

**U.S. EPA’s Proposed Rule: Water Quality Standards to Protect
Human Health in Florida
Public Hearing #1 Transcript
January 23, 2024 – 9:00 a.m. to 11:00 a.m. Eastern Standard Time**

(Slide 1) Kary Phillips: Hello and welcome to today’s online public hearing for U.S. EPA’s Proposed Rule: Water Quality Standards to Protect Human Health in Florida. This session is sponsored by the United States Environmental Protection Agency’s Office of Science and Technology. The purpose of today’s public hearing is to provide background on the proposed rulemaking and then for interested parties to provide oral comments on the proposed rule. I am Kary Phillips of Tetra Tech, a contractor to EPA, and I will be moderating today’s hearing with support from my colleagues. Thank you for joining us.

Kary Phillips: Before we introduce our speakers today, let’s start by going over a few housekeeping items. You should be connected to this session through your computer or mobile device. At this time, you should see a slide titled “Logistics: Options for Audio.” You can listen to the presentation through your computer or mobile device speakers but will need a microphone if you would like to make oral testimony. If you do not have speakers or a microphone on your device, you may use a phone to call in. We will provide detailed instructions on how to provide oral testimony after the presentation.

Kary Phillips: Instructions for calling in are available in the menu on your screen to the right of the Unmute button. Select the arrow to the right, then “Switch to Phone Audio” and follow screen prompts. Following the on-screen instructions for calling in will link your phone line to your computer and allow you to use controls on your screen. For example, to mute or unmute yourself or to raise your hand to speak.

Kary Phillips: Alternatively, you may also call in directly to (301) 715-8592. The Meeting ID is 843 1288 3282. Once you are connected to the audio, if you hear an echo, please turn off your computer speakers. If you have any technical difficulties, please chat with Tech Support. If you would like to download a copy of the slides for today’s presentation, a PDF of the slides has been posted to the Chat window for all participants. If you do not see the PDF, please chat with Tech Support. A copy of the slides will also be posted to EPA’s website after today’s presentation.

Kary Phillips: Please note that all lines have been muted upon entry to avoid any echo and sound issues. If you have un-muted your device or phone to test your audio, please mute yourself on the screen, or by pressing *6.

Kary Phillips: Today’s public hearing will be transcribed, and all oral comments will be considered part of the official record for this rule. As such, when developing the official response to public comments and finalizing the rule, the oral comments provided today will become part of the official record along with the written public comments submitted via the docket for this rulemaking. If you provide an oral comment during today’s online hearing, you do not have to submit the same comment in writing in order for it to be included in the official record. If you are interested in making a written comment, directions will be provided during this hearing. Please note that EPA will not respond to comments today; however, EPA will respond to the oral comments received at this hearing, along with all comments it receives during the comment period, in EPA’s response-to-comments document that will accompany the final rulemaking. Also, EPA will not be answering questions today.

Kary Phillips: Today's presentation for the online public hearing has been reviewed by EPA staff for technical accuracy. However, the views of those making an oral comment and their organizations are their own and do not necessarily reflect the views of EPA. Mention of commercial enterprises, products, or publications does not mean that EPA endorses them.

(Slide 2) Kary Phillips: Now that we have completed the discussion of housekeeping items, let's start today's online public hearing. EPA staff who are present for today's hearing include: Erica Weyer, Erica Fleisig, Katherine Snyder, and Joel Hansel. And with that, we will begin the presentation by EPA. I will now turn it over to Erica Weyer to provide a brief overview of the proposed rule.

(Slide 3) Erica Weyer: Good morning, everyone. On December 8th, 2023, EPA published a proposed rule to establish new and revised human health water quality criteria for certain pollutants in the state of Florida. The rule proposes to establish human health criteria that reflect the latest science to protect the health of Floridians by improving the quality of the surface waters they fish from and use in drinking water sources.

(Slide 4) Erica Weyer: Clean Water Act (CWA) section 101(a)(2) establishes a national goal of "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water," wherever attainable. To protect people from cancer and non-cancer effects from pollutants in drinking water and fish and shellfish, states must establish human health criteria for their surface waters. EPA periodically publishes criteria recommendations under CWA section 304(a) for states to consider using to meet these CWA section 101(a)(2) goals.

