



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

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October 6, 2019

Erica Fleisig
U.S. Environmental Protection Agency
Office of Water, Standards and Health Protection Division (4305T)
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OW-2015-0174 proposed federal rule Withdrawal of Certain Federal Water Quality Criteria Applicable to Washington.

Dear Erica Fleisig:

The Washington State Department of Ecology (Ecology) strongly objects to the U.S. Environmental Protection Agency's (EPA) repeal of Washington State Human Health Criteria (HHC) for our fish consumption rule. Once again, we urge you to withdraw this proposal immediately.

Enclosed, for the record, please find Washington State's previous correspondence regarding EPA's repeal, including:

- *August 7, 2018, Ecology to Assistant Administrator David Ross, asking EPA to desist from moving forward with industry's petition to repeal Washington State's fish consumption rule.*
- *May 7, 2019, Ecology to Administrator Andrew Wheeler, explaining there is no legal basis for EPA to repeal Washington State's fish consumption rule.*
- *May 8, 2019, Washington State Attorney General Bob Ferguson to Administrator Andrew Wheeler, reiterating legal concerns with EPA's proposed repeal.*
- *May 10, 2019, Joint statement from Washington State Governor Jay Inslee and Attorney General Bob Ferguson, denouncing EPA's proposed action.*
- *June 6, 2019, Announcement from Washington State Attorney General Bob Ferguson, stating the state of Washington will sue EPA over their illegal action to withdraw Washington State's fish consumption rule.*



- *July 22, 2019, Ecology to Administrator Andrew Wheeler, vigorously opposing EPA's proposed action to move forward with a formal rule proposal.*

Though our state's prior objections have been ignored, we will continue to raise opposition. EPA's actions are against the law. The state of Washington has already filed litigation against EPA because there is no legal basis for this action under the federal Clean Water Act. We expect the court can make a swift determination on this purely legal question. Every step EPA continues to take to finalize its new rule, while litigation is pending, only creates more chaos for Washingtonians, including for the regulated community and the original petitioners.

Washington's HHC was developed through an engaged process over the course of ten years with key stakeholders including tribes, local communities and regulated businesses. Following EPA's over-file on several criteria in Washington's 2016 proposal, the same stakeholders came together to ensure implementation tools remained viable to support progress toward cleaner water and durable National Pollutant Discharge Elimination System (NPDES) permits. EPA was a strong proponent of this work and committed to provide assistance to support successful implementation. To illustrate, below are quotes from the EPA letter sent to Ecology on November 15, 2016:

- At page 4, first paragraph: *"The state may use its approved implementation tools in concert with the approved new state criteria as well as the federal human health criteria applicable to Washington. The EPA recognizes the importance of implementation tools in making progress toward improved water quality while allowing a reasonable time for industry to comply with more stringent requirements, and remains committed to providing assistance to Ecology during implementation of the criteria."*
- At page 4, Conclusion: *"The combination of the EPA-approved criteria from the state's rule and the criteria in the EPA's final federal rule set an appropriate level of protection for all Washington citizens, including tribal members with treaty-protected fishing rights. As stated previously, the EPA remains available to work closely with Ecology and others during implementation of the criteria."*

For the past three years, we have forged a path forward using a *variance* for several dischargers to the Spokane River. The variance section of our rule was approved by EPA in 2016 consistent with federal variance rules. We held a series of workshops with the Spokane community on variances and we have worked closely with EPA Headquarters staff to ensure that our pathway for these variances will move the regulated dischargers toward compliance with the standards and be approvable by EPA (enclosures 7, 8, and 9).

If EPA moves forward with its proposal to revise Washington's HHC, it puts significant work by Ecology, EPA, and Spokane River dischargers at risk. It also presents a significant risk to the cooperative relationships Ecology has worked to establish between Spokane River dischargers, concerned citizens, tribes, and regulatory agencies regarding efforts to reduce the discharge of toxic pollutants to the Spokane River. To reinforce and reiterate our commitment and progress toward implementing Washington's current HHC, we have included our Environmental Impact Statement Scoping Notice, our state rule initiation proposal for the polychlorinated biphenyl (PCB) variance

Erica Fleisig
October 6, 2019
Page 3

for 5 dischargers on the Spokane River based upon their applications to Ecology, and the agenda for our next workshop in which we will review variance information (enclosures 10, 11, and 12).

EPA's decision to revise Washington's HHC is poisoning our state's ability to use the very tools we need to help our regulated community be successful. EPA must surely be aware that an action to remove the federally promulgated criteria that have been in place in Washington for the past three years will most certainly spark new lawsuits and fan the flames of existing lawsuits. Our authorizing environment to use these tools is being compromised. If the EPA's proposal moves forward, it is a forgone conclusion that energy among interested parties will be shifted toward fighting the change in the criteria inputs and appropriate fish consumption rate once again — rather than actually making progress on toxics reduction. It will reopen past arguments about whether the criteria are protective enough of high fish consumers and how to implement the criteria.

