UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Reply to
Attn Of: OWW-131

MAY 23 2007

Dave Peeler, Program Manager
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Approval of 2003 Revisions to Marine Chronic Aquatic Life Cyanide Criterion for Waters Outside of Puget Sound

Dear Mr. Peeler:

The U.S. Environmental Protection Agency (EPA) has completed its review of Washington's marine chronic aquatic life cyanide criterion found at WAC 173-201A-240. We conducted our review pursuant to our authority under Section 303(c) of the Clean Water Act and the implementing regulations at 40 CFR 131.11(b)(1)(i). I am pleased to inform you that EPA is approving the criterion, subject to the results of consultation under Section 7(a)(2) of the Endangered Species Act (ESA).

On August 1, 2003, the State of Washington submitted revisions to its Water Quality Standards, found in Chapter 173-201A of the WAC to EPA for its review, which included revisions to the temperature criteria, antidegredation policy, bacteria criteria, compliance schedule and some toxics criteria (ammonia and cyanide). Receipt of the standards initiated EPA's review pursuant to Section 303(c) of the CWA and the WQS regulations.

EPA is limiting today's action to the marine chronic aquatic life cyanide criterion for waters outside of Puget Sound found at WAC 173-201A-240. Upon completing its review, EPA Region 10 is approving this criterion subject to the results of consultation under Section 7(a)(2) of the ESA.

Section 7 of the ESA requires federal agencies to consult with the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration (NOAA) – Fisheries on federal actions which may have the potential to affect listed and proposed endangered and threatened species, and listed habitat. The approval of Washington's marine chronic aquatic life cyanide criterion found at WAC 173-201A-240 is being made subject to the results of consultation under Section 7(a)(2) of the ESA. By approving the standards subject to the results of consultation under Section 7(a)(2) of the Endangered Species Act," EPA has explicitly stated that it retains its discretion to take appropriate action if the consultation identifies deficiencies in the standards requiring remedial action

We will be in contact with Washington Department of Ecology as we proceed through the ESA consultation, and will consult with you regarding measures that may be recommended by U.S. Fish and Wildlife Service and NOAA Fisheries to address any concerns for protection of listed threatened or endangered species.

If you have questions concerning this letter, please call me or Jannine Jennings, Manager, Water Quality Standards Unit, (206) 553-2724, or have your staff call Becky Lindgren, Water Quality Standards Unit, (206) 553-1774.

Sincerely,

Michael F. Gearheard, Director
Office of Water and Watersheds

Enclosure 1

cc: Melissa Gildersleeve
Susan Braley
Cheryl Neimi

Enclosure

WASHINGTON'S WATER QUALITY STANDARDS

BASIS FOR EPA'S ACTION

This document provides the Environmental Protection Agency's (EPA's) basis for its action on the Water Quality Standards (WQS) Provisions for marine chronic aquatic life criterion for cyanide for waters outside of Puget Sound submitted by the State of Washington on August 1, 2003.

The State's WQS submission included multiple revisions, including revisions to the temperature criteria, antidegradation policy, bacteria criteria, compliance schedule for dams, and several toxics criteria (marine cyanide, ammonia). However, today's action is limited to the marine chronic aquatic life criterion for cyanide.

I. Marine Chronic Aquatic Life Cyanide Criterion for Waters Outside of Puget Sound

The State of Washington has revised the numeric marine chronic aquatic life cyanide criterion found in Table 240(3) Toxics Substances Criteria. The State marine chronic aquatic life cyanide criteria consists of a site specific chronic criterion of 2.8 µg/L for Puget Sound and a chronic criterion of 1 µg/L for the remainder of the marine waters of the State.

The State adopted its acute and chronic site specific marine aquatic life cyanide criteria for Puget Sound on November 18, 1997, which EPA approved in February 1998. EPA noted in its approval letter that Washington Department of Ecology advised EPA of a typographical error in the site specific criteria causing a transposition of the acute and chronic criteria numbers for cyanide. This typographical error was corrected in this submission, which is not a substantive change requiring EPA action. As EPA has already approved the chronic site specific marine aquatic life cyanide criterion for Puget Sound, no action is required on this criterion.

The State's chronic marine aquatic life cyanide criterion for the remainder of marine waters outside of Puget Sound (1 µg/L) is consistent with EPA's most recent CWA Section 304(a) criteria for the protection of aquatic life (*National Recommended Water Quality Criteria*, 2006). EPA's primary concern in reviewing state numeric criteria is that the State criteria not be less stringent than EPA criteria recommendations or otherwise indicate that the criteria are protective of designated uses. EPA provides an extensive technical basis and justification as to how its recommended aquatic life criteria adequately protect aquatic life uses in each of its criteria documents. As such, no additional technical justification regarding the ability of the State revised criterion to protect the associated uses, consistent with EPA's criteria recommendations, is required.

Based on the above analysis, EPA has determined that this criterion has been set at a level that protects the aquatic life uses and requirements under 40 CFR 131.11(a)(1). Therefore, EPA approves the chronic marine aquatic life cyanide criterion for marine waters outside of Puget Sound subject to ESA consultation.

Table 1. Revised Water Quality Criterion: Aquatic Life	
Compound	Marine Water Chronic
Cyanide	d, mm

d. A 4-day average concentration not to be exceeded more than once every three years on average.

mm. The cyanide criteria are: 2.8 mg/L chronic and 9.1 mg/L acute and are applicable only to waters which are east of a line from Point Roberts to Lawrence Point, to Green Point to Deception Pass; and south from Deception Pass and of a line from Partridge Point to Point Wilson. The chronic criterion applicable to the remainder of the marine waters is 1 µg/L.

II. ESA Consultation

EPA is approving this criterion subject to the completion of consultation under Section 7(a)(2) of the Endangered Species Act (ESA). Section 7 of the ESA requires federal agencies to consult with the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration (NOAA) – Fisheries on federal actions which may have the potential to affect listed endangered and threatened species, and listed critical habitat. By approving the standards "subject to the results of consultation under Section 7(a)(2) of the Endangered Species Act, EPA has explicitly stated that it retains its discretion to take appropriate action if the consultation identifies deficiencies in the standards requiring remedial action by EPA. EPA retains the full range of options available under Clean Water Act Section 303(c) for ensuring water quality standards are environmentally protective.