DEPARTMENT OF ECOLOGY
State of Washington

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

Natural Conditions Criteria

November 2024

Publication 24-10-052

Publication and Contact Information

This document is available on the Department of Ecology's website at:
https://apps.ecology.wa.gov/publications/SummaryPages/2410052.html

For more information contact:

Water Quality Program
P.O. Box 47600
Olympia, WA 98504-7600
Phone: 360-407-6600

Washington State Department of Ecology — www.ecology.wa.gov

- Headquarters, Olympia 360-407-6000
- Northwest Regional Office, Shoreline 206-594-0000
- Southwest Regional Office, Olympia 360-407-6300
- Central Regional Office, Union Gap 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

The Department of Ecology is committed to providing people with disabilities access to information and services by meeting or exceeding the requirements of the Americans with Disabilities Act (ADA), Section 504 and 508 of the Rehabilitation Act, and Washington State Policy #188.

To request an ADA accommodation, contact Ecology by phone at 360-407-6600 or email at marla.koberstein@ecy.wa.gov. For Washington Relay Service or TTY call 711 or 877-833-6341. Visit https://ecology.wa.gov/accessibility for more information.

Rule Implementation Plan

Chapter 173-201A WAC

Natural Conditions Criteria

Water Quality Program

Washington State Department of Ecology

Olympia, Washington

This page is purposely left blank.

Table of Contents

Page

List of Tables 6
Tables 6
Purpose 7
Introduction 8
Implementation and Enforcement 9
Overview of Implementation 9
Human Action Allowance Considerations 9
Performance-Based Approach Considerations 11
Changes to Permits 14
Changes to Water Clean Up Plans 16
Water Quality Assessment 18
401 Certifications 18
Informing and Educating Persons Affected by the Rule 19
Rule development outreach 19
Rule proposal outreach 19
Future outreach 19
Promoting and Assisting Voluntary Compliance 21
Evaluating the Rule 22
Objectively Measurable Outcomes 22
Training and Informing Ecology Staff 23
NPDES permits and 401 certifications 23
Water Quality Assessment 23
Water Clean Up Plans 23
List of Supporting Documents that May Need to be Written or Revised 25
More Information 26
Contact Information 27

List of Tables

Tables

Table 1. Addressing permit processing when new water quality standards become effective.....14
Table 2. Water clean up plan implementation for this rulemaking.....16

Purpose

The Washington State Department of Ecology (Ecology) provides the information in this implementation plan to meet agency and Administrative Procedure Act (RCW 34.05.328) requirements related to rule adoptions.

Introduction

On November 14, 2024, Ecology adopted amendments to chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington. We adopted revisions to several natural conditions provisions in this chapter, including:

- WAC 173-201A-020 Definitions,
- WAC 173-201A-200 Fresh water designated uses and criteria,
- WAC 173-201A-210 Marine water designated uses and criteria,
- WAC 173-201A-260 Natural conditions and other water quality criteria and applications, and
- WAC 173-201A-430 Site-specific criteria.

We adopted a new section: WAC 173-201A-470 Performance-based approach.

We also proposed a methodology for calculating site-specific natural conditions criteria in a new performance-based approach document. Based on comments received during the public review period of this rulemaking, we are making revisions to this document. We plan to get additional feedback from Tribes and the public before finalization of this document.

The purpose of this rule implementation plan is to inform those who must comply with Chapter 173-201A about how Ecology intends to:

- Implement and enforce the rule.
- Inform and educate persons affected by the rule.
- Promote and assist voluntary compliance for the rule.
- Evaluate the rule.
- Train and inform Ecology staff about the new or amended rule.

Also included in this plan is information about:

- Supporting documents that may need to be written or revised because of the new rule or amended rule.
- Other resources where more information about the rule is available.
- Contact information for Ecology employees who can answer questions about the rule implementation.

