



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Reply To
Attn Of: OW-131

Ernesta Ballard, Commissioner
Alaska Department of Environmental Conservation
410 Willoughby Ave., Suite 105
Juneau, AK 99801-1795

Re: EPA Review of the 2003 Revisions to the Alaska Water Quality Standards Regulations

Dear Ms. Ballard:

The Environmental Protection Agency (EPA) has completed its review of the 2003 revisions to the Alaska water quality standards (Alaska 2003 WQS revisions) regulations. We conducted our review pursuant to our authority under Section 303(c) of the Clean Water Act and the implementing regulations at 40 CFR 131.5 and 131.21. The purpose of this letter is to inform you of our decision. I am pleased to inform you that EPA is approving almost all of the Alaska 2003 WQS revisions that were received by EPA on June 9, 2003. Portions of this approval are subject to the results of consultation under Section 7(a)(2) of the Endangered Species Act (ESA). The attached enclosure provides clarification about what is approved, what is approved "subject to the results of ESA consultations", and the items that EPA is taking no action on at this time.

EPA is not taking action at this time on the acute and chronic freshwater aquatic life criteria for selenium and mercury because we need more time to complete the essential fish habitat consultation for these two parameters and work with our EPA headquarters office. Similarly, EPA is not taking action at this time on the removal of the fluoride and odor secondary drinking water standards. Additional work is under way for both of these situations.

The new aquatic life criteria for mercury and selenium will not be in effect for CWA purposes until a decision is made by EPA about whether they can be approved. In the interim, the previously approved aquatic life criteria for mercury (2.4 ug/l acute and 0.012 ug/l chronic, both as total recoverable) and selenium (20 ug/l acute and 5 ug/l chronic, both as total recoverable) will remain the applicable CWA standards and will be retained in the CWA WQS docket until EPA acts on this revision (65 FR 24643). The secondary drinking water standards for fluoride (2.0 mg/l) and odor (3 threshold odor number) will remain in effect for CWA purposes.

Today's Action

The Alaska Department of Environmental Conservation (ADEC) submitted the Alaska 2003 WQS revisions to EPA and EPA received the submittal on June 9, 2003. In accordance with EPA's regulations at 40 CFR 131.6, the Alaska water quality standards revisions submittal package contained the Lt. Governor's certification that the revisions to 18 AAC 70 were duly adopted in accordance with State law. The specific revisions to the regulatory language at 18 AAC 70 were also included. EPA retrieved the response to comments from the Alaska water quality web site as a means to document the public involvement process for these revisions.

The primary focus of the Alaska 2003 WQS revisions was to update the numeric criteria for toxic substances and to consolidate the numeric criteria into one document. Alaska's previous WQS had adopted twelve EPA criteria documents by reference. If the public or regulated community did not have copies of all twelve documents it was difficult to determine the applicable numeric criteria for toxic substances. In the 2003 WQS revisions, instead of adopting twelve separate EPA documents by reference, Alaska adopted by reference a single document, the *Alaska Water Quality Criteria Manual for Toxic and Other Deleterious Organic and Inorganic Substances, May 15, 2003* (Toxics Manual), that contains all of the applicable criteria.

Not all of the criteria in the Toxics Manual are the same as the criteria contained in the twelve EPA documents referenced by Alaska's WQS prior to this revision. As part of these revisions, Alaska included in the Toxics Manual many of the updated numeric aquatic life and human health criteria contained in EPA's *National Recommended Water Quality Criteria - Correction* dated April 1999 (EPA-822-Z-99-001), and in individual criteria updates that EPA issued between April 1999 and August 2002.. Therefore, the Toxics Manual contains updated numeric criteria that are based on more recent EPA science for the protection of water quality than was the case for the prior WQS.

The Toxics Manual contains several tables that present both the previously approved numeric criteria, and the updated (new and revised) numeric criteria for toxic substances for each water use class and subclass found in the Alaska WQS regulations at 18 AAC 70.020(a). This manual provides the public with a more user-friendly approach to determine the applicable numeric criteria for Alaska waters. The Toxics Manual is readily available on the Alaska water quality standards web site.

Section 303(c) of the Clean Water Act (CWA) and Section 131.20(a) of the EPA regulations at 40 CFR Part 131 encourage States to update and adopt numeric criteria to protect designated uses. Section 131.11(a)(2) of the EPA WQS regulations specify that States must adopt criteria for toxic pollutants to protect designated uses. EPA regulations at 131.11(b) encourage States to establish numeric criteria based on CWA 304(a) guidance. Under section 304(a) of the CWA, EPA publishes numeric water quality criteria that consist of scientific information regarding concentrations of specific chemicals in water that protect aquatic life and human health. The numeric criteria for toxic substances in the Toxics Manual are based on EPA's 304(a) guidance.

It is important to note that EPA's approval is considered a federal action which is subject to the Section 7 consultation requirements of the Endangered Species Act (ESA) as well as Essential Fish Habitat (EFH) consultation requirements under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Endangered Species Act Consultation

EPA initiated consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service (Services) under Section 7(a)(2) of the Endangered Species Act (ESA) with a letter, dated November 21, 2003, requesting a list of federally listed threatened and endangered species. Section 7(a)(2) of the ESA requires that federal agencies, in consultation with the Services, ensure that their actions are not likely to jeopardize the continued existence of federally listed species or result in the adverse modification of designated critical habitat of such species. As of today, this consultation has not been completed. EPA is approving portions of the Alaska 2003 WQS revisions subject to the results of consultation under Section 7(a)(2) of the ESA.

By approving the standards "subject to the results of consultation under Section 7(a)(2) of the ESA," EPA has explicitly stated that it retains its discretion to take appropriate action if the consultation identifies deficiencies in the water quality standards requiring remedial action by EPA. EPA retains the full range of options available under section 303(c) of the Clean Water Act for ensuring water quality standards are environmentally protective.

Essential Fish Habitat (EFH) Consultation

The Magnuson-Stevens Act requires federal agencies to consult with the National Marine Fisheries Service (Service) on any actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH) identified by Regional Fishery Management Councils. EPA prepared an evaluation of the effects of the Alaska 2003 WQS revisions on the essential fish habitat of protected commercial fisheries in the North Pacific. EPA determined that those WQS revisions being approved in this letter will have no adverse effect on EFH. The requirements of the EFH consultation process have been completed for those Alaska WQS revisions that are approved in this letter.

In the case of the acute and chronic freshwater aquatic life criteria for mercury and selenium further analysis is needed. EPA determined that these criteria may have an adverse effect on the EFH of the freshwater life stages of the salmon commercial fishery. Additional time is required to complete the EFH consultation step for a "adverse affect" determination.

Tribal Consultation

EPA sent a letter to all federally recognized Tribes in Alaska on December 5, 2003 initiating formal consultation on EPA's proposed approval of the Alaska 2003 WQS revisions. EPA sought input from Tribes in two ways. Tribes could either send written comments or request a meeting to discuss the proposed approval with EPA. As of today, EPA has not received any written comments or requests for meetings to discuss this EPA action.

We recognize that it has taken longer than either the State or EPA expected to reach this point, but we appreciate both the State's patience and persistence. We greatly appreciate the efforts of your staff to coordinate this action with EPA throughout the WQS revisions process. Please feel free to contact me at (206) 553-1261 or Sally Brough, Water Quality Standards Coordinator, at (206) 553-1295.

Sincerely,

Randall F. Smith
Director
Office of Water

Enclosures

cc: Nancy Sonafrank