RULE-MAKING ORDER
PERMANENT RULE ONLY

CR-103P (December 2017)
(Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 23, 2019
TIME: 5:26 PM

WSR 19-04-007

Agency: Department of Ecology AO # 16-07

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:

Purpose: We are adopting amendments to Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington. This rulemaking sets forth revised fresh and marine water quality standards for the protection of the water contact recreational use in state waters.

This rulemaking adopted:

- New bacterial indicators and numeric criteria to protect water contact recreational uses.
- Updated water contact recreational use categories, and modifications to sections 600 and 602 to support the proposed updated uses.
- Improved location information in use designation tables 602 (use designations for fresh waters), and 612 (use designations for marine waters).

At the request of the Puyallup Tribe, we added a note in Table 602 clarifying water quality regulatory authority for the lower Puyallup River. This provides an improved delineation between the State and the Puyallup Tribe's water quality standards.

The rulemaking amended the following sections of Chapter 173-201A WAC:

- 173-201A-020: Definitions.
- 173-201A-200: Fresh water designated uses and criteria.
- 173-201A-210: Marine water designated uses and criteria.
- 173-201A-320: Tier II – Protection of waters of higher quality than the standards.
- 173-201A-600: Use Designations – Fresh waters.
- 173-201A-602: Table 602 — Use designations for fresh waters by water resource inventory area (WRIA).
- 173-201A-610: Use designations – Marine waters.
- 173-201A-612: Table 612 – Use designations for marine waters.

Citation of rules affected by this order:

New:
Repealed:
Amended: WACs 173-201A-020; -200; -210; -320; -600; -602; -610; -612
Suspended:

Statutory authority for adoption: RCW 90.48.035 Rule-making authority provides clear and direct authority to Ecology to revise the water quality standards.

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Other authority: 40 CFR 131.20 requires states and tribes (with primacy for clean water actions) to periodically review and update the Water Quality Standards.

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-15-073 on July 17, 2018 (date).

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

The rule adopted differs from the rule proposed on July 17, 2018. Ecology made these changes:

- In response to comments we received during the formal comment period.
- To ensure clarity and consistency.

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 "E. coli" in response to public comments.

Proposed rule language

No edit proposed.

Final rule language

"E. coli" ~~or "Escherichia coli" is an aerobic and facultative gram negative nonspore forming rod shaped bacterium that can grow at 44.5 degrees Celsius that is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive and Methylumbelliferyl glucuronide (MUG) positive~~ is a bacterium in the family Enterobacteriaceae named Escherichia coli and is a common inhabitant of the intestinal tract of warm-blooded animals, and its presence in water samples is an indication of fecal pollution and the possible presence of enteric pathogens.

Change to WAC 173-201A-020

Ecology removed the proposed definition of "Effluent" in response to public comments.

Proposed rule language

"Effluent" refers to the discharge of chemical, physical, biological, or other constituents from point sources into surface waters.

Final rule language

Ecology removed the proposed definition.

Change to WAC 173-201A-200(2)(b)

Ecology made edits to the proposed rule language in response to public comments.

Proposed rule language

Water contact recreation bacteria criteria. Table 200 (2)(b) lists the bacteria criteria to protect water contact recreation in fresh waters. These criteria are based on Escherichia coli (E. coli) and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). Both bacterial indicators may be used to measure effluent discharge and ambient water quality conditions to determine compliance. The use of fecal coliform organism levels to determine compliance will expire December 31, 2020.

Final rule language

Water contact recreation bacteria criteria. Table 200 (2)(b) lists the bacteria criteria to protect water contact recreation in fresh waters. These criteria are based on Escherichia coli (E. coli) and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). The use of fecal coliform organism levels to determine compliance will expire December 31, 2020.

Change to WAC 173-201A-200(2)(b)(iv)

Ecology made edits to the proposed rule language in response to public comments.

Proposed rule language

~~Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis by the department.~~

Final rule language

Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis ~~by the department~~ as described in WAC 173-201A-430.

Change to WAC 173-201A-210(3)(b)

Ecology made edits to the proposed rule language in response to public comments.

