

Protecting High Quality Waters in Washington

Washington State has an abundance of high quality waters that are important to protect for uses such as habitat for threatened and endangered salmon, tribal customs and recreation. The Clean Water Act provides an opportunity for states to identify their highest quality waters as outstanding resource waters and provide extra protection from future sources of degradation. People may nominate waters for the state to designate for this highest level of protection. This is possible under the state's "antidegradation" policy.

Q: What does Ecology's antidegradation policy do?

A: The Clean Water Act requires that state water quality standards:

- Protect existing uses by establishing the maximum levels of pollutants allowed in state waters.
- Protect those waters with a quality that is better than the standards.

The antidegradation process helps prevent unnecessary lowering of water quality in lakes, rivers, wetlands, and marine waters. It also provides a framework to identify and protect those waters that are designated as an "outstanding resource" by the state. Washington's antidegradation policy follows the framework of the federal regulation. It has three tiers of protection:

Tier I. The state must maintain and protect water quality necessary to protect existing and designated uses of a water (such as swimming, boating, and fish habitat). These protections apply to all waters and all pollutants.

Tier II. The state must protect water quality at the higher level where a water is demonstrated to be of a higher quality than the standards, unless Ecology determines that lowering the water quality is necessary and in the overriding public interest.

MORE INFORMATION

To learn more about the antidegradation section of the rule, visit our website at www.ecy.wa.gov/programs/wq/swqs

To receive electronic updates on the water quality standards, including notification that a Tier III water is being considered, send an e-mail message to swqs@ecy.wa.gov, with "Subscribe" as the subject heading.

Contact information:

Susan Braley
360-407-6414
sbra461@ecy.wa.gov

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If you need this publication in an alternate format, call the Water Quality Program at 360-407-6401. Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

These protections apply only to discharge permits, water quality certifications, and other pollution control programs authorized by Ecology.

Tier III. The state must maintain and protect against all sources of pollution where a high-quality water is designated as an “outstanding resource water.”

Q: How does Washington define a Tier III – outstanding resource water?

A: The state specifically describes protection for Tier III outstanding resource waters in the antidegradation section of the water quality standards (WAC 173-201A-330). The rule contains specific eligibility requirements to identify the outstanding resource waters that receive special protection. These include, but are not limited to, waters without multiple sources of pollution that are located in:

- Federal or state parks.
- Monuments.
- Preserves.
- Wilderness areas.
- Wild and scenic rivers.

Tier III could also cover waters of unique ecological or recreational value located in urban areas.

The rules allow two levels of Tier III protection. They say that a qualifying water body may be designated as:

- Tier III(A), which prohibits any and all future degradation.
- Tier III(B), which allows for de minimis (below measurable amounts) degradation from well-controlled activities, such as stormwater or forest practice activities that apply state-of-the-art best management practices.

Waters that meet the eligibility requirements for Tier III status can be nominated as outstanding resource waters. Ecology first determines that the waters qualify, and then conducts a public review of the proposal. After the public process, waters that Ecology designates as Tier III are included in the water quality standards rule. Activities that would cause future measurable degradation are not allowed. However, if any degradation occurs, it must be kept below measurable amounts.

Q: How will Ecology evaluate a water nominated for Tier III status?

A: People can request the state to grant Tier III status for waters through public nominations submitted to Ecology in writing. Nominations or requests must include sufficient information to show how the water body meets the criteria for designation as an outstanding resource

water. If the submitted information demonstrates that the water body meets the eligibility requirements, Ecology schedules a review of the nominated water for designation. The review will include a public process and consultation with recognized tribes in the geographic vicinity of the water.

In determining whether or not to designate an outstanding resource water as Tier III, Ecology considers factors such as:

- The importance of the water body to the local or regional community or for the recovery of salmon.
- The difficulty of maintaining the current quality of the water body.
- The social or economic impact to the local community will occur.
- The level of support from the public and affected governments in assessing whether or not to designate the water as an outstanding resource water.

After the review process, Ecology makes a final determination on whether a nominated water body should be adopted into this rule as an outstanding resource water.

