



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

Reply To: OWW- 135

MAY 14 2008

Kelly Susewind, P.E., P.G.
Interim Water Quality Program Manager
P.O. Box 47600
Olympia, Washington 98504-7600

Re: EPA revised determination regarding the 2003 turbidity criteria revisions

Dear Mr. Susewind:

Thank you for your April 11, 2008, clarification letter regarding EPA's determination on Ecology's turbidity criteria contained in our February 11, 2008, approval letter of the 2003/2006 water quality standards. In the enclosure to our February 11 approval letter, EPA determined that the 2003 revisions to the freshwater (WAC 173-201-200(1)(e)(i)) and marine water (WAC 173-201-210(1)(e)(i)) turbidity provisions are not water quality standards under Section 303(c) of the CWA. The EPA, therefore, did not take action on these provisions.

Based your clarification letter, we agree that we misinterpreted your 2003 revisions to your freshwater and marine water turbidity criteria that allow for a temporary area of mixing during and immediately after necessary in water construction activities that result in the disturbance of in-place sediments. We now recognize that these provisions were previously contained in the Short Term Modification section of your 1997 water quality standards and that in your 2003 revised standards you moved the location of these provisions to be included directly in the freshwater and marine water turbidity criteria sections. However, although these provisions were moved in the 2003 revised standards, the substance of these provisions did not change as you explained in your clarification letter.

Accordingly, with this letter EPA is revising its determination on the freshwater (WAC 173-201-200(1)(e)(i)) and marine water (WAC 173-201-210(1)(e)(i)) turbidity provisions. EPA's revised determination is to approve these provisions as editorial and formatting changes that do not alter the water quality standards that EPA previously approved and that were in effect in the 1997 standards. EPA is approving the changes to these provisions to ensure that the editorial and formatted provisions are in effect under Section 303(c) of the CWA. However, EPA is not re-assessing the underlying substance of these provisions that were previously approved in 1997.

The enclosure to this letter is an amended justification for the approval of these two provisions. This enclosure replaces EPA's previous determination that was described in the enclosure to EPA's February 11, 2008 letter on pages 36-38 (IV.C.17) and pages 52-54 (IV.D.15).

If you have any questions regarding these action, please call me at (206) 553-7151 or Jannine Jennings, Manager for the Water Quality Unit at (206) 553-2724.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Gearheard". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Michael F. Gearheard, Director
Office of Water and Watersheds

Enclosure

cc: Melissa Gildersleeve

ENCLOSURE

Amended EPA Action & Technical Justification for the Freshwater and Marine Water Narrative Turbidity Criteria

This amendment supersedes the information provided on EPA's previous determination that was described in the Enclosure to EPA's February 11, 2008 letter on pages 36-38 (IV.C.17) and pages 52-54 (IV.D.15)

C. FRESH WATER AQUATIC LIFE USES AND CRITERIA

17. WQS Provision: Fresh water Narrative Turbidity Criteria (WAC 173-201A-200(1)(e)(i))

(i) The turbidity criteria established under WAC 173-201A-200(1)(e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. A temporary area of mixing shall be as follows:

(A) For waters up to 10 cfs flow at the time of construction, the point of compliance shall be one hundred feet downstream from the activity causing the turbidity exceedance.

(B) For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be two hundred feet downstream of the activity causing the turbidity exceedance.

(C) For waters above 100 cfs flow at the time of construction, the point of compliance shall be three hundred feet downstream of the activity causing the turbidity exceedance.

(D) For projects working within or along lakes, ponds, wetlands, estuaries, marine waters or other nonflowing waters, the point of compliance shall be at a radius of one hundred fifty feet from the activity causing the turbidity exceedance.

EPA ACTION: EPA approves this provision as an editorial and formatting change that does not alter the water quality standard that EPA previously approved and that was in effect in the 1997 WQS.

EPA is acting on the changes to this provision to ensure that the edited and reformatted provision is in effect under the CWA. However, EPA is not reassessing or re-approving the underlying, previously approved standard.

In the 1997 WQS, this provision was contained in the Short-Term Modification section (WAC 173-201A-410). In the revised 2003 WQS, Ecology moved this provision to be included in the freshwater turbidity criteria section (WAC 173-201A-200(1)(e)), since this provision was specific to the turbidity criteria and did not apply to any other criteria. In addition to moving this provision, Ecology added the above underlined minor editorial changes, which are discussed below.

- The revised regulatory references underlined above reflect changes in the numbering of those referenced provisions.
- The addition of without specific written authorization from the department clarified that a water quality revision is not needed to implement this provision.
- The clause "area of mixing" replaced the previous clause "mixing zone".
- The clause "and can occur only" replaced the previous clause "and is authorized only."

None of the above editorial changes modified the substance of this provision that was previously approved by EPA in 1997. Further, Ecology clarified in a April 11, 2008 letter from Kelly Susewind to Michael Gearheard that this provision was only moved in location with the water quality standards and that substance did not change. In this letter, Ecology clarified that it will continue to follow the limitations on its use that it has historically applied when it implements this provision. Those limitations include using it only when necessary to accommodate essential activities and that such activities must be conditioned, timed, and restricted (i.e., hours or days rather than week or months) in a manner that will minimize water quality degradation. Additionally, in no case will it be used if there is degradation of the characteristic uses of the water body or causes long-term harm to the environment. These limitations were previously placed on this provision in the 1997 standards in the introductory paragraph of the Short-term modification section. These limitations are similar in nature to the WAC 173-201A-400 (4) and (6) constraints (i.e., mixing zone limitations) that continue to explicitly apply to this provision.

D. MARINE WATER DESIGNATED USES AND CRITERIA

15. WQS Provision: Marine water narrative turbidity criteria, (WAC 173-201A-210(1)(e))

(i) The turbidity criteria established under WAC 173-201A-210 (1)(e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. A temporary area of mixing shall be as follows:

(A) For waters up to 10 cfs flow at the time of construction, the point of compliance shall be one hundred feet downstream from the activity causing the turbidity exceedance.

(B) For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be two hundred feet downstream of the activity causing the turbidity exceedance.

(C) For waters above 100 cfs flow at the time of construction, the point of compliance shall be three hundred feet downstream of the activity causing the turbidity exceedance.

(D) For projects working within or along lakes, ponds, wetlands, estuaries, marine waters or other nonflowing waters, the point of compliance shall be at a radius of one hundred fifty feet from the activity causing the turbidity exceedance.

EPA ACTION: EPA approves this provision as an editorial and formatting change that does not alter the water quality standard that EPA previously approved and that was in effect in the 1997 WQS.

EPA is acting on the changes to this provision to ensure that the edited and reformatted provision is in effect under the CWA. However, EPA is not reassessing or re-approving the underlying, previously approved standard.

In the 1997 WQS, this provision was contained in the Short-Term Modification section (WAC 173-201A-410). In the revised 2003 WQS, Ecology moved this provision to be included in the marine water turbidity criteria section (WAC 173-201A-210(1)(e)), since this provision was specific to the turbidity criteria and did not apply to any other criteria. In addition to moving this provision, Ecology added the above underlined minor editorial changes, which are discussed below.

- The revised regulatory references underlined above reflect changes in the numbering of those referenced provisions.
- The addition of without specific written authorization from the department clarified that a water quality revision is not needed to implement this provision.
- The clause "area of mixing" replaced the previous clause "mixing zone".
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