(Slide 5) Erica Weyer: CWA section 303(c)(2)(B) requires states to adopt numeric water quality criteria for all priority toxic pollutants for which EPA has published CWA section 304(a) criteria recommendations. In 1992, Florida adopted human health criteria for 43 priority toxic pollutants that it determined may be present in state waters, utilizing EPA recommendations available at that time. In 1992, EPA's recommendations for human health criteria were based on a national default fish consumption rate (FCR) of 6.5 grams per day. Florida adopted criteria using this national default FCR and has not subsequently revised those criteria.

(Slide 6) Erica Weyer: EPA Administrators Determination. On December 1, 2022, the EPA Administrator determined that new and revised human health criteria are necessary to protect Florida's designated uses. In particular, EPA determined that the FCR used to derive Florida's existing human health criteria, 6.5 grams per day, needs to be updated to consider more recent information. EPA's current national default FCR is 22 grams per day. EPA determined that new human health criteria are needed for additional priority toxic pollutants to protect Florida's designated uses. EPA's determination was responsive to an external petition requesting that EPA exercise its discretionary authority to update Florida's human health criteria.

(Slide 7) Erica Weyer: EPA periodically publishes national recommended criteria under CWA section 304(a) that reflect the latest scientific knowledge. In 2015, EPA published updated 304(a) human health criteria for 94 chemicals and followed EPA's 2000 Methodology for Deriving Water Quality Criteria for Protecting Human Health. When developing the proposed human health criteria for Florida, EPA considered its current CWA section 304(a) recommendations.

(Slide 8) Erica Weyer: Tribal reserved rights. When developing the proposed human health criteria for Florida under the CWA, EPA additionally considered applicable federal statutes through which Florida tribes reserved certain natural resource rights. The Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida have off-reservation rights reserved under federal law to fish for subsistence in areas in and around Everglades National Park and Big Cypress National Preserve.

(Slide 9) Erica Weyer: Proposed rules scope of pollutants. Based on the scope of EPA's administrative determination, EPA is proposing the following: provide human health criteria for 36 priority toxic pollutants and new human health criteria for 37 priority toxic pollutants.

(Slide 10) Erica Weyer: How EPA derived the proposed criteria. EPA derives human health criteria for carcinogenic facts using the following inputs: cancer slope factor, cancer risk level, body weight, drinking water, intake rate, fish consumption rate, and bioaccumulation factor or factors. For pollutants with non-cancer effects, EPA uses a reference dose in place of a cancer slope factor and cancer risk level, as well as a relative source contribution, which is intended to ensure that an individual's total exposure from all sources does not exceed the criteria.

(Slide 11) Erica Weyer: To derive Florida-specific criteria, EPA is proposing to use the same cancer slope factors body weight of 80 kilograms, drinking water intake rate at 2.4 liters per day, bioaccumulation factors, reference doses, and relative source contribution factors that the Agency uses in its current 304(a) recommended human health criteria. For carcinogens, EPA is proposing to use Florida's longstanding cancer risk level of 1 in 1 million excess risk.

(Slide 12) Erica Weyer: EPA is proposing to use two different fish consumption rates depending on where the human health criteria apply. For most of the state, EPA is proposing to use the national default recommended general population fish consumption rate of 22 grams per day, and for those areas where tribes have off reservation reserved rights to fish for subsistence, EPA is proposing to use a fish consumption rate of 142 grams per day, or the national default subsistence value in EPA's 2000 human health criteria methodology.

(Slides 13 and 14) Erica Weyer: This slide shows a map depicting in yellow, as of the date of publication of this proposed rule, the areas with reserved rights based on the relevant statutes and related documents provided by the Tribes. The areas in yellow are where the Tribes have reserved rights and where the EPA is proposing HHC based on a FCR of 142 g/day. The map also depicts in purple and brown the Tribal Reservations and Trust Lands. Please note that the standards in this proposed rule don't apply in Indian country, i.e., on the Tribes' reservation and trust lands. This map is also available in the docket for the rule.

(Slide 15) Kary Phillips: In a moment, we will provide instructions for making an oral comment today, but first we will provide instructions for submitting written comments in one of the following ways. Again, if you provide oral comments during today's online hearing, you do not have to submit the same comment in writing. However, if you plan to submit a written comment, you may do so through the website at [regulations.gov](https://www.regulations.gov) (our preferred method), mail your comment, or submit a written comment via hand delivery. The instructions for submitting a written comment through these mechanisms are explained in more detail on this slide. Remember, when submitting a written comment, please make sure to reference the Docket ID No. EPA-HQ-OW-2023-0378. I will pause here for a few moments to allow time to record this information.