The regulated communities will invariably experience litigation around their respective permits and our state will no longer have a durable solution to help them make progress toward meeting these protective standards. The resulting wasteful and negative energy will not lead to protecting waters from toxic threats, but only delay our ability to have healthy watersheds. EPA's action is a waste of public funds and contrary to EPA's national mission to protect water quality.

When EPA adopted HHC for Washington in 2016, Ecology chose to move forward in good faith using the tools that would support our regulated community and get to cleaner water. We strongly believe that EPA should shift its focus away from this proposed rulemaking and onto helping the state be successful in using the new implementation tools, so that we can protect our industries from litigation and make progress toward cleaner water.

We urge EPA to withdraw this proposed rule and work with the state of Washington and our stakeholders and tribes on the issue of toxics reduction through existing tools, rather than taking an action that will lead to chaos. We ask that you help us move forward with the implementation tools consistent with EPA's position in 2016. Please do not move forward with this proposed rule.

Sincerely,



Maia D. Bellon
Director

Enclosures (12)



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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Aug. 7, 2018

Mr. David Ross, Assistant Administrator
U.S. Environmental Protection Agency Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: The Petition to reconsider Washington's Human Health Water Quality Criteria and Implementation Tools

Dear Mr. Ross:

I have received your letter to Ms. Shamblin representing the Counsel for Utility Water Act Group, which grants its request for reconsideration of Washington's human health water quality criteria and implementation tools. The standards proposed two years ago by Washington State were protective and our preferred approach, but we chose not to challenge EPA's stricter standards.

I am writing to clearly state that I oppose changing course now, more than a year and a half after the current standards took effect.

What Washington State's communities and businesses need the most right now is predictability, certainty and flexibility to meet clean water requirements.

We are well on the path of providing just that. We have been engaging with wastewater dischargers since last year to ensure these complex new standards work on the ground, striving to develop clean water permits that are both protective and practical.

In places like Spokane, where the standards require strict limitations on PCBs, we've been diligently pursuing solutions with the current rules in place.

I am proud of my agency's strong record of working to find reasonable solutions for challenging regulatory situations. And we will continue these efforts.

Mr. David Ross
August 7, 2018
Page 2

Your decision to reconsider the current standards only sets us back and is already causing confusion and unpredictability. It gives no guarantee that the long-term outcome will move us toward cleaner water or provide the certainty that communities and businesses need.

Sincerely,

A handwritten signature in cursive script that reads "Maia D. Bellon". The signature is written in black ink and includes a long horizontal flourish extending to the right.

Maia D. Bellon
Director



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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May 7, 2019

The Honorable Andrew R. Wheeler
U.S. Environmental Protection Agency
Office of Policy Regulatory Reform
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: EPA's Intention to Reconsider Washington State's Water Quality Standards for Human Health Criteria

Dear Administrator Wheeler:

I write to express significant concern over the Environmental Protection Agency's (EPA) intention to reconsider Washington State's water quality standards for human health criteria. In an August 7, 2018, letter to Assistant Administrator David Ross, I made it clear that Washington does not support EPA's reconsideration of the water quality standards that it adopted in November of 2016. Those standards have been in effect for over two and a half years, and we are successfully implementing them. As I noted in my letter, changing course now would only create regulatory uncertainty and confusion. Attempting to change the standards would be arbitrary and capricious.

There is also no legal basis for reconsideration of the standards. The Clean Water Act establishes a system of cooperative federalism where states develop water quality standards and submit them to EPA, for EPA to approve or disapprove those standards. This occurred on November 15, 2016, when EPA partially approved and partially disapproved Washington's proposed standards. EPA then adopted its own standards for Washington on November 28, 2016. See 81 Fed. Reg. 85419. To repeat, Washington does not seek revision or repeal of the standards set in 2016. To the contrary, we steadfastly oppose any revision or repeal.

Under the Clean Water Act, there are only two circumstances where EPA may propose new water quality standards for a state:

- A. if a revised or new water quality standard submitted by such State...is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or
- B. in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.



The Honorable Andrew R. Wheeler
May 7, 2019
Page 2

33 U.S.C. § 1313(c)(4). The first circumstance does not apply because Washington has not submitted revised or new water quality standards to EPA. Thus, in order to revise the current standards, EPA would need to conclude that a "revised or new standard is necessary to meet the requirements of [the Clean Water Act]." That also does not apply here.

The purpose of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." To best accomplish this goal, "[i]t is the policy of the Congress to recognize, preserve, and protect the *primary responsibilities and rights of States* to prevent, reduce, and eliminate pollution[.]" 33 U.S.C. § 1251, emphasis added. These core purposes would be undermined by the repeal or revision of water quality standards that Washington supports. Needless to say, revising the standards to make them less stringent certainly is not "necessary to meet the requirements" of the Act.

