



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Ecology AO # 12-03

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No

If Yes, explain: This rule is effective 31 days after filing, but will not be able to be used for Clean Water actions until the Department of Ecology receives Clean Water Act approval from the Environmental Protection Agency.

Purpose: The Washington State Department of Ecology intends to adopt amendments to Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington. The amendments provide new human health criteria and implementation tools. All federal Clean Water Actions, including discharge permits, water pollution identification, and water cleanup plans, will use the new criteria.

The rule also provides language around tools to implement water quality standards, and requirements for implementing water quality standards that will keep dischargers in compliance with their National Pollutant Discharge Elimination System permits while they actively implement actions and control strategies to address pollutants.

Citation of existing rules affected by this order:

Repealed:

Amended: Chapter 173-201A WAC

Suspended:

Statutory authority for adoption: Revised Code of Washington (RCW): RCW 90.48.035, RCW 90.48.605

Other authority : Section 303(c) of the Federal Water Pollution Control Act (often called the Clean Water Act)
Code of Federal Regulations (CFR) 40 CFR 131

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 16-04-092 on February 01, 2016.

Describe any changes other than editing from proposed to adopted version: See Attachment A.

A preliminary cost-benefit analysis was prepared under RCW 34.05.328, and the final cost-benefit analysis is available by contacting:

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Washington Department of Ecology

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Date adopted: 8/1/16

NAME

Maia D. Bellon

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 01, 2016

TIME: 11:20 AM

WSR 16-16-095

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>1</u>	Amended	<u>4</u>	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

Attachment A

Describe any changes other than editing from proposed to adopted version:

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

The rule adopted on August 1, 2016 differs from the rule proposed on February 1, 2016. Ecology made these changes:

- In response to comments we received during the formal comment period.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.
- To consider new information.

The following content describes the changes between the proposed and adopted rule language, and Ecology's reasons for making them. New language is underlined, and deleted language is in strikethrough.

Example: New language

Example: ~~Deleted language~~

Change to WAC-173-201A-020

Ecology clarified the definition of "intake credit" to be consistent with language in section WAC 173-201A-460(a).

Proposed rule language

"Intake credit" is a procedure for establishing effluent limits that take into account the amount of a pollutant that is present in waters of the state, at the time water is removed from the body of water by the discharger or other facility supplying the discharger with intake water."

Final rule language

"Intake credit" is a procedure for establishing effluent limits that takes into account the amount of a pollutant that is present in waters of the state, at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water."

Change to WAC-173-201A-240(5)

Based on public comment, Ecology moved language regarding criteria revision from the section that addresses only aquatic life protection ((5)(a)) to the more inclusive provision (5) that will include both aquatic life and human health.

Proposed rule language

(5) The following criteria, found in Table 240, shall be applied to all surface waters of the state of Washington. Values are µg/L for all substances except ammonia and chloride, which are mg/L, and asbestos which is million fibers/L.

*(a) **Aquatic life protection.** The department may revise the following criteria in Table 240 for aquatic life on a statewide or water body-specific basis as needed to protect aquatic life occurring in waters of the state and to increase the technical accuracy of the criteria being applied. The department shall*

formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act. ~~The department shall ensure there are early opportunities for public review and comment on proposals to develop revised criteria.~~

Final rule language

(5) The following criteria, found in Table 240, shall be applied to all surface waters of the state of Washington. Values are µg/L for all substances except ammonia and chloride which are mg/L, and asbestos which is million fibers/L. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act. The department shall ensure there are early opportunities for public review and comment on proposals to develop revised criteria.

*(a) **Aquatic life protection.** The department may revise the criteria in Table 240 for aquatic life on a statewide or water body-specific basis as needed to protect aquatic life occurring in waters of the state and to increase the technical accuracy of the criteria being applied. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act.*

Change to WAC 173-201A-240: Cadmium footnote indicators

Based on public comments, Ecology corrected footnote indicators for cadmium. The proposed rule language included an incorrect aquatic life criteria footnote indicator due to a transcription error.

Proposed rule language

		Aquatic Life Criteria – Freshwater	
Chemical	CAS#	Acute	Chronic
Cadmium	7440439	(I, c, dd)	(I, c, dd)

Final rule language

		Aquatic Life Criteria – Freshwater	
Chemical	CAS#	Acute	Chronic
Cadmium	7440439	(i, c, dd)	(j, c, dd)

Change to WAC 173-201A-240: Bis(2-Chloroisopropyl) Ether

After the rule proposal comment period closed, EPA notified Ecology that information from EPA on which Ecology had originally based the proposed criteria for Bis(2-Chloroisopropyl) Ether was in error. Ecology corrected the error, which includes changing the CAS # and removing the criteria from Table 240. Please see Key Decision Document (Publication no. 16-10-025) for documentation to support this change.

Proposed rule language

		Human Health Criteria for Consumption of	
Chemical	CAS#	Water & Organisms	Chronic
Bis(2-Chloroisopropyl) Ether	108601	1,100	7,400

Final rule language

		Human Health Criteria for Consumption of	
Chemical	CAS#	Water & Organisms	Organisms Only
Bis(2-Chloroisopropyl) Ether	39638329	-	-

Change to WAC 173-201A-510(4)(c)

Based on public comments, Ecology removed reference language from the proposed rule. This language was not needed and added confusion to this section. Additionally, the word “practicable” changed to “possible” to make the state language consistent with language in the federal regulations found at 40 CFR 122.47.

Proposed rule language

(d) Prior to establishing a schedule of compliance, the department shall require the discharger to evaluate the possibility of achieving water quality standards via nonconstruction changes (e.g., facility operation, pollution prevention). Schedules of compliance ~~shall meet requirements in WAC 173-220-140 and~~ shall require compliance with the specified requirements as soon as ~~practicable~~.

Final rule language

(d) Prior to establishing a schedule of compliance, the department shall require the discharger to evaluate the possibility of achieving water quality standards via nonconstruction changes (e.g., facility operation, pollution prevention). Schedules of compliance shall require compliance with the specified requirements as soon as possible.

Change to WAC 173-201A-510(4)(b)

Based on public comments, Ecology changed the word “practicable” changed to “possible” to make the state language consistent within the rule, and also consistent with language in the federal regulations found at 40 CFR 122.47.

Proposed rule language

(b) Schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits and the water quality standards ~~in the shortest practicable time~~.

Final rule language

(b) Schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits and the water quality standards as soon as possible.

Change to WAC 173-201A-510(4)(e)

In 2009, the legislature directed Ecology to authorize compliance schedules longer than 10 years to implement TMDL requirements if certain conditions are met (RCW 90.48.605). Since the rule language no longer limits compliance schedules to 10 years, the proposed language in WAC 173-201A-510(4)(e) authorizing “a longer period of time” was unclear. Ecology reworded WAC 173-201A-510(4)(e) was reworded to improve clarity.

Proposed rule language

(e) When an approved total maximum daily load, ~~or TMDL~~, has established waste load allocations for permitted dischargers, ~~a longer period of time for a compliance schedule may be authorized if the department has determined that:~~

Final rule language

(e) When an approved total maximum daily load has established waste load allocations for permitted dischargers, the department may authorize a compliance schedule longer than ten years if: