

Public Hearing for EPA Proposed Rule to Restore Protective Human Health Criteria Applicable to Washington

Transcript: May 24, 2022

Kary Phillips: Thank you for joining. The listening session will start promptly at 9am Pacific time. The listening session will now begin. Thank you all for joining us today, the listening session will now begin. Welcome to today's online public hearing titled Public Hearing for EPA Proposed Rule to Restore Protective Human Health Criteria Applicable to Washington.

This public hearing is sponsored by the United States Environmental Protection Agency's, or EPA's, Office of Science and Technology and EPA Region 10. The purpose of today's public hearing is for EPA to provide background on the proposed rulemaking and then for interested parties to provide oral comments on the proposed rule.

I'm Kary Phillips of Tetra Tech, Contractor to EPA, and I will be moderating today's hearing. Thank you for joining us, I will turn off my camera now to reduce distraction. Let's start by going over a few housekeeping items.

Before we introduce our speakers, here are a few housekeeping items. You should be connected to the session, through your computer or mobile device. At this time, you should see a slide titled "Logistics Options for Audio". You can listen to the presentation through your computer or mobile device but will need a microphone if you would like to make oral testimony.

If you would like to make oral testimony and you do not have speakers or microphone on your device, you may use a phone to call in. We will provide detailed instructions on how to provide oral testimony after the presentation.

Instructions for calling in are available in the menu on your screen to the right of the unmute button. Select the arrow to the right, then select "Switch to Phone Audio" and follow screen prompts. Following the onscreen instructions for calling in will link your phone line to your computer and allow you to use controls on your screen, for example, to mute or unmute yourself or to raise your hand to speak.

Alternatively, you may also call in directly to 669-900-9128. The meeting ID is 86835271773. Once you are connected to the audio if you hear an echo, please turn off your computer speakers, and if you have any technical difficulties, please chat with tech support.

Please note that all lines have been muted upon entry to avoid any echo and sound issues. Commenters will be able to unmute themselves once they've been notified that it is their time to speak.

Today's public hearing will be recorded and transcribed, and all oral comments will be considered part of the official record for this rule. As such, when developing the official response to public comments and finalizing the rule, the oral comments provided today will become part of the official record along with the written public comments submitted via the docket for this rulemaking.

If you provide an oral comment during today's online hearing, you do not have to submit the same comment in writing in order for it to be included in the official record. If you are interested in making a written comment, directions will be provided during this hearing. Please note that EPA will not respond to comments today, however EPA will respond to the oral comments received at this hearing, along with all the comments it receives during the comment period, in the EPA response to comments document that will accompany the final rulemaking. Also, EPA will not be answering questions today.

Today's presentation for the online public hearing has been reviewed by EPA staff for technical accuracy. However, the views of those making an oral comment and their organizations are their own and do not necessarily reflect the views of EPA. Mention of commercial enterprises, products, or publications does not mean that EPA endorses them.

Now that we have completed the discussion of housekeeping items, let's start today's online public hearing.

On March 28, 2022, EPA Administrator Reagan signed a proposed rule to restore the protective and science-based federal human health criteria for the state of Washington's waters that EPA had originally promulgated in 2016 but later removed in 2020. This proposed rule reflects the agency's commitment to protect people who consume fish from Washington's waters, including tribes with treaty-protected subsistence fishing rights and to apply sound science under the Clean Water Act. Public comments on the proposed rule must be received on or before May 31, 2022. EPA is offering this online public hearing so that interested parties may provide oral comments on EPA's proposed rule. Following a brief presentation from EPA, the Agency will accept oral comments that will be limited to three minutes per commenter. The three-minute time limit ensures each commenter has an opportunity to present their views.

EPA staff who are present for today's hearing include Lindsay Guzzo, Hanh Shaw, and Cami Grandinetti. Lindsey Guzzo is the Water Quality Standards Coordinator at EPA Region 10, Hanh Shaw is the Standards and Assessment Section Manager at EPA Region 10, and Cami Grandinetti is the Standards, Assessment, and Watershed Management Branch Manager at EPA Region 10.

And with that we will begin the presentation by EPA, I will now turn it over to Lindsay to provide a brief overview of the proposed rule.

Lindsay Guzzo: Thanks, Kary. As Kary said, my name is Lindsay Guzzo and I'm the Region 10 staff lead for this project. I will also be turning my camera off just to help with any distractions. I'm going to start with a little statutory background. The Clean Water Act section 101(a)(2) establishes the national goal that water quality should provide for the protection and propagation of fish, shellfish and wildlife and recreation in and on the water.