If EPA takes the position that it is not making a section 303(c)(4) determination but is merely reconsidering its November 2016 disapproval of certain Washington criteria, there would also be no legal mechanism for reconsideration. By adopting water quality standards for Washington, EPA bound itself to the Clean Water Act's requirements for revising those standards. A 303(c)(4) determination is one of those requirements. EPA cannot revise or repeal existing standards without first making the requisite determination that such action is needed to meet the requirements of the Clean Water Act.

Since there is no legal basis to revise or repeal Washington's water quality standards for human health criteria, I strongly urge EPA to cease its reconsideration process. I am confident in my agency's ability to work with the regulated community to implement the current standards.

I am deeply disappointed in EPA's refusal to engage with me or my agency on this topic, especially as EPA touts its commitment to cooperative federalism. Additionally, despite how important this issue is to Washington's 29 federally recognized tribes, EPA has failed to consult with them. And EPA has provided no opportunity for members of the public to comment. This is especially troubling in light of the fact that EPA initially posted a memorandum on its website seeking public comment through May 8, 2019, then abruptly pulled the public notice for no apparent reason. This is not how cooperative federalism is supposed to work. I urge you to cease any further action on revision or repeal of Washington's standards so that my agency can continue the important work of protecting Washington's waters, finding workable solutions for regulatory challenges, and ensuring certainty for the regulated community.

Sincerely,



Maia D. Bellon
Director



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Administration Division
PO Box 40100 • Olympia WA 98504-0100 • (360) 753-6200

May 8, 2019

The Honorable Andrew R. Wheeler
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue NW
Mail Code: 1101A
Washington, DC 20460

Dear Administrator Wheeler:

I am writing to reinforce the concerns expressed to you in the May 7, 2019 letter from Director Maia Bellon regarding the Environmental Protection Agency's (EPA) intention to reconsider Washington State's water quality standards for human health criteria. EPA adopted those standards in 2016, and Washington State has been successfully implementing them for over two years. There is no legal basis for such a reconsideration.

Under this administration, EPA has repeatedly disregarded required procedures when implementing ill-advised policy changes. In this case, the Clean Water Act establishes clear procedures that provide the states submit water quality standards to EPA for approval. Once approved, EPA may not propose new standards unless a state has proposed a revised standard or, under the provisions of 33 U.S.C. § 1313(c)(4)(B), EPA determines that a new standard is necessary to meet the requirements of the Act. Since EPA has not made the case that a new standard is necessary, there is no legal basis for reconsideration of the current Washington water quality standards.

I am also disturbed by EPA's refusal to consult with Washington's 29 federally recognized tribes before EPA makes a decision on reconsideration. I strongly urge EPA to reconsider this course of action, return to a cooperative relationship with states, and adhere to its tribal consultation obligations. Doing so is necessary to respect the complementary roles of state, federal, and tribal governments in protecting water quality and the environment.

I am prepared to defend Washington State and our residents against overreach by EPA. As you are likely aware, my office has filed 10 lawsuits against EPA since January 2017. We are 5-0 in these cases. No court to rule on the merits of one of these cases has ruled against us.

ATTORNEY GENERAL OF WASHINGTON

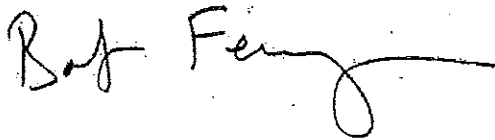
The Honorable Andrew R. Wheeler

May 8, 2019

Page 2

I hope EPA will live up to its name -- and its mission -- and reconsider this proposed course of action.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Ferguson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

BOB FERGUSON
Attorney General

RWF/eg

Washington Governor - Jay Inslee

Inslee and Ferguson oppose EPA decision that dismantles Washington's clean water standards

May 10, 2019

Story

Gov. Jay Inslee and Attorney General Bob Ferguson released a statement today in response to the Environmental Protection Agency's action on changing Washington's clean water standards.

"The Environmental Protection Agency just announced they will change the water quality standards that protect human health in the state of Washington. By taking this unilateral action, the EPA will risk almost certain litigation and cause uncertainty for Washington's businesses.

"EPA is pretending to honor a state process while at the same time throwing our clean water standards into disarray. We are already well on our way to implementing these standards for Washington businesses in a manner that will not be challenged by the many parties that worked so hard to come to agreement.

"The Washington State Department of Ecology has been working with the current standards and Washington businesses for more than two years to implement them in a flexible manner. The years of work that brought forth the current standards, also known as the fish consumption rule, represent a compromise by Washington's tribes who worked with the state and EPA to help put them in place.

"As noted by Ecology Director Maia Bellon and Attorney General Bob Ferguson, not only does this illegal act represent bad faith around a process that already occurred, but it is being done without notice or consultation with the state or Washington tribes.

