UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

December 1, 2004

Reply To
Attn Of: OW - 135

Dave Peeler
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

Dear Mr Peeler:

In the process of reviewing the revisions to Washington's Water Quality Standards we have identified several provisions that need clarification. We'd like to request that you assist us in our legal and technical review by providing us with additional clarification for these provisions. We have included an attachment to this letter that lists the information we are seeking.

As we move forward we may need additional clarification on some language in the standards. We appreciate your assistance in this current effort, and appreciate the support your staff has provided us throughout this process.

If you have any questions or need additional information please feel free to contact me at 206-553-7151 or Kathleen Collins at 206-553-2108.

Sincerely,

Michael Gearheard
Director
Office of Water and Watersheds

cc: Melissa Gildersleeve

ATTACHMENT
Information Request

1) Natural conditions exceeding criteria

There are several provisions in the standards which contain language allowing criteria to be set equal to the natural condition. In addition, other parameter-specific provisions allow for small increases or decreases (depending on the parameter) over the natural condition. The new or revised provisions that allow increases or decreases from natural include:

- 200(1)(c) (i) and (v) – Fresh water temperature
- 200(1)(d)(i) and (ii) – Dissolved oxygen
- 210(1)(c)(i) - marine temperature

New or revised provisions allowing the criterion to be set equal to natural conditions include:

- 260(1)(a) – general provision
- 310(3) – antidegradation

EPA needs to understand how Ecology will be implementing these procedures. Ecology's explanation should address the following:

- Identify the potential pollutants/parameters which are naturally occurring.
- A general description of the methods to be used for estimating natural conditions along with a demonstration that the exceedance is due to naturally occurring conditions. In addition, there should be an uncertainty analysis pertaining to the estimate of the natural condition.
- A commitment to affirm that human health beneficial uses are protected/attained by the natural conditions, or if not then a re-evaluation of the human health use.
- A public process for Natural Conditions determinations (which could be accomplished through the NPDES permit, TMDL or 303(d) listing public process)
- Central tracking of the Natural Condition determinations
- A commitment to work with EPA on a more detailed natural condition methodology in the TMDL, NPDES, or 303(d) listing context.

2) Spawning narrative for char

Ecology's numeric temperature criterion to protect char spawning and early tributary rearing (Table 200(1)(c)) is augmented by provision 200(1)(c)(iv), which states, in part:

> "Where the department determines the temperature criteria established for a water body would likely not result in protective spawning and incubation temperatures, the following criteria apply:
> - Maximum 7-DADMax temperatures of 9°C (48.2° F) at the initiation of spawning and at fry emergence for char; and...
>
> The department will maintain a list of waters where the single-summer maximum criterion is not sufficient to protect spawning and incubation."

Ecology must make a determination of where this narrative criterion applies to protect char spawning and incubation, and provide the list to EPA and make the list available to the public.

3) Criteria applicable to lakes

Provision 600(1)(a)(ii), which precedes the designated use Table 602, indicates that lakes are to be protected for the use designation of "salmon and trout spawning, core rearing and migration" (hereafter referred to as "core rearing"). The wording of this provision can lead to the conclusion that the "core rearing" use criteria for temperature apply to lakes (i.e., 16° C). Furthermore, it appears that provisions 200(1)(c)(i) and (ii)), which limit temperature increases above the natural condition, would apply to lakes. However, provision 200(1)(c)(v) indicates the human actions considered cumulatively may not increase the 7-DADMax temperature for lakes by more than 0.3°C (0.54°F) above natural conditions. Additionally, this provision seems to imply that the temperature criterion for lakes is the "natural condition."

These provisions are confusing because it is not clear if the criterion found in Table 200(1)(c) (i.e., 16° C) applies to lakes, or if the criterion for lakes is the "natural condition" of the lake as indicated in provision 200(1)(c)(v) . Further, it is not clear if provisions 200(1)(c)(i) and (ii)) apply to lakes, or if only provision 200(1)(c)(v) applies to lakes. This same discrepancy applies to dissolved oxygen and other parameters.

Please clarify provisions 200 and 600 and specify whether numeric criteria for "core rearing," as found in the tables contained within WAC173-210A-200 apply to lakes, or whether the criterion for lakes is the natural condition, with an allowable increase or decrease from the natural condition.

4) Thermal plume provisions

New provisions have been included under the temperature criteria to serve as guidelines for preventing acute lethality and barriers to migration. These include:

- 200(1)(c)(vii) – Fresh water temperature
- 200(1)(c)(v) – Marine water temperature

Please explain how this guidance will be applied in connection with the mixing zone policy provisions and particularly how areas of higher temperature will be limited spatially to protect salmonid beneficial uses (See EPA Temperature Guidance, Section V.3. for EPA recommended provision to protect salmonids from thermal plume impacts).

5) Antidegradation

New provisions have been added to address antidegradation implementation. Among these are provisions for:

- 320(6) – Application of Tier II to general permits and water pollution control programs
- 330 (1)(e) – Protection of cold water refuge areas

Please provide the process that will be used to address compliance with Tier II for general permits (i.e, What information will be made available to the public at the time of public notice of the general permit? Will there be opportunity for any site-specific antidegradation evaluation of specific actions that fall under the general permit at the time that an applicant applies for coverage under the general permit?). Additionally, please provide clarification of the procedures that will be used to ensure that existing cold water refuges will be protected.

6) Short-term modifications

The short-term modification provisions have been revised to add:

- 410(2) – an option to renew the short-term modification for long-term projects
- 410(3) – a provision for major habitat restoration activities

These provisions have the potential for more than short-term exceedances of the water quality criteria. It is not clear how a short-term modification is distinguished from a variance, or how Ecology will determine when it is appropriate to use a short-term modification rather than a variance.

Please clarify how short-term modifications will be implemented (i.e., Are the criteria modified, with an alternative level set in the short-term modification, or is the short-term modification provision a form of enforcement/compliance discretion? What is the limit for the duration of a criteria exceedance to be considered a short-term modification? How will Ecology determine when a variance rather than a short-term modification is needed?).

7) Compliance Schedules for Dams

We have reviewed the language for compliance schedules for dams and would like Ecology to clarify an ambiguity in this provision. This provision allows for an attainment plan and a compliance schedule of up to 10 years to meet water quality standards (see (5)(b) & (c)); and it allows the compliance schedule to be extended if new technologies have been developed during the period of the initial compliance schedule (see (5)(g)(i)). There is ambiguity in the provision at (5)(g)(ii) as to whether a water quality standard revision (i.e, such as a use attainability analysis or site specific criterion) must be finalized before the end of the compliance schedule. If a water quality standard revision is not finalized (i.e., approved by EPA) prior to the end of the compliance schedule this would create a period of non-compliance with the water quality standard. Similarly, if a water quality offset is not in place prior to the end of the compliance schedule this would create a period of non-compliance with the water quality standard. Please explain how Ecology intends to implement this provision.

8) Use Designations in GIS

To facilitate our review of the revised WQS, it would be very helpful to have the adopted use designations for each WRIA in GIS. We have been working with the Northwest Indian Fish Commission and they have developed GIS maps of the uses for WRIA's 1-23. If your staff has not already received these, we would be glad to forward these GIS maps to you. We request that Ecology develop GIS maps of the uses for the remaining WRIAs in the state and forward them to use as soon as possible.