DEPARTMENT OF
ECOLOGY
State of Washington

Water Quality Program Policy

Chapter 1 | *WQP Policy 1-25*

Resource contact: Melissa Gildersleeve | Effective: October 2002

References: RCW 43.21A.130 | Revised: August 2012

Dispute Resolution Related to Total Maximum Daily Loads (TMDLs) or Water Cleanup Plans

Purpose: To establish a mechanism by which a local entity or citizen can ask for reconsideration of final TMDL/Water Cleanup Plan reports developed by the Department of Ecology (Ecology) and/or bring a dispute of a procedural step in the TMDL/Water Cleanup Plan process. This applies to all final TMDL reports, including the following: quality assurance project plan, technical study report, EPA submittal report, and effectiveness monitoring report. (Reference: RCW 43.21A.130.)

TMDLs, or water cleanup plans, require meaningful public participation and involvement opportunities for watershed planning groups, local governments, and other affected citizens. These opportunities are outlined in Ecology's TMDL Guidance Document. All information relating to the development of a TMDL is open for public review, including data precision, computer models, and assumptions used. If there is a technical or procedural dispute or disagreement arising from a TMDL project, it may be presented to Ecology for review, in accordance with this policy.

The normal and preferred sequence for resolving differences or providing additional information for consideration is to work with Ecology's representatives involved with the TMDL development and to raise issues during routine public comment periods. A local entity or citizen may address concerns or differences of opinion directly to the regional office TMDL lead or the technical staff for clarification. Issues may be raised and expressed verbally or during public comment periods by phone, email, or written correspondence. If it is determined that the responses are inadequate or unclear, an appointment may be made with Ecology's Water Quality Program regional office supervisor to further review the issue. Should this review not resolve the issue, then the local entity or citizen should use the following procedures to file a formal dispute.

We encourage people to let us know right away if they have problems with any procedures.

I. Time constraints, requirements and process when filing written disputes.

A. When a local entity or citizen wishes to formally dispute a procedural step or final report developed by Ecology, the aggrieved party shall file a formal written dispute, addressed to the Ecology Water Quality Program Manager, within 30 days from the date the final report was made public, or for procedural disputes, as appropriate to the timing of the procedural step. Ecology reserves the ability to deny a dispute request from additional disputing parties if the dispute request is received 14 calendar days after the receipt of the initial request.

If the aggrieved party has not previously attempted to resolve the issue with the regional Water Quality Section Manager, the party will be directed to that manager for an attempt at finding resolution. If there is no satisfactory resolution, the dispute resolution process can be initiated if the aggrieved party satisfies the other conditions of this policy for filing a written dispute.

If the TMDL in dispute has been sent to EPA for approval before a dispute request is received, the decision to wait to approve the TMDL until the end of the dispute resolution process is at EPA's discretion.

B. The written dispute shall include the following items:

1. Explicit reasons for the dispute.
2. An indication of how this concern was raised during prior involvement opportunities in the TMDL process.
3. Citations of applicable state or federal laws, regulations or guidance, as well as appropriate portions of Water Quality Program policies, procedures and guidelines.
4. Copies of all related correspondence and backup information including specific detail pertaining to dispute.
5. The specific outcome or resolution desired.
6. If desired, a request to make an oral presentation to the Dispute Resolution Panel (either in person or by conference call). Indicate who will be presenting the dispute to the panel. A request to make an oral presentation must be made as part of the dispute resolution request, otherwise, no oral presentations will be allowed.
7. If a second party joins the dispute and requests an oral presentation when the first party did not, the other disputing party or parties can elect to join the oral presentation.

C. Notice to other affected parties:

1. Once Ecology accepts a request for dispute resolution, the agency will notify other potentially affected parties that a dispute resolution request has been received and will solicit comments from the other parties. Notification will go to all advisory group members involved in the TMDL, citizens who participated in the TMDL process, permitted stakeholders, and local governments likely to be affected by the TMDL. This group will be collectively described as the "other affected parties".

The other affected parties will be notified of the comment deadline. The deadline will be no less than 14 days from the starting date of the dispute resolution process. Comments may be accepted after this deadline but they risk not being included in the Dispute Resolution Panel deliberations if they are received late. Written comments submitted to Ecology *must* include the following items to be considered:

a. The person's name and contact information.

b. Comments that are germane to the dispute.