Implementation and Enforcement

Ecology will implement and enforce the adopted rule (upon its effective date) in the same way the prior rule was implemented and enforced. The rule will not be able to be used for Clean Water Act (CWA) actions such as for Total Maximum Daily Loads (TMDLs) or National Pollutant Discharge Elimination System (NPDES) permits until Ecology receives approval from the Environmental Protection Agency (EPA).

Overview of Implementation

Ecology intends to update any existing guidance documents or develop new guidance documents to assist Ecology staff and others to implement new and revised portions of the rule. We also plan on revising and finalizing the performance-based approach document, which will include a public review process. This will help ensure any new criteria derived under our approach for determining natural conditions criteria and implementation tools are consistently applied by Ecology. As we implement the performance-based approach to derive natural conditions aquatic life criteria, as well as any new criteria values as result of that approach, we will continue to review documents and make any necessary updates if changes are needed. See the List of Supporting Documents in this document for a complete list of documents that will be developed to support this rule.

Human Action Allowance Considerations

Ecology is adopting updates to the human action allowances that apply when a water's temperature is warmer than applicable numeric criteria and when a water's dissolved oxygen (D.O.) concentration is lower than applicable numeric criteria, that these conditions are due to natural conditions, and applicable site-specific natural conditions criteria have been calculated and are in effect.

Human Allowance Limitations for Temperature

Ecology adopted language that specified:

> When a water body's temperature is warmer than the criteria in Table 200 (1)(c) (or within 0.3°C (0.54°F) of the criteria) and that condition is due to natural conditions, then ((~~human actions~~)) local and regional sources of human-caused pollution considered cumulatively may not cause the 7-DADMax temperature of that water body to increase more than 0.3°C (0.54°F) above natural conditions.

For further details on this portion of the rule updates, see the Technical Support Document,[1] Ecology publication 24-10-051.

[1] https://apps.ecology.wa.gov/publications/SummaryPages/2410051.html

Human Allowance Limitations for Dissolved Oxygen

Ecology adopted language that specified:

> When a water body's D.O. concentration is lower than the numeric criteria in Table 200 (1)(d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then ((~~human actions~~)) local and regional sources of human-caused pollution considered cumulatively may not cause the D.O. concentration of that water body to decrease more than 10 percent or 0.2 mg/L below natural conditions, whichever decrease is smaller.

This approach for human action allowances that impact D.O. is to protect species that live in hypoxic (water with a D.O. concentration below 2 mg/L) areas, as even small decreases in D.O. can have an impact on their ability to survive and reproduce. For further details on this portion of the rule, see the Technical Support Document,[2] Ecology publication 24-10-051.

Local and Regional Sources of Human-Caused Pollution

Ecology adopted limits for the human action allowance to apply only to local and regional sources of human-caused pollution. These sources of pollution are those that originate from:

- Within the boundaries of Washington; or
- Within the boundaries of the United States of America *and* within the boundaries of a jurisdiction that abuts Washington (e.g., Oregon, Idaho) *and* impacts Washington's surface waters.

These criteria allow for non-measurable (or de minimis) allowances for regulated actions within the state.

Thus, local sources of human-caused pollution refer to both point and non-point sources of pollution that impact surface waters where the source originates within Washington. Regional sources refer to point and non-point sources of pollution that impact surface waters where the source originates within Washington, Oregon, Idaho, or the seaward boundary of Washington. In either case, the originating pollution source must be from within the boundaries of the United States, and thus would exclude pollution sources originating from other countries or from other oceanic impacts.

These changes to the human action allowances provide Ecology with the tools to regulate de minimis allowances when natural conditions criteria are applicable to a waterbody without allocating human-caused impacts that are outside of Ecology's regulatory authority (e.g., point source discharges in upstream Canadian waters, global climate change impacts to oceans). These other, non-local and non-regional human-caused impacts are not allowed to further lower water quality when water quality is not met because of natural conditions (see WAC 173-201A-310(3)).

