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Department of
Natural Resources and Parks
Director's Office
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DEPARTMENT OF ECOLOGY

APR 03 2015

WATER QUALITY PROGRAM

March 17, 2015

Cheryl Niemi
Washington State Department of Ecology
Water Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Dear Ms. Niemi:

King County would like to thank the Washington State Department of Ecology (Ecology) for their extensive outreach activities supporting the development of the current draft human health water quality rules. Your time and thoughtful efforts to educate stakeholders and the public about this complex rulemaking are appreciated. We are writing to offer our support of draft rulemaking on chapter 173-201A WAC for the state's proposed amendments to the Water Quality Standards for human health criteria and implementation tools.

King County provides wastewater treatment for 1.5 million residents and businesses and manages stormwater for over 250,000 residents. Both our wastewater and stormwater services are managed under National Pollution Discharge Elimination System (NPDES) permits with Ecology. King County is also a designated Water Pollution Control Authority under State law. As both a regulated entity and jurisdiction actively managing and protecting water quality and quantity over an area of more than 2,100 square miles, we have a strong interest in how responsibility for maintaining and restoring these public water resources is shared amongst local, state and federal agencies.

Protection of public health and welfare is our highest priority and we have consistently supported Ecology's efforts to develop effective and meaningful human health criteria. King County supports the State's comprehensive approach to controlling toxic pollutants. This draft rule updates our fish consumption rate and defines water quality standards that are equal to or more protective than the standards in place today. This rule coupled with the toxics reduction strategies in the Governor's toxics reduction package is a holistic approach offering the best assurance of achieving real improvements in water quality and health outcomes over time.

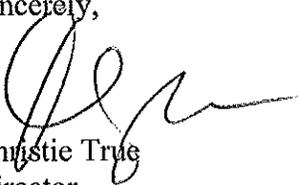
King County representatives were actively involved in the rulemaking process. Many of our initial interests were adequately addressed or clarified during the outreach process and are represented in the proposed rule. We do have a few remaining concerns about the rulemaking which are outlined in the attachment to this letter. We have significant concerns about the adequacy of the economic analysis, how the new criteria will be used in conjunction with impaired waterbody designations, the potential expansion of AKART requirements to unregulated chemicals, and the obligations imposed on facilities seeking a variance.

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Some of our comments reflect concerns which are outside of the specific rule changes, but for which we believe decisions must be addressed in parallel with this process. This is because the human health water quality standards are not implemented in isolation of other state rules and policies which Ecology uses to guide its permit decisions.

We appreciate your consideration of our comments on the revised human health criteria as they interface with their associated implementing rules and guidance. King County supports the rulemaking in conjunction with the suite of efforts to reduce toxic chemicals at their source. We look forward to continuing to work with Ecology to achieve our state's water quality and human health goals.

Sincerely,



Christie True
Director

Enclosure

cc: Sandra Kilroy, Assistant Division Director, Wastewater Treatment Division, Department of Natural Resources and Parks (DNRP)
Mark Isaacson, Division Director, Water and Land Resources Division, DNRP
Ngozi Oleru, Division Director, Environmental Health Services Division, Department of Public Health

King County Comments on WA Human Health Criteria and Expanded Permit Implementation Tools Rulemaking

- 1) Revisions to the rule's economic analysis are warranted. The analysis under reports the potential economic impact from the new rules.
 - It is unclear why there is no quantification of costs to implement the rule or convey the potential magnitude of implementation. It is additionally unclear why the benefits of the rule are not adequately discussed or quantified.
 - The economic analysis does not address reasonably expected changes that could occur over two to three permit cycles, such as additional impaired waterbodies and changing permit effluent limits. We urge the state to redo the economic analysis to include a discussion of future economic impacts to permittees based on the implementation of this rule through multiple permit cycles. In addition, Ecology has stated in the past that variances are a tool some permittees need in the short term; the costs associated with these pending variances have not been accounted for in the economic analysis. Other States have updated their human health criteria and their actual costs are an additional source of information which could be used to supplement the current narrative cost-benefit analysis and provide estimated dollar values for costs and benefits.
 - More sensitive chemical testing will naturally follow the newer stringent criteria. It is inevitable that more sensitive analytical testing methods will either be developed or required in the future to address increasingly stringent criteria. In many cases, these methods already exist, and are required by Ecology for monitoring at some facilities. Changing the analytical testing requirements and expanding the use of more sensitive methods will result in increased costs, detection of additional chemicals, and additional impairment listings in the future. We recommend that cost estimates for these methods be accounted for to expand the cost benefit analysis beyond its current narrative. Chapter 7 has not provided any dollar context for the magnitude of changing sampling, analytical, or permitting costs.
 - The cost benefit analysis points out 55 additional waterbodies will likely be considered impaired under the revised criteria. The analysis also states that 50 of the 55 are in waterbody segments on which there are no NPDES discharges present. This illustrates how important it is to address non-point pollution to achieve the overall health of our State's waterbodies.

