



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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DEPARTMENT OF ECOLOGY

SEP 16 2009
WATER QUALITY PROGRAM

OFFICE OF
WATER AND WATERSHEDS

SEP 14 2009

Mr. Kelly Susewind, Manager
Water Quality Program
Washington Department of Ecology
PO Box 47600
Olympia, Washington 98504-7600

Dear Mr. Susewind:

On February 11, 2008, EPA completed its review and took action on several of the State of Washington's new and revised water quality standards (Chapter 173-201A of the Washington Administrative Code (WAC)) adopted by the State in 2003 and 2006. EPA did not take action on revisions to the short-term modifications provision found at WAC 173-201A-410 because we do not consider this provision a water quality standard under section (§) 303(c) of the Clean Water Act (CWA).

EPA's CWA implementing regulations define water quality standards as: "provisions of State or federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act" (see *Code of Federal Regulations* (CFR) at 40 CFR § 131.3(h)). As such, water quality standards are legally binding norms that describe the desired ambient condition (i.e., level of protection) for a waterbody and consist of designated uses, criteria, and antidegradation requirements. The short-term modification provision at WAC 173-201A-410 does not affect the level of protection afforded by narrative or numeric water quality criteria, but rather is in the nature of an enforcement discretion provision under State law. Since this provision is not a water quality standard under CWA § 303(c), EPA did not act on revisions to this provision as part of its February 11, 2008, action.

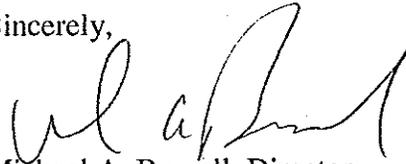
While water quality standards are directly enforceable under Washington State law, water quality standards are not directly enforceable under the CWA. Rather, they are implemented through other water quality programs, such as the CWA § 402 National Pollutant Discharge Elimination System (NPDES) program, the total maximum daily load (TMDL) program, § 401 certifications, and numerous state implementation programs. In the technical support document accompanying our February 11, 2008 letter, we stated the following with respect to the short-term modification provision: "As this provision is not a water quality standard under the CWA it cannot be used in Clean Water Act actions, e.g., establishing permit limits in NPDES permits or developing wasteload allocations or load allocations in TMDLs."

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The phrase "cannot be used in CWA actions" in our technical support document is more broadly expressed than necessary. A more precise rendering is, cannot be used as an approved water quality standard in CWA actions. Thus, for example, the short-term modification provision cannot be used as the applicable water quality standard for purposes of calculating water quality-based effluent limits in NPDES permits, calculating the loading capacity in TMDLs or determining impaired waters to be placed on the CWA § 303(d) list.

For State actions involving EPA review or oversight under CWA § 402 or § 303, we recommend that the Department coordinate closely with EPA staff if any application of the short-term modifications provision is being considered. If you have further questions, please feel free to contact me at (206) 553-4198, or Melinda McCoy of my staff at (206) 553-6102.

Sincerely,



Michael A. Bussell, Director
Office of Water and Watersheds

cc: Ms. Melissa Gildersleeve
WA State Department of Ecology