

Congress of the United States
House of Representatives
Washington, DC 20515

July 26, 2013

The Honorable Gina McCarthy
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator McCarthy,

We appreciate the importance of ensuring the safety of the fish consumed in Washington, Oregon and Idaho, and are aware of efforts underway by the state agencies in Washington and Idaho to develop protective Clean Water Act (CWA) human health water quality criteria (HHWQC). However, we are concerned that EPA's interference in those processes will prevent the agencies from developing criteria that properly balance protections of public health and achievable CWA permit limits by facilities that must abide by them in these states. This balance is critical to ensure clean water and to protect people as well as jobs and the economy.

Under the CWA, states have the primary responsibility to develop water quality standards to protect human health. Specifically, CWA Section 303(c)(4)(B) directs that, "...State[s] shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act for which criteria have been published under Section 304(a), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses." EPA's role in reviewing and approving HHWQC (a component of the state standard) is to ensure that the final standard is adequately protective of fish consumers. We believe that EPA is overstating its authority by dictating that states use overly conservative input values and risk levels in the already extremely conservative and protective formula for deriving criteria, for example, by requiring a very high Fish Consumption Rate (FCR).

In a June 21, 2013 letter from the EPA to the Washington Department of Ecology, EPA Region 10 Administrator McLerran threatens to issue a federal rule if Washington's process is "unnecessarily delayed." The letter states that EPA expects Washington to adopt the same high FCR and risk levels as were adopted in Oregon.

The Oregon standards, adopted in 2011, are expected to result in numerous new impaired waters listings, TMDLs, and CWA permit limits that cannot be met with existing technology. Indeed, some limits would require facilities' discharges to be cleaner than the background water they take in. Administrator McLerran's letter also references EPA's actions in Idaho,

where EPA rejected Idaho's human health water quality standards, again citing concerns about the FCR used by the state.

Washington is undertaking a high-level stakeholder process to bring parties to the table in an attempt to strike a reasonable balance with the updated HHWQC. Idaho is moving forward with processes to accomplish the same goal, including a statewide general population FCR survey. This information will serve as the basis for developing more scientifically defensible and data-based HHWQC and also allow the states to use a probabilistic approach in their criteria development.

This approach, using peer reviewed science, better characterizes risk and provides an opportunity to develop balanced, defensible standards that are both feasible for CWA permittees to achieve, and be protective of human health for all fish consumers, including those consuming high levels.

States need to be allowed to complete their work of developing protective and achievable HHWQC, without dictating particular input values. EPA should let the states make the appropriate, individual policy choices, not attempt to dictate them in a less than transparent manner. We would request a response on how EPA will remedy this process as soon as possible to allow states to proceed without interference.

If you have any questions, please contact Todd Ungerecht of Rep. Hastings' staff at (202) 225-2761 or Missy Small of Rep. Simpson's staff at (202) 225-5531.

Sincerely,



Mike Simpson
Member of Congress



Doc Hastings
Member of Congress



Cathy McMorris Rodgers
Member of Congress



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Member of Congress



Raúl Labrador
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Jaime Herrera Beutler
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