To protect people from cancer and non-cancer effects from pollutants and drinking water and fish and shellfish consumption, states and authorized tribes must establish human health criteria for the waters within their jurisdiction. EPA periodically publishes national criteria recommendations under the Clean Water Act section 304(a) for states to consider using to meet the Clean Water Act section 101(a)(2) goals. Throughout this presentation these recommendations will be referred to us as 304(a) criteria recommendations. More information on these 304(a) criteria recommendations can be found at the website listed on this slide.

Clean Water Act section 303(c)(2)(B) requires states to adopt numeric water quality criteria for all priority toxic pollutants, for which EPA has published 304(a) criteria recommendations. However, states are not required to adopt EPA's recommendations. In establishing criteria, states may adopt EPA's 304(a) criteria recommendations, a modified version of EPA's recommendations that reflect site-specific conditions, or criteria based on other scientifically defensible methods. In 2015, EPA published updated 304(a) criteria recommendations for states to consider when deriving human health criteria.

EPA recommends deriving human health criteria for carcinogenic effects, using the following inputs: cancer slope factor, cancer risk level, body weight, drinking water intake, fish consumption rate, and a bioaccumulation factor or factors. For pollutants with non-cancer effects, EPA recommends using a reference dose in place in the cancer slope factor and cancer risk level, as well as a relative source contribution. We will discuss these inputs more later.

The following equations were part of the 2015 updated 304(a) criteria recommendations that EPA published. The first equation on this slide includes the calculation to derive 304(a) recommended criteria for carcinogenic effects. The second calculation is used to derive 304(a) recommended criteria for pollutants with non-cancer effects. Both equations use the inputs that were discussed in the previous slide. Next slide.

Now that we've touched on the statutory background, I'll walk through a brief history of human health criteria in Washington state. In 1992, EPA promulgated the National Toxics Rule, or NTR, establishing chemical-specific numeric criteria for 14 states and territories, including Washington, that were not in compliance with Clean Water Act section 303(c)(2)(B). EPA derived the human health criteria in the 1992 NTR based on national data available at the time, which indicated that people ate on average 6.5 grams of fish per day. Next slide.

In 2015, EPA made a determination that revised human health criteria were necessary in Washington and proposed federal human health criteria that incorporated the 2015 304(a) recommendations and the Washington-specific fish consumption rate of 175 grams per day. Prior to EPA finalizing the federal rule, Washington submitted updated human health criteria on August 1, 2016, consisting of 192 human health criteria for 97 priority toxic pollutants applicable to all surface waters under the state's jurisdiction. Next slide.

Washington's criteria were based on a cancer risk level of one in a million and a fish consumption rate of 175 grams per day with chemical specific approaches for both arsenic and PCBs. Washington's criteria incorporated some, but not all, of the inputs from EPA's 2015 304(a) criteria recommendations. To evaluate Washington's criteria for consistency with the Clean Water Act and federal regulations, EPA compared the state's criteria values against the criteria EPA proposed in 2015. Because Washington did not incorporate all of the recommended inputs to derive its human health criteria, some of the state's criteria were more stringent than the criteria calculated by EPA, while others were less stringent.

On November 15, 2016, EPA partially approved, and partially disapproved Washington's human health criteria based on this comparison. EPA approved 45 of Washington's criteria that were as stringent or more stringent than EPA's calculated values and disapproved 143 of Washington's criteria that were less stringent. EPA's disapproval of Washington's human health criteria was largely predicated on Washington's use of input values that were not reflective of sound science rationale. The main reasons, including the state calculating criteria using bioconcentration factors, instead of bioaccumulation

factors, and the state using a relative source contribution value of one for non-carcinogens, instead of protective values in the range of 0.2 to 0.8. Bioconcentration factors account for pollutant accumulation and fish from only the uptake from the water column, whereas bioaccumulation factors account for the accumulation from all surrounding media, water column, food, and sediment. Relative source contribution values of less than one account for sources of exposure other than drinking water and the consumption of fish and shellfish from inland and near shore waters. EPA also deferred Clean Water Act action on for the state's criteria for two pollutants, thallium and dioxin.