- 2) Revisions to the waterbody listing policy guidance should be done simultaneously with this rule.
 - One effect of the rulemaking will be an increase in the listings of impaired waterbodies as a result of sampling efforts required for permitting and Ecology's ambient monitoring being compared with new, more stringent human health criteria. With the current low thresholds in the listing guidance for tissues, many waterbodies could be listed on the basis of only three fish or samples. The policy currently states:
"Tissue data: A waterbody segment will be placed in Category 5 for a specific pollutant when exceedances of the human health criteria are present from resident species for that pollutant. A segment will be placed in Category 5 if either the mean of the three single-resident fish samples

with the highest concentration of a given pollutant or one composite sample made up of at least three resident fish exceed the criteria.”

This is a very low threshold for a waterbody to be moved into the State’s highest level of impairment. This “overlisting” of waterbodies as impaired does not help us improve water quality or human health statewide. As a companion to the revised human health criteria, King County urges Ecology to create a more statistically robust evaluation of tissue data to be implemented as part of the waterbody listing policy. This evaluation should review all data used from prior listing decisions to ensure that older, currently unrepresentative tissue listings are removed, or at the very least downgraded to “Category 2, of concern, insufficient data.”

While not part of the human health listing process, comparable revisions to the minimum bioassay sample requirements are also warranted to ensure they are reasonably representative of the waterbody as well.

- Category 4B should be more fully utilized – Implementing the State’s Toxic Reduction Package could be considered a pollution reduction measure. If the State commits to implementation of these strategies, affected waterbodies could be considered for Category 4B (having a pollution control program) rather than Category 5 (303d list of impaired waters needing total maximum daily loads) status.

3) This rulemaking should not change or expand uses of All Known Available and Reasonable Technology (AKART).

- The Rule appears to expand AKART. The new rule provision: “Dischargers have the obligation to reduce toxics in discharges through the use of AKART” proposed in section 173-201A-240(5)(b) could be interpreted to apply to any toxic substance not just those chemicals on the new human health criteria list. Inserting the reference to AKART in the new rule section seems to expand these technological requirements to any possible chemical. It is important to recognize the financial implications of generalizing AKART to any constituent. While permittees strive for the best, most complete treatment, revising or adding treatment technologies to all facilities regardless of the demonstrated need is not a prudent use of public funds. We request that Ecology remove this sentence, because AKART requirements are already clearly defined in other sections of WAC 173-201A.
- The application of AKART to arsenic control is uncertain. Other than for drinking water, the technologies considered as AKART for arsenic control in wastewaters are undefined. Also, it is unclear if an industrial, publically owned wastewater treatment facility, or stormwater responsible party implements AKART and their effluent still exceeds the water quality criteria, what could be required. We request that Ecology develop guidance on this issue as soon as possible.

4) The data/information needed to support the granting of a variance must be reasonable to make this implementation tool a workable option for permittees.

- Information needed to support a variance application should be further defined. The expectations that variance applications meet one or more of the conditions in 40 CFR 131.10(g) and 131.10(h) represents a significant legal and financial challenge to a permittee. Information needed to apply for a variance appears to be the same as is

expected to complete a Use Attainability Analysis and these costs associated with expected variance applications should be included in the economic analysis. Ecology needs to develop guidance which demonstrates how individual permittees can successfully address the appropriate sections of the CWA requirements cited in a reasonable way. Perhaps EPA's 2014 Water Affordability Memorandum updating the 1997 Financial Capability Assessment (FCA) Guidance could be used as a model to incorporate additional metrics of affordability into variance applications (Revised FCA framework available online at:

http://water.epa.gov/polwaste/npdes/cso/upload/municipal_fca_framework.pdf)

- Termination of a variance should be predictable – Under the proposal, Ecology can terminate variances during any 5-year permit renewal (interim review); however, no appeal procedures for the permittee are offered. Removal of a major aspect of a permittee's operations and compliance without some process of appeal is not reasonable. We suggest some advance notice and appeal processes be added to the rule.

5) Human Health criteria should not apply to 401 Certification permitting.

- The way the information is presented with the rule-making, there is an indication that the human health criteria could begin to be applied to short term, in water construction activities. The duration of exposures for human health criteria is weeks or months (for non-carcinogens) to decades (for carcinogens), which is typically much longer than a transient water quality excursion from construction activities. Consequently, human health criteria should not apply to these permits and only ecological criteria with exposure durations similar to the construction duration should apply. The current rulemaking should not change the current practice of only applying relevant criteria such as those addressing the aquatic life impacts of total suspended solids when performing 401 Water Quality Certification analyses. We would like to see confirmation from Ecology that there are no changes to the current approach and that the human health criteria should not apply to 401 certifications.