

March 23, 2015

Surface Water Quality Standards Coordinator

Washington State Dept. of Ecology

RE: SWQS Rule Making Proposal for Human Health Criteria

I want to say upfront that I am very pleased that the Dept. of Ecology is finally addressing human health criteria in the state's water quality standards. This is a step that is long overdue, though I understand the reasons for the long delay up to this point. Kudos should go to Ecology for stepping up to this complex and controversial issue. Now to my comments on the proposal:

Fish consumption rate: The fish consumption rate proposed of 175 grams/day is based on data obtained in our state from tribal and other subsistence fishermen, it is state specific information and should be adopted. The data are credible, tribes and other people are consuming large quantities of fish and should be protected from dangerous chemicals in their food as shown in Ecology's technical support document. People who do not eat fish should not be included in the calculation of the FCR, since they do not need protection from contaminated fish.

Cancer risk level: It is regrettable that Ecology is proposing to increase the cancer risk level to 1:100,000. This change alone ensures that the increased fish consumption rate will result in little increased protection for fish eaters. The most often cited reasons for this increased rate relate to problems with detection, laboratory analysis, treatment and cost at the lower levels of criteria that would ensue by retaining the current 1:1,000,000 risk level. While these are real issues, they are the same issues that are raised by point and nonpoint source dischargers every time a more stringent change is proposed to the standards or to the levels they must reach due to other requirements (technology standards, TMDLs, etc.). In every case to date, those issues have been overcome. In most cases, the concerns have proven to be way overblown. The problem with detection and laboratory analysis issues is there is no incentive to develop more sensitive monitoring and lab procedures unless the standards are tightened. The same goes for treatment methods – without the driver of more stringent criteria, there is no incentive for industry, municipalities and nonpoint sources to find better treatment and pollution reduction alternatives. Secondly, under the federal CWA the standards are not to be cost-modified, they are to represent the real safety needs for aquatic life and human health. Costs are intended to be considered in the implementation of the standards, not in their setting. Finally, although Ecology has stated that this risk level is within the range given in EPA guidance, it is a huge disservice to the citizens of our state to increase our cancer risk level simply to appease industry. Please keep the current cancer risk level of one in one million.

Compliance schedules: These are clearly a tool to address issues with compliance for existing dischargers and have generally been used appropriately in the past. However, I am very concerned with the

removal of any long term limit for compliance schedules. Administrations, governors and directors come and go, but the standards remain in place for decades. Who is to say that a future administration will treat the factors for approving compliance schedules and keeping them as short as possible the same as today's administration? Absent a definite end date in regulation, there is no way that Ecology can guarantee that real progress will be made in a timely manner and that dischargers won't simply string the department along until they decide to do something different somewhere else. We have seen this scenario happen here before, and we will see it again under this proposal. Please include an absolute not to be exceeded end date for compliance schedules, no longer than 20 years.

Variations: See my statements above re: compliance schedules. The very same problems arise with no absolute end date by which waterbodies must meet the new standards. Where is the forcing mechanism to make it happen by a date certain? The factors to be considered are subjective and can be manipulated by the parties involved. Absolute end dates to variations should be added to the standards, no longer than 20 years.

Special chemicals:

Arsenic is naturally occurring in many of our watersheds, but it is above standards entirely due to natural processes in few of them. Therefore the criteria proposed (the safe drinking water act criteria, which is cost modified and should not be used for water quality standards to begin with) should only be applied to those watersheds where the naturally occurring levels would exceed the human health criteria calculated using the normal formula. All others should have a criteria calculated using the normal formula.

PCBs are clearly not naturally occurring, and do represent a special case caused primarily by past practices but not solely by them. But again, the water quality criteria are supposed to be free of cost and implementation issues, dictated only by the needs of aquatic and human health. By letting dischargers and cleanup sites off the hook for true human health-based standards, we will only perpetuate the harmful conditions currently found in many of our waterways.

Toxics Reduction: The Governor and Ecology's efforts to increase Ecology's authority and resources to control and reduce toxics at the source are laudable and should be supported. However, they are not a substitute for rigorous and protective human health criteria and stringent water quality standards. From past experience we know that the standards Ecology will adopt are likely to be in place for many years if not decades, but funding and legislative support for state programs waxes and wanes. Support for programs that entail additional costs for point and nonpoint sources of pollution is especially problematic and likely will not be sustained absent a strong underpinning of stringent water quality criteria. Under the federal Clean Water Act the standards must stand on their own, and cannot be predicated or "balanced" on the supposition of these proposed strategies to reduce toxics in the environment. Rather, the adoption of more stringent standards and criteria will encourage the Legislature and others in positions of authority and means to fund or implement such strategies to do so.

Sincerely,

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