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Delivered via U.S. Mail & Electronic Mail

Honorable Michael S. Regan, Administrator
U.S. Environmental Protection Agency
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Honorable Daniel Blackman, Regional Administrator
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Re: Alabama Water Quality Criteria for Toxic Pollutants to Protect Human Health

Dear Administrator Regan and Regional Administrator Blackman:

This letter, submitted by the Environmental Defense Alliance, Waterkeepers Alabama, and Alabama River Alliance, requests that the U.S. Environmental Protection Agency take immediate action to ensure the adoption of new and revised water quality criteria for toxic pollutants to protect human health in Alabama.

As you know, States are required to conduct a review of water quality standards, including water quality criteria, at least once every three years (the triennial review"). Clean Water Act § 303(c)(1), 33 U.S.C. § 1313(c)(1); 40 C.F.R. § 131.20. Whenever a State conducts such a triennial review or revises or adopts new standards, it is required to adopt criteria for all toxic pollutants listed pursuant to Clean Water Act § 307(a)(1), 33 U.S.C. § 1317(a)(1), for which criteria have been published under Clean Water Act § 304(a), 33 U.S.C. § 1314(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. States should establish numerical criteria based on EPA recommended criteria published under Clean Water Act § 304(a), 33 U.S.C. § 1314(a), EPA recommended criteria modified to reflect site-specific conditions, or other scientifically defensible methods. 40 C.F.R. § 131.11(b). States are required to adopt water quality criteria, based on sound scientific rationale and sufficient parameters or constituents, that protect the designated uses of water bodies. Clean Water Act § 303(c)(2)(A), 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. § 131.11(a).

The Clean Water Act directs the Administrator to promptly prepare and publish proposed regulations setting forth revised or new water quality standards for the navigable waters involved in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Clean Water Act. Clean Water Act § 303(c)(4)(B), 33 U.S.C. § 1313(c)(4)(B). A State's failure to complete the timely review and adoption of appropriate standards required by Clean Water Act § 303(c)(2)(B), 33 U.S.C. § 1313(c)(2)(B), constitutes a failure "to meet the requirements of the Act" and is a sufficient basis for the Administrator to make a determination under Clean Water Act § 303(c)(4)(B), 33 U.S.C. § 1313(c)(4)(B), that new or revised water quality criteria are necessary to ensure designated uses are adequately protected. *Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance – Final Rule*, 57 Fed. Reg. 60848, 60857 (Dec. 22, 1992); *Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California – Final rule*, 65 Fed. Reg. 31682, 31687 (May 18, 2000).

Despite numerous triennial reviews, the adoption of numerous new or revised water quality standards, and the consideration of a rulemaking petition, the Alabama Department of Environmental Management has failed to adopt new or revised water quality criteria necessary to protect drinking water consumption uses and fish and shellfish consumption uses of navigable waters in Alabama. Specifically, the Department has failed to adopt new water quality criteria for three toxic pollutants (see **TABLE 1** enclosed) without demonstrating that these toxic pollutants are not present in the navigable waters of Florida or could not reasonably be expected to interfere with the designated uses of such waters; the Department has adopted water quality criteria for 59 toxic pollutants that are less stringent than EPA's recommended national water quality criteria (see **TABLE 2** enclosed) without demonstrating that the criteria are based on site-specific conditions or other scientifically defensible methods; and the Department has failed to revise existing water quality criteria for 96 toxic pollutants that are no longer based on sound scientific rationale (see **TABLE 3** through **TABLE 9** enclosed).

To ensure adequate protection of human health from the consumption of water, fish and shellfish in Alabama, your immediate action is needed. Accordingly, we request

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that you make a determination that new and revised water quality criteria are necessary to meet the requirements of the Clean Water Act in Alabama.

We request the opportunity to meet with you and your staff concerning this matter.

Sincerely,

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cc: ***Via Electronic Mail Only***

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