Association of Washington Business

Washington State's Chamber of Commerce

December 15, 2016

The Honorable Jay Inslee
Governor
State of Washington
PO Box 40002
Olympia, WA 98504-0002

RE: EPA promulgation of Washington's Human Health Water Quality Standards

Dear Governor Inslee:

As a coalition representing public and private entities, we urge the State of Washington to pursue a legal challenge to the Environmental Protection Agency of their recent partial disapproval of Washington water quality standards and adoption of separate standards for our state.

For more than five years the regulated community, including businesses and local governments, has worked directly with the state, including your administration, and the EPA to develop human health criteria and implementation tools that are based on compliance with the Clean Water Act; that conform to published EPA guidance; and that rely on sound principles of science to protect human health. While we haven't always supported every decision, we have been very appreciative of the robust process the state undertook to engage with all stakeholders about these critical decisions. We appreciate the active role that you took to help chart a course on this issue. Unfortunately, the same cannot be said of EPA. EPA's final rule for Washington clearly shows the federal agency ignored or rejected almost all the comments and input provided by the regulated community – both public and private stakeholders alike.

The Clean Water Act and federal regulations specify that states have the authority and responsibility to adopt water quality standards that comply with federal regulations and achieve state public health protection choices. Maintaining state control and prerogatives in the development of the human health water quality criteria is critical. Not only do the recent EPA actions usurp policy discretion granted to states, they disapprove common-sense judgments by the Department of Ecology and impose bad science choices for certain pollutants. If left unchallenged, the inescapable outcome of EPA's rule will result in public and business NPDES permittees facing billion-dollar treatment system upgrades, unnecessary regulatory impediments to state economic growth, and most importantly, the inability for permittees to meet these new EPA-adopted water quality standards with available or reasonably foreseeable wastewater treatment technology.

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Correspondingly, there will be no measurable benefit for the protection of health. In sum, EPA's water quality standard rule for Washington creates a system ripe for failure, sets the stage for ubiquitous litigation on individual NPDES permits, and creates great uncertainly for existing and future permittees in Washington.

We hope that you will continue to show leadership at this critical moment by moving to challenge the EPA action and therefore defend the state's work in crafting a balanced approach.

The state of Washington should appeal EPA's November 28th regulation promulgation for these reasons:

- EPA should not usurp what is a state responsibility. The Department of Ecology's public process in developing state water quality standards was fair and, in total, struck a more complete and workable outcome for Washington state.
- EPA's derivation of water quality criteria for PCB's, arsenic, methyl mercury, and other pollutants, defies best-science considerations and common sense, and is inconsistent with EPA own guidance and similar actions in other states.
- If left unchallenged, Clean Water Act program implementation based on EPA's standards will force billions of dollars in costs onto POTW's and industrial NPDES permittees (not the $126,000-150,000 annual cost to all Washington major NPDES permittees which EPA's wholly unrealistic economic analysis announces), and for almost immeasurable human health benefit.
- If left unchallenged, EPA's standards will overwhelm the ability of the Department of Ecology to implement Clean Water Act programs. Litigation, non-compliance concerns, and the uncertainty of government actions will have a stifling impact on economic development choices.
- EPA's approval/disapproval action is administratively flawed. At 40 CFR 131.21 and .22, the federal government is to notify states on any water quality standards disapproval and allow states 90 days to remedy the objection. EPA's sequence of decision-making, providing notice, and rule promulgation did not follow this time-line, and this precludes a state/federal government process to re-evaluate the legal and public policy merits of each position.

We all share the responsibility of protecting public health through updated water quality standards. We are convinced this can be accomplished in a balanced manner, consistent with EPA guidance,

protective of NPDES permittees interests, and with a lessened risk to long-term economic growth prospects in Washington state.

Thank you again for your time and attention on this important policy discussion. Please let us know if we can help provide any additional resources or answer any questions.

Sincerely,

Gary Chandler
Vice President Government Affairs
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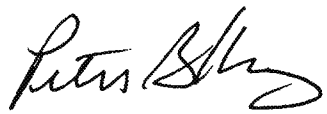

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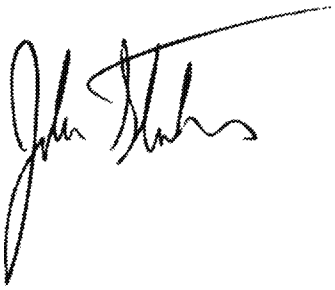

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cc: Maia Bellon, Department of Ecology
The Honorable Doug Ericksen
The Honorable John McCoy
The Honorable Joe Fitzgibbon
The Honorable Matt Shea