For further details on this portion of the proposed rule, see Technical Support Document,[3] Ecology publication 24-10-051.

---

[2] https://apps.ecology.wa.gov/publications/SummaryPages/2410051.html
[3] https://apps.ecology.wa.gov/publications/SummaryPages/2410051.html

Performance-Based Approach Considerations

Ecology adopted a performance-based approach for developing site-specific natural conditions criteria for aquatic life at WAC 173-201A-470. During the rule proposal phase, we proposed a draft performance-based approach document[4] for public comment, Ecology publication 24-10-017. At the time of publication of the Rule Implementation Plan, we have not published a final version of Ecology's performance-based approach document. We plan to publish a final Performance-Based Approach for Developing Site-Specific Natural Conditions Criteria for Aquatic Life in Washington,[5] Ecology publication 25-10-001, in 2025.

Finalization of the Performance-Based Approach Document

During the public comment period for this rulemaking, Ecology received numerous comments regarding our draft performance-based approach document. These comments allowed us to recognize that additional work is needed to the document.

Ecology plans to make edits to this publication based on feedback received and provide another opportunity for public involvement and review on the revised draft of the performance-based approach document in Spring 2025. Following the public comment period, we will carefully consider comments received and aim to publish the final version of this publication alongside our response to comments by Summer 2025. After we finalize the Performance-Based Approach document next year, the Office of the Attorney General will certify that the document is legally binding, then we will send the performance-based approach document to EPA for review and approval.

Because the performance-based approach document is only referenced, and not part of the Water Quality Standards regulations at WAC 173-201A-470, and revisions to the document would not change the adopted regulatory language, we are not required nor will be conducting a separate formal rulemaking to revise this document. However, we feel it is important to provide another opportunity for public and Tribal input on a revised draft. Further, this document, which governs how Ecology will use the performance-based approach for site-specific criteria development, must meet federal CWA requirements, which includes a public review process and EPA review and approval before use in federal CWA actions.

Therefore, until we publish a final version of this document and receive EPA approval following their review, we will not be able to use the performance-based approach document for site-specific criteria under the Clean Water Act.

Implementation Differences

Development of site-specific natural conditions criteria using the performance-based approach differs from other site-specific or general numeric or narrative criteria in two ways:

[4] https://apps.ecology.wa.gov/publications/SummaryPages/2410017.html
[5] https://apps.ecology.wa.gov/publications/SummaryPages/2510001.html

a) The resulting criteria values do not need to be separately adopted into Chapter 173-201A WAC through rulemaking as done with other site-specific criteria development (see WAC 173-201A-430); and

b) Details of the process undertaken by Ecology to develop these natural conditions criteria using the performance-based approach must accompany the developed criteria in all subsequent CWA actions.

Aquatic life natural conditions criteria values developed using the performance-based approach are applicable to the waterbody following the performance-based approach derivation process, so long as all requirements set forth in the performance-based approach document (publication 25-10-001) and WAC 173-201A-470 are met. If, however, the requirements set forth in the performance-based approach document are not met, then alternative site-specific criteria development may be considered through other processes (see WAC 173-201A-260(1)(a)(i)).

In the process of using the performance-based approach, there will be multiple requirements for criteria development, including evaluation of various water quality elements, data requirements, quality assurance and quality control, and ensuring criteria are protecting all designated and existing uses. As such, if any criteria developed under this approach are used for state or federal CWA actions, Ecology must provide a report following departmental policy that meets the requirements set forth in the performance-based approach document (publication 25-10-001). This report ensures that the process and criteria development followed the performance-based approach. For example, if using the performance-based approach to generate protective site-specific natural conditions criteria values for use in a clean up (e.g., TMDL) action, then the report must be included alongside the criteria used in a draft clean up plan for Tribal, public, and EPA review.

