UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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OFFICE OF THE
REGIONAL
ADMINISTRATOR

DEC 18 2014

Maia Bellon, Director
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

Dear Director Bellon:

I am writing in follow up to my letter dated April 8, 2014, in which I described the U.S. Environmental Protection Agency's intention to amend the National Toxics Rule for the State of Washington's human health water quality criteria should the Washington Department of Ecology not finalize its human health water quality criteria by the end of 2014. Consistent with that letter, I am informing you that the EPA has initiated its internal federal rulemaking process to amend the NTR for Washington's human health water quality criteria and plans to publicly announce the initiation of the process on the EPA's Website in mid-January 2015 via a monthly notice that summarizes upcoming EPA regulatory actions (known as the Action Initiation List).

At the same time, as you know, the EPA remains interested and committed to supporting the State's process to complete a water quality standards submission for the EPA to review. I am encouraged by Ecology's timeline to issue a draft rule for public comment in January 2015, and appreciate the Governor's personal investment in moving the State's efforts forward. I continue to strongly encourage the State to fully consider the issues that the EPA has raised during the State's rulemaking process, particularly regarding the need for the State to base its decision on sound science and the best available data, which provide evidence of fish consumption rates well above 6.5 grams per day in Washington, and to explain why a change in the State's long-standing cancer risk protection level is necessary and how it is consistent with its strategy for protecting higher fish consumers in Washington. I am hopeful that Washington's submission to the EPA fully addresses these issues, protects human health and the environment, and is consistent with the Clean Water Act.

The EPA recognizes that its federal rulemaking activities, specifically the timeframe for developing draft federal water quality criteria for Washington, would overlap with Washington's potential timeline for finalizing its rule. Therefore, it is important to note that, if Washington were to submit a final rule to the EPA for Clean Water Act review and action, the EPA would likely pause its federal rulemaking activities to fulfill its required duty to review and act on the submittal under the Clean Water Act (to either approve the submittal within 60 days or disapprove within 90 days). However, initiating the EPA's internal rulemaking process now, preserves the EPA's ability to propose a rule in a timely manner should action on our part become necessary.

Consistent with the input we have provided the State, the EPA will ensure that its federal rulemaking process fully considers the best available science, including local and regional information, and applicable EPA policies, guidance, and legal requirements. These policy and legal considerations would include an assessment of downstream waters protection, environmental justice, federal trust responsibility, and tribal treaty rights and how those issues should inform the EPA's analysis of the

protectiveness of the water quality criteria. At this time, the EPA believes it would be able to complete a proposed federal rule within approximately 9-12 months unless, as previously noted, it pauses its process to review a final State submittal. The EPA acknowledges that this would mean the earliest timeline for a federal proposal would likely be August 2015, which is later than the May 2015 timeframe I noted in my April 2014 letter. I believe the August timeframe strikes a balance by providing time for Washington to potentially complete its rulemaking process and submit a final rule to the EPA for Clean Water Act review while at the same time allowing the EPA to prepare to move forward with updating the federal rule should that action become necessary.

Finally, the EPA recognizes that industry and local governments have raised concerns about implementation flexibility and being provided time to meet new, more stringent water quality standards. The EPA supports Ecology's efforts to regularly engage a broad range of stakeholders about these concerns during its rulemaking process, and several of those concerns have been addressed in the State's analysis on the potential economic costs and benefits of the preliminary draft rule. The EPA intends to continue working with the State on its development and use of appropriate implementation mechanisms that are consistent with the Clean Water Act, including variances and compliance schedules.

We are keenly aware of the need to implement water quality standards in ways that make reasonable progress in improving water quality while protecting the economic viability of state industries and communities. To that end, the EPA is available to meet jointly with Ecology and key stakeholders to discuss how implementation mechanisms can and should work to make progress toward improved water quality while accounting for the needs of the regulated community. We look forward to continuing to work with the State on a successful path forward.

The EPA remains very appreciative of the challenging work that Ecology has undertaken thus far to adopt human health water quality criteria and we look forward to reviewing a rule proposal in January. Developing water quality standards that protect public health remains a high priority issue for the EPA, especially in Region 10. Please note that, as with my April 8, 2014 letter, this letter does not constitute and is not intended as an Administrator determination under CWA section 303(c)(4(B). If you would like to discuss these topics further, please contact me directly or have your staff contact Dan Opalski, our Director for the Office of Water and Watersheds, at (206) 553-1855.

Sincerely,

Dennis J. McLerran
Regional Administrator

cc: Michael Grayum, Executive Director
Northwest Indian Fisheries Commission

Brian Cladoosby, Tribal Chairman
Swinomish Tribe

Matt Steuerwalt, Policy Advisor
Washington State Governor's Office