Proposed rule language

Water contact recreation bacteria criteria. Table 210 (3)(b) lists the bacteria criteria to protect water contact recreation in marine waters. These criteria are based on enterococci and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). Both bacterial indicators may be used to measure effluent discharge and ambient water quality conditions to determine compliance. The use of fecal coliform levels to determine compliance will expire December 31, 2020.

Final rule language

Water contact recreation bacteria criteria. Table 210 (3)(b) lists the bacteria criteria to protect water contact recreation in marine waters. These criteria are based on enterococci and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). The use of fecal coliform levels to determine compliance will expire December 31, 2020.

Change to WAC 173-201A-210(3)(b)(i)(A)

Ecology made edits to the proposed rule language in response to public comments.

Proposed rule language

Effluent bacteria samples: When averaging effluent bacteria sample values for comparison to the geometric mean criteria, or for determining compliance with effluent requirements, the averaging period shall be thirty days or less.

Final rule language

Effluent bacteria samples: When averaging effluent bacteria sample values for comparison to the geometric mean criteria, or for determining permit compliance, the averaging period shall be thirty days or less.

Change to WAC 173-201A-210(3)(b)(iv)

Ecology made edits to the proposed rule language in response to public comments.

Proposed rule language

~~Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis by the department.~~

Final rule language

Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis ~~by the department~~ as described in WAC 173-201A-430.

Change to WAC 173-201A-602

Ecology modified the format of Table 602 to appear as a portrait-orientated table instead of images. Each area, or WRIA, in Table 602 appears as a stand-alone table, with any notes as text below the table. The hyphens following the waterbody name were bolded, and the first letter of the following word capitalized, per Code Reviser standards. The intent of these changes is to make Table 602 easier to read, and to make any necessary edits in future rulemakings.

Change to WAC 173-201A-602 (WRIA 10 Puyallup-White)

Based on a comment received from the Puyallup Tribe, Ecology modified the text in table 602 to include a note.

Proposed rule language

Note: This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species. See WAC 173-201A-200 (1)(c)(iv).

Final rule language

Notes for WRIA 10:

1.The Puyallup Tribe regulates water quality from the mouth of the Puyallup River to the up-river boundary of the 1873 Survey Area of the Puyallup Reservation.

2.This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Change to WAC 173-201A-602 (WRIA 10 Puyallup-White)

Based on a comment received from the Puyallup Tribe, Ecology modified the text in table 602 to include a note.

Proposed rule language

Puyallup River: upstream from the mouth (latitude 47.2685, longitude -122.4269) to river mile 1.0 (latitude 47.2562, longitude -122.4173).

Final rule language

Puyallup River: Upstream from the mouth (latitude 47.2685, longitude -122.4269) to river mile 1.0 (latitude 47.2562, longitude -122.4173).[1]

Change to WAC 173-201A-602 (WRIA 10 Puyallup-White)

Based on a comment received from the Puyallup Tribe, Ecology modified the text in table 602 to include a note.

Proposed rule language

Puyallup River: upstream from river mile 1.0 (latitude 47.2562, longitude -122.4173) to the confluence with White River (latitude 47.1999, longitude -122.2591).

Final rule language

Puyallup River: Upstream from river mile 1.0 (latitude 47.2562, longitude -122.4173) to the confluence with White River (latitude 47.1999, longitude -122.2591).[1]

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Water Quality Program
P.O Box 47600
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Phone: 360-407-6413
Fax: N/A
TTY: 711, for deaf or hard of hearing: 877-833-6341 (Washington Relay Service)
Email: swqs@ecy.wa.gov
Web site: https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-201A-Aug17
Other: N/A

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	____	Amended	8	Repealed	____
Federal rules or standards:	New	____	Amended	8	Repealed	____
Recently enacted state statutes:	New	____	Amended	____	Repealed	____

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

	New	____	Amended	____	Repealed	____

The number of sections adopted on the agency's own initiative:

	New	____	Amended	____	Repealed	____

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

	New	____	Amended	____	Repealed	____

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	____

Date Adopted: 1/23/2019	**Signature:** 
Name: Maia D. Bellon	
Title: Director	