Use of the Performance-Based Approach

Ecology adopted revisions to the water quality standards that limit the use of the performance-based approach to certain water quality parameters. In the adopted rule, the performance-based approach applies to D.O. (fresh and marine water), temperature (fresh and marine water), and pH (fresh water) only. Development of natural conditions site-specific criteria for other aquatic life water quality parameters will use the alternative pathway listed at WAC 173-201A-260(1)(a)(ii). Natural conditions criteria do not replace nor supersede any applicable human health criteria for a waterbody.

There are no requirements that the performance-based approach must be used. The performance-based approach is a tool used by Ecology to develop site-specific water quality criteria for aquatic life based on the natural conditions of a site. The Department of Ecology is the authorizing agency for rules and regulations related to water quality standards in the state of Washington and for substances discharged into Washington's waters (RCW 90.48.035). This performance-based approach, therefore, serves as an available tool for Ecology to use when developing these site-specific criteria.

If Ecology chooses to develop site-specific criteria based on natural conditions, WAC 173-201A-260(1)(a) and other applicable state and federal regulations must be followed. In addition, the use of the performance-based approach to develop protective aquatic life criteria values must involve a Tribal and public process. While an EPA-approved performance-based approach means the

resulting criteria are approved for use in CWA actions (and, therefore, do not require separate formal rulemaking), we want to ensure that the public has opportunity to comment on our use of this approach and the resulting criteria values.

We anticipate that Ecology will most commonly use the performance-based approach in conjunction with development of a TMDL or other water clean up plan (e.g. an advance restoration plan). When we go out to the public and Tribes with a draft water clean up plan for comment and feedback, all of the required performance-based approach documentation and criteria values would be included alongside other documentation, and we would accept comment and feedback on the use of the performance-based approach at that time

We also will make public when and where we have developed site-specific criteria using the performance-based approach once the criteria are effective for federal CWA actions. Because these criteria would replace any applicable biologically-based criteria, but would not be adopted in the section of the water quality standards that lists site-specific criteria (WAC 173-201A-602 and WAC 173-201A-612), we want to make it clear to Ecology staff, Tribes, permitted dischargers, and the public when and where these criteria are in effect.

Using the Performance-Based Approach for Water Clean Up Plans

It is anticipated that TMDL and other water clean up plan developments (e.g., advanced restoration plans) will use the performance-based approach for waters where natural conditions are a partial reason for nonattainment of applicable water quality standards. The performance-based approach follows closely with established procedures and policies for water clean up plan development, including the use of QAPPs and model requirements. There are, however, additions to anticipated workflow in the process compared to prior natural conditions criteria implementation.

First, all human-caused impacts must be accounted for using all existing, readily available, and credible data. This includes estimation of the impact from human actions to a waterbody from waters outside the state's jurisdiction and impacts from climate change. These impacts are included alongside local and regional human sources of pollution to determine the total human-caused influence on the waterbody. This impact can then be removed from the model estimates of current (existing) water quality to estimate the natural condition water quality. In other words, outside jurisdictional waters and climate change influences are removed from the "target reference conditions of the system", as determined when using prior natural conditions criteria implementation procedures.

Extra-jurisdictional sources and climate change should be included in current condition model simulations and removed in the natural condition simulations, if feasible. If it is not technically feasible to model these sources and remove them, then they must be accounted for and removed separately to establish natural conditions criteria that represent water quality free from human-caused pollution.

The resulting estimates of the water quality represent the natural conditions of the target system. These estimates, alongside the applicable and protective biologically-based numeric criteria duration and frequency components, represent the natural conditions criteria for that water quality parameter.

Departmental documents, procedures, and policies related to the development, review, and submittal of water clean up plans may need to be updated to reflect the use of the performance-based approach.

Considering Human Structural Changes
In situations where a water body does not meet its assigned criteria due to human structural changes that cannot be effectively remedied, alternative criteria may be developed (e.g., site-specific criteria, use attainability analysis).