"There is no legal basis for EPA to reconsider standards that Washington has been working to implement for more than two years in order to protect Washingtonians. We are 5-0 in lawsuits filed against President Trump's EPA, and we continue to defeat the EPA in court because it continues to disregard legally required procedures. President Trump's EPA does not always seem interested in protecting the environment. The attorney general's legal team will be very carefully reviewing EPA's proposal and we will consider all options, including bringing a legal action.

"The state will consider all available options to oppose this effort."

Media Contact

Tara Lee

Governor Inslee's Communications Office

360.902.4136

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歡迎 (/welcome-traditional-chinese)



Washington State (/)
Office of the Attorney General
Attorney General Bob Ferguson

(/)

Home (/) | News (/news) | News Releases (/pressrelease.aspx) | AG Ferguson sues Trump Administration over reversal of water quality protections

AG FERGUSON SUES TRUMP ADMINISTRATION OVER REVERSAL OF WATER QUALITY PROTECTIONS



(<https://www.atg.wa.gov>)

FOR IMMEDIATE RELEASE:

Jun 6 2019

EPA's revision violates Clean Water Act, lawsuit argues

OLYMPIA — Attorney General Bob Ferguson today filed a lawsuit (https://agportal-s3bucket.s3.amazonaws.com/2019-06-04ComplaintExhs_%5BDkt1%5D.pdf) in U.S. District Court for the Western District of Washington challenging the Environmental Protection Agency's decision to revise Washington's water quality standards. These standards, which apply specifically to Washington, are used to determine how clean the state's waters must be in order to protect human health.

Revising the standards now, the lawsuit argues, would create confusion and disrupt the work Washington has already completed to meet the standards. The revision is a violation of the Clean Water Act, which only allows the EPA to revise an existing standard if the standard is not stringent enough — which is not the case with Washington's existing standards.

"Clean water is essential to our quality of life," Ferguson said. "Trump's EPA cannot change important water quality protections at the whim of industry interests. It's not only disruptive to Washington's environmental efforts over the past two years, it's a clear violation of the Clean Water Act. We keep beating the Trump Administration in court, and we haven't lost yet. I don't plan on starting now."

"The Clean Water Act is crystal clear on when it's appropriate to change water quality standards in a state, and how it must be done," said Washington Department of Ecology Director Maia Bellon. "The Environmental Protection Agency has blatantly ignored this federal law. We won't sit back while EPA unilaterally acts on short-sighted industry desires, completely cutting out the state regulator, Washington's tribes and our communities."

In 2016, the Washington Department of Ecology proposed updates to a portion of state water quality standards that establish limits on a range of nearly 200 pollutants dangerous to human health, such as arsenic, asbestos, mercury and lead. The Environmental Protection Agency revised the proposal, and Washington began the labor-intensive process of implementing the standards.

These standards are intended to minimize the risk of cancer caused by consuming fish, shellfish and untreated water from state waterways. The pollutant limits are calculated with an equation that factors in, among other things, how much fish or untreated water a Washingtonian might consume from state waters.

In February 2017, an industry group sent a "petition" requesting the EPA reconsider the rule. The industry group did not file a challenge in court, the proper way to challenge federal agency decisions. In May of this year, more than two years later, EPA announced its decision to grant the industry group's request and revise Washington's water quality standards without any evidence that the existing standards are insufficient.

Despite a meticulous revision process outlined in the Clean Water Act, the EPA claimed in its decision it has "inherent authority" to make unilateral changes to its decisions. Ferguson's lawsuit argues that there is no legal basis for the change. The reversal violates the Clean Water Act, which requires the federal government to follow legally required procedures and find that the change is more stringent than existing standards.

Both Ferguson and Bellon wrote letters to the EPA opposing the revision. The federal government did not respond to these letters, nor did the EPA consult with Bellon, Ferguson or tribal governments regarding the changes. The federal government also decided not to seek public comment.

Since the adoption of the current standards, Ecology has worked with businesses and municipalities to implement the new standards. Reversing course on the standards now would cause unnecessary confusion for businesses and government agencies, and invalidate an implementation process that is already two and a half years down the road.

For example, reconsidering the rule creates uncertainty in Ecology's permitting process. Any entity that releases pollutants into state waters, from municipal wastewater treatment facilities to industrial plants, must receive a permit from Ecology. These permits help ensure that governments and businesses are complying with the standards. Many permit applications are currently pending. Without predictability and certainty, Washington's businesses and the state are left in limbo.

Ferguson's lawsuit asks the court to block the EPA from revising the standards.

Senior Counsel Ron Lavigne and Senior Assistant Attorney General Laura Watson with the Ecology Division are leading the case.

