter's "critical period" for monitoring and sampling. We also request a clarification of the difference between the "critical period" for monitoring data and the "critical condition" that is identified as part of the development of a TMDLs Waste Load Allocation and Measure of Safety analysis.

- Impaired Category listings are most often dependent upon sampling performed within a defined "critical period." Pierce County recommends that the "critical period" for each parameter, where appropriate, be explicitly defined and listed for each major watershed or WRIA. This information will add needed transparency to Assessment process and provide a great service to those municipalities and the Permittees who want to target their resources to sample a waterbody specifically during its' critical period(s).
- All pollutants listed in Section 8 of Water Quality Policy 1-11 should have similar water quality assessment thresholds for impaired Category 5 listings as they do for unimpaired Category 1 listings. If a Category 1 listing requires continuous monitoring then Pierce County believes that Category 5 listings should require the same continuous monitoring based criteria. Alternatively, if a Category 5 determination can be made using discrete monitoring results of sufficient number and criteria exceedance frequency, then the same number and frequency of criteria compliance discrete monitoring results should be used to place a waterbody segment in Category 1.
- Pierce County recommends that Ecology also require a minimum number of samples for water quality parameters that have a Category 5 determination in which a percentage of exceedance is calculated. For example, Pierce County suggests that there be a minimum requirement of 10 samples when 10 percent of samples exceeding criteria represents the listing threshold. This approach prevents a small number of results from heavily influencing Category 5 listings for Bacteria, Dissolved Oxygen, pH, Total Dissolved Gas, and Turbidity.
- Pierce County proposes a designated appeal period for Category 5 listings where a municipality can show through appropriately conducted recent or new monitoring that a listing does not accurately reflect the current condition of the receiving waterbody.
- Pierce County recommends that the phrase "from all data considered" be removed from Section 8 and be replaced with more discrete description of the periods that determine when monitoring data will be considered. For example, Total Dissolved Gas Category 5 Determination (pg. 46) uses sample values collected during the "critical season" and within the latest five years to make impaired listing decisions. Similarly, Bioassessment (pg. 33) uses data from only the two most recent years. Pierce County recommends Ecology use a more consistent framework for all Pollutants of Concern identified in Section 8.
- Pierce County suggests the statement "The collection of phosphorous data must not be grouped nor spread out over time so as to mask periods of noncompliance" (pg. 41) should be generalized and applied to all parameters so that data submitted as part of a water quality assessment accurately reflects the recent water quality conditions.

Specific Comments:

- Bacterial listings based on Agency Advisories provide additive criteria for impaired Category listings in the bulleted list on pg. 27. These shellfish harvesting and swimming closures are typically seasonal or temporary and do not align with TMDL development for Bacterial listings.
- Pg. 28 describes the process for a Bacteria listing category change from an impaired Category 5 to an unimpaired Category 1. These procedures include narrative criteria in the form of "investigative and/or remedial activities that have occurred, such as; septic system repairs, the formation of shellfish protective districts, construction of pet waste containers, or other appropriate activities". Pierce County recommends that this section be deleted due to 1) the age of data submitted and 2) the less than certain connection between fecal bacteria concentrations and natural background conditions. If a bacteria impairment determination was due, in part, to natural conditions, then the narrative criteria supporting the impaired category listing change could not be fulfilled.
- Section 8.h Total Dissolved Gas has language that appears to be directed toward the hydropower facilities industry. Pierce County would like Ecology to clarify if the policies described under Section 8.h are directed exclusively towards waterbody segments affected by hydropower facilities or other dams? Pierce County would like more information on policy decisions based on conditions that are not related to hydroelectric power, specifically the Critical Condition.

Bioassessment Comments:

- Pierce County reiterates its comments from the July 28, 2015 letter to Environmental Protection Agency (attached) regarding the intent to use Bioassessment (B-IBI) data in the Water Quality Assessment.
- Pierce County supports the use of B-IBI as an indicator, in combination with other tools, of watershed health trends. Pierce County's analysis of Water Quality Index and B-IBI scores strongly suggests that WQI and B-IBI scores are independent indicators of stream health. Pierce County has determined that improvements in water quality do not necessarily translate to improvements in B-IBI scores.
- Pierce County strongly opposes using B-IBI scores for 303d listing purposes. Instead, Pierce County urges Ecology to confirm water quality standards status of waterbodies with low B-IBI scores through water quality sampling data prior to making listing decisions. This would promote a scientifically credible, legally-supportive process of guided data collection, analysis, and interpretation with a transparent stakeholder review process.
- It is inappropriate to benchmark urban streams against pristine streams for regulatory purposes when there are tools available to determine the appropriate or reasonable level of B-IBI improvement that could be attained in urban streams.

- B-IBI methodology is a landscape-scale measure of aquatic health. In contrast, Assessment determinations are linked to specific assessment units. Applying a landscape-scale index to make conclusions about specific assessment units is inappropriate because B-IBI scores are dependent upon habitat conditions that may vary widely within and between reach sections, and integrate all upstream conditions to some degree.
- A great deal of historical B-IBI sampling was often conducted by untrained or minimally trained volunteers as part of “education and outreach” activities, rather than under an approved Standard Operating Procedure or Quality Assurance Project Plan. Results lacking documented quality assurance and quality control procedures create inconsistencies in the Assessment process and should not be used for regulatory purposes. Similarly, historical B-IBI data may have been analyzed under differing degrees of spatial and taxonomic resolution, which by in themselves, disqualify these data for listing purposes.
- Overall, the Category 5 Determination section lacks sufficient sample collection attributes, quality assurance/quality control measures, and correlation analysis results to meet the intent of the Code of Federal Regulations (40 CFR parts 25, 31, 35, 130 and 131), the Washington State Administrative Procedures Act, and the Credible Data Act.

Section 9: Prioritizing TMDLs

- Pierce County requests that a Use Attainability Analysis, or alternatively, a beneficial use confirmation study, be conducted, before a TMDL is developed. This would ensure the TMDL remedies are needed and appropriate.
- Pierce County requests that Ecology use the assistance from stakeholders to collaboratively identify issues within watersheds and include these stakeholders in the TMDL prioritization process. Pierce County requests that the prioritization process of TMDLs be reflective of publically-recorded procedures that are adopted into regulations under the State’s Administrative Procedures Act.
- Pierce County urges Ecology to provide a clear roadmap to developing and implementing TMDLs. In the past, we made the request that Ecology develop a strategic plan to indicate where it intended to direct its water quality resources into the future. We make that request again and that it involve stakeholders with interest and expertise. We again urge Ecology to make its mid- and long-term strategies available of how it intends to prioritize, develop, and implement TMDLs and changes it anticipates to water quality standards over the next 5, 10 and 15 years. This will enable stakeholders to do complementary program planning to anticipate changes for a more timely and complete implementation.