

WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

Implementation Plan
for the Revisions to Chapter 173-201A WAC,
Water Quality Standards for Surface Waters of the State of Washington

As required by the Washington State Administrative Act, RCW 34.05.

November 2006
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Prepared in conjunction with the CR103

Prepared by:
Washington State Department of Ecology
Water Quality Program

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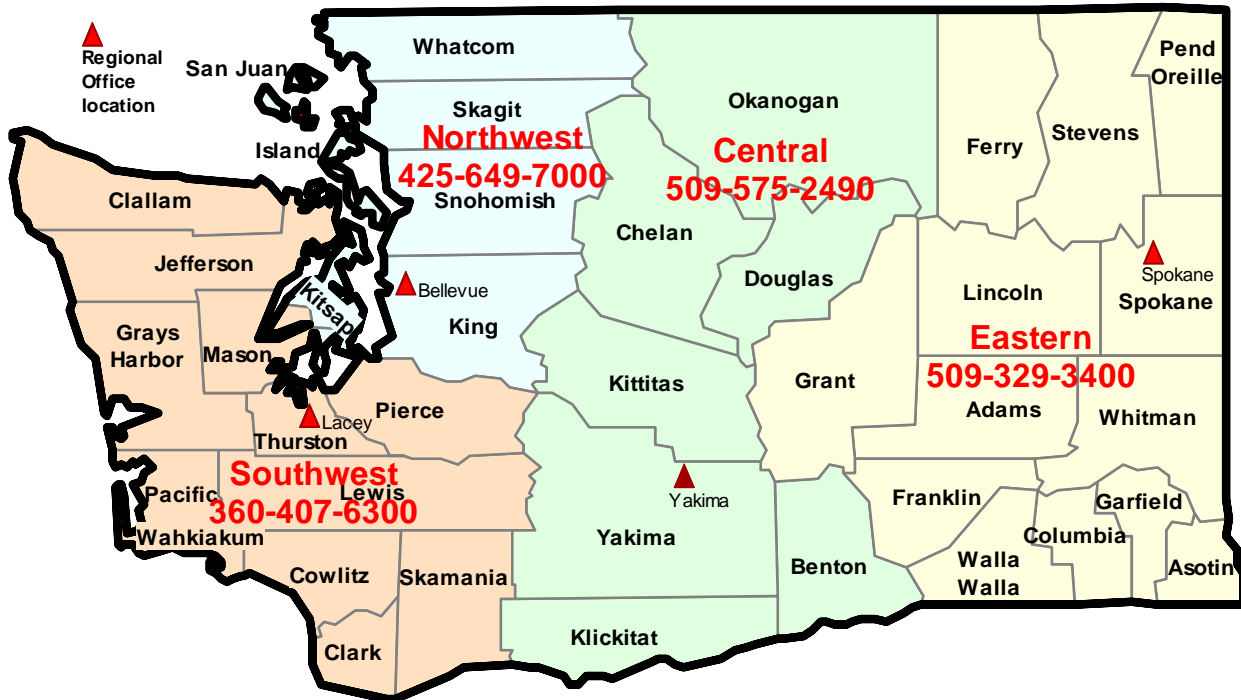
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**APA Requirements
Table of Contents**

1. How the agency intends to implement and enforce the rule including a description of the resources the agency intends to use.....1

2. How the agency intends to inform and educate affected persons about the rule. 6

3. How the agency intends to promote and assist voluntary compliance for this rule.6

4. How the agency intends to evaluate whether the rule achieves the purpose for which it was adopted, including to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.7

5. How the agency intends to train and inform Ecology staff regarding new rule or rule amendment.....7

6. Supporting documents that may need to be revised because of the rule amendment. Or new supporting documents that need to be developed because of a new rule.....8

Implementation Plan for Revisions to Chapter 173-201A WAC

1. How the agency intends to implement and enforce the rule including a description of the resources the agency intends to use.

Overview

In general, the Washington State Department of Ecology (Ecology) will implement and enforce the revised rule in the same way the current rule is implemented and enforced. Part V of the revised rule (WAC 173-201A-500-530), briefly discusses overall implementation, and other sections of the rule address specific implementation issues.

This rulemaking did not result in any changes that would affect the way that the state standards are implemented. The rulemaking only changed the numeric values for the temperature and dissolved oxygen water quality criteria that have been assigned to discrete portions of the state's waters. Those uses and criteria remain very similar to what has been in the state standards for decades.

Summary of Changes

The rule revision resulted in several key changes to the state standards:

- 1) The titles of three categories of aquatic life designated uses were changed, and brief descriptions were provided to better describe the intended application of these uses.
- 2) The designated aquatic life uses for select water bodies around the state were upgraded to reflect the current fisheries information available from the WDFW.
- 3) Supplemental temperature criteria were assigned to specific waterbody segments to protect summer season spawning or emergence of salmonids. A 13°C criterion was applied to protect salmon and trout stocks, and a 9°C criterion was applied to protect stocks of native char where these species are still developing in the stream gravels during the summer period (June 1-September 15).
- 4) The upgrades in the designated aquatic life uses have resulted in the revision of both the temperature and dissolved oxygen criteria applied to these affected waters. These changes increased the stringency of the criteria values but did not affect how they would be applied.