Ferguson has now filed 39 lawsuits against the Trump Administration and has not lost a case. Ferguson has 22 legal victories against the federal government since President Trump assumed office. Twelve of those cases are finished and cannot be appealed. The Trump Administration has appealed or may appeal the other 10, which include lawsuits involving Dreamers and 3D-printed guns. Of the 22 victories, 13 are related to the environment and six are from cases that specifically challenge actions by President Trump's EPA.

-30-

The Office of the Attorney General is the chief legal office for the state of Washington with attorneys and staff in 27 divisions across the state providing legal services to roughly 200 state agencies, boards and commissions. Visit www.atg.wa.gov (<http://www.atg.wa.gov>) to learn more.

Contacts:

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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July 22, 2019

The Honorable Andrew R. Wheeler
U.S. Environmental Protection Agency
Office of Policy Regulatory Reform
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Wheeler:

Washington State continues to vigorously oppose the U.S. Environmental Protection Agency's (EPA) attempts to unlawfully revise our state's Human Health Criteria standards, also known as the *Fish Consumption Rule*. As I stated in previous letters to you, there is no legal justification by which EPA can revise our *Fish Consumption Rule*. Furthermore, EPA has failed to consult with the State of Washington and has also failed to meet formal consultation requirements with any of Washington's 29 federally recognized tribes.

The Washington State Department of Ecology's (Ecology) previous requests for consultation have been ignored. EPA chose to forge ahead without the consent of the State or the communities most vulnerable to toxics in fish tissue. As you are well aware, Washington State has filed a lawsuit against EPA for violating the Clean Water Act in attempting to revise Washington's rule. Subsequent to the lawsuit, I asked you to cease action until the courts resolve this pure legal matter.

We have become aware through an email notice, "*Withdrawal of Certain Human Health Criteria in Washington – Upcoming Proposed Rule*," that EPA ignored my request to cease action and will soon publish a proposed rule. The notice also states EPA intends to hold a 60-day comment period during which there will be two "online public hearings." This is insufficient and inadequate to collect information from the residents of Washington. We demand both hearings be conducted in-person in Washington State where members of our communities have a meaningful opportunity to participate. EPA's unlawful attempt to revise Washington's *Fish Consumption Rule* broadly affects Washington's communities—especially tribes and underrepresented communities of color whose traditional diets are high in fish. These communities deserve an in-person audience with the federal government. Providing only online public hearings will limit public engagement to those with reliable broadband internet access, which could disenfranchise the very communities most impacted by EPA's actions.

The Honorable Andrew R. Wheeler
July 22, 2019
Page 2

Furthermore, EPA's own agency rule governing revisions to states' water quality standards provides that when EPA promulgates water quality standards for a state, "the Administrator is subject to the same policies, procedures, analyses, and public participation requirements established for States in these regulations." (40 C.F.R § 131.22). As you know, states are required to hold at least one public hearing—more if it is a matter of statewide significance—in their states for the purposes of reviewing water quality standards "at times and places which, to the maximum extent feasible, facilitate attendance by the public." Since EPA consistently holds Washington State to these standards, and since EPA is subject to the same policies as states when making revisions to state water quality standards, EPA by its own agency rule is required to hold its public hearings in Washington State.

As the state agency entrusted with protecting Washington's waters, Ecology remains committed to our state's existing rule. We stand behind the people of Washington and the overlooked communities whose voices have been ignored in your process. If you decide to continue on this path of revising the existing *Fish Consumption Rule* over our objection, the least you can do is hold your hearings in Washington State. Washingtonians deserve no less.

Sincerely,

A handwritten signature in cursive script that reads "Maia D. Bellon". The signature is written in black ink and includes a long horizontal flourish extending to the right.

Maia D. Bellon
Director

DRAFT AGENDA

Working Agenda

Spokane River Permitting Strategy Workshop

March 14, 2018

6:00 pm – End (About 8 pm)

Location: Liberty Lake Sewer and Water District office

Conference Call Information:

Audio connection:

+1-240-454-0887 US Toll

Access code: 802 324 551

WebEx weblink:

<https://watech.webex.com/watech/j.php?MTID=meac40cd8efbb6bc2d9f6d25ec2bcb780>

Meeting number:

802 324 551

Meeting password:

vAE6pceU

Host key:

923651

We will be at LLSWD and testing the system starting at 5 pm.

Meeting Objective: Provide public with information about Ecology's Spokane River permitting strategy

Expected Outcome: Ecology, EPA, and public will be better informed. Opportunity to share information and hear concerns.

