



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 155
Seattle, WA 98101

OFFICE OF THE REGIONAL
ADMINISTRATOR

September 6, 2022

Mr. Jason Brune
Commissioner
Alaska Department of Environmental Conservation
P.O. Box 111800
Juneau, Alaska 99811

Dear Commissioner Brune,

I appreciated the opportunity to discuss the state of Alaska's water quality standards, along with other topics, when we recently had the chance to meet in person. As we discussed, the U.S. Environmental Protection Agency is reviewing several citizens petitions the agency received across the country for various states requesting that the EPA use its discretionary authority under the Clean Water Act to revise those states' WQS.

Under the Administrative Procedure Act, the EPA has a legal obligation to respond to citizen petitions and is currently evaluating options for addressing these petitions. Two of these petitions, received in 2015 from the Chickaloon Native Village and Southeast Alaska Conservation Council/Inside Passage Waterkeeper, requested that the EPA update the state of Alaska's human health criteria and the fish consumption rate used to derive those criteria. The EPA has identified these two petitions as particularly high priority because they identify potential human health and environmental justice issues that may be addressed by updating Alaska's HHC to incorporate current information, and a significant amount of time has passed since Alaska last revised its HHC.

States have the primary responsibility under the CWA to develop, and periodically review and modify, water quality criteria to protect designated uses for the waters within their jurisdictions, and it is EPA Region 10's preference to support the Department of Environmental Conservation in its development of new and revised WQS to protect human health in Alaska. The EPA appreciates DEC's acknowledgment that revising the state's HHC is a high priority¹ and recognizes the significant efforts DEC previously invested to formulate and lead a HHC technical working group to review local harvest data across the state and make recommendations regarding potential fish consumption rates. In responding to citizen petitions, the EPA is guided by several additional factors, including any evidence of a specific deficiency with the state's current WQS, the time that has elapsed since the state last reviewed and modified those WQS and whether the state is actively engaged in the process of reviewing and modifying those WQS. The EPA endeavors to work with states to understand their priorities and resource considerations when responding to citizen petitions such as the 2015 petitions regarding Alaska's HHC.

I am writing to suggest how we might move forward if DEC is willing to prioritize this issue by completing a state-led rulemaking to revise Alaska's HHC within a reasonable and defined timeline. The EPA is prepared to provide technical and policy support to DEC throughout the process.

¹ <https://dec.alaska.gov/water/water-quality/triennial-review>

Ideally, Alaska would communicate its preference to undertake a state-led process in a written commitment from DEC to the EPA expressing the state's intent to initiate a rulemaking to develop new and revised HHC by a date certain and outlining the state's internal rulemaking steps and target dates for completing those steps. As a point of reference for establishing a mutually acceptable timeline, when the EPA has developed federal HHC on behalf of states, it has taken the agency approximately 18-24 months to propose and promulgate the final rules. Additionally, to ensure public awareness and transparency, the EPA recommends the state communicate DEC's intentions to revise Alaska's HHC to interested stakeholders (i.e., posting on DEC's webpage, sending via DEC's WQS listserv, etc.).

I would appreciate your response by October 1, 2022, to help inform the EPA's considerations of the Alaska petitions. We are planning to make decisions regarding these petitions by November 2022.

Please note that this letter does not constitute an Administrator's determination under CWA § 303(c)(4)(B). The EPA is committed to working with DEC, Alaska Native Villages, tribal consortia and local stakeholders to facilitate the development and adoption of water quality criteria for the state of Alaska that are protective of human health and are consistent with the CWA. We look forward to continued coordination and collaboration with DEC as we work together to address this issue.

If you would like to discuss this topic further, please reach out to me at (206) 553-1234 or Dan Opalski, Director of the Water Division, at (206) 553-1855 or opalski.dan@epa.gov.

Sincerely,

/s/ 09-06-2022

Casey Sixkiller

Regional Administrator