

Water Quality Criteria/Clean Water Act: U.S. Environmental Protection Agency Federal Register Notice Proposal Addressing Florida Toxic Pollutant Standards



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The United States Environmental Protection Agency (“EPA”) published a proposed rule in the December 8th Federal Register that would establish new and revised human health water quality criteria (“WQC”) for certain pollutants in the State of Florida. See 88 Fed. Reg. 85530.

EPA had previously issued in 2022 a determination that Florida’s human health criteria (“HHC”) were not protective of the state’s designated uses and therefore additional HHC were needed for certain priority toxic pollutants.

Section 303 of the Clean Water Act requires that each state develop water quality standards (“WQS”) for jurisdictional waters of the United States within their borders.

WQS consists of three parts:

1. The designated uses of the waterbody;
2. The WQC that are necessary to protect existing uses and to attain the beneficial uses designated by the state; and
3. An antidegradation statement or policy to protect uses in high quality water.

WQC are ambient water quality conditions deemed protective for the use established for a waterbody. They must specify maximum concentrations of pollutants that may be present in the water without impairing its suitability for certain uses.

The WQC represent a judgment as to what levels, concentrations, or conditions can support a desired use for a waterbody. States can develop their own WQC if justified by the technical data. However, EPA also undertakes this task pursuant to Section 304(d) of the Clean Water Act. EPA WQC are frequently used by the states in establishing or revising their WQS.

EPA notes that when a state designates waterbody uses such as fishing and drinking water supply an HHC must be established. The federal agency takes the position that Florida’s current HHC were adopted in 1992 based on the science and information available at the time. It states that national and regional data

have become available indicating greater levels of fish consumption. The state also does not have WQC for 37 pollutants that EPA states are likely to be in its waters.

Florida is recognized to have acknowledged that updates to its HCC are necessary and efforts undertaken to adopt new/revised criteria. However, EPA states that they were never finalized or submitted to the federal agency for review pursuant to Section 303(6).

A copy of the Federal Register Notice can be downloaded [here](#).