The performance-based approach may be used for assessment units that are impacted by a waterbody containing human structural changes (as per WAC 173-201A-260(1)(b)), so long as the regional natural condition values are used to remove the potential impacts of the irreversible structural changes. Support for the regional natural condition values, including calculations, must be scientifically sound and defined in the project-specific Quality Assurance Project Plan (QAPP) or relevant documentation.

For example, the natural nutrient loading from the Lake Washington watershed to the Salish Sea would be estimated as the sum of all the natural nutrient loading input estimates to Lake Washington (a lake with irreversible structural changes from natural). Any differences between the existing net load from Lake Washington to the Salish Sea and the estimate of natural loading for Lake Washington inputs would thus be assumed to be human-caused and removed from the natural condition estimate for the Salish Sea.

Using this approach in these situations is particularly important for impaired waters with large geographic drainage areas and where water quality models cover a large area of waters, as they will most certainly contain some waterbodies with irreversible structural changes. See the performance-based approach document for additional information (publication 25-10-001).

Changes to Permits

Addressing Permit Processing

Permitting can be in various stages when water quality standards are approved by EPA and become effective for CWA purposes. All newly EPA approved criteria will be implemented when permits are renewed or when new permits are issued. Table 1 describes how Ecology will guide permitted dischargers to consider the water quality standards once they become effective, based on permit status at the date of approval.

Table 1. Addressing permit processing when new water quality standards become effective.

Wastewater Discharge Permit Status at the Date of Approval	Action
1. Entity review not begun.	Use new criteria to determine reasonable potential and effluent limits.
2. Entity review completed but public notice not started. New water quality standards	Prior to notice, Ecology will first estimate whether the reasonable potential determination would likely use the newly approved criteria and whether it would make a

Wastewater Discharge Permit Status at the Date of Approval	Action
cause reasonable potential to pollute or cause the effluent limits to change.	significant difference in Ecology's decision and conditions. The permit would go to public notice once the new standards are incorporated into the permit.
3. Entity review completed but public notice not started. New water quality standards don't cause a reasonable potential to pollute or cause the effluent limits to change.	Go to public notice with permit.
4. Public notice completed.	Issue permit but make sure applicant understands that new rules were recently approved, and future permits may change.

Impacts to Existing Permits

Ecology reissues individual and general NPDES permits every 5 years and uses the EPA-approved water quality standards that are in effect at the time of issuance. A reasonable potential determination to exceed the water quality standards should be assessed for each permit. In addition, compliance schedules are a permitting tool considered by Ecology if permittees are unable to comply with new limits or benchmarks, based on state and federal NPDES rules. Ecology also can work with affected industries or permittees to provide technical assistance and guidance on best management practices that would help achieve compliance with any limits or benchmarks that are more stringent (protective) resulting from rulemakings.

This rulemaking does not propose to adopt criteria which affects parameters that have water quality-based effluent limits (WQBELs) or benchmarks in Ecology permits.

Identifying Future Changes to Permits

In general, this rulemaking provides a benefit for permits, as any natural conditions criteria developed by Ecology and in effect for CWA actions for a receiving water will reflect specific site-conditions. See the Final Regulatory Analyses[6] for this rule (publication 24-10-053) for additional details.

Permit Benchmarks

Benchmarks are provided to permittees in stormwater general permits. Benchmark means a pollutant level used as a permit threshold, below which a pollutant is considered unlikely to cause a water quality violation, and above which it may. When pollutant concentrations exceed benchmarks, corrective action requirements take effect. Benchmark values are not water quality standards and are not numeric effluent limitations; they are indicator values. However, benchmarks are calculated based on the numeric criteria applicable to the permit. This

[6] https://apps.ecology.wa.gov/publications/SummaryPages/2410053.html

rulemaking will not change aquatic life or human health criteria for toxic substances listed under WAC 173-201A-240; therefore, recalculations of stormwater benchmarks for applicable general permits is unlikely.

