



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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August 1, 2016

Dennis McLerran, Regional Administrator
US Environmental Protection Agency
1200 6th Avenue
Seattle, WA 98101

RE: Submittal of Water Quality Standards for Clean Water Act

Dear Mr. McLerran:

The Department of Ecology (Ecology) is pleased to submit to you its newly adopted Human Health Criteria and Implementation Tools. On August 1, 2016, Ecology completed the first-time adoption of human health criteria into Washington's surface water quality standards rule. The new criteria reflects the best scientific information that we have available, including state-specific risk management decisions, and the criteria meet federal requirements. Ecology relied heavily on the United States Environmental Protection Agency's (EPA) science and guidance in developing these new criteria, and endeavored to make science-based decisions that minimized uncertainty and reflected state decisions on policy and risk management. Ecology followed the requirement of Section 303(c)(2) of the Clean Water Act and 40 CFR 131.2 to adopt criteria taking into account the "*use and value*" of the resources, as demonstrated by this submittal package. Also included in the revised rule is new and revised language on variances, compliance schedules, intake credits, and combined sewer overflow treatment plants.

During the multi-year process of this rulemaking Ecology worked with tribes, the public, and stakeholder groups. Governor Jay Inslee was personally engaged in making important state-specific risk management decisions to guide the rule's development. EPA Region 10 staff provided Ecology with input on regulatory, science, and policy matters. We especially appreciate EPA's efforts to provide written comments to us so that we could address EPA concerns regarding federal mandates and guidance prior to the state adopting final rule language.

Ecology conducted an extensive and comprehensive public process to support the development of this rule. From the January 2015 first proposed rule, we received public comments from 121 entities, including several form letters and petitions that resulted in several thousand endorsements and signatures. From the January 2016 second proposed rule, we received public comments from 77 entities. It seems apparent from the fewer number of comments on the second proposal that the Ecology process to develop this new rule responded to the needs of the



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public from the first proposal, especially as it relates to risk level. The extensive record on the development of this rule demonstrates that the final outcome is appropriate for Washington. Ecology made minor changes to the final rule as a result of the public comments. Not surprisingly, there are some issues that people still have concerns with, and Ecology has worked diligently to address these concerns through the extensive response to comments contained in the Concise Explanatory Statement that is attached.

Now that the rulemaking process has been completed, Ecology will be focusing on implementation of the new criteria. Ecology will begin immediately to develop supplementary guidance on key issues:

- Guidance for the implementation tools, including variances, compliance schedules, and intake credits.
- Ensuring the consistent and effective application of the new criteria in Clean Water Act programs, such as National Pollutant Discharge Elimination System permitting and meeting requirements in sections 303(d) and 305(b).
- We will also focus on considering new human health criteria for methyl mercury, and hope to work closely with your agency as we move forward.

Documents that comprise parts of this submittal package are attached. This information should be sufficient to support EPA's review and approval of the new rule language as specified in 40 CFR 131.5. If you find that you need additional information to complete your review, please notify our agency by mid-August so that we can facilitate EPA's review and approval of Washington's final rule.

Ecology's understanding is that EPA's review and approval process for this rulemaking will be limited to the standards revisions made in this rulemaking.

We look forward to this long awaited rule change and to its final completion, with your approval. If you have any questions, please contact Heather Bartlett, Water Quality Program Manager at heather.bartlett@ecy.wa.gov or (360) 407-6405.

Sincerely,



Maia D. Bellon
Director

cc: Dan Opalski, EPA Region 10
Angela Chung, EPA Region 10
Matthew Szelag, EPA Region 10

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Enclosures:

- Submittal Crosswalk (Attachment A)
- A memorandum from the Attorney General's office certifying the standards were duly adopted pursuant to state law. (see Attachment B)
- *Water Quality Standards for Surface Waters of the State of Washington, Chapter 173-201A WAC*, as revised on August 1, 2016. (see Attachment C)
- *Washington State Water Quality Standards: Human health criteria and implementation tools, Overview of key decisions in rule amendment*. August 2016. Ecology Publication no. 16-10-025 (see Attachment D)
- *Concise Explanatory Statement. Chapter 173-201A WAC Water Quality Standards for Surface Waters of the State of Washington*. Summary of Rulemaking and response to comments. August 2016. Ecology Publication no. 16-10-026 (see Attachment E)
- Rule Implementation Plan. Water Quality Standards for Surface Waters of the State of Washington. Amendments to Chapter 173-201A WAC. August 2016. Ecology Publication no. 16-10-022. (see Attachment F)
- *Final Cost-Benefit and Least-Burdensome Alternative Analyses. Chapter 173-201A WAC. Water Quality Standards for Surface Waters of the State of Washington*. August 2016. Publication no. 16-10-019. (see Attachment G)
- *Final Environmental Impact Statement. Washington State's Changes to Water Quality Standards for Surface Waters of the State of Washington – WAC 173-201A*. July 2016. Publication no. 16-10-023. (see Attachment H)
- *E-mails providing information on the priority pollutant bis(2-chloroisopropyl) ether*. (Attachment I)
- *EPA's Motion for Summary Judgement, US District Court, Western District, Case No. 2:16-cv-00293-JLR*, June 3, 2016. (Attachment J)

