



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

August 22, 2006

Theresa Phillips, Rules Coordinator
Washington State Department of Health
PO Box 47822
Olympia, WA 98504-7822

Dear Ms. Phillips:

The Center for Environmental Law and Policy (CELP) submits the following comments on the Draft Water Use Efficiency Rules, Chapter 246-290 WAC. CELP is a non-profit membership organization founded in 1993 to serve as a voice for the public interest in the management and preservation of water resources. Through government oversight, research, education and strategic litigation, CELP takes action to leave a legacy of clean, flowing water in Washington for use and enjoyment by all. We appreciate the Department of Health's inclusion of CELP on the Water Supply Advisory Committee and its Water Use Efficiency Subcommittee, and have also appreciated the opportunity you afforded us to provide input and feedback throughout the rule development process.

These water efficiency rules were intended to bring balance to the incredible increase in flexibility given to municipal water suppliers through the adoption of the Municipal Water Law: Second Engrossed Second Substitute House Bill (SESSHB) 1338 of 2003. We objected to that legislation, believing that when municipal water suppliers exercise their newfound flexibility, their withdrawals and diversions will unduly deplete and degrade public water resources. The only component of this law that affords any protection for natural resources is the requirement in Section 7 of the bill (now RCW 70.119A.180) that water suppliers become more efficient with their water use, thereby limiting or postponing impacts to instream flows and other public water resources. While we are pleased to see that the rule requires data collection and water metering – something we see as an essential to a successful water use efficiency program - we are at the same time generally disappointed by the lack of specificity in this proposed rule, and the lack of effective and enforceable standards to achieve greater water use efficiency.

General Comments

- ◆ The rule uses the terms “public water system” and “purveyor” but they are not defined in WAC 246-290-010. The rule should either define these terms and use them as terms of art, or consistently use the term “municipal water supplier,” which is defined and is the intended term to which the rule applies.
- ◆ Many sections of the rule are vague and will be difficult to implement without additional guidance from the Department of Health. Without guidance documents available to review along with the draft rule, the rule itself is deficient and does not meet the spirit or intent of its

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overriding statute. At a minimum, the rule should indicate which sections will have guidance documents that provide more detailed instruction for implementation.

Definitions WAC 246-290-010

Comments:

- ◆ “Public forum” should be defined to be a public meeting as defined by Open Public Meetings Act, Ch. 42.30 RCW.

- ◆ “Societal perspective” should be defined more fully. The definition provided is too ambiguous and broad, especially as it relates to the cost-effectiveness analysis required by public water suppliers. The definition should include a reference to environmental benefits and avoided environmental costs. At a minimum, specific elements should include:
 - Avoided energy costs
 - Avoided cost of delaying, deferring or minimizing costs of production, transport, storage, treatment, wastewater treatment, and distribution capacity increases
 - Avoided cost of water purchases
 - Avoided environmental costs and environmental benefits (improved water quality, recharge areas, increased water in streams, decreased contaminants)
 - Capital expenditures
 - Associated operating costs
 - Costs to customers

These parameters should also be included in the guidance document, along with an explanation of how to conduct such analyses.

- ◆ “Water supply characteristics” should be defined more fully to include the identity of the source of water supply, whether ground or surface water, including the watershed within which source exists, name of stream or river source, and all affected water bodies (ground and surface) hydraulically connected, or likely to be hydraulically connected, to the source of supply; and a description of impacts to the following resulting from the withdrawal or diversion of the supply: water quality, ESA-listed species and associated habitat, instream flows and existing senior water rights. In other words, the definition should address: “What are the characteristics of the water body from which the water is withdrawn, and what happens to that water body and the environment dependent upon it when the municipality removes water?” As written, the definition includes factors that “include, but are not limited to,” which does not provide adequate instruction about what municipal water suppliers must include in this description. DOH should be more clear about what specific factors are required as part of this description. As used throughout the rule, this definition is critical to understanding the environmental impacts of water supply, as intended by the Legislature. This is a critical opportunity for municipal water suppliers to understand and document potential environmental impacts. Without more detailed requirements and guidance about what to include in this description, municipal water suppliers are not likely to provide a robust description that fully characterizes the environmental impacts of water use on the water supply. By not having a comprehensive definition and clear direction in the rule, DOH is foregoing a significant opportunity to ensure its meaningful effect.

- ◆ “Water Use Efficiency”: This definition should state: “Water use efficiency includes conservation planning requirements, water distribution system leakage standards, and water conservation performance reporting requirements,” as per RCW 70.119A.180

[Water System Plan \(WAC 246-290-100\)](#)

Comments:

- ◆ (4)(f)(ii)(B) “A narrative description of the system’s water supply characteristics” should be expanded beyond the definition to detail information required as part of the water supply characteristics. See comment above in Definitions section.
- ◆ (4)(f)(vii) This would be an appropriate place to remind municipal water suppliers serving one thousand or more connections of the requirements imposed by Section 5 of H.B. 1338, RCW 90.03.386(3). [Implementing and documenting water conservation programs and improving water use efficiency before attempting to grow into inchoate water rights.]

[WAC 246-290-105: Small Water System Management Program](#)

Comments:

- ◆ CELP approves of the amendment of subsection 4(l) to require small water systems to evaluate the feasibility of adopting and implementing a rate structure that encourages water use efficiency. Rate structures are very useful tools to encourage water conservation and eliminate wasteful water use practices.