Changes to Water Clean Up Plans

There is ongoing water clean up work (e.g., TMDLs, advanced restoration projects) that will be in various stages of development once proposed revisions to the water quality standards are finalized and become effective for CWA purposes. Table 2 describes how Ecology plans to manage the various stages of clean up plans when changes become effective.

Table 2. Water clean up plan implementation for this rulemaking

Status	Action
1. TMDL or other water clean up plan formally approved.	• Keep plan in place, even if criteria in the new rule are different • Continue implementation measures • Monitor compliance with allocations • Compare targets to new criteria, but not required to change targets • Waterbody will be placed in category 4a in accordance with the 303(d) listing policy • Effectiveness monitoring will include analysis of the new criteria
2. TMDL or other water clean up plan not yet approved, but field work completed and draft document (report) may or may not be completed	• Report will have to be updated to include analysis of the new criteria, if developed and in effect • Proceed with submittal of water clean up plan if the analysis shows that new criteria, if developed and in effect, will be met • If new criteria, if developed and in effect, will not be met, then the in-progress or draft clean up plan will need to be amended to address new criteria. • If it is determined that the waterbody is naturally not meeting applicable water quality criteria at critical points in the year, AND the water quality parameter is temperature (fresh or marine water), D.O. (fresh or marine water), or pH (fresh water) AND a natural conditions determination will be needed, AND the performance-based approach is used, then the QAPP will need to be updated to account for the procedures as stated in Ecology publication 25-10-001.

Status	Action
3. Water clean up study in progress and field work begun but not completed	• Continue study and include new criteria, if developed and in effect • Analysis should be based on new criteria, if developed and in effect • Develop monitoring plan that incorporates new criteria, if developed and in effect • If it is determined that the waterbody is naturally not meeting applicable water quality criteria at critical points in the year, AND the water quality parameter is temperature (fresh or marine water), D.O. (fresh or marine water), or pH (fresh water), AND a natural conditions determination will be needed, AND the performance-based approach is used, then the QAPP will need to be updated to account for the procedures as stated in Ecology publication 25-10-001.
4. Water clean up study planned and no field work yet begun	• Include new criteria, if developed and in effect, in study design and sampling and drop old criteria • If it is determined that the waterbody is naturally not meeting applicable water quality criteria at critical points in the year, AND the water quality parameter is temperature (fresh or marine water), D.O. (fresh or marine water), or pH (fresh water), AND a natural conditions determination will be needed, AND the performance-based approach is used, then the QAPP will need to be updated to account for the procedures as stated in Ecology publication 25-10-001.
5. 303(d) listed but no priority set for doing water clean up study	• Retain on 303(d) list • Continue to scope and schedule projects. When projects are selected for work, the project will be treated the same as in (4) above
6. Effectiveness monitoring for water clean up plans	• Each water clean up plan should do effectiveness monitoring after implementation of actions • Effectiveness monitoring associated with the water clean up plan will be based on the monitoring strategy. In order to determine the water clean up plan is meeting water quality standards, monitoring will have to show the waterbody is meeting the most current criteria • If new criteria, if developed and in effect will not be met, then the clean up plan will need to be amended to address new criteria

Water Quality Assessment

The addition of new and updated natural conditions criteria will require Ecology to refine the natural conditions considerations found in Water Quality Program Policy 1-11, Chapter 1: Washington's Water Quality Assessment Listing Methodology to Meet Clean Water Act Requirements,[7] Ecology publication 18-10-035. Because EPA disapproved prior water quality standards natural conditions provisions in 2021, the natural conditions methodology in Policy 1-11 is not currently used for listing purposes. In this rulemaking, we adopted updated natural conditions provisions that limit application to aquatic life water quality parameters only, adjusted human pollution allowances, and provide a performance-based approach option for determining protective natural conditions criteria. The addition of these elements will require water quality assessment staff to revise and develop new methodologies based on these updated provisions.