For the criteria that EPA disapproved, EPA promulgated federal criteria for Washington at 40 CFR 131.45. The federal criteria incorporated all inputs from EPA's 304(a) criteria recommendations and Washington's fish consumption rate of 175 grams per day. The federal rule also included criteria for Methylmercury and Bis(2-Chloro-1-Methylethyl) Ether, which were not submitted by Washington.

This slide compares the inputs from Washington's criteria submitted in 2016 and EPA's criteria promulgated in 2016. As you can see, the same input parameters were used by both Washington and EPA include fish consumption rate, cancer risk level with the exception of PCBs, cancer slope factor, reference dose, body weight, and drinking water intake. Again, the two areas where the criteria calculations differ, as mentioned previously, were relative source contribution and bioaccumulation versus bioconcentration factors. Next slide.

On February 21, 2017, several groups filed a petition requesting that EPA reconsidered its disapproval action on Washington's human health criteria and repeal or withdraw the federal rule. On August 3, 2018, EPA provided notice of its intent to reconsider its action in response to the February 2017 petition. On May 10, 2019, EPA reversed the 2016 partial disapproval of Washington's human health criteria and approved all but two of the criteria Washington submitted in 2016. For arsenic, EPA reaffirmed its November 2016 disapproval, and therefore the federally promulgated arsenic criteria for 40 CFR 131.45 remained in place. For methylmercury and bis(2-chloro-1-methylethyl) ether, Washington did not submit criteria for these pollutants and therefore the federally promulgated criteria are the only criteria in effect. On May 13, 2020, EPA withdrew remaining federal criteria at 40 CFR 131.45, and on June 12 of 2020 the state's human health criteria became the effective water quality standards for Clean Water Act purposes. Next slide.

Following EPA's approval of the state's criteria and removal of the federally promulgated criteria, EPA received two lawsuits challenging the actions. In January of 2021, President Joe Biden issued executive order 13990. Executive order 13990 directed federal agencies to immediately review and take actions to address federal regulations promulgated and other actions taken during the last four years that conflict with the national objectives to improve public health and the environment. In July of 2021, the Court granted EPA's request for an abeyance for a period of 18 months pending a voluntary rulemaking. Next slide.

In evaluating Washington's criteria for consistency with the Clean Water Act and federal regulations, including requirements to ensure sound science, EPA compared the criteria that Washington submitted in 2016 and EPA criteria promulgated in 2016, which was based on the 304(a) criteria recommendations. Again, Washington and EPA both used the same input parameters for reference dose, cancer slope factor, cancer risk level with the exception of PCBs, fish consumption rate, body weight, and drinking water intake. The two big areas where the criteria calculations differed were relative source contribution and bioaccumulation factors. For relative source contribution, Washington's inputs

included relative source contribution of one for all non-carcinogens, whereas EPA used pollutant-specific relative source contributions ranging between 0.5 and 0.8. Because the state appropriated the entire safe dose to fish and water consumption and did not account for other sources of exposure, the federal criteria was up to two times more stringent than that submitted by the state.

For bioaccumulation factors, EPA's inputs included the updated nationally recommended bioaccumulation factors that were available. However, Washington continued to use the 1980 national recommendations for bioconcentrations instead. This difference in input values affected some of the criteria because they underestimated accumulation. Upon reconsideration, EPA has concluded that certain human health criteria in Washington are not based on sound scientific rationale and are therefore not protective of the applicable designated uses in Washington waters. On April 1, 2022, EPA proposed to restore protective and science-based federal human health criteria for Washington's waters, including waters where tribes hold treat-reserved rates to fish. Next slide.

So, what does the currently public notice federal rule propose? EPA is proposing to use all the inputs we just discussed in the previous slides from the 2016 federal rule and restore the federal human health criteria promulgated for Washington in 2016, with the exception of dioxin and thallium. For dioxin and thallium, EPA deferred action in 2016, leaving them covered by the National Toxics Rule. EPA's 2019 approval of the state standards removed them from the NTR and updated most of the calculation inputs, including updating the fish consumption rate to 175 grams per day. At this time, EPA is proposing to leave the 2019 approval in place. We do know that there is new toxicity information available since 2015. For some of these pollutants, however, this information has not been reviewed through the agency's extensive 304(a) criteria development process, and therefore EPA is not proposing to incorporate additional changes in the current rule. Next slide.

