



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017) (Implements RCW 34.05.310)

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WSR 19-11-032

Agency: Department of Ecology AO # 19-02

Subject of possible rule making: The Department of Ecology (Ecology) is beginning a rulemaking for multiple revisions to Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington. This rulemaking would consider:

- Amending the numeric criteria for total dissolved gas in the Snake and Columbia rivers:
 - WAC 173-201A-200(1)(f)(ii)
- Amending specific sections of the rule to meet legal obligations in a 2018 Stipulated Order (see discussion below):
 - WAC 173-201A-200(1)(c)(ii)(B)
 - WAC 173-201A-210(1)(c)(ii)(B)
 - WAC 173-201A-240(5) Table 240 footnote dd
- Aligning the rule with the Washington State Department of Health (DOH) Shellfish Harvesting Program:
 - WAC 173-201A-210(2)(b)
- Revising and clarifying the descriptions of marine water aquatic life use designations:
 - WAC 173-201A-210(1)(a)
 - WAC 173-201A-610 Table 610

Other sections of Chapter 173-201A WAC may be amended, as necessary, to support any revisions to the sections noted above.

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). Additionally, 40 CFR 131.20 requires states and tribes with Federal Clean Water Act authority to periodically review and update the SWQS.

Reasons why rules on this subject may be needed and what they might accomplish:

We are considering multiple revisions to Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington (SWQS), which include: (Revision A) modifying TDG Criteria, (Revision B) meeting legal obligations, (Revision C) aligning shellfish criteria, (Revision D) clarifying definitions.

(Revision A) Amending the numeric criteria for total dissolved gas (TDG) in the Snake and Columbia rivers

The goal of this rulemaking is to improve fish passage for salmon and steelhead migrating downstream in the Snake and Columbia rivers. Dams release water through spillways over the dam and fish using the spillway have a better chance for survival compared to those that pass through the dams' turbines. However, spilling water also increases TDG that can negatively impact aquatic life. This rulemaking would aim to amend the TDG limit to allow for greater water flow through spillways for improved salmon migration, while ensuring that TDG limits minimize negative impacts to aquatic life through sufficient biological monitoring.

These revisions would:

- Provide a new adjusted TDG criteria that could be applied at dams that operate increased spills for the purpose of improving downstream juvenile salmon and steelhead migration in the Snake and Columbia rivers.
- Establish biological thresholds that must be met to apply an adjusted criteria up to 125% TDG.

(Revision B) Meeting obligations made in a 2018 U.S. District Court Stipulated Order of Dismissal between NWEA, EPA, and Ecology

We are considering revisions to sections of the SWQS as agreed to in a 2018 U.S. District Court Stipulated Order of Dismissal (Order) between Northwest Environmental Advocates (NWEA), the U.S. Environmental Protection Agency (EPA), and the Department of Ecology (Ecology). In the Order, Ecology agreed to take action on several sections of the surface water quality standards by October 2021, including the following two revisions:

- i. Remove two sub-sections in the fresh and marine water temperature criteria related to an incremental temperature allowance from nonpoint source activities.
 - Although these provisions for nonpoint temperature increases have been in the standards for decades, they have not been applied in Ecology's nonpoint protection program. The provisions may also conflict with our current antidegradation requirements that already prescribe a different temperature allowance when water is cooler than the assigned numeric criterion. For these reasons, Ecology agreed to remove these sub-sections of temperature criteria and is including the revision in this rulemaking to be compliant with the Order.
- ii. Amend footnote 'dd' in Table 240 to clarify that an adjustment of metals criteria (Water Effects Ratio) pursuant to this footnote requires EPA approval pursuant to 33 U.S.C. § 1313(c).
 - Ecology agreed to amend the footnote in Table 240 to clarify that adjustments to metals criteria requires EPA approval. The EPA previously indicated to Ecology that any efforts to revise metals criteria by developing water effects ratios would need to go through a separate rulemaking, which Ecology agreed to. This amendment would codify the agreed-upon intent of this footnote and would not change how the footnote is currently implemented.

(Revision C) Aligning the rule with the Washington State Department of Health (WA DOH) Shellfish Harvesting Program

We are considering a revision to portions of the shellfish harvesting use criteria to come into alignment with the WA DOH Shellfish Harvesting Program and the associated Federal Food & Drug Administration's (FDA) National Shellfish Sanitation program. Ecology would adopt the same bacteria data averaging and duration periods as these programs.

The WA DOH requested Ecology to align this section of the surface water quality standards with state and federal shellfish harvesting program requirements. Due to changes that occurred as a result of Ecology's January 2019 rule adoption for recreational use criteria (RUC), recreation and shellfish harvesting are now protected using different bacteria indicators. The WA DOH formal request was submitted during the comment period of the RUC rulemaking. Now that shellfish harvesting use criteria is 'decoupled' from recreational use criteria, Ecology has the opportunity to meet the WA DOH request.

This action to revise averaging and duration portions of the shellfish harvesting use criteria would simplify compliance goals by making FDA and Clean Water Act compliance requirements the same. This would minimize confusion between the two state agency programs that implement these federal programs to ensure that consumers and the public are protected.

(Revision D) Clarifying the descriptions of marine water aquatic life use designations

We intend to revise the aquatic life use designation descriptions for marine waters. In a 2003 rulemaking to update Washington's Water Quality Standards, the restructuring of aquatic life use designations descriptions resulted in an unintentional change that applied these use designations to cold water fisheries. This error was recently discovered when the City of Everett petitioned Ecology to revise dissolved oxygen criteria for marine waters. The city pointed out the discrepancies in the marine use designation descriptions, and upon review, Ecology agreed that this was an unintended error and that the agency would correct in a future rulemaking. This clarification would return the descriptions to their original intent and improve the ability for the public to apply the SWQS appropriately.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: We will work with tribes, the federal Environmental Protection Agency (EPA), Washington State Department of Health (DOH), and other federal and state agencies that also coordinate implementation of the SWQS to discuss, and seek input on, rulemaking activities and 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:

	(If necessary)
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Email:

Web site: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-201A-revisions>

Web site:

Other: <http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?SUBED1=ECOLOGY-WATER-QUALITY-INFO&A=1>

Other:

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: May 7, 2019

Signature:

Name: Heather R. Bartlett



Title: Water Quality Program Manager