



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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May 7, 2019

The Honorable Andrew R. Wheeler
U.S. Environmental Protection Agency
Office of Policy Regulatory Reform
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: EPA's Intention to Reconsider Washington State's Water Quality Standards for Human Health Criteria

Dear Administrator Wheeler:

I write to express significant concern over the Environmental Protection Agency's (EPA) intention to reconsider Washington State's water quality standards for human health criteria. In an August 7, 2018, letter to Assistant Administrator David Ross, I made it clear that Washington does not support EPA's reconsideration of the water quality standards that it adopted in November of 2016. Those standards have been in effect for over two and a half years, and we are successfully implementing them. As I noted in my letter, changing course now would only create regulatory uncertainty and confusion. Attempting to change the standards would be arbitrary and capricious.

There is also no legal basis for reconsideration of the standards. The Clean Water Act establishes a system of cooperative federalism where states develop water quality standards and submit them to EPA, for EPA to approve or disapprove those standards. This occurred on November 15, 2016, when EPA partially approved and partially disapproved Washington's proposed standards. EPA then adopted its own standards for Washington on November 28, 2016. *See* 81 Fed. Reg. 85419. To repeat, Washington does not seek revision or repeal of the standards set in 2016. To the contrary, we steadfastly oppose any revision or repeal.

Under the Clean Water Act, there are only two circumstances where EPA may propose new water quality standards for a state:

- A. if a revised or new water quality standard submitted by such State...is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or
- B. in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.



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33 U.S.C. § 1313(c)(4). The first circumstance does not apply because Washington has not submitted revised or new water quality standards to EPA. Thus, in order to revise the current standards, EPA would need to conclude that a “revised or new standard is necessary to meet the requirements of [the Clean Water Act].” That also does not apply here.

The purpose of the Clean Water Act is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” To best accomplish this goal, “[i]t is the policy of the Congress to recognize, preserve, and protect the *primary responsibilities and rights of States* to prevent, reduce, and eliminate pollution[.]” 33 U.S.C. § 1251, emphasis added. These core purposes would be undermined by the repeal or revision of water quality standards that Washington supports. Needless to say, revising the standards to make them less stringent certainly is not “necessary to meet the requirements” of the Act.

If EPA takes the position that it is not making a section 303(c)(4) determination but is merely reconsidering its November 2016 disapproval of certain Washington criteria, there would also be no legal mechanism for reconsideration. By adopting water quality standards for Washington, EPA bound itself to the Clean Water Act’s requirements for revising those standards. A 303(c)(4) determination is one of those requirements. EPA cannot revise or repeal existing standards without first making the requisite determination that such action is needed to meet the requirements of the Clean Water Act.

Since there is no legal basis to revise or repeal Washington’s water quality standards for human health criteria, I strongly urge EPA to cease its reconsideration process. I am confident in my agency’s ability to work with the regulated community to implement the current standards.

I am deeply disappointed in EPA’s refusal to engage with me or my agency on this topic, especially as EPA touts its commitment to cooperative federalism. Additionally, despite how important this issue is to Washington’s 29 federally recognized tribes, EPA has failed to consult with them. And EPA has provided no opportunity for members of the public to comment. This is especially troubling in light of the fact that EPA initially posted a memorandum on its website seeking public comment through May 8, 2019, then abruptly pulled the public notice for no apparent reason. This is not how cooperative federalism is supposed to work. I urge you to cease any further action on revision or repeal of Washington’s standards so that my agency can continue the important work of protecting Washington’s waters, finding workable solutions for regulatory challenges, and ensuring certainty for the regulated community.

Sincerely,



Maia D. Bellon
Director