Natural Conditions General Provision

Ecology updated the natural conditions general provision at WAC 173-201A-260(1) to limit use of the natural conditions provisions to aquatic life only, not human health. Further, the general provision makes clear there are binding procedures to calculate natural conditions criteria (e.g., performance-based approach). Generally, we anticipate that determining the natural conditions criteria that constitute the water quality criteria would be done during the TMDL development process. Therefore, there may be situations where waterbody segments are listed as impaired even if the nonattainment of a standard is only due to natural conditions. However, there may be a subsequent need to re-evaluate these categorizations following derivation of natural conditions aquatic life criteria that are applicable for CWA actions. Therefore, the adopted rule may require revisions to the current listing methodology.

401 Certifications

Ecology will issue 401 Certifications based on the water quality standards that are in effect when the certification is issued. When Ecology goes to public notice, it can estimate how the certification might change if the adopted water quality standards are approved by EPA prior to issuance of the certification, and whether it would make a significant difference to Ecology's decision and conditions. All certifications that go to public notice after the water quality standards are adopted should be based on the newly adopted water quality standards.

[7] https://apps.ecology.wa.gov/publications/SummaryPages/1810035.html

Informing and Educating Persons Affected by the Rule

Rule development outreach

On September 27, 2022, we filed a pre-proposal statement of inquiry (CR-101) to notify the public that we started a rulemaking to consider revisions to our natural conditions provisions in the surface water quality standards. During the rule development phase, we:

- Reached out to interested and affected parties through email, including water quality email distribution lists, and website notices.
- Held requested meetings.
- Hosted public informational webinars.

Outreach activities during this phase included:

- March 2, 2023 Public webinar. We held an introductory webinar to discuss the scope of the rule and listen to any concerns from stakeholders.
- April 4, 2023 Tribal webinar. We held an introductory webinar to discuss the scope of the rule and any concerns from Tribal water quality staff.
- April 2, 2024 Tribal webinar. During this webinar, we discussed the preliminary decisions for the proposed rulemaking with Tribal water quality staff.
- April 23, 2024 Public webinar. During this webinar, we discussed the preliminary decisions for the proposed rulemaking with the public.

Rule proposal outreach

During the rule proposal phase, we held online public hearings on June 27, 2024 and July 2, 2024, to discuss the proposed rule and to collect formal comments. Public hearings consisted of a presentation of the proposed changes to the water quality standards followed by a question-and-answer session. After questions, we then provided the opportunity for formal testimony on the proposed changes. We considered and responded to all comments we received during the rule proposal phase.

Future outreach

We intend to inform and educate persons affected by the adopted rule revisions by:

- Providing new or revised guidance for implementing the natural conditions provisions.
- Providing continued opportunities to meet and discuss the implementation of the proposed rule with stakeholders.
- Providing continued opportunities for discussion and government-to-government consultation about the proposed rule with interested Tribes.

- Educating Ecology staff on how to implement the rule in their CWA action work.

For more information on how we intend to train and inform Ecology staff, see the section "Training and Informing Ecology Staff."

We also plan to get additional feedback from Tribes and the public before we finalize the performance-based approach document (publication 25-10-001).

Promoting and Assisting Voluntary Compliance

Ecology will provide direct technical assistance to any entity that requests it. Ecology will continue to work with entities that are regulated by the state water quality standards. Ecology continues to encourage voluntary compliance with the water quality standards and supports numerous water quality programs that, at least in part, promote voluntary compliance:

- Total maximum daily loads (TMDLs) and other water clean up plans
- Nonpoint pollution programs
- Federal and state grants and loans
- Ongoing technical assistance from permit writers and compliance staff

These programs provide financial and technical support to entities complying with the water quality standards.

Evaluating the Rule

The purpose of the surface 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 water, 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. Ecology will consider if the adopted changes have achieved their purpose to protect the beneficial uses.