Meeting called by Washington State Department of Ecology, Water Quality Program

Attendees: Ecology: Grant Pfeifer, Adriane Borgias, Karin Baldwin, Pat Hallinan, Ellie Key, Cheryl Niemi, Art Jenkins

EPA: Lindsay Guzzo, other EPA

Optional: Brook Beeler, Melissa Gildersleeve, Diana Washington, Lucy Edmondson

6 pm - 6:10 pm

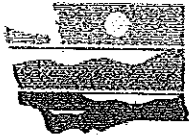
Introductions

Adriane Borgias, ECY
ERO WQ Program Section
Manager

Depending on nature of group, we may have roundtable introductions. Otherwise will begin at 6:10 with program

6:10 pm – 6:15 pm	Introduction and Background to the Spokane River Permitting Strategy
Grant Pfeifer, ECY ERO Regional Director	<i>Brief description of permitting history, collaboration, and how we got to this point.</i>
6:15 pm – 6:25 pm	Overview of the Spokane River Permitting Strategy
Adriane Borgias, ECY ERO WQ Program Section Manager	<i>High level presentation of permitting tools: Administrative extension, compliance schedule, removal from river, and variance with focus on the river.</i>
6:25 pm – 6:35 pm	Understanding Compliance Schedules
Pat Hallinan, ECY WQ Permit Manager	<i>Explanation of compliance schedules as a permitting tool: what we can and can't do.</i>
6:35 pm – 6:45 pm	Understanding Variances: the EPA Experience
Lindsay Guzzo, EPA R10 Water Standards Coordinator	<i>Overview from EPA of the variance permitting tool and discussion of EPA's experience.</i>
6:45 pm – 7:00 pm	Investigating Variances for the Spokane River System
Cheryl Niemi, ECY WQ Standards Specialist	<i>Overview of the variance process in Washington State.</i>
7:00 pm – 7:10 pm	The Bridge: Agreed Orders
Pat Hallinan, ECY WQ Permit Manager	<i>What are Agreed Orders and the elements Ecology would consider including.</i>
7:10 pm – 7:15 pm	Schedule and Path Forward
Art Jenkins, ECY ERO Permit Unit Supervisor	<i>The big picture of what happens when.</i>
7:15 pm – 7:30 pm	Wrap up: What does Success Look Like?
Adriane Borgias, ECY ERO WQ Program Section Manager	<i>The short and long term vision of success: how the permitting tools will help us reach water quality standards.</i>

Q&A



AGENDA

Spokane River permitting tools workshop

Join us at: CenterPlace Regional Event Center or online

Learn about new permitting tools available for meeting clean water requirements in the Spokane River. Ecology and the U.S. Environmental Protection Agency will share a variety of options and the associated processes available for permitting wastewater facilities.

Welcome and settle in

12:45 | 15 minutes | All

Introductions and background

1:00 | 15 minutes | Adriane Borgias

- Meeting purpose and objectives

Review of permit tools

1:15 | 30 minutes | Diana Washington and Pat Hallinan

- Mixing Zones
- Intake Credits
- Compliance Schedules

Review Water Quality Standards tools (part 1)

1:45 | 60 minutes | Cheryl Niemi and Lindsay Guzzo

- Site Specific Criteria
- Variance – Part 1

Break

Review Water Quality Standards tools (part 2)

3:15 | 60 minutes | Cheryl Niemi and Lindsay Guzzo

- Variance – Part 2
- Use Attainability Analysis

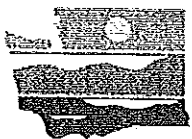
Next steps

4:15 | 15 minutes | Art Jenkins

- Process and timeline

Q&A

4:30 | 30 minutes | All



AGENDA

Spokane River permitting tools workshop#2: Decoding the Variance Process

Join us at: CenterPlace Regional Event Center or online.

Learn about the submittal process and package requirements associated with the Variance permitting tool available for meeting clean water requirements in the Spokane River. Ecology will also share details about a projected schedule for the completion of the rule-making process and how the variance process affects the permit cycle.

Welcome and settle in

12:45 | 15 minutes | All

Introductions and background

1:00 | 15 minutes | Adriane Borgias

- Recap of where we've been
- Meeting objectives

Variance Tool

1:15 | 45 minutes | Cheryl Niemi

- What is a Variance
- How to obtain a Variance
- Variance submittal package

Break (15 min)

Rule-making

2:15 | 30 minutes | Becca Conklin

- What is rule-making

Local applicability/Path forward

2:45 | 15 minutes | Art Jenkins

- Process and timeline

Q&A

3:00 | 60 minutes | All



STATE OF WASHINGTON
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STATE ENVIRONMENTAL POLICY ACT
 DETERMINATION OF SIGNIFICANCE AND
 REQUEST FOR COMMENTS ON SCOPE OF ENVIRONMENTAL IMPACT STATEMENT

June 12, 2019

Lead agency: Washington State Department of Ecology

Location of proposal: Spokane River

Description of proposal: The Department of Ecology (Ecology) is beginning a rulemaking to consider amending the Water Quality Standards for Surface Waters of the State of Washington, Chapter 173-201A Washington Administrative Code (WAC). Ecology is considering adopting one or more variances to the water quality standards that meet the requirements of WAC 173-201A-420 (Variance section), for polychlorinated biphenyls (PCBs) for the Spokane River, in water resource inventory area (WRIA) 57.