Q: How will Ecology ensure that a Tier III water does not further degrade?

A: Ecology has authority through both the Clean Water Act and state statutes to protect the water quality of the state. Ecology implements this authority through various federal and state regulatory programs. Implementation includes permitting discharges to waters of the state; carrying out water pollution control programs; and conducting compliance and enforcement activities.

Point Source Pollution

Point sources of pollution are controlled through the National Pollutant Discharge Elimination System (NPDES) and state waste discharge permit programs. Any permit issued for discharges to a Tier III(A) outstanding resource water will need to ensure that further degradation to that water is prevented. Permits for activities on a Tier III(B) water will allow for de minimis (below measurable amounts) degradation from well-controlled activities, such as application of state-of-the-art control technologies. All new or expanded point sources of pollution in Tier III(B) waters are required to use applicable advanced waste treatment and control techniques that reasonably represent the state of the art and minimize the degradation of water quality to nonmeasurable levels if total elimination is not feasible.

Nonpoint Source Pollution

Ecology can protect Tier III waters from nonpoint source pollution in three ways.

1. Ecology can list a water body as Tier III(A) or (B), which will apply to the following protections:

- Tier III(A) protections allow no further degradation from nonpoint sources after the water body has been designated. Essentially, if existing land uses can preserve the status quo for water quality, then no additional requirements will be needed. However, if existing and future activities contribute new nonpoint source pollution to the water, then those activities are required to eliminate or fully mitigate those discharges.
- Tier III(B) protections allow minor degradation to occur, but only due to highly controlled activities. Those activities must use all applicable best management practices so that degradation to the water quality is reduced to “non-measurable levels.”

2. Ecology can provide local governments, tribes, or other federal or state agencies with technical assistance to ensure that their land use decision-making and planning processes meet the legal requirements for a Tier III water body. This work may include commenting on SEPA (State Environmental Policy Act) determinations and resultant Environmental Impact Statements as well as providing the necessary scientific and technical guidance to promote sound water quality planning. Moreover, Ecology can provide guidance to ensure that activities include all the required best management practices.

3. Ecology can enforce against any nonpoint source activity that a) does not utilize the necessary best management practices, or b) is otherwise found to contribute to a degradation of the water quality despite the activity's receipt of local permits, approvals, or both.

Q: How far does Ecology's authority go to restrict or prohibit activities on Tier III waters?

A: Ecology's authority to protect water quality in the state is granted through state statutes and the Clean Water Act. It includes the administration of waste discharge permits and water pollution control programs. Ecology uses this authority to provide the extra protection status to Tier III waters.

Granting a water Tier III status does not extend Ecology's authority to making land-use decisions. Primarily, local governments, tribes, or other federal or state agencies need to consider the environmental impacts of land-use decisions on Tier III waters. They must also ensure that those decisions and approvals do not further degrade existing water quality. Localities may also use the comprehensive planning process; undertake alternative analyses; adequately condition approvals and permits to protect and maintain the water quality; or any combination of these. Failure to consider or mitigate the impacts of land-use decisions on water quality may render those decisions indefensible to judicial or administrative review and may subject those activities to future enforcement by Ecology.

Ecology has the discretion to use enforcement, as necessary, to ensure that point source discharges comply with the added protection requirements for outstanding resource waters. Ecology also has this discretion over nonpoint source activities. According to the existing rule, if land use activities do not use all applicable best management practices to fully protect a Tier

III water, Ecology may conclude that those individual activities are causing pollution in violation of RCW 90.48.080. In these situations, the department may pursue orders, directives, permits, or civil or criminal sanctions to gain compliance with the standards.

Q: Are there any Tier III waters in the state?

A: As of September 2007, there were no waters in the state assigned as a Tier III water. EPA recently approved the antidegradation section of the Washington water quality standards (WAC 173-201A, Part III) that were revised in 2003. Now Ecology expects to receive nominations for Tier III waters. Any future rule-making on a Tier III water will go through a full public review prior to adoption.

Several other states have designated outstanding resource waters in their state, including those with exceptionally high scenic, recreational, ecological or water supply values.