



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Environmental
Conservation**

DIVISION OF WATER
Director's Office

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May 19, 2023

Dan Opalski
Office of Water and Watersheds
US Environmental Protection Agency (OWW-135)
1200 Sixth Avenue, Suite 900
Seattle, WA 98101 - 3140

Re: Alaska Human Health Criteria Development – Amendments to 18 AAC 70

Dear Mr. Opalski:

The Alaska Department of Environmental Conservation (DEC) continues to make progress on its commitment to update human health criteria (HHC) water quality standards (WQS) by the end of calendar year 2024. DEC has been actively engaged in this issue for many years and is keenly interested in developing WQS's that work for Alaska, are based on available science, are legally defensible, and that can be approved easily by the Environmental Protection Agency (EPA).

DEC conducted a public scoping effort from February 10 – March 31, 2023 to collect and evaluate information and hear from the public, Tribes, industry, and all other interested parties to determine what HHC revisions are most appropriate. DEC also provided outreach about the scoping process, HHC, and WQS during the public scoping period at several stakeholder-specific events. DEC received eight public comments during the scoping period and has read through each of those.

DEC appreciates EPA Regional Administrator Sixkiller's commitment to coordination and collaboration on this high priority issue. We are seeking your engagement and collaboration on the following questions:

1. Many of the bioaccumulation/bioconcentration factors published by EPA as part of the national 2015 HHC update are built on the Great Lakes food web model. The user reference guide indicates the model is not recommended for use in modeling arctic conditions such as those in large portions of Alaska. Are there Alaska-specific or more relevant datasets that can be used to refine Alaska's bioaccumulation factor or bioconcentration factor on a statewide/regional/site-specific level?
2. Can EPA provide any additional information, define any exposure differences, or identify any benefit or risk to including anadromous fish and/or marine mammals in the relative source contribution (RSC) rather than accounting for them via the fish consumption rate (FCR)? Has EPA's guidance for balancing the RSC when including marine species in the

FCR been updated, revised, or otherwise informed based on recent science since the rule for Restoring Protective Human Health Criteria in Washington, November 2022 was released?

3. The application of “regional criteria” rather than statewide criteria of HHC has been raised by different stakeholders.
 - a. On August 21, 2015, EPA commented on Idaho’s Department of Environmental Quality, Preliminary Draft Negotiated Rule disfavoring the use of regional criteria on the basis that residents should be able to “consume from local waters the amount of fish they would normally consume from all inland and near shore waters” This indicates that HHC criteria should be developed without regard to geographical location.
 - b. In November 2022, EPA announced a proposal to Protect Tribal Reserve Rights (TRR) in Water Quality Standards. This proposal, along with the April 2023 Proposed Rule to promulgate federal baseline water quality standards (Baseline WQS) for waters on Indian Reservations, could effectively create regional HHC criteria in states.
 - c. These different actions by EPA conflict with each other. Please explain EPA’s view of the utility of developing statewide vs. regional criteria.
4. Please provide data relevant to appropriate averaging periods for determining lifetime exposure, including for sensitive populations, when generating waterbody assessments.
5. Of particular interest are the strategies for implementing HHC based on fish tissue concentrations. DEC has reviewed implementation documentation from Oregon and Idaho pertaining to methylmercury and notes that both states reference use of “narrative effluent limits.” In both cases, the state is requiring use of pollutant/mercury minimization plans in lieu of new numeric criteria. DEC has also seen this approach used in Ohio, Michigan, and Wisconsin.

DEC recognizes that such an approach was referenced in the EPA 2010 Methylmercury guidelines but is curious if such an approach could be more broadly considered. In other words, is the use of pollutant minimization plans an acceptable alternative for addressing other challenging pollutants? In what cases would a state be restricted from using narrative effluent limits?

6. A particular issue in Alaska is potential conflicts with fish consumption advisories, especially in areas with high subsistence use. DEC finds a general misunderstanding in the public of the relationship between HHC, fish consumption advisories, and subsistence fishing permits. DEC would appreciate assistance in crafting public messaging regarding these concepts.
7. EPA has previously identified the following as currently authorized tools for facilitating new HHC:
 - a. Compliance Schedules
 - b. Water Quality Standards Variances (Individual/Multi-discharger/Watershed)
 - c. Reclassification of Waters

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Besides DEC's previous inquiry regarding the application of "narrative criteria" in a permitting context, are there any additional tools or approaches DEC should be actively considering?

8. Alaska has a complex legal tribal landscape. The Draft TRR and Baseline WQS's applicability in Alaska is not clear to us, which complicates the timeline for this rulemaking. Please articulate the applicability of these draft rules in the State of Alaska.

DEC understands that implementation concerns are not generally addressed during WQS rulemaking, but with a package of this scope it is natural to assume implementation questions will arise. To educate and alleviate as many public concerns as possible, we ask EPA's assistance in answering those during this rulemaking rather than after completion. As DEC works through the many facets that comprise HHC, more questions will arise, and we appreciate EPA's technical support on this project and look forward to continued collaboration on the administration of the Clean Water Act.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Bates", with a stylized flourish at the end.

Randy Bates
Director

Cc: Jason Brune, Commissioner, Alaska Department of Environmental Conservation
Casey Sixkiller, Regional Administrator, U.S. Environmental Protection Agency R10