

UNIVERSITY OF WASHINGTON SUPERFUND RESEARCH PROGRAM



October 7, 2019

Erica Fleisig, Office of Water
Standards and Health Protection Division (4305T)
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: EPA's Withdrawal of Certain Federal Human Health Criteria in Washington State

Dear Ms. Fleising:

The University of Washington Superfund Research Program (SRP) conducts research related to toxicity of metals found in the Duwamish River, Puget Sound, and Washington State lakes, and is part of a nation-wide network of SRPs that specialize in a wide range of chemical pollutants found in our nation's Superfund Sites. The UW SRP's Community Engagement Core (CEC) has been involved in related local and national fish consumption issues for more than two decades; we work closely with regional government and community partners to communicate relevant health data and to protect the state's tribal, subsistence, and recreational fishing communities from exposures that may threaten their health. We serve as a Resource Member of EPA's Lower Duwamish Roundtable and a participant in EPA's Lower Duwamish Waterway Healthy Seafood Consumption Consortium (HSSC).

We are writing to encourage EPA to reconsider withdrawing federal Human Health Criteria (HHC) for the waters of Washington State promulgated by EPA in 2016 in order to approve Water Quality Standards that are not supported by the state. In addition, we urge EPA to begin any new process involving a review of our state's human health criteria and water quality standards by engaging in meaningful government-to-government consultation with the tribes of Washington State. This should be undertaken as a first step toward any reconsideration of our state's fish consumption-based health protections, which have been developed in close consultation with Washington's tribes, as required by their treaties with the United States.

In 2016, the EPA found that the Human Health Criteria (HHC) proposed by Washington State were not protective of the designated uses for waters in the state, particularly fish consumption by tribes and other high consuming subsistence fishers, and therefore did not comply with the Clean Water Act. EPA subsequently promulgated a rule substituting stricter criteria for the disapproved HHC. At that time, EPA stated in its Technical Support

Document dated May 10, 2019 that the agency's disapprovals were based on: "1) a comparison between Ecology's criteria and criteria that the EPA calculated at the time using the EPA's national recommended HHC and Ecology's fish consumption rate; and 2) a finding that Ecology had not adequately described its rationale for departing from the EPA's national recommendations."

EPA now proposes to reverse its previous disapproval of the state's HHC. In doing so, EPA argues that for the majority of the affected chemicals, it is reasonable for Washington State to have used "prior" or outdated scientific information rather than the "latest scientific information," as directed by the Clean Water Act. EPA also notes that states are required to update their HHC every three years, and that Washington State is expected to do so this year. Given that the "prior" scientific information under consideration is now another three years – a full cycle – out of date, it does not seem reasonable to revert to criteria that is due to be updated based on the very information EPA applied in its disapproval in 2016. Scientific information is continually evolving, and should be taken into consideration whenever feasible, as it has been in the currently applicable health criteria.

EPA also argues that it should not have rejected the state's 2016 standards without a more strongly compelling rationale since states are meant to have primary authority for adopting water quality standards. Yet, Washington State now asserts its intention to retain EPA's 2016 rule, which the current EPA action would reverse. Just as EPA is asserting its "inherent authority" to reconsider its previous position, it should logically afford the same authority to Washington State. The state's preference for retaining the health protections currently in place, even if now considered stricter than required, should be respected if EPA seeks to uphold the state's authority in regulating its waters and the health of the people who consume its fish.

EPA's 2016 disapproval of the HHC for PCBs was based on different considerations than for the other criteria proposed for withdrawal. The PCB criterion rejected in 2016 was based on a chemical-specific cancer risk rate that was less protective than the 1×10^{-6} criteria applied to all other chemicals. EPA's current proposal to withdraw the HHC for PCBs is based on the assertion that the tribal-based Fish Consumption Rate (FCR) used by Washington is higher than the general public's consumption rate, and that the rejected HHC was more protective than EPA requires for high fish consumption populations, including tribes. EPA now argues that the resulting cancer risk falls within its acceptable range when the FCR is calculated based on the general public. However, the resulting risk would be much greater for tribes and other high fish consumers, including Asian and Pacific Islanders and other subsistence fishers. This disparity would be inconsistent with the existing Executive Order on Environmental Justice (EJ).

EPA also argues that any attempt to "harmonize" the HHC and other requirements of the Clean Water Act with existing treaty obligations to Washington's tribes is "improper and unnecessary." To the contrary, the EJ Executive Order and federal treaty obligations should be considered fundamental to establishing human health criteria. The criteria directly determine the cancer risks that will be imposed on Washington's tribes and other exposed "EJ" populations. Nationwide, liver and kidney cancer rates are higher in native populations

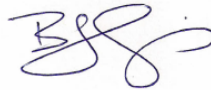
than among whites. In the Pacific Northwest, pancreatic and colorectal cancers are also disproportionately high, while life expectancy for native people in Washington State is 8.3 years shorter than for non-Hispanic whites. The proposed withdrawal of EPA's HHC for Washington waters imposes less protective criteria for these populations, undermining their health in a discriminatory fashion and exacerbating these chronic health disparities.

Thank you for the opportunity to review the proposed Withdrawal of Certain Human Health Criteria in Washington State. We urge EPA to retain the current criteria supported by Washington State, and to take every available opportunity to partner with our state and our tribes to improve health outcomes in our fish-dependent communities.

Sincerely,



Tom Burbacher
Director
Community Engagement Core
UW Superfund Research Program



BJ Cummings
Community Engagement Manager
Community Engagement Core
UW Superfund Research Program