D. If the disputing party requests an oral presentation, the Water Quality Program Dispute Resolution Coordinator will schedule one meeting (to last up to a half day) with the Dispute Resolution Panel for a time and day that is agreeable to Ecology and the disputing parties. Ecology will provide written notice to all parties of the presentation date, time, and location.

E. Ecology will notify all involved parties that formally commented when presentations are scheduled. Other affected parties will not be allowed to speak to the Dispute Resolution Panel, but their comments will be reviewed by the panel if submitted by the deadline for comments.

F. Structure of dispute resolution process:

1. Disputes heard by the Dispute Resolution Panel at the oral presentation are for the sole purpose of presenting each point of view. No cross-questioning will be allowed. Only the Dispute Resolution Panel may ask questions of the parties.

2. Presentations will be brief and discuss only information relevant to the dispute.

3. The Dispute Resolution Panel will review all written materials (and comments presented at the oral presentation if applicable), and make a recommendation to the Ecology Water Quality Program Manager on the resolution of the issue. The Dispute Resolution Coordinator will forward a written summary of the Program Manager's recommendation to the Ecology Director for a final decision.

4. The Ecology Director will make a formal final decision on the Program Manager's recommendation. The Dispute Resolution Coordinator will forward a copy of the Ecology Director's decision to the disputing parties and other participants. This letter shall be sent within 30 days of the oral presentation or within 60 days of the receipt of the written dispute, unless longer timeframes are agreed to by the parties.

5. If a decision outcome indicates that a change is needed in technical work, policies, procedures, or guidelines, Ecology will incorporate the Director's decision accordingly.

II. Responsibilities

Dispute Resolution Coordinator: The Dispute Resolution Coordinator is chosen by the Watershed Management Section Manager of the Water Quality Program. The Coordinator will:

A. Maintain a dispute log.

B. Provide copies of the dispute materials, formal written correspondence, and copies of the final decision to all parties involved in the dispute resolution process.

C. Schedule a meeting of the Dispute Resolution Panel and an oral presentation date (if requested).

D. Maintain a record of the dispute resolution meeting and the Panel recommendation and forward it to the Water Quality Program Manager.

E. Prepare a transmittal letter and mail the final decision of Ecology's Director to the parties to the dispute.

F. Maintain a copy of the final decision, pertinent correspondence, meeting records, and a listing of pertinent facts or documents considered in the dispute process.

G. Notify appropriate Ecology staff of the dispute and the decision for follow-up action.

Program Staff: The Ecology staff person who is central to the disputed decision or process (usually a TMDL project lead, or technical project manager) will:

A. Prepare his/her response to the dispute in writing or before the Dispute Resolution Panel.

B. Take any necessary follow-up action to implement the Director's decision.

Communication Managers: The level of communication with media and the public will vary between disputes, but a communication strategy should be developed for every dispute resolution process.

A. The Water Quality Program headquarters communication manager has the coordination lead for media relations during the dispute process.

B. To develop the communication strategy, the communication manager in the affected regional office should coordinate with the headquarters communication manager and the dispute resolution coordinator.

Dispute Resolution Panel: The Dispute Resolution Panel, named by the Ecology Water Quality Program Manager, will review the dispute and act as an advisory group to the Program Manager. The panel may consist of the following people (specific panel members will depend on the nature of the dispute process, policy, public involvement, or technical issues):

A. Water Quality section manager from an Ecology regional office not involved in the dispute.

B. Environmental Assessment Program section manager.

C. External representative familiar with TMDLs but not involved in the dispute will be invited.

D. Ecology Director's designee.

E. Ecology staff person with expertise in the subject area of the dispute and not responsible for development of the technical portion of the affected TMDL.

Ecology Water Quality Program Manager: The Program Manager receives the recommendations of the Panel and makes a summary recommendation for a decision on the dispute. The recommendation will address each element of a dispute involving multiple components. This recommended decision is then presented to the Ecology Director for final decision.

Ecology Director: The Ecology Director will review and evaluate the Water Quality Program Manager's recommendation and make a final decision on the dispute outcomes.

Approved: _____ 8/22/12

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Approved: _____ 8/27/12

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