WAC 173-201A-420 (Variance section) provides the pathway to establish a variance, which is described as a discharger-specific or waterbody-wide approach that maintains the ultimate goal of reaching the water quality standard or the highest attainable condition in the river, but achieves it in a step-by-step process over a longer period of time. Ecology must receive adequate information from interested parties (application) that meets WAC 173-201A-420(3) before moving forward with rulemaking.

Environmental Impact Statement (EIS) Required: The lead agency, Ecology, has traditionally done an EIS with rule revision efforts. The EIS format is a helpful format to provide transparency in our thinking and to assist the public with issues associated with adopted rules. We are going to prepare an EIS for this variance rule. This EIS will evaluate the potential environmental impacts of adopting variances for five regulated wastewater dischargers to the Spokane River and will use the EIS to guide its development of proposed rule language.

Ecology is taking this rulemaking action in response to receiving completed applications from five National Pollutant Discharge elimination System (NPDES) permitted dischargers to the Spokane River in April 2019:

- Liberty Lake Sewer and Water District - Water Reclamation Facility (Liberty Lake)
- Kaiser Aluminum Washington LLC – Trentwood (Kaiser)
- Inland Empire Paper Company (IEP)
- Spokane County Regional Water Reclamation Facility
- City of Spokane – Riverside Park Water Reclamation Facility

State Environmental Policy Act – Determination of Significance

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Ecology has administratively extended these five NPDES permits beyond their original expiration date. The dischargers are seeking variances because of concerns that they will be unable to meet future permit limits for PCBs. Ecology will consider the information provided in the variance applications, as well as additional input that may be provided through the rulemaking process, to develop the variances and determine whether it is appropriate to adopt them into the standards.

In developing the variances, Ecology would establish a time-limited interim standard in each variance that would be used to set discharge effluent limits, allowing NPDES permitted dischargers to meet their numeric permit limits. Additionally, the variances would require implementation of pollutant minimization plans to continually reduce sources of PCB pollution to the Spokane River. The variance pathway requires mandatory reviews of the progress, and requires adaptive management to meet the goals of the variance. Ecology will evaluate the progress of meeting the variance goals at each permit reissuance cycle (every five years).

Scoping: Agencies, affected tribes, and members of the public are invited to comment on the scope of the EIS. You may comment on alternatives, mitigation measures, probable significant adverse impacts, and licenses or other approvals that may be required.

Scoping public comment period: June 12, 2019 through July 2, 2019

Submit comments online at <http://ws.ecology.commentinput.com/?id=KTMcA>.

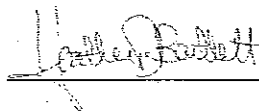
Ecology prefers to have comments submitted through the online comment form, but will accept written comments by mail to the address below.

Mail comments to: Susan Braley
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

To sign-up for the Ecology Water Quality Info Listserv, visit:
<http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?A0=ECOLOGY-WATER-QUALITY-INFO>

Responsible official: Heather R. Bartlett
Position/title: Water Quality Program Manager
Phone: (360) 407-6405
Address: Department of Ecology
Water Quality Program
PO Box 47600
Olympia, WA 98504-7600

Signature



Date June 12, 2019



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017)
(Implements RCW 34.05.310)
Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 12, 2019

TIME: 7:25 AM

WSR 19-13-030

Agency: Department of Ecology AÖ # 19-01

Subject of possible rule making: The Department of Ecology is beginning a rulemaking to amend Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington. Ecology is considering adopting one or more variances to the water quality standards that meet the requirements of WAC 173-201A-420 (Variance section), for polychlorinated biphenyls (PCBs) for the Spokane River, in water resource inventory area (WRIA) 57.

Ecology will consider amending sections of Chapter 173-201A WAC that address variances to the standards, including amendments to 173-201A-420 (Variance) and 173-201A-602 (Table 602 – Use designations for fresh waters by water resource inventory area), as well as any other sections that need to be amended to support adopting the above-noted variances.

Statutes authorizing the agency to adopt rules on this subject: RCW 90.48.035 provides clear and direct authority to Ecology to revise the Surface Water Quality Standards (SWQS).

Reasons why rules on this subject may be needed and what they might accomplish: WAC 173-201A-420 provides the pathway to establish a variance, which is described as a discharger-specific or waterbody-wide approach that maintains the ultimate goal of reaching the water quality standard or the highest attainable condition in the river, but achieves it in a step-by-step process over a longer period of time. Ecology must receive adequate information from interested parties (application) that meets WAC 173-201A-420(3) before moving forward with rulemaking.

