



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Environmental Conservation

Jason W. Brune
Commissioner

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September 30, 2022

Mr. Casey Sixkiller
Regional Administrator
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

Dear Regional Administrator Sixkiller,

Thank you for your September 6, 2022 letter regarding Alaska's ongoing effort to revise our human health criteria (HHC) water quality standards (WQS). Alaska is cognizant of our responsibilities under the Clean Water Act (CWA), and as you highlight in your letter, revising the state's HHC has been, and remains, a high priority.

HHC has garnered a significant amount of both Alaska's and EPA's limited resources. Alaska is aware of the two pending petitions received in 2015 from the Chickaloon Native Village and Southeast Alaska Conservation Council/Inside Passage, the litigation related to HHC in multiple states, the new and updated fish consumption rate (FCR) studies, the promulgation of EPA-recommended criteria,¹ and the shifting policy preferences regarding acceptable approaches to the derivation of HHC. This has created a somewhat chaotic landscape of what may or may not be permissible in terms of state decision-making policies and 'acceptable risk' to the EPA.

The CWA "envisions 'cooperative federalism' in the management of the nation's water resources."² It "anticipates a partnership between the States and the Federal Government."³ In this partnership, the federal government plays a supportive role in recognizing, preserving, and protecting the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution. With our effort to revise the state's HHC, there will be certain information needs and challenges that will need to be addressed to inform Alaskans of the technical and policy implications of this effort, and we appreciate EPA's commitment to provide that support for this process.

¹ U.S. Environmental Protection Agency. 2015. Final Updated Ambient Water Quality Criteria for the Protection of Human Health. EPA-HQ-OW-2014-0135 FRL-9929-85-OW. Office of Water, Health, and Ecological Criteria Division. Washington D.C.

² *Catskill Mountains Chapter of Trout Unlimited, Inc. v. EPA*, 846 F.3d 492, 502 (2d Cir. 2017) (citing *New York v. United States*, 505 U.S. 144, 167 (1992) (referring to the Act as an example of "cooperative federalism")).

³ *Arkansas v. Oklahoma*, 503 U.S. 91, 101, 112 (1992).

Alaska will continue its leadership role in the development of HHC and FCR, including the adoption of updated HHC and FCR used to develop the criteria, and commits to promulgation of final rules within 24 months (see attached draft schedule), contingent upon the receipt of the following information from EPA:

1. *Provide the Department of Environmental Conservation (DEC) with an updated economic analysis of impacts to major dischargers nationally (1+ million gallon/day) that addresses specific challenges raised by HDR 2013⁴.*

DEC has determined that an accurate accounting of the potential challenges with implementation of revised HHC has yet to be produced by states or EPA. For DEC to engage in a meaningful discussion about the potential impact of this rulemaking with the general and regulated public, DEC needs to provide the necessary context of the amount of risk and potential costs associated with different risk-related decisions to our stakeholders.

2. *Provide a complete list of CWA-approved state permits in Region 10 that have been re-issued with updated HHC and any compliance schedules that accompany such permits.*

Similar to our request for an actual accounting of potential costs of this project, it is important for DEC to have specific examples of permit modifications that have resulted from HHC rulemaking. This ensures that DEC and the regulated public understand the implications of the regulated choices DEC will be making.

Please note that our commitment to final rules within a 24-month period from when we receive the above information does not represent a legally binding commitment, and potential changes to Alaska's Executive and/or Legislative branches of government may necessitate modification to the following draft timeline.

Alaska looks forward to continued engagement with EPA on this issue while we develop HHC and FCR that are appropriate and protective of our resources. Please reach out to me and/or Randy Bates, Director of the Division of Water at (907) 465-5307 if you would like to discuss further.

Sincerely,



Jason W. Brune
Commissioner

Enclosure: DEC Proposed HHC Rulemaking Timeline

⁴ <https://www.regulations.gov/document/EPA-HQ-OW-2015-0174-0380>

DEC Proposed HHC Rulemaking Timeline

Fall – Winter 2022-2023

- Engage with EPA on additional economic information and NPDES-authorized discharge permits with updated HHC criteria that have been issued.

Winter 2023

- Develop public presentation defining HHC, their role in the protection of designated uses, work completed on revising HHC to date, DEC's present HHC inputs and options and technical/policy merit for those, and potential data gaps.

Spring – Summer 2023

- Conduct outreach to various stakeholders via a series of public workshops
- Engage stakeholders in an effort to develop a broader understanding of specific implementation challenges (technical, financial, etc.) associated with applying updated HHC in state water pollution control programs
- Solicit public comments on DEC's policy options

Fall 2023

- Review and consider public comments and draft DEC policy preferences; commence work on draft rulemaking
- Share informal draft rulemaking for HHC and implementation tools with EPA for 60-day period
- Draft implementation guidance for HHC

Winter 2023-2024

- Meet with EPA to discuss comments and potential DEC responses
- Public Notice draft rulemaking materials (~120-day period) and implementation guidance

Spring 2024

- Review and consider public comments and finalize DEC policy preferences
- Prepare response to comments document

Summer 2024

- Commence state rulemaking adoption process

Fall – Winter 2024-2025

- Complete adoption of final package and submit to EPA for approval via 40 CFR 131