UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF THE
REGIONAL
ADMINISTRATOR

JUL 1 2014

The Honorable Doug Ericksen
Energy, Environment, and Telecommunications Committee Chair
Washington State Senate
Post Office Box 40442
Olympia, Washington 98504-0442

Dear Senator Ericksen:

Thank you for your letter dated May 28, 2014. I appreciate your taking the time to follow up with me about the Department of Ecology's ongoing rulemaking process to adopt human health criteria into Washington's water quality standards. The U.S. Environmental Protection Agency is very appreciative of the challenging work that Ecology has undertaken thus far to adopt human health water quality criteria, which has included a robust public process and a detailed review of the factors used to derive human health criteria, including scientifically sound regional and local fish consumption data. Your letter asks three related questions about the EPA's communications regarding the cancer risk level that Ecology may use to derive human health criteria for carcinogens. Below is my response to your questions.

As you may be aware, water quality criteria must protect applicable designated uses and be based on sound scientific rationale (see 40 CFR § 131.11(a)). In discussions with Ecology and other interested parties, the EPA has acknowledged the language in its national guidance for deriving ambient water quality criteria to protect human health (EPA's 2000 Human Health Methodology) regarding state adoption of water quality criteria for carcinogens. The Methodology identifies some flexibility in choosing cancer risk levels below Washington's current ten to the minus six (10^{-6}) level of protection. At the same time, the EPA recognizes that the Methodology encourages the consideration of local and regional data when available and that other important principles, such as environmental justice and treaty rights, need to be considered in decisions by the states and the EPA on water quality standards, including risk levels.

When reviewing the State's adopted human health water quality criteria, the EPA will consider Ecology's basis for justifying the input parameters used to calculate the criteria, ensuring that they are consistent with the best available science and a sound scientific rationale. In addition, the EPA has communicated to Ecology that we will need to review the State's entire final water quality standards submittal to better understand Ecology's overall plan to reduce toxic pollutants in the environment before determining what Clean Water Act action we will take. These types of details are important elements implicit in my April 24, 2014 response to you, where I indicated that the EPA must ensure that the human health criteria that Washington adopts are protective of applicable designated uses and based on a sound scientific rationale.

Regarding the specific issue of water quality criteria to limit exposure to cancer-causing pollutants, I have recommended that Ecology retain their current state-wide cancer risk level of 10^{-6}, which is used to

derive the State's human health criteria. There are several reasons why I would like Ecology to maintain their cancer risk level of 10^{-6}.

First, Washington's risk-based criteria for carcinogenic substances were derived by the EPA under the National Toxics Rule using a cancer risk level of 10^{-6}, pursuant to Washington's decision to select that risk level. In the current human health criteria rulemaking process, Ecology has stated a desire to better protect higher fish consumers in Washington. It is not clear why, in developing human health criteria to protect higher fish consumers, it is necessary or appropriate for Washington to reduce the level of cancer risk protection for the entire State – a level that has been in effect for more than twenty years.

Second, if Washington reduces the level of cancer risk protection from the current level of 10^{-6}, tribes, certain low-income, minority communities, and other high fish consuming groups could be provided less protection than they have now. Thus, a reduction in the level of cancer risk protection raises environmental justice concerns, which are a significant consideration in the EPA's review of the State's overall submittal. Consistent with Executive Order 12898 and the EPA's environmental justice policy and guidance documents, such as the EJ Legal Tools document issued in December 2011, the EPA incorporates environmental justice considerations into its decision-making. Notably with respect to many of the tribes, this approach to the cancer risk level would not advance environmental or public health protections consistent with their treaty-reserved right to harvest and eat fish and shellfish.

Third, in order to protect downstream waters consistent with the EPA's regulations at 40 CFR 131.10(b), I support regional consistency among Region 10 states and authorized tribes particularly when there are similarities in pollutants and associated environmental and human health risks. In line with that, I believe this is an opportunity for Washington to join Oregon as a national environmental leader in setting human health criteria that protect the designated uses and reflect the best available regional and local data. Seizing that opportunity will involve thoughtful selection of a cancer risk level that protects not only the State's general population, but its most vulnerable populations.

I firmly believe that there is a way for Ecology to adopt a water quality standards package that retains the State's current 10^{-6} level of protection from cancer-causing pollutants while giving industry time to comply with more stringent water quality criteria through implementation tools, such as compliance schedules and variances. I think this approach could support a thriving economy while protecting higher fish consuming populations.

Again, thank you for your follow-up inquiry. If you have any questions, please feel free to contact me or have your staff contact Dan Opalski, the Director of the Office of Water and Watersheds. You can reach Dan by phone at (206) 553-1855 or by email at opalski.dan@epa.gov.

Sincerely,

Dennis J. McLerran
Regional Administrator

cc: Ms. Maia Bellon, Director, Washington Department of Ecology