



PUBLIC WORKS

October 28, 2014

Mr. Rob Duff
Senior Policy Advisor
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

RE: Ecology's proposed Water Quality Standards revision

Dear Mr. Duff:

The City of Everett thanks Ecology for the reasonable approach taken for 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. Ecology has been clear about this, but incomplete understanding of all the pieces involved in applying the criteria (over 70 year time frame, drinking water from same source, etc.) leads to flawed assumptions that still get a lot of play in the media.

We agree with the use of an RSC of 1, and agree with Ecology's wanting to keep the criteria relevant to water exposures and the associated CWA tools.

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. Such plans can, and have in the past, lead to some bans, and also to some push for alternative assessments, and that is appropriate. In the past, the bans have been imposed by the legislature. We note that the Governor's package seeks to have Ecology empowered to enact bans. We are unsure about giving Ecology that much power, while we also recognize that legislative imposition may be outside of the legislature's expertise. The legislative process for banning is well suited to evaluating and weighing and balancing effects on people and industry. Perhaps a hybrid approach would work, where Ecology works through a reasonable process for proposing bans, which then get presented to legislative committees in the House and Senate to inform them. The proposed bans could then go into effect in a reasonable time unless the legislature determines a ban is not right for some reason. DOE can also take recommendations from the legislature to modify conditions or terms of a ban. In other words, the legislature can help inform Ecology on a proposed ban, and the legislature can essentially veto a ban, but otherwise, Ecology can adopt bans without having to be adopted by the legislature.

We are concerned with what is an egregious error in the economic analysis. That analysis determines a benefit in reduced cancers and reduced cancer deaths associated with a more stringent standard for vinyl chloride in a discharge from a groundwater cleanup remediation. Vinyl chloride is a volatile organic

compound which in the water behaves opposite of a persistent bioaccumulative contaminant. It does not persist, it volatilizes. We think that it does not bioaccumulate. There are no exposures associated with the scenario described in the economic analysis that produce cancer risks and cancer deaths to people eating just fish that have lived their entire lives in 100% effluent from the discharge. Consequently, the benefit touted of this rule does not exist.

We are concerned about the possible impacts of these proposed human health criteria in the situation where newer test methods come along that then find some substances that were not known to be exceeding criteria in receiving waters. 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. The applicable methods are already known and identified by Ecology in NPDES permits. The applicable test methods could be presented either as 1) a table immediately following table 240, 2) another column in table 240, or it could go into WAC 173-201A-260(h). In either event, WAC 173-201A-260(h) needs to be changed to preclude imposition of new methods approved by EPA before the state and permittees have had a chance to review and evaluate them, and adopt the methods into WAC173-201A through rule-making. With this strategy, the economic analysis would not have to consider the effect of future test methods, as those would be considered when such methods were adopted into the rule.

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. The TMDL imposed PCB limit for the City of Walla Walla is an example of an ineffective action, as the POTW loadings account for less than 2% of the total. A CAP approach can recognize the bigger picture, identify what is feasible to do, and what is not feasible. Think mercury and PCBs as good examples. This 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.

Lincoln Loehr has identified some footnote problems with Table 240 and already discussed them with Cheryl Niemi, so they do not need repeating here.

Thank you for the opportunity to participate meaningfully in this process.

Sincerely,



Heather Kibbey
Surface Water Manager