



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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July 22, 2019

The Honorable Andrew R. Wheeler
U.S. Environmental Protection Agency
Office of Policy Regulatory Reform
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Wheeler:

Washington State continues to vigorously oppose the U.S. Environmental Protection Agency's (EPA) attempts to unlawfully revise our state's Human Health Criteria standards, also known as the *Fish Consumption Rule*. As I stated in previous letters to you, there is no legal justification by which EPA can revise our *Fish Consumption Rule*. Furthermore, EPA has failed to consult with the State of Washington and has also failed to meet formal consultation requirements with any of Washington's 29 federally recognized tribes.

The Washington State Department of Ecology's (Ecology) previous requests for consultation have been ignored. EPA chose to forge ahead without the consent of the State or the communities most vulnerable to toxics in fish tissue. As you are well aware, Washington State has filed a lawsuit against EPA for violating the Clean Water Act in attempting to revise Washington's rule. Subsequent to the lawsuit, I asked you to cease action until the courts resolve this pure legal matter.

We have become aware through an email notice, "*Withdrawal of Certain Human Health Criteria in Washington – Upcoming Proposed Rule*," that EPA ignored my request to cease action and will soon publish a proposed rule. The notice also states EPA intends to hold a 60-day comment period during which there will be two "online public hearings." This is insufficient and inadequate to collect information from the residents of Washington. We demand both hearings be conducted in-person in Washington State where members of our communities have a meaningful opportunity to participate. EPA's unlawful attempt to revise Washington's *Fish Consumption Rule* broadly affects Washington's communities—especially tribes and underrepresented communities of color whose traditional diets are high in fish. These communities deserve an in-person audience with the federal government. Providing only online public hearings will limit public engagement to those with reliable broadband internet access, which could disenfranchise the very communities most impacted by EPA's actions.



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July 22, 2019

Page 2

Furthermore, EPA's own agency rule governing revisions to states' water quality standards provides that when EPA promulgates water quality standards for a state, "the Administrator is subject to the same policies, procedures, analyses, and public participation requirements established for States in these regulations." (40 C.F.R § 131.22). As you know, states are required to hold at least one public hearing—more if it is a matter of statewide significance—in their states for the purposes of reviewing water quality standards "at times and places which, to the maximum extent feasible, facilitate attendance by the public." Since EPA consistently holds Washington State to these standards, and since EPA is subject to the same policies as states when making revisions to state water quality standards, EPA by its own agency rule is required to hold its public hearings in Washington State.

As the state agency entrusted with protecting Washington's waters, Ecology remains committed to our state's existing rule. We stand behind the people of Washington and the overlooked communities whose voices have been ignored in your process. If you decide to continue on this path of revising the existing *Fish Consumption Rule* over our objection, the least you can do is hold your hearings in Washington State. Washingtonians deserve no less.

Sincerely,

A handwritten signature in cursive script that reads "Maia D. Bellon". The signature is written in black ink and extends to the right with a long, thin horizontal stroke.

Maia D. Bellon
Director