This table just shows a comparison of EPA's actions on Washington's human health criteria, since receiving Washington's 2016 submittal package for Clean Water Act action. For those pollutants where Washington's criteria was more stringent than EPA's national recommendations, EPA approved those criteria in 2016 and no changes have been made since. For those pollutants where Washington's criteria was less stringent than EPA criteria due to relative source contribution, or bioaccumulation factors, EPA disapproved and promulgated federal criteria in 2016, reversed that decision in 2019, approving the state's criteria values, and we are now proposing to restore the 2016 federal criteria. For arsenic, we disapproved Washington's criteria and left the 1992 National Toxics Rule in place. No changes were made in 2019 nor are they proposed for this rule. For PCBs in 2016 EPA disapproved Washington's criteria, due to the cancer risk level and promulgated criteria, using a cancer risk level of one in a million. In 2019 we reversed that decision approving the state's criteria, and we are now proposing to restore the same 2016 federal criteria, again with a risk level of one in a million. For dioxin and thallium, EPA deferred action in 2016, approved the state's criteria in 2019, and have proposed no changes to EPA's 2019 action. And finally, for methylmercury and bis(2-Chloro-1-Methylethyl) Ether, Washington did not submit criteria in 2016, but EPA promulgated criteria in the 2016 federal rule. No changes were made in 2019 and therefore no changes are proposed in the current public notice. Next slide and back to you Kary.

Kary Phillips: Thank you, Lindsay, for providing an overview of the proposed rule. As a reminder, you can access the proposed rule and supporting documents by visiting EPA's website listed on the slide. Please note that written comments must be received on or before May 31, 2022. If listeners would like to

contact EPA staff following today's presentation their contact information is on the slide, I will pause here for a few moments to allow time to record this contact information.

We will provide instructions for making an oral comment today, but first we will provide instructions for submitting written comments in one of the following ways. Again, if you provide oral comments during today's online hearing you do not have to submit the same comment in writing. However, if you plan to submit a written comment you may do so through the website at [regulations.gov](https://www.regulations.gov), which is our preferred method. You can also mail your comment or submit a written comment, via hand delivery. The instructions for submitting a written comment through these mechanisms are explained in more detail on this slide. Remember when submitting a written comment, please make sure to reference the Docket ID Number EPA-HQ-OW-2015-0174. I will pause here for a few moments to allow time to record this information.

We will now open the hearing for interested parties to make an oral comment. If you would like to ask a question or make a comment, please raise your hand. Depending on the device you are using, there are different ways to raise your hand. If you are on a computer or internet-based mobile device, click on the reactions button in the menu on the bottom of your zoom window. If you did not see a reactions button on your computer, hover towards the bottom of your zoom window and the menu bar should appear. Over the reactions button, select raise hand. If you called in using your phone, please press star nine on your phone to raise your hand. When it is your turn to speak the host will call on you, by name or by the phone number you dialed in with. At that time, you can unmute yourself by pressing the unmute button on your screen or by dialing star six on your phone. When it is your turn to speak the host will call on you, by name or by the phone number you dialed in with. Remember, EPA will not respond to comments today, however EPA will respond to oral comments received at this hearing, along with all comments received during the comment period in the EPA response to comments document accompanying EPA's final rule. Also, EPA will not be answering any questions during the hearing today.

Each commenter will be announced before providing an oral comment. Each commenter will have a maximum of three minutes to make an oral comment. A timer will appear on the screen indicating approximately how much time each commenter has left. Commenters are responsible for watching their own time. Each commenter will be given a 10-second warning using the timer appearing on the screen. At the three-minute mark the slide will read time is up, and commenters will be muted. If you provided your oral comment and were stopped after three minutes you can resume making your comment after all commenters have had the opportunity to provide their comments. Please raise your hand at that time and wait for your name to be called. When it is your time to make an oral comment, your name will be announced, and you will be able to unmute yourself. If you called in using your phone your phone number will be announced, and you will be able to unmute yourself. Please state and slowly spell your name for the official record and, if applicable, provide the name of your organization. After the self-introduction your three-minute time will start. We will now begin the public comment process. There may be a short pause before the first commenter is introduced. Rachel, do we have any commenters in the queue?

Rachel Buzzeo: At this time, we do not have any commenters in the queue. *No comments received.*

Kary Phillips: At this time, I'd like to conclude today's public hearing. Thank you to everyone who joined us. Remember, if you would like to provide a comment you can submit a written comment to the docket. That ends our hearing for today, thank you again for joining us.