[Paused for 15 seconds]

Kary Phillips: We will now open the hearing for interested parties to make an oral comment. If you would like to ask a question or make a comment, please raise your hand. Depending on the device you are using, there are different ways to raise your hand. If you are on a computer or internet-based mobile device: Click on the Reactions button in the menu on the bottom of your Zoom window. If you do not see a Reactions button on your computer, hover towards the bottom of your Zoom window, and a menu bar should appear. Over the Reactions button, select Raise Hand.

Kary Phillips: If you called in using your phone, please press *9 on your phone to raise your hand.

Kary Phillips: When it is your turn to speak, the host will call on you by name or by the phone number you dialed with. At that time, you can unmute yourself by pressing the unmute button on your screen, or by dialing *6 on your phone. Please feel free to turn on your video while you are speaking. If you have technical issues, please start a chat with Technical Support.

Kary Phillips: Remember, EPA will not respond to comments today; however, EPA will respond to oral comments received at this hearing—along with all comments received during the comment period—in EPA’s response-to-comments document accompanying EPA’s final rule. Also, EPA will not be answering any questions during the hearing today. Each commenter will be announced before providing an oral comment. Each commenter will have a maximum of five minutes to make an oral comment. A timer will appear on the screen indicating approximately how much time each caller has left. Commenters are responsible for watching their own time. Each commenter will be given a 10-second warning using the timer appearing on the screen. At the five-minute mark, the slide will read “Time is up” and commenters will be muted. If you provided your oral comment and were stopped after five minutes, you can resume making your comment after all commenters have had the opportunity to provide their comments. Please raise your hand at that time and wait for your name to be called.

Kary Phillips: When it is your time to make an oral comment, your name will be announced, and you will be able to unmute yourself. If you called in using your phone, your phone number will be announced, and you will be able to unmute yourself. Please state and slowly spell your name for the official record and if applicable, provide the name of your organization. After the self-introduction, your five-minute time will start. We will now begin the public comment process. There may be a short pause before the first commenter is introduced. Rachel, do we have any commenters in the queue?

Comment #1 Jen Lomberk (Oral Comment): Good morning, my name is Jen Lomberk. I currently serve as the executive director and riverkeeper for Matanzas Riverkeeper based in northeast Florida. I also serve as the chair of Waterkeepers Florida, representing the 15 waterkeepers across the state who were petitioners in this current action. First, I would like to thank EPA for its efforts to adopt more protective water quality criteria for Floridians. This rulemaking follows years of inaction from the Department of Environmental Protection to adopt protective standards, and as Assistant Administrator Fox pointed out in the December 2022 determination letter, new human health criteria are needed for 37 toxic pollutants. Revised criteria are needed for 40 priority toxic pollutants to meet the requirements of the Clean Water Act for Florida. To begin, we would like to urge EPA to move quickly with this rulemaking. These standards have been absent or deficient for over 30 years, putting an increased risk of swimming in and fishing from polluted waterways. We hope that EPA will act with a sense of urgency to get protective standards in place as soon as possible. With regard to the actual numeric standards, we also

want to urge EPA to use a fish consumption rate that adequately reflects the amount of fish that Floridians consume. Florida has over 1,300 miles of coast and we are known as the fishing capital of the world. Currently EPA is using the default fish consumption rate of 22 grams per day to derive the water quality, and studies really show that Floridians consume more fish than the rest of the country. So, we are planning to submit written comments that support that assertion as well. We thank EPA for your efforts to protect Floridians who live, work, and play in our beautiful waterways and we look forward to working with you on this rule.

Kary Phillips: Thank you for providing your comment. Rachel, do we have another commenter in the queue?

Rachel Buzzeo: We do have someone with their hand raised, David Ludder, if you want to go ahead and introduce yourself and then make your public comment, you are free to do so.

