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Human Health Criteria/Clean Water Act: Washington State Attorney General Challenges U.S. Environmental Protection Agency Revision of State Water Quality Standards

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The Washington State Attorney General (“AG”) filed a June 6th Complaint for Declaratory and Injunctive Relief (“Complaint”) in United States District Court (Western District of Washington) against the United States Environmental Protection Agency (“EPA”) related to a disagreement over the state’s Clean Water Act water quality standards (“WQS”).

The AG is challenging EPA’s revision of certain existing WQS for the State of Washington.

Section 303 of the Clean Water Act requires that each state develop WQS for jurisdictional waters of the United States within their borders. WQS serve a dual purpose. They establish the water quality goals for a specific body of water and also serve as the regulatory basis for the development of water-quality based effluent limits and strategies for individual point source discharges.

A WQS consists of three parts:

1. The designated uses of a waterbody
2. The water quality criteria (“WQC”) that are necessary to protect existing uses and to attain the beneficial uses designated by the state; and
3. An anti-degradation statement or policy to protect existing uses in high quality water

WQS may be expressed either as a numeric concentration level or a narrative standard.

Section 303(c) of the Clean Water Act specifies that the adoption of WQS is primarily a responsibility of the states. States must adopt uses consistent with the Clean Water Act objectives and WQCs sufficient to protect the chosen uses. However, EPA is required to ensure that state WQS, along with any changes, meet the minimum requirement of the Clean Water Act. This includes an assessment of whether WQS protect state criteria and/or designated uses taking into account the water’s use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, navigation and other purposes. The Clean Water Act regulations provide for EPA review of any state WQS changes.

WQC are ambient water quality conditions that are deemed protective of the uses established for a waterbody. States are required to adopt WQC protective of the designated uses. They generally assume three forms, which include:

1. Numerical terms reflecting maximum concentration of a particular pollutant in the receiving water
2. Bioassay or biomonitoring results which reflect mortality rates of certain waterborne organisms relative to the concentrations of particular pollutants
3. Terms narrative in nature

WQC represent a judgment as to what levels, concentrations or conditions can support a desired use.

The Washington AG's Complaint alleges that nearly two-and-a-half years after the effective date of the State's Human Health Criteria (incorporated in the Washington State WQS) that EPA unilaterally decided to revise such human health criteria to make them less protective. It states that Washington's current WQS include human health criteria that are a combination of criteria Washington submitted to EPA that were approved by the federal agency and criteria that EPA adopted for the State after finding that the criteria Washington submitted to EPA were not consistent with the applicable requirements of the Clean Water Act.

The Washington State officials are argued to have informed EPA that it was opposed to the revision of such standards. The State had opposed the revisions arguing that they had been successfully implemented and there was no legal basis for reconsidering them.

The Complaint alleges in part:

EPA does not have inherent authority to ignore the process Congress established in the Clean Water Act to revise a state's existing water quality standards. Accordingly, EPA's May 10, 2019 decision to revise Washington's existing water quality standards is arbitrary, capricious, not in accordance with law, and in excess of statutory authority. Washington seeks a declaration invalidating and vacating EPA's May 10, 2019 decision and an injunction to prevent EPA from unilaterally revising Washington's existing human health criteria unless EPA complies with 33 U.S.C. § 1313(c)(4).

A link to the news release, to which the Complaint is attached, can be found [here](#).