Ecology is taking this rulemaking action in response to receiving completed applications from five National Pollutant Discharge Elimination System (NPDES) permitted dischargers to the Spokane River in April 2019:

- Liberty Lake Sewer and Water District - Water Reclamation Facility (Liberty Lake)
- Kaiser Aluminum Washington LLC – Trentwood (Kaiser)
- Inland Empire Paper Company (IEP)
- Spokane County Regional Water Reclamation Facility
- City of Spokane – Riverside Park Water Reclamation Facility

Ecology has administratively extended these five NPDES permits beyond their original expiration date. The dischargers are seeking variances because of concerns that they will be unable to meet future permit limits for PCBs. This is the first time Ecology has received formal requests for variances. These requests are part of the larger community efforts happening on the Spokane River watershed to address PCB pollution in the Spokane River.

Ecology will consider the information provided in the variance applications, as well as additional input that may be provided through the rulemaking process, to develop the variances and determine whether it is appropriate to adopt them into the standards.

In developing the variances, Ecology would establish a time-limited interim standard in each variance that would be used to set discharge effluent limits, allowing NPDES permitted dischargers to meet their numeric permit limits. Additionally, the variances would require implementation of pollutant minimization plans to continually reduce sources of PCB pollution to the Spokane River. The variance pathway requires mandatory reviews of the progress, and requires adaptive management to meet the goals of the variance. Ecology will evaluate the progress of meeting the variance goals at each permit reissuance cycle (every five years).

A new federal regulation, establishing variances as a tool for meeting water quality standards, was published in August 2015 at 40 CFR 131.14. Additionally, Ecology adopted revised state regulations for variances in August 2016. Together, these regulations provide the process for dischargers to apply for, and Ecology to consider, adopting a variance through the rulemaking process. As with any proposed rule change, a variance might or might not be formally adopted, depending on the outcome of the rule adoption process.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: We will work with the federal Environmental Protection Agency (EPA) to ensure that the adopted water quality standards meet Clean Water Act approval. We will work with the Spokane Tribe and other tribes who have interest and/or proximity to the Spokane River. We will work with other state agencies who have a role or interest in implementing the adopted water quality standard, including Washington Department of Fish and Wildlife, Washington Department of Health, and Washington Department of Agriculture. We will also work with Spokane city and county governments, and entities noted above, to discuss, and seek input on, rulemaking language development.

Process for developing new rule (check all that apply):

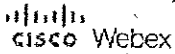
- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (Chapter 34.05 RCW).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

<p>Name: Susan Braley (Rule writer) Address: Department of Ecology Water Quality Program PO Box 47600 Olympia, WA 98504 Phone: 360-407-6414 Fax: N/A TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711. Email: swqs@ecy.wa.gov Web site: https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-201A-variances Other: Sign up to receive email notices: http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?SUBED1=ECOLOGY-WATER-QUALITY-INFO&A=1</p>	<p>(If necessary)</p> <p>Name: Cheryl Niemi (technical lead) Address: Department of Ecology Water Quality Program PO Box 47600 Olympia, WA 98504 Phone: 360-407-6440 Fax: N/A TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711 Email: swqs@ecy.wa.gov Web site: https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-201A-variances Other: N/A</p>
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Additional comments: Interested parties can stay informed about the rulemaking and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

Date: June 12, 2019	Signature: 
Name: Heather R. Bartlett	
Title: Water Quality Program Manager	



Enclosure 12

< [Navigation icons] >

Event Information: Workshop on PCB Variances in the Spokane River



Registration is required to join this event. If you have not registered, please do so now.

[Refresh](#) : [San Francisco Time](#)

Event status: Not started ([Register](#))

[Join Event Now](#)

Date and time: Thursday, November 14, 2019 10:00 am
Pacific Standard Time (San Francisco, GMT-08:00)
[Change time zone](#)

You cannot join the event now because it has not started.

Duration: 5 hours

First name:

Description: The Washington Department of Ecology is hosting a one day public workshop to share information on the potential use of PCB variances for five Spokane River dischargers. This event is tentatively scheduled to run from 10 a.m. - 3 p.m.

Last name:

Email address:

Event password:

We are developing a detailed agenda and meeting materials. At this time, we plan to cover the following topics:

[Join Now](#)

- Overview of PCBs in the Spokane River
- Clean Water Act and Variances 101
- Ecology's rulemaking process and status update
- Status of the discharger specific variance applications
- Next steps

*Join by browser **NEW***

If you are the host, [start your event](#).

Please note, the topics and meeting time are tentative. As we build the agenda, if it looks like we need to extend the meeting time to start earlier or end later in order to ensure time for discussion, we will update the agenda.

By joining this event, you are accepting the Cisco Webex [Terms of Service](#) and [Privacy Statement](#).

[Register](#)

Before you join the event, please [click here](#) to make sure that you have the appropriate players to view UCF (Universal Communications Format) rich media files in the event.