Guidance

Implementation guidance has been drafted to assist Ecology staff and others to implement the existing and revised temperature standards in permits and water body improvement plans (TMDLs). This has been done to help insure the criteria are consistently applied by the department. This guidance will be available online and will be updated as experience implementing the new standards warrants.

Ecology is also providing maps showing where the new uses and criteria apply across the state to assist Ecology staff and others in applying the new rules. These maps will be available online and plans are being discussed for expanding the topics of the maps to describe all of the water quality standards.

Incorporating and Implementing Rule Revisions

Approval of the New Standards by EPA

Ecology's formal rule adoption of the 2003 state water quality standards replaced the previous state standards adopted in 1997, effectively repealing them. Similarly, adopting these most recent standards will result in the 2006 version replacing the 2003 rule. While the 2006 rule cannot be used as federal water quality standards under the Clean Water Act until they are approved by EPA, effective December 21, 2006, Ecology will implement the 2006 rule to the fullest extent possible under existing state authority.

Ecology's decision to use the new, more protective, standards prior to EPA approval recognizes that:

1. The key issues of concern to the federal agencies and tribes (the use designations and temperature criteria) have been addressed in the corrective 2006 rulemaking, and
2. The state is obliged to use the most protective state or federal requirements available when conditioning sources of pollution.

Given the three year delay in receiving EPA approval, and the uncertainty of when final federal approval will be received, Ecology believes this is the best course of action for protecting water quality in the state. The decision to use the most recently adopted state standards prior to EPA approval will avoid confusion on which standards to apply, and will result in better protection of the state's waters, sooner.

Upon submittal of the final rule package to EPA, they have 60 days to approve or 90 days to disapprove the state's rule package, as required by the Clean Water Act. However, the timing of this action is complicated by the ESA consultation that must occur on the rule, since the federal services have a longer time frame to work under and often are not able to complete their consultation within that timeframe.

EPA can take one of the following 3 courses of action on the state's new rule:

1. Approve within 60 days of submittal
2. Conditionally approve pending ESA consultation within 60 days of submittal
3. Disapprove within 90 days of submittal

Ecology water quality staff will work with other Ecology staff and the public to keep them up-to-date and informed on how federal approval of the new rule is proceeding.

List of impaired waters - 303(d)

Periodically, Ecology produces a list of impaired waters that do not meet the water quality standards. This list is commonly called the 303(d) list, since the requirement comes from Section 303(d) of the federal Clean Water Act. The current (1997) EPA approved water quality standards are being used to develop the 303(d) list for 2006/2007. Future 303(d) lists will use the water quality standards that have been approved by EPA at the time the 303(d) list is compiled. These new water quality standards will be used to determine impaired water bodies for future listings.

TMDLs

There is continuous ongoing TMDL work that will be in various stages of completion once the standards are finalized. This chart describes how Ecology generally plans to manage that work once the standards become effective for federal actions such as TMDLs.

TMDL Status	Transition Solution
1. TMDL formally approved, submitted, or ready to be submitted	<ul style="list-style-type: none"> • Keep TMDL in place, even if criteria in the new rule is different • Continue implementation measures • Monitor compliance with TMDL allocations • Compare TMDL targets to new criteria, but not required to change targets • Water body will be placed in category 4a: Has a TMDL - in accordance with the new 303(d) listing policy
2. TMDL not yet approved, but field work completed and report may or may not be completed	<ul style="list-style-type: none"> • Proceed with submittal of TMDL package prior to the effective date of newly adopted standards • The Summary Implementation Strategy in the TMDL needs to address monitoring plan to pick up new criteria • Possible exceptions requiring closer evaluation involve point source dominated TMDLs
3. TMDL study in progress and field work begun but not completed	<ul style="list-style-type: none"> • Continue study but include new criteria, if possible • Analysis may still be based on old criteria • Extent of inclusion of new criteria depends on individual study and the difference between the old and new criteria. • Develop monitoring plan that incorporates new criteria
4. TMDL study planned and no field work yet begun	<ul style="list-style-type: none"> • Include new criteria in study design and sampling and drop old criteria
5. 303(d) listed but no priority set for doing study	<ul style="list-style-type: none"> • Retain on 303(d) list • Continue to scope and schedule projects. When projects are selected for work, the project would be treated the same as in (4) above

Permits

There is continuous ongoing permit work that will be in various stages of completion once the standards are finalized. This table describes how Ecology plans to manage that work once the standards become effective.

Permit Status at the Date of Adoption	Transition Solution
1. Public notice completed	Issue permit but make sure applicant understands that new rules were just adopted and might cause changes in the next permit.
2. Entity review completed but public notice not started. New standards don't affect reasonable potential or the limits.	Go to public notice with permit.
3. Entity review completed but public notice not started. New standards cause reasonable potential and effluent limits	Go to public notice with the permit. Prior to notice, Ecology will first estimate whether the reasonable potential determination would likely change if the standards become effective (get approval from EPA), and whether it would make a significant difference to our decision and conditions.
4. Entity review not begun	Use new criteria to do reasonable potential and effluent limits.

