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**To:** [ECY.RE.SWQS](#)  
**Subject:** SWQS comments  
**Date:** Friday, March 20, 2015 8:20:34 PM

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The Association of Washington Cities thanks the Department of Ecology (DOE) and Governor Inslee for the reasonable approach taken in the proposal for new water quality criteria, especially for the approach on mercury, arsenic and PCBs. We recognize that the new human health criteria are more protective, or equally protective when compared to the currently applicable criteria.

We support the decision to apply an incremental cancer risk level of 10<sup>-5</sup>. For cancer risk, the criteria represent a range of risks covering a range of fish consumption values. This is true for the current NTR criteria, EPA's National Recommended Water Quality Criteria, and the state's proposed new criteria. Generally speaking, we believe that the new proposed risk range is about 2.7 times more protective than the NTR criteria. For non-carcinogenic based criteria, the use of a single fish consumption rate is appropriate and the resulting criteria are about 27 times more protective than the NTR criteria. Rather than some who focus only on the cancer risk level element of the equation, we view these standards as providing an increased range of protection for a wide range of fish consumption rates.

We agree with the use of an RSC of 1, and agree with DOE's wanting to keep the criteria relevant to water exposures and the associated clean water act (CWA) tools. We expressed significant concerns throughout the process at meeting these new criteria in some cases, and feel that it is the right policy choice to keep CWA standards focused on exposures from CWA regulated sources. We support the position Ecology voiced on this issue in their comments to EPA concerning EPA's proposed revisions to EPA's national recommended human health water quality criteria.

We agree that for some toxics, CWA tools are not able to address significant sources, and that alternative tools, such as Chemical Action Plans are more appropriate. Although we support and are working to pass a series of improvements in addressing non-point pollution in front of the legislature this year, we believe that this rule-making is well thought out, the process was extensive and open, and the decisions made are well explained. We believe this rule-making stands on its own merit.

We remained concerned about the possible impacts of these proposed human health criteria in the situation where newer test methods come along that identify situations where substances that were not previously known to be exceeding criteria in receiving waters with no technological capacity to treat to the new criteria. This is the situation that could suddenly drive end-of-pipe effluent limits with no dilution benefit, while the CWA regulatory tools might be ineffective because of non-CWA regulated sources (much like for PCBs). The economic analysis acknowledged there could be possible future impacts associated with new methods, but that there was no way to quantify that now. To protect against this, we strongly recommend that the applicable test methods for each of these toxicants be spelled out and adopted in a table in this rule. Especially as the state appears poised to adopt aggressive new water quality criteria it seems reasonable to provide an opportunity for a public evaluation of the implications of those new criteria when new testing methodology

does become available.

Finally, we believe that there is an additional implementation tool that needs to be specifically recognized in the rule. That is the use of Chemical Action Plans in lieu of a TMDL. The TMDL approach is limited to CWA tools focused on NPDES permitted discharges. Sometimes, that isn't going to accomplish much, while it could impose great costs and liability if permittees are unable to comply. A CAP approach can recognize the bigger picture, identify what is feasible to do and also identify what is not feasible. The mercury CAP and the PCB CAP are good examples. CAPs such as for mercury and PCBs should count in the 303(d) process as a Category 4(b) action. There should be a new section in the rule that acknowledges that non-TMDL implementation tools should be encouraged, especially where traditional TMDL and CWA tools will not be very useful.

Thank you for the opportunity to participate in this process and we greatly appreciate the willingness of the agency to listen to constructive feedback and work to find a balanced approach to this rule.

**Carl Schroeder**

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