Water Quality Standards Rule Making

Implementation Tools Outline

Summary

November 6, 2013

Developing human health criteria based on updated fish consumption rates for Washington will likely result in more protective criteria that, in some cases, will be difficult to achieve with current technology and the limitations of what can be controlled through Clean Water Act programs. Demands will be placed on regulated dischargers to do everything that is reasonably feasible to meet these new low levels. However, these efforts will not be enough for some persistently pervasive pollutants that are considered to be legacy in the environment, such as PCBs that are introduced into waterbodies through many unregulated sources, or mercury being introduced through sources outside of the jurisdiction of the Clean Water Act, such air deposition.

The cost and ability for regulated dischargers to get to these new low levels immediately after new standards are adopted are of concern. We want to avoid situations where communities are immediately out of compliance with treatment plants that handle sewage, or businesses become liable for third party lawsuits because new lower criteria cannot be met immediately even though the regulated discharger is doing everything reasonably feasible to control the pollutant in their discharge.

Ecology is looking at expanding regulatory tools to address some of the difficult issues associated with meeting updated human health criteria. New and revised tools are being considered that:

- Are legally defensible.
- Will result in measurable toxic reduction.
- Will result in dischargers being able to stay in compliance while they work on toxic reduction activities.
- Are able to be issued and administered in a timely way without over-burdensome administrative costs.
- Provide opportunities to include new science.

The following sections outline Ecology's preliminary ideas for expanding or adding implementation tools for compliance schedules, variances and intake credits. White papers have been developed that describe these in further detail. Summaries are provided below.

Compliance Schedules

At this time Ecology is considering three options for revising current rule language for compliance schedules at WAC 173-201A-510(4):

- Option 1 – Delete the 10 year time limit on compliance schedules and deal with on a case specific basis.
- Option 2 – Add language to allow 20 year compliance schedule for facilities where there has been a TMDL to address a specific pollutant (directed by 2010 legislation).
- Option 3 - Add language to provide 20 year compliance schedule for areas that do not have a TMDL (goes beyond 2010 legislative language).

Variances

At this time Ecology is considering draft minimum qualifications for granting variances. We need to determine what would go into rule versus guidance but the following is our current thinking:

1. Document that a variance is necessary:
   - Identify and justify applicable federal 131.10(g) reason(s) for allowing the variance.
   - For individual application of the variance, an analysis showing the discharger cannot meet criteria and why a variance is needed.
   - For broader application, a watershed assessment to identify sources contributing to the pollutant.

2. Granting a variance must include assurances that toxics reductions will occur:
   - Required actions would be specific and adaptable.
   - General requirements would be in rule language, details would be in guidance.
   - Permit requirements would include:
     - Pollution minimization requirements.
     - Milestones/dates for specific accomplishments.
     - Monitoring to measure effectiveness and compliance (e.g. ambient waters, effluent, sludge).
   - If a waterbody variance is considered, then require a detailed “to do” list for specific actions needed, and the responsible entity identified, to get non-permitted toxics out of the environment and water.

3. Variance must have accountability:
   - Interim criteria would be set to ensure measurable progress towards meeting criteria is being made.
   - Public review at issuance and a time-specified mandatory review thereafter to ensure that the variance is being complied with and reasonable progress is being made.
   - Requirements must be enforceable, either in rule or in permits.
   - Regulated dischargers would be assured of compliance if they were complying with permit requirements or orders stipulated in the variance.
   - For variances that are broader than individual, such as granting a variance to a waterbody or statewide, the following would be required:

- Watershed assessment to identify permitted discharges and other sources (e.g. nonpoint pollution) contributing to the pollutant.
- Requirements for pollutant reduction plan for permitted discharges.
- An implementation plan to deal with nonpoint pollution sources, including a schedule and actions needed to address those sources, and a commitment to implement.
- Consequences if variance is not being complied with.

4. Duration of a variance must be articulated:
   - Duration of a variance would not be longer than reasonably necessary to achieve compliance with the criteria in question:
     - Ecology would seek ability to issue longer duration variances with EPA, where justified.
     - Variances longer than 5 years would have a mandatory review and the ability to repeal the variance if compliance was not met.
     - Renewal of the variance would be addressed in rule.

5. Where appropriate, other sources must be dealt with in the variance:
   - For individual variances, permit requirements would address non-point and other sources as appropriate to the permittee.
   - For waterbody variances, an implementation plan to deal with nonpoint pollution sources, including a schedule and actions needed to address those sources, would be required:
     - Regulatory and financial gaps that prevent implementation of the nonpoint pollution implementation plan would be identified.
     - Identify actions that need to be implemented. If a Chemical Action Plan exists for the pollutant of concern, then pertinent actions would be built into the variance.
     - A schedule and resources to implement nonpoint control actions would be included.

6. USEPA review and approval of variances:
   - Option 1: Draft rule language would specify that Ecology issues variances for individual dischargers based on 40CFR131.10(g)(6), public process and tracking/enforcement specified; EPA review and approval would be required for all multiple discharger and waterbody variances.
   - Option 2: EPA review and approval required for all variances.

Intake Credits

At this time Ecology is considering adding a new section to the water quality standards rule at WAC 173-201A-510(1) that addresses implementation of standards in permits. Language would be added to clarify conditions where intake credits would be allowed for water quality-based effluent limits (similar to Oregon and Great Lakes Initiative):

- Accounts for pollutants already present in intake water
- When the mass and concentration of effluent is the same or less than intake water
- “No net addition” of the pollutant