401 Certifications

Certifications will be issued based on the standards that are in effect when the certification is issued. When we go to public notice, we can estimate how the certification might change if the standards become effective (get approval from EPA) prior to issuance of the certification and whether it would make a significant difference to our decision and conditions.

All certifications that go to public notice after the standards are revised will be based on the new standards.

Monitoring

Monitoring for temperature will need to switch from grab samples to continuous monitoring to the extent feasible. This will more effectively measure compliance with the 7-DADMax metric. This will also be needed to better assess compliance with the temperature criteria during the spawning and emergence windows specified for selected waters in the revised rule.

2. How the agency intends to inform and educate affected persons about the rule.

Previous Activities

Affected persons and the public have been informed and educated about the proposed changes to the water quality standards over the past several years. Since this rulemaking began there have been numerous stakeholder discussions, special presentations, and public meetings.

During the formal rulemaking process, notices were mailed to approximately 6,000 individuals informing them of Ecology's final changes to adopt the water quality standards. In addition, email notices were sent to about 800 interested persons. Public workshops and hearings on the formal rule proposal were held in five locations around the state in August 2006. The purpose of these workshops and hearings was to inform and educate the public on the reasons for the proposed changes and to give them an opportunity to formally testify on the proposal. During the public comment period, Ecology also consulted directly with interested and affected tribes.

All of the formal changes to the water quality standards are available to the public on Ecology's website (www.ecy.wa.gov/programs/wq/swqs). This material includes the final regulatory language and supporting documentation. The water quality standards ListServ will continue to provide updates on how the new standards will be implemented. Interested persons can obtain written material upon request.

Future Activities

After rule adoption, Ecology will work with interested parties to prioritize guidance document needs. Ecology will continue to be available to external interests to explain the formal rule changes. Ecology will also develop programs to provide outreach and training on the water quality standards for parties interested and affected by those standards.

3. How the agency intends to promote and assist voluntary compliance for this rule.

Ecology will continue to work with key interests to encourage voluntary compliance with the water quality standards. Ecology supports numerous water quality programs that, at least in part, promote voluntary compliance:

- TMDLs
- Nonpoint Pollution Programs
- 319 Grant Programs
- SRF and Centennial Grants and Loans
- Watershed Planning
- The Engineering Assistance Team

These programs provide a great deal of financial and technical support to entities voluntarily complying with the water quality standards.

4. How the agency intends to evaluate whether the rule achieves the purpose for which it was adopted, including to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcome.

The purpose of the water quality standards is to restore and maintain the chemical, physical, and biological integrity of Washington's waters. More specifically, the water quality standards are designed to protect public health; public recreation in the waters; and the propagation of fish, shellfish, and wildlife. The numeric and narrative criteria in the water quality standards are intended to protect those beneficial uses.

The formal changes to the water quality standards will be considered to have achieved their purpose if they fully protect the beneficial uses. The water quality standards should also protect those beneficial uses in the least burdensome way.

Milestones are difficult to develop for the current revisions to the state standards. This is in large part because they resulted in only moderate changes to the designated uses and numeric criteria in the existing state regulation. One way that Ecology will measure success, however, is through its ability to reduce the number of waters listed on category five of the state's 303(d) impaired waters list. Another way will be through bringing discharge permits into compliance with these new standards.

Ecology will need to periodically update this rule as new fisheries information is collected in the field by staff and cooperators with the Washington State Department of Fish and Wildlife (WDFW). Ecology will need to work with the WDFW, tribal governments, and others to develop an effective means of obtaining and using such new information to propose future changes to the state surface water quality standards.

5. How the agency intends to train and inform Ecology staff regarding new rule or rule amendment.

Throughout the rulemaking process, Ecology staff have been informed of the proposed changes to the water quality standards. Headquarter's water quality standards staff have visited regional offices and held informational meetings for staff. These meetings will continue on a regular basis to achieve successful rule implementation. Staff working directly with the water quality standards, especially the formal changes, will receive additional training and involvement in guidance development. Additional training will take place in various forums such as: the permit writer workgroup, TMDL implementation workshops, engineers' workgroup, permit writer unit

supervisors workgroup, and a variety of other groups where staff implementing the standards can get up-to-date rule information.

Training on implementation of the revised water quality standards will also be made available to other entities that request such training.

6. Supporting documents that may need to be revised because of the rule amendment. Or new supporting documents that need to be developed because of a new rule.

Documents that will need to be revised:

- Permit Writers Manual
- TMDL guidance manual
- Permits and applications will need to be updated to reflect the new citations
- 303(d) listing policy for future listings will need to reflect new rule

Documents in support of criteria changes:

- Ecology intends to develop an interactive Web site that staff and stakeholders can use to identify the water quality standards applicable to specific portions of the state's waters.
- Ecology is working to formalize guidance that has been drafted to assist in implementing the temperature standards in permits and TMDLs.