

From: Lincoln Loehr, lcloehr@yahoo.com  
To: Heather Bartlett, Department of Ecology, and others listed below  
Date: February 3, 2017  
Subject: WQP 1-11 listing policy

I have some concerns with the changes to human health surface water quality criteria that EPA adopted in place of Ecology's adopted criteria. Mercury and PCBs in particular are ubiquitous, move through the atmosphere and Clean Water Act tools cannot meaningfully address them. Ecology's Chemical Action Plans (CAPs) for these parameters identify the sources and pathways of concern, as well as the possible meaningful actions that can be taken, and in each case place little emphasis on Clean Water Act stringent requirements that can be imposed as a result of EPA's new criteria for the state. I know and appreciate that Ecology understands this concern.

I think that one possible appropriate step to address PCBs and Mercury in the listing process is to use special categories for these parameters. The categories would be 4M for mercury and 4P for PCBs. The categories would specifically describe how these parameters will not be able to meet criteria through the use of Clean Water Act tools, and as such, the requirement to trigger and implement TMDLs is futile and wasteful. A more holistic approach is called for and is already in place. Ecology's CAPs are the appropriate management tool to reduce the concentrations of these parameters in the environment and the biota. The CAPs are not capable of meeting the new human health criteria, but they are much more effective than the Clean Water Act tools that would target NPDES permittees with costly limits set equal to the criteria and would prohibit any new discharges that could not meet the criteria, while having little or no effect. These stringent requirements would be triggered because the ambient water will exceed the criteria and/or the biota would exceed the fish tissue equivalent criteria. Use of specific 4M and 4P categories, fully explained, would provide relief from an expensive and futile set of requirements.

I know that Ecology has heard my concerns about the use of fish tissue equivalents for 303(d) listing purposes, and has decided to continue the practice. I still think this is not a good idea because we have no fish tissue based criteria adopted in rule (other than Methyl-Mercury now) and we have no means adopted for translating such criteria back and forth between tissue concentrations and water concentrations.

I note that EPA rejected Ecology's proposed use of the drinking water MCL for arsenic as the human health criterion. I also note that EPA did not adopt their original proposed arsenic criteria. Rather, EPA left the state with the NTR arsenic criteria of 0.018 ppb for water and organism consumption and 0.14 ppb for organism only consumption. Ecology knows there are significant problems with the NTR criteria and EPA in their actions on the California Toxics Rule also knows there are significant problems. I ask that Ecology reaffirm that they will continue their policy of not implementing the arsenic human health criteria in NPDES permits. Furthermore, Ecology should not use the flawed human health arsenic criteria from the NTR as an ARAR in the MTCA program. Nothing has changed with EPA's override of our water quality standards regulation that justifies implementing the flawed NTR arsenic human health criteria.

Thank you for the opportunity to provide input to Ecology on these rather complex, interacting programs (water quality standards, 303(d) listings, and Chemical Action Plans). I fear that they can come together in a train wreck. My recommendations are trying to prevent the train wreck.

Sincerely yours,

Lincoln Loehr

cc: Susan Braley, Department of Ecology  
Cheryl Niemi, Department of Ecology  
Rob Duff, Governor's office