

# NORTHWEST ENVIRONMENTAL ADVOCATES



October 28, 2013

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue N.W.  
Washington, DC 20004

*Certified Mail; Return Receipt Requested*

**Re: Petition for Rulemaking on Water Quality Criteria for Toxics in the State of Washington**

Dear Ms. McCarthy:

Please find enclosed a petition from Northwest Environmental Advocates requesting that the U.S. Environmental Protection Agency take specified steps to update the water quality criteria for toxics to protect human health and aquatic life in the State of Washington.

As set out in the attached petition, EPA not only has the authority to update Washington's toxic criteria but it must do so. This petition demonstrates that toxic contamination is widespread in Washington and that lack of adequate water quality criteria hampers assessment and clean-up efforts in state waters, putting people, fish, and wildlife at risk. As I am sure you are aware, Washington's human health criteria were established by EPA itself in the National Toxics Rule and, for many years now, Region 10 has clearly stated the criteria do not provide adequate protection to the general public and high fish-consuming population groups in the state. In addition, Washington has failed to update most of its aquatic life criteria, consistent with the requirements of the Clean Water Act, since it adopted them over two decades ago.

While the Washington Department of Ecology (Ecology) has made some headway in efforts to update its human health criteria, not only has the pace slowed but there is every reason to believe that the state will be unable to complete its task. While EPA has disapproved Oregon's and Idaho's efforts to use the national average fish consumption level to develop their human health criteria, EPA has not taken action to ensure that Washington's human health criteria are updated in a timely fashion. In addition, Ecology has given no indication that it intends to update the state's aquatic life criteria and to the best of our knowledge EPA has not reminded the state of its Clean Water Act obligations in this regard.

As EPA has watched the years go by, knowing Washington's toxic criteria are woefully out-of-date, it has allowed the state to produce water quality assessments, issue NPDES discharge permits, develop Total Maximum Daily Load (TMDL) clean-up plans, and take other regulatory actions all of which are intended to meet those wholly inadequate toxic criteria. EPA's inaction to revise the criteria is inexcusable in light of the decades that have elapsed since it first understood the scope of the problem.

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[www.NorthwestEnvironmentalAdvocates.org](http://www.NorthwestEnvironmentalAdvocates.org)

P.O. Box 12187, Portland, OR 97212-0187 Phone (503) 295-0490 Fax Upon Request

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In a lawsuit recently filed against EPA, *Puget Soundkeeper Alliance, et al. v. EPA, et al.*, No. 2:13-cv-01839-JCC (W.D. Wash., filed Oct. 11, 2013), plaintiffs have alleged the agency has already made a determination that Washington's human health criteria are inadequate. Either, as that lawsuit alleges, EPA has already made such a determination and now has a mandatory duty to promulgate new criteria for Washington, or pursuant to this petition, EPA must make such a determination.

We look forward to your response to this petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Nina Bell", with a stylized flourish at the end.

Nina Bell  
Executive Director

Attachment: Petition for Rulemaking Under the Clean Water Act Water Quality Criteria for  
Toxics in the State of Washington