

# REDUCING TOXIC POLLUTION IN FISH & SHELLFISH

## How the State of Washington Can Adopt New Water Quality Standards to Reduce Toxics



Despite being an environmental leader in many arenas, the State of Washington has some of the nation's least protective limits on toxic pollution. The States of New Jersey and New York protect citizens from toxics better than Washington. Washington's water quality standards – the amount of pollution a state deems tolerable – simply allow too much toxic pollution.

In 2011, Oregon adopted the nation's most protective toxic pollution water quality standards. So why hasn't Washington—a coastal state with some of the Northwest's greatest rivers, including the Columbia—adopted standards that protect human health? Last year, EPA, conservation groups, and a number of Tribes urged the state to fix its outdated standards. Now, Washington is taking the long-overdue, initial steps toward adopting new criteria. But the state's plans still fall short.

Public involvement is critical to encourage state leaders to reduce toxics in Washington. An important step toward reducing toxics is revising the water quality standards—and ensuring that regulatory loopholes for pollution dischargers don't swallow the new toxic limits. Here are some basics on the process.



**QUESTION —** Is there a problem with toxic pollution accumulating in fish and shellfish in Washington State?

**ANSWER —** Yes. Studies across Washington State show serious problems with toxic pollution accumulating in fish and shellfish that people regularly eat. The large number of fish advisories—advising people to limit or stop eating certain kinds of fish—reflects the severity of the problem. Contaminants include PCBs, DDT, mercury and lead.

**QUESTION —** What are water quality standards?

**ANSWER —** Water quality standards are the basis for protecting and regulating the quality of surface waters in the United States. The standards implement portions of the federal Clean Water Act by specifying the designated and potential uses, such as fishing, swimming and drinking water, of waterbodies in the state. Water quality standards are divided into three categories:

- Designated uses, which include fishing, swimming, and aquatic life habitat.
- Numeric and narrative water quality criteria, which are established to protect each use. The numeric criteria are divided into two categories: aquatic life criteria to protect the fish and shellfish and human health criteria to protect people who drink surface water and eat fish, shellfish, and other aquatic life.
- Policies, such as antidegradation, to protect higher quality waters from being further degraded.

**QUESTION —** How could Washington revise the human health criteria to reduce toxics?

**ANSWER —** The Clean Water Act requires that states protect their citizens from unsafe levels of toxic pollution in locally caught fish and shellfish. EPA, states, and tribes develop human health criteria based on a standardized assumption about how much fish people consume per day. This assumption is referred to as the “fish consumption rate.”

If a state uses a high fish consumption rate (*i.e.*, determines that people eat a large number of fish per day), the state’s human health criteria for toxics will be more protective (*i.e.*, less tolerable of toxic pollution). Conversely, if a state adopts a low fish consumption rate, the state’s human health criteria will be less stringent and more toxic pollution will be allowed in the water. Washington State currently has one of the nation’s **least protective** fish consumption rates and, in turn, some of the nation’s weakest human health criteria. To reduce toxics, Washington State can revise the fish consumption rate and adopt new, more stringent toxic standards to protect human health.



**QUESTION —** What are the new human health criteria for toxics in Oregon?

**ANSWER —** In 2011, Oregon adopted and EPA approved the nation’s strictest human health criteria for toxics. Although some tribes have adopted similar or more stringent human health criteria, Oregon was the first state to adopt criteria based a fish consumption rate that protects the majority of fish consumers. Oregon’s new criteria are based on a fish consumption rate of **175 grams per day**. Before Oregon adopted the new criteria, New Jersey led the nation in protective human health criteria, with a fish consumption rate of 37.5 grams per day. As part of the rulemaking adopting new human health criteria, Oregon also adopted “implementation rules” designed to provide more leeway for pollution dischargers to comply with the new standards

**QUESTION —** What steps are Washington taking to adopt new human health criteria, and are they enough?

**ANSWER —** In 2011, EPA, a number of tribes, and conservation groups urged Washington to follow Oregon’s example and adopt protective toxics standards to protect human health. Unlike Oregon’s approach to revising the human health criteria, Washington plans to break the rulemaking into two separate processes. First, Ecology intends to address “regulatory flexibility” for pollution dischargers. This means the state will develop rules that apply to industry, municipalities, and other who have permits—known as NPDES permits—to discharge pollution into waters of the state. The “regulatory flexibility” rules will provide off-ramps so that pollution dischargers can take more time to comply with— or avoid compliance with— the new criteria. Second, Ecology will revise and adopt new human health criteria for toxics. Unfortunately, the state doesn’t plan to adopt new toxics standards until late 2013, at the earliest.

This two-step process raises serious concerns about the ultimate benefits and purposes of increasing rule-making tools that ultimately weaken compliance with water quality standards that have yet to be adopted. In November 2011, eighteen (18) conservation groups sent a letter to the Washington Department of Ecology urging the agency to hold off adopting “regulatory flexibility rules” (*i.e.*, rules to make it easier for pollution discharges to continue discharging toxic pollution at levels greater than the anticipated human health criteria) until the state actually decides to adopt new toxic limits.



**QUESTION —** Why is public involvement critical to ensuring that Washington both adopts new human health criteria for toxics and limits the regulatory off-ramps for pollution dischargers to comply with the new rules?

**ANSWER —** For decades, pollution dischargers in Washington have grown accustomed to the lax limits on toxic pollution. In turn, if Washington adopts accurate, protective human health criteria, many pollution dischargers will have to work harder to reduce the amount of toxic pollution they release into waterbodies. In Oregon, public involvement was critical to ensuring that that state followed through on its promise to protect the vast majority of people who eat fish, **and** ensure that off-ramps from compliance didn't swallow the new toxic limits.

**QUESTION —** Are there aquatic life criteria for toxics and, if so, how do they compare to the current human health criteria?

**ANSWER —** Yes, Washington State currently has aquatic life criteria for toxics. These criteria are designed to protect fish and shellfish from the acute and chronic effects of toxic pollution. In general, the aquatic life criteria are more stringent (*i.e.*, lower) than the current human health criteria. Notably, Washington regulates significantly more toxic pollutants for the protection of human health than for the protection of aquatic life. When compared to the aquatic life criteria, there are currently dozens more pollutants for which the state has a human health criteria. What does this mean for practical purposes? Adopting more protective human health criteria will mean major reductions in toxic pollution from a lot of sources.

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