UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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OFFICE OF THE
REGIONAL
ADMINISTRATOR

JAN 20 2015

The Honorable Senator Doug Ericksen, Chair
Washington Senate Energy, Environment, and Telecommunications Committee
Post Office Box 40442
Olympia, Washington 98504-0442

Dear Senator Ericksen:

Thank you for your letter dated December 23, 2014. I appreciate you taking the time to write to me again about Washington's water quality standards to protect human health. As you noted, the U.S. Environmental Protection Agency has initiated its internal federal rulemaking process to amend the human health water quality criteria for Washington in the National Toxics Rule.

In general, the EPA prefers that states and tribes update their water quality standards and submit final rules to the EPA that are consistent with the Clean Water Act and EPA's policies, guidance, and legal requirements. Therefore, I recognize that there is concern about the dual processes involving both the state and federal government in the development of human health criteria for Washington. However, as I stated in my December 18, 2014, letter to Ecology Director Bellon, it is not the EPA's intent to detract from the State's rulemaking process. The EPA strongly supports Washington's efforts to finalize a State rule that is protective of human health to replace the human health criteria that were federally promulgated for Washington in the 1992 NTR. At the same time, we continue to believe it is prudent for EPA to prepare for a potential federal rule proposal should action on our part become necessary. With that background in mind, I have outlined specific answers to your six questions below.

(1) Is EPA currently developing water quality rules for other states in Region 10? If so, what rules are being developed, and for which states?

The EPA is not currently developing federal water quality rules for other states in Region 10. However, in a December 2014 settlement agreement with the Idaho Conservation League, the EPA committed to either approve revised human health criteria submitted by Idaho or to propose federal human health water quality criteria for Idaho. The general deadline to fulfill this commitment is December 2016, subject to extension under certain circumstances. This settlement agreement was in response to a Notice of Intent to Sue alleging EPA's failure to promptly promulgate criteria for Idaho following the EPA's disapproval of Idaho's revised human health criteria in May 2012. According to its current rulemaking schedule, the State of Idaho plans to submit a revised final rule to EPA in 2016.

(2) Is EPA currently developing water quality rules for states in other EPA Regions? If so, what rules are being developed, and where do those rules apply?

In August 2014, EPA entered into a consent decree with Our Children's Earth and Ecological Rights Foundation that obligates EPA to propose selenium and mercury criteria to protect aquatic life and aquatic-dependent wildlife for certain areas of California, unless California adopts (and EPA approves)

such criteria first. EPA is working with California to fulfill the obligations under the consent decree, and to ensure workable implementation of any new water quality standards.

(3) In the last six years, has EPA proposed to take control of the water quality rule development process in other states? If so, in which states, and has EPA followed through on any such proposals?

Under the CWA, states have primary responsibility for developing and adopting water quality standards for their navigable waters. On certain occasions, consistent with CWA section 303(c)(4), the EPA Administrator (or his/her duly authorized delegate) has determined that to meet the requirements of the CWA, federal promulgation of one or more new or revised water quality standards was necessary. In these instances, the affected state(s) retained the option to adopt and submit to EPA water quality standards consistent with CWA section 303(c) and the EPA's implementing regulations at 40 CFR part 131. On several occasions, once a state has submitted new or revised water quality standards that the EPA approved as fully meeting CWA requirements, the EPA has withdrawn or ceased work on (as appropriate) its federally promulgated standards. In the last six years, EPA finalized two such withdrawals via federal rulemaking (certain aquatic life criteria applicable to Wisconsin originally promulgated in 40 CFR part 132 for the Great Lakes system (see 76 FR 57646), and certain criteria applicable to California, New Jersey, and Puerto Rico originally promulgated in the NTR (see 78 FR 20252).

Additionally, in the last six years, EPA promulgated numeric nutrient criteria for Florida's lakes, springs and certain flowing waters, and proposed numeric nutrient criteria for Florida's estuaries, and coastal waters. Ultimately, once Florida submitted and EPA approved state-adopted nutrient criteria for these waters, EPA withdrew its federal promulgation and ceased work on its proposals.

(4) What, specifically, will EPA do to ensure ample public participation in its development of water quality standards for Washington, and how can the public participate in the process?

As stated above, the EPA's preference is for Ecology to proceed with its rulemaking in a timely manner, which would include the State following their own public participation process. If EPA proceeds with proposing a federal rule, the EPA conducts a public participation process similar to the State's where it provides a formal public comment period that commences when a federal rule is proposed. In addition, EPA offers government-to-government consultation with tribal governments consistent with its federal trust responsibilities. The EPA would also consider meeting with other stakeholders who are interested in providing input before or during the formal public comment period. It is important to note the EPA's deliberative process limits the information that the EPA can share about a federal proposal prior to the public comment period.

(5) Who, specifically, within EPA is authorized to make a final determination to adopt human health criteria for Washington's water quality standards?

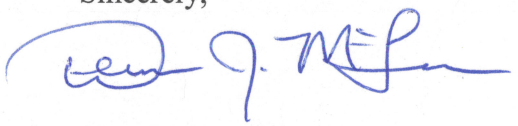
Consistent with CWA section 303(c)(4)(B), the EPA Administrator (or his/her duly authorized delegate) is authorized to determine that one or more new or revised water quality standards is (are) necessary to meet CWA requirements.

(6) What is the particular basis for EPA's view that Washington's current water quality standards are deficient?

The best available science includes evidence of fish consumption rates well above 6.5 grams per day among high fish consumers in Washington, which raises concerns that the human health criteria currently in effect for Clean Water Act purposes in Washington are not sufficiently protective.

Again, thank you for contacting the EPA. If you have any questions, please feel free to contact me or have your staff contact Dan Opalski, the Director of the Office of Water and Watersheds. You can reach Dan by phone at (206) 553-1855 or by email at opalski.dan@epa.gov.

Sincerely,



Dennis J. McLerran
Regional Administrator

cc: Ms. Maia Bellon, Director, Washington Department of Ecology