[Metering Requirements \(WAC 246-290-496\)](#)

Comments:

- ◆ Metering water use at all direct service connections is crucial to the achievement of water use efficiency as required by RCW 70.119A.180. The proposed rule appropriately requires that such meters be installed on all new and existing direct service connections and clustered connections. However, the proposed rule is too lax in its timelines for installing meters in water systems that currently lack them. Ten years to achieve metering is too long. Water suppliers have been on notice for more than a decade through DOH’s Conservation Planning Requirements document (dated March 1994) that service meters are recommended. Source and service meters provide the necessary data for determining leakage, and enhance the ability to plan for and manage an important resource. Metering is the most credible way to address leaks and to make water use more efficient. Six years is sufficient time to implement the metering requirement. The date in WAC 246-290-496 2(c) should be changed from July 1, 2016 to July 1, 2012. Additionally, voluntary achievement milestones as described in 246-290-496(2)(i) are useful planning tools, but DOH should consider requiring that such milestones actually be achieved. For example, DOH could prescribe a phased-in approach requiring that 33% of a system’s service meters be installed every two years beginning in 2008.

[Water Use Efficiency Program \(WAC 246-290-810\)](#)

Comments:

- ◆ (3) Requires municipal water suppliers to develop and implement a “cost-effective water use efficiency **program**” rather than selection of all cost-effective **measures** to achieve water use efficiency goals. As written, this requirement conflicts with H.B. 1338, Section 7(4)(a)(A).
- ◆ It is inappropriate, and conflicts with the statutory requirements in H.B. 1338 Section 7, to allow municipal water suppliers to either evaluate **or** implement. The language in (4)(d) should

be changed to “evaluate and implement.” If there is no evaluation, there is no assurance the implemented measures will achieve the goal.

- ◆ Limiting the number of water use efficiency measures to be “evaluated or implemented” conflicts with the statutory requirement of “Selection of cost-effective measures to achieve a system’s water conservation objectives.” The statute implies all cost-effective measures to achieve stated goals should be implemented and we believe a comprehensive list of commonly used measures should be included from which water suppliers can choose to evaluate the cost-effectiveness of which measures they can implement to achieve their conservation goals.
- ◆ Regardless of the number of measures implemented, but particularly if they are limited to a specific number, the rule should require municipal water suppliers to demonstrate **quantitatively** that implementation of the chosen measures will achieve the conservation goal established pursuant to WAC 246-290-830.
- ◆ Subsection (1) essentially provides a six-year grace period for municipal water suppliers who submit a water system plan prior to December 31, 2007 to implement a rules-compliant water use efficiency program. The municipal water suppliers who submit a water system plan prior to December 31, 2007 should be required to do more than simply “describe the existing water use efficiency program and continue existing levels of water use efficiency.” These systems, at a minimum, should be required to estimate the amount of water saved through implementation of their existing water use efficiency program as a base line standard when they submit new water system plans in 2013. These systems must also submit leakage data as determined by WAC 246-290-820(2) or (3).

[Distribution System Leakage Standard \(WAC 246-290-820\)](#)

Comments:

In general, this section recognizes that system distribution leakage is a problem, but it lacks appropriate enforcement mechanisms or other incentives for system operators to detect and promptly fix leaks.

- ◆ Subsection (4)(f) needs to set a time frame for implementation of repairing leaks or maintaining meters. As the statute is written a supplier could effectively delay doing this until submission of the water loss control action plan, which is only submitted as part of a water use efficiency program, which is only submitted once every 6 years as part of the water system plan. Any supplier with a leakage rate of 30% or over must begin implementation within 6 months. Therefore, it would be fair to set a deadline of implementation of 12 months for any supplier who has a leakage rate of 20-29%.
- ◆ CELP supports subsection (5)(d), which requires evidence documenting, among other things, that all leaks have been found and repaired.

[Water Use Efficiency Goal Setting \(WAC 246-290-830\)](#)

Comments:

The efficient use of the public’s water is of concern to the public at large – not just to a particular system’s customers or those residing within or near a water supplier’s service area. Therefore it is essential that goal setting be accomplished in a manner that allows maximum transparency and notice to the public at large. Materials supporting the rationale for the proposed goals must be readily available to any citizen (not limited as to residence or customer status) in advance of the public meeting.

- ◆ (4)(b) There should be more detail in this section of the rule governing notice, including:
 - Notice to water supplier customers (via billing insert is the logical means to accomplish this)
 - Notice to parties who request notice
 - Notice to affected Indian Tribes
 - Notice to local governments within or surrounding the water supply area
 - Publication in appropriate newspaper
 - Internet notice if the municipal water supplier maintains a website
 - Conspicuous placement of signs and advertisements at municipal water supplier's office and, where appropriate, city hall
 - Notice to the Department of Health, with DOH maintaining a website with times, dates and locations of upcoming goal-setting forums.

- ◆ We recommend requiring municipal water suppliers to evaluate and re-establish water use efficiency goals every two years, rather than every six years. To allow such a long period of time to elapse between goal setting and evaluation fosters a disconnect between the goal and actual performance and stretches the timeframe unreasonably long for correction if a goal is not being met.

Conclusion

The task assigned to the Department of Health by HB 1338 to ensure water use efficiency is of monumental importance to the health and well being of Washington's residents and the environment. Unfortunately, the state's policy on water resource management has too often been one that promotes unchecked water acquisition over water conservation and efficiency. But, as the legislature recognized in enacting RCW 70.119A.180, water is a finite resource. In the face of global warming and increasing competition for water resources, water conservation must be prioritized if Washington intends to preserve its cultural and environmental heritage. Water use efficiency and conservation are proven measures to stretch existing water supplies to meet the demand of an increasing population. CELP therefore urges the Department of Health to promulgate and enforce the most stringent and effective water use efficiency rules possible. The health of Washington's residents and environment depend on it.

Thank you for considering CELP's comments.

Sincerely,

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Patrick Williams, Staff Attorney

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