Objectively Measurable Outcomes

Outcomes of the rule can be measured if water quality standards are attained. Ecology monitors surface waters across the state to determine whether water quality conditions support the designated uses set in the standards. Monitoring data (meeting requirements of the Data Quality Act; RCW 90.48.570 to 90.48.590) will be used to determine whether designated uses are met.

Training and Informing Ecology Staff

A rulemaking of this magnitude requires broad outreach to TMDL staff in both the Environmental Assessment and Water Quality programs, permit writers, and other staff and management involved with water quality regulation. This has been and will continue to be done through meetings, email communication, written guidance, and one-on-one communication. Ecology will notify all Water Quality Program staff, as well as staff from other programs, that will use the new criteria or tools after EPA takes an approval action on its federal CWA review of the newly adopted water quality standards. The following are examples of staff resources to address training and information sharing related to the revised rule.

NPDES permits and 401 certifications

The Water Quality Program will provide training for the Ecology permit writers on changes to the rule and to permit writer's guidance. In addition, permit writers are given the opportunity to review and comment on changes to Ecology's Water Quality Program Permit Writer's Manual, which will contain the new guidance on how to implement the final rule changes in permits. Permit writing tools, templates, and forms will be updated to account for provisions in the adopted rule, and permit writers will be notified of changes.

Ongoing support is provided by Ecology's Permit Writer's Workgroup and General Permit Writer's Workgroup, made up of permit writers who meet quarterly to discuss emerging issues and facilitate communication throughout the regions and across other programs with staff who issue permits.

Water Quality Assessment

Ecology Water Quality Assessment staff will be involved in determining any new approaches that are needed to assess Washington waters for compliance with the new natural conditions provisions. These staff are already involved with this rulemaking via the development of information to support the Cost Benefit Analysis required by the Administrative Procedures Act. Water Quality Assessment staff will be aware of all changes to criteria that will affect how surface waters are assessed.

Water Clean Up Plans

Ecology Environmental Assessment Program staff are already involved with this rulemaking via the development of information to support the adopted rule language and draft performance-based approach document. There will be updated QAPP guidance to make sure that QAPPs for water clean up plans incorporate the requirements of this rule for plans that want to use the performance-based approach. Staff at Ecology's regional offices will be informed of changes to the water quality standards through direct communication at their regular meetings, water clean up implementation workshops, and updates to applicable templates. Additional training on

implementation of the revised water quality standards will be made available to staff upon request.

List of Supporting Documents that May Need to be Written or Revised

Guidance and other documents that will need to be developed or revised:

- The draft performance-based approach document (publication 24-10-017) will be revised and finalized.
- Ecology's Water Quality Program Permit Writer's Manual (publication 92-109) may need to be modified to include the updated human pollution allowances when natural conditions constitute the applicable aquatic life criteria.
- Permit templates, Fact Sheet templates, and permit application forms may need to be updated to reflect the new criteria and tools.
- PermitCalc (Ecology's permit spreadsheet tool) may need to be updated.
- Materials available to the public (e.g., websites, Focus Sheets) will need to be updated to reflect the adopted rule.
- The Water Quality Program's Policy 1-11 Chapter 1 (publication 18-10-035) will need to be revised to reflect the new rule.
- The TMDL Template and TMDL guidance documents will need to be updated along with the QAPP templates to reflect the use of these tools (e.g., performance-based approach) if the TMDL or other water clean up plan is using them.

More Information

For additional information go to Ecology websites noted below:

- Rulemaking webpage[8]
- Water Quality Standards webpage[9]

[8] https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-201a-natural-conditions
[9] https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-standards

Contact Information

Kalman Bugica – Technical lead
Washington Department of Ecology
360-972-4638
swqs@ecy.wa.gov

Marla Koberstein – Rule coordinator
Washington Department of Ecology
360-628-6376
swqs@ecy.wa.gov