

EPA Reinstates Water Quality Regs For Wash. State

By **Tom Lotshaw**

Law360 (November 16, 2022, 7:36 PM EST) -- The U.S. Environmental Protection Agency laid out a final rule to reestablish water quality standards for Washington state that were rolled back during the Trump administration and are aimed at protecting people who eat fish and shellfish caught in the state.

The rule sets 141 human health criteria for 72 pollutants in Washington waters, setting levels to protect people from cancer and other health risks, according to a statement from the EPA on Tuesday.

"This final rule utilizes the latest scientific knowledge and brings us one step closer to delivering safe, swimmable, fishable bodies of water that the people of Washington deserve," EPA Administrator Michael S. Regan said in a news release.

The standards, which are required under the Clean Water Act for waters designated for fish and shellfish harvesting, drinking water and other uses, have been in flux for more than five years.

The EPA said it partially approved and disapproved human health criteria Washington state officials submitted to it in August 2016, putting in place federal criteria for the ones it did not approve.

During the Trump administration, the agency rolled back the protective standards it had put in place for the state.

That rollback was challenged by Washington state officials in a lawsuit joined by the Sauk-Suiattle Indian Tribe and Quinault Indian Nation and in a separate suit that Earthjustice filed on behalf of conservation groups, fishing organizations and the Makah Indian Tribe.

Both lawsuits were put on hold in July 2021 after the EPA announced it would voluntarily revisit the water quality standards. It ultimately concluded that its prior actions in 2019 and 2020 were not based on sound science and were inadequate to protect human health.

In a statement, Washington Department of Ecology Director Laura Watson said the new rule reestablishes standards that truly protect the people who depend on locally caught fish as a staple in their diets.

"I am grateful that EPA restored rules that recognize and reflect the importance of fish for tribes as well as many other communities in the state," Watson said.

Patrick DePoe, vice chair of the Makah Tribal Council, said in a statement that the EPA has made good on its commitment to restore water quality standards in Washington.

"This is an important step toward protecting water quality, ensuring health of our treaty resources and supporting the exercise of our treaty rights to harvest fish and marine mammals," DePoe said. "We have relied on marine and freshwater resources for thousands of years and we need those resources to be clean and safe in order to survive and thrive as a people."

Earthjustice, the Pacific Coast Federation of Fishermen's Associations and other conservation groups said in April 2022 that they supported the new rule **when the EPA first proposed it**. They applauded the announcement of the final rule on Tuesday, saying it will undo an industry-led attack on the state's water quality standards and lead to less toxic pollution for its water bodies, fish and orcas.

"This is the result we sought in our litigation," Marisa Ordonia, an attorney for Earthjustice, told Law360.

Ordonia said the final rule announced by the EPA essentially restores the science-based protective standards that were put in place for the state's waters in 2016. That includes a standard for polychlorinated biphenyls that is 25-times more protective than what was put in place during the Trump administration.

"It's a good result," Ordonia said of the rule. "But there is still more to be done to protect human health and Washington's waters."

Glen Spain, northwest regional director of the Pacific Coast Federation of Fishermen's Associations, said in a statement the rule is an important step toward protecting the public's right to safe and healthy seafood.

"Our industry fought back against the prior administration's efforts to protect polluters at the expense of consumers and we welcome the EPA's decision to finalize this rule," Spain said. "There is no 'right to pollute' the public's food supply."

Nina Bell, executive director of Northwest Environmental Advocates, a group that **has challenged** the EPA's failure to update aquatic life criteria for toxic pollutants in Washington, described the issue over the human health criteria as a "political ping pong game."

The state could have "done the right thing" on its own, Bell said.

"Blaming the Trump administration EPA is a bit of a cheap shot when the Washington Department of Ecology has always had all the power all along to adopt protective human health criteria for toxics," Bell said in an email to Law360. "It's certainly a good outcome to have this over with so that Ecology and EPA can address the extremely outdated criteria for protection of aquatic life, the subject of our successful litigation."

The Association of Washington Business, the state's chamber of commerce and manufacturing and technology association, has opposed the standards, arguing that while steps must be taken to protect human health and the environment, standards must be attainable.

"We remain concerned, as we have throughout this process, that the EPA is pushing standards that will put employers out of compliance with the law and without any pathway for reaching compliance," Peter Godlewski, government affairs director for energy, environment and water policy at the Association of Washington Business, said in a statement to Law360.

--Additional reporting by Juan Carlos Rodriguez and Greg Lamm. Editing by Vaqas Asghar.

Update: This story has been updated with additional comment.