2019 Updates to Recreational Use Water Quality Standards

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

Background

The Water Quality Standards for Surface Waters of the State of Washington establish the rules for maintaining clean waters for the State. These standards designate uses, such as swimming and fishing for each waterbody in the State. To protect the designated uses, the water quality standards also set limits (criteria) on pollution in our lakes, rivers, and marine waters to determine the health of the water and protect the designated uses. The State identifies waterbodies that do not meet the criteria as 'impaired' and schedules clean up actions. Clean up actions can include issuing discharge permits under the federal Clean Water Act, and modifying other non-permitted activities (nonpoint discharge) to return impaired waters to a 'healthy' status.

The 2019 recreational use rulemaking updated and improved water quality standards for protecting swimmers by:

- Including new science to protect people that recreate in state waters.
- Establishing indicators that are better correlated with illness and can more accurately determine the presence of human-caused fecal pollution.
- Aligning Washington's recreational use categories with EPA recommendations for recreational protection

Major Changes

New water quality criteria were adopted to better protect swimming and other recreational uses. The recreational use criteria rule adopted *Escherichia coli (E. coli)* as the bacterial indicator for freshwaters and *Enterococci* for marine waters. This rule did not change the criteria that protect shellfish harvesting uses, which continue to be protected by the fecal coliform criteria.

The previous recreational uses were split into three categories: extraordinary, primary, and secondary use. The updated rule now protects all waters at the same level, *primary contact*, for both freshwater and marine waters.

When the Rule Goes Into Effect

Washington adopted the recreational use criteria rulemaking in January 2019 and EPA approved the rule in April 2019. Ecology established a two-year transition period for the rule. This transition period allows use of either the older fecal coliform criteria or the new indicator criteria until **December 31, 2020.** Fecal coliform will remain an indicator of shellfish harvesting use but will be phased out for determining waterbody health for swimming and recreating. This transition period also allows laboratories time to transition to new methods for analyzing samples and to become accredited for new bacterial indicators and methods.

Frequently Asked Questions

Why are the standards changing?

In 2012, EPA revised the national recommended recreational water quality criteria. The recommendations include the latest science, which quantifies the link between illness and fecal contamination in recreational waters. The federal BEACH Act of 2000 requires coastal states, tribes, and territories to adopt new or revised recreational water quality criteria for all pathogens.

Why keep fecal coliform as the indicator of risk for shellfish?

Fecal coliform is still supported as the appropriate indicator of risk for shellfish. The Federal Food and Drug Administration continues to support using fecal coliform for the Washington State Department of Health's regulatory program is responsible for the implementation of rules related to the commercial harvest of shellfish.

Are Pollution Identification and Correction (PIC) programs required to make changes as a result of the rule amendment? Should programs transition to sampling for E. coli?

No, PIC Programs are not required to make any changes as a result of this rule change. Pollution identification can utilize many indicators to determine where actions need to be taken to improve water quality. PIC programs can decide which bacteria indicator is best to use for their program based on its goals and objectives.

Without a "regulatory fecal coliform numeric criteria" for freshwater, how will local programs establish actionable thresholds?

Local governments implementing PIC Programs should consult with their legal representatives to determine what evidence they need to show a violation under local ordinances when making determinations of what is "actionable" in an enforcement context.

PIC programs should determine the best criteria to guide pollution identification and source tracking work as well as prioritize sites for action. Programs should consider prioritizing their work based on where sampling indicates the biggest sources of pollution instead of focusing on a specific "actionable threshold" number.

Where does Ecology get its authority to take enforcement actions?

Under the Washington State Water Pollution Control Act (Chapter 90.48 RCW) Ecology is given the jurisdiction "to control and prevent the pollution of… waters of the state of Washington." The Water Pollution Control Act is the principal law governing water quality in Washington State and applies to surface waters, wetlands and ground water. Ecology has authority to control and prevent all pollution of state waters, whether the pollution comes from a point or nonpoint source.

A more detailed discussion of Ecology's regulatory authority can be found in Chapter 2 of Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution.

Related Resources:

- Rule Implementation Plan (Jan. 2019)
- Concise Explanatory Statement Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of the Washington (Jan. 2019)
- Adoption Notice – CR-103 form
- Adopted rule language
- Final Regulatory Analyses
- Final Environmental Impact Statement

How does Ecology ensure compliance of water quality laws?

Our preferred approach is to assist people with gaining compliance with state law and water quality standards through voluntary tools (outreach, technical assistance, incentives) that promote the implementation of best management practices. Based on the nature and severity of the problem, Ecology has discretion to issue warnings, Notice of Violations, orders, and penalties. We use enforcement as a backstop when landowners fail to act on voluntary opportunities to correct issues and implement long-term solutions to protect water quality.

When we get to a site we ask the following questions:

- Are there sources of nonpoint pollution?
- Is surface water present at the site or in proximity to the site?
- Are there groundwater concerns?
- Are there pathways for pollution to get to state waters?
- Is there evidence that pollutants have entered state waters?
- Are management practices in place to prevent nonpoint pollution to state waters?

After identifying a site as a pollution source, Ecology staff determine the factors most relevant to a watershed when prioritizing action. When working in areas with shellfish beds, staff may decide to use fecal coliform counts as a factor in prioritizing clean-up actions. In other areas, *E. coli* counts or other indicators may be used.

Factors Ecology uses to prioritize nonpoint pollution sources for action:

- Is the site a significant pollution source?
- Is the problem on-going? Do you have evidence of past runoff and foreseeable runoff with rain?
- Is there a discharge directly to a stream, or other natural waterbody? Or, does the site discharge to a ditch or stormwater conveyance that subsequently discharges to stream or river?
- What is the history at the site? Has the site been identified as a problem before?

Will Ecology base future bacteria Total Maximum Daily Loads (TMDLs) for freshwater on E. coli, fecal coliform, or both?

If the TMDL is developed specifically to protect recreational uses then it should generally be based on *E. coli*. The rule implementation plan allows for a two-year transition period. Fecal coliform TMDLs may be accepted if completed and submitted to EPA before December 31, 2020. However, these TMDLs should address and discuss the change to *E. coli* in their implementation plans. TMDLs that are expected to be approved by EPA after December 31, 2020 must be based on *E. coli*.

How should existing fecal coliform TMDLs be monitored to determine progress?

The goal of a TMDL is to fully restore one or more designated uses to a waterbody. Monitoring designed to determine the effectiveness of TMDL cleanup actions may use the new indicator criteria to track improvement and eventual attainment of recreational uses. If a freshwater fecal coliform TMDL was also designed to protect downstream shellfish harvest use, then the TMDL effectiveness monitoring should continue to track progress on fecal coliform reductions. Because nearly all marine waters in Washington are protected for shellfish harvesting use, all new and existing bacteria TMDLs in marine water will continue to track fecal coliform.

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