



**Washington State
Department of Transportation**

Lynn Peterson
Secretary of Transportation

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March 23, 2015

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

RE: WSDOT Comments on the *Proposed Human Health Criteria and Implementation Tools Rule*

Dear Ms. Niemi:

The Washington State Department of Transportation (WSDOT) appreciates the opportunity to share our perspective and provide comments on the *Proposed Human Health Criteria and Implementation Tools Rule*.

The Draft Implementation Plan¹ states, “Changes to all criteria will be implemented when permits are renewed or when new permits are issued.” This language is applicable to National Pollutant Discharge Elimination System (NPDES) permits that prohibit discharges that violate surface water quality standards. WSDOT is concerned that permittees will not have the necessary tools to initiate the required “adaptive management response,” since existing stormwater best management practices are likely unable to remove carcinogenic pollutants, such as C-PAH, to a level that meets the proposed criteria. Therefore, we request that the final rule include reasonable lead time for technological advances in stormwater treatment, and that Ecology develop clear guidance on how to “apply” for a compliance schedule or variance.

The cost-benefit analysis² states, “Because most human health-based criteria are based on lifetime exposures, direct comparisons of receiving water criteria with pollutant concentrations in intermittent stormwater discharges are not appropriate. This and the high variation in stormwater pollutant concentrations and discharge volumes, both

¹ Ecology 2015. Rule Implementation Plan Water Quality Standards for Surface Waters of the State of Washington: Amendments to Chapter 173-201A WAC. Draft January 2015. Ecology Pub# 14-10-057.

² Ecology 2015. Preliminary Cost-Benefit and Least-Burdensome Alternative Analyses. Chapter 173-201A WAC. Water Quality Standards for Surface Waters of the State of Washington. January 2015. Ecology Pub# 14-10-056.

between storms and during a single storm, make the application of human health criteria to stormwater particularly problematic,” and “for an existing discharger to be impacted by the new rules a facility must have the following attributes:…Have a continuous discharge (i.e. not be an intermittent discharge such as stormwater or CSO).” For the reasons stated, we are in support of the decision that stormwater discharges are not subject to the proposed criteria. However, this is inconsistent with the existing NPDES permit prohibition for discharges that would violate water quality standards. We seek clarification on the applicability of the new criteria to stormwater discharges covered under NPDES permits as they relate to violations of water quality standards.

WSDOT does appreciate that the new criteria won't become applicable until the next permit cycle. However, existing NPDES permits contain language to prohibit any discharge which would cause or contribute to a violation of water quality standards, including Chapter 173-201A WAC³. This permit language does not tie the water quality standards to the permit issuance date or any other reference time. This opens the possibility that a permittee might have a discharge that would not violate the current standards under their permit, but a similar discharge in the future might cause a violation once the new rule takes effect. As such, we are seeking clarification from Ecology on which version of Chapter 173-201A is applicable to current permits.

That said, delaying applicability of the new criteria to the next permit cycle is important to WSDOT and other permittees, as potential changes in budgets and staffing levels to meet new permit requirements take time. WSDOT's biennial budget cycle does not allow for quick reactions to changing regulations. Therefore, we request that any monetary impacts imposed by the final rule include reasonable lead time in the final Implementation Plan.

Lastly, WSDOT is concerned about the effect of the proposed criteria on the Construction Stormwater General Permit process. It is important that the permitting process for contaminated sites be clear and consistent statewide to minimize confusion and permitting delays. Clarification should be added to the Implementation Plan to describe how and when the new human health criteria will be used to set trigger levels for contaminants. If the new criteria are going to apply to construction discharges, the Implementation Plan must include reasonable lead time for technological advances in stormwater treatment to allow for technology-based approaches to compliance that are widely available and cost-effective.

WSDOT appreciates the opportunity to submit comments on this draft rule and support Ecology's efforts to address water quality impacts to human health from toxics.

³ For example, see Special Provision S4.A and S4.B in the WSDOT NPDES Municipal Stormwater Permit.

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Please contact me at (360) 570-6642; StoneK@wsdot.wa.gov or Jana Ratcliff at (360) 570-6649; RatcliJ@wsdot.wa.gov if you would like WSDOT to discuss or provide additional clarification on our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'K Stone', written over a light blue horizontal line.

Kenneth M. Stone

Resource Programs Branch Manager

Washington State Department of Transportation

Environmental Services Office

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KMS:jr

cc: Dick Gersib, Stormwater and Watershed Program Manager
Jana Ratcliff, Municipal Stormwater Permit Coordinator
Sheila Helgath, Environmental Program Manager, Washington State Ferries