Comment #2 David Ludder (Oral Comment): Thank you, my name is David Ludder. I am an attorney and represent the Environmental Defense Alliance. On criteria, EPA's guidance says that local data is the preferred data to use, and EPA has used national data, rather than local data. In 1994, Robert Degner published "Per Capita Fish and Shellfish Consumption in Florida", and in that document, he identified the annual fish consumption rate among Floridians to be 16.8 kg per year. That computes to a mean of 46 grams per day, far more than 22 grams per day that EPA is using. EPA has suggested that data is no longer useful because it is 30 years old, but there is no evidence that it is inaccurate. There is absolutely no evidence that the fish consumption rate has changed. It's arbitrary for EPA to assume that the fish consumption rate has changed since 1994. Therefore, I suggest that the fish consumption rate remains and that the best data available is local. EPA has reviewed the Degner data on multiple occasions and derived fish consumption from those distributions. One can calculate a fish consumption rate for adults who are 80 kg in body weight. First, in the exposure factors handbook of 2011, EPA analyzed data from fish consumption in Connecticut, Florida, Minnesota, and North Dakota that was published in 2006. That data for the 2011 exposure factors handbook indicates that Floridians with an 80 kilogram adult body weight consume the 90th percentile per capita fish consumption rate for those Floridians, which is 101.6 grams per day. I will submit the analysis of this data for the record. That sample size in this evaluation was 15,067 people total. Florida's total adult population in 1990 was 10,071,689. Therefore, the sample size was 0.15% of Florida's population. In 2013, EPA did another analysis and found that the 90th percentile per capita total fish consumption for persons weighing 80 kg is approximately 118 grams per day. The sample size in that case was 12,078 adults. That amounts to 0.12% of Florida's population in 1990. In 2008, an EPA employee and several others published estimates of fish consumption rates for consumers who bought and self-caught fish in Connecticut, Florida, Minnesota, and North Dakota. In that evaluation of the Degner data, the authors concluded that the 90th percentile per capita for total fish consumption rate for adults weighing 80 kg is 93.6 grams per day. In 2008, DEP conducted a study using the Degner data. They used the distribution derived from the Degner data and created 60,000 modeled individuals with a computer program. They estimated that the 90th percent of per capita freshwater and near shore water fish consumption rate for adult Floridians is 63.7 grams per day. In this study, the modeled individuals represented 0.6% of the Florida population. I see my time is up and I will ask to continue later. Thank you.

Kary Phillips: Thank you for providing your comment. Rachel, do we have another comment in the queue?

Rachel Buzzeo: Currently, we do not have any other public commenters in the queue.

Kary Phillips: I would like to invite anyone who has not completed their previous comments to continue.

Erica Weyer: David, would you like to continue?

Comment #3 David Ludder (Oral Comment, Continued): Yes, thank you. At this point, the available local data has not proven to be inaccurate. I suggest the per capita Florida fish consumption rate is much higher than the 22 grams per day that EPA has proposed. The 22 grams per day fish consumption rate is the national 90th percentile consumption rate of fish and shellfish from inland and near shore waters for the U.S. adult population 21 years and older and is based on data generated by EPA in a document entitled “Fish Consumption Rates of the U.S. Population”. Excuse me, that publication was generated by another agency. In the entitled “Fish Consumption Rates for the U.S. Population and Selected Subpopulations from 2003 to 2010”—that is from an EPA publication—the sample size from that analysis was 29,463. The U.S. adult population in 2010 was 234,564,071, so with this sample size, to develop the 22 grams per day is 0.013%; that’s considerably lower than the sample size of the Degner study evaluated for Florida’s population. Thirty-five of Florida’s 67 counties are coastal counties. Florida has 1,350 miles of general coastline and 8,426 miles of tidal shoreline. It stands to reason that Florida has a population that consumes more fish than other states in the country. The available data indicates that 22 grams per day underestimates the fish consumption rate in Florida, and will expose Floridians to higher intake of toxic chemicals that are not safe. 22 grams per day provides Florida with no incentive to conduct another fish consumption survey. To update the Degner survey, 22 grams per day is a gift to toxic pollutant dischargers in Florida. 22 grams per day is a shameful estimate of the fish consumption rate in Florida. I will submit the rest of my comments in writing. Thank you.

Kary Phillips: Thank you for providing your comment. Rachel, do we have another commenter in the queue?

Rachel Buzzeo: At this moment we do not have any more public commenters in the queue.

Kary Phillips: If there are no additional commenters and 15 minutes have passed with no comments, the hearing will end early. You are welcome to stay with us or depart the meeting. If you have a comment at this time please use the raise hand function.

[Fifteen minutes pass by]

Kary Phillips: At this time, I’d like to conclude today’s public hearing. Thank you to everyone who joined us and provided an oral comment. Remember, if you would like to provide a written comment, you can submit one to the docket for this rulemaking. That ends our hearing for today. Thank you again for joining us.