

EPA Finds Florida Water Quality Standards Unprotective Of Human Health

December 2, 2022

[Tweet](#)

EPA has notified Florida officials that the state's water quality standards (WQS) are unprotective of human health and is ordering them to both revise some human health criteria (HHC) and issue new criteria to protect against dozens of priority toxic pollutants in surface waters within a year, or face a federally imposed plan.

EPA's decision -- spelled out in [a Dec. 1 determination](#) from EPA water chief Radhika Fox to Shawn Hamilton, secretary of the state's Department of Environmental Protection (DEP) -- renews focus on the agency's recent efforts to increase fish consumption rates (FCR) in water quality decisions as a way to protect subsistence fishermen and other seafood consumers.

"Without an updated FCR, Florida is not keeping pace with the current practices of Florida residents, who appear to be eating far more fish than the 6.5 g/day input indicates. Moreover, EPA has placed an emphasis on increased consumption of healthy fish for its human health benefits and is particularly concerned that people eating fish they catch for their sustenance are being disproportionately impacted," Fox told Hamilton.

The determination is the second major EPA action over state WQS in recent weeks. On Nov. 18, EPA issued final [water quality criteria](#) to protect human health from toxics in Washington state and, over industry objections, set 141 HHC for 72 different pollutants.

The agency's rule for Washington state could set a precedent for how EPA and state regulators craft such risk-based measures that are used to set regulatory standards under the Clean Water Act (CWA).

EPA's latest decision responds to [a Jan. 19 petition](#) from Environmental Defense Alliance and Waterkeepers Florida, which charged that the state's human health standards did not provide enough protection for designated uses.

"Despite numerous triennial reviews, the adoption of numerous new or revised water quality standards and the consideration of a rulemaking petition, the Florida [DEP] has failed to adopt new or revised water quality criteria necessary to protect drinking water consumption and uses and fish and shellfish consumption uses of navigable waters in Florida," the petition said.

David Ludder, an attorney who represents the Environmental Defense Alliance in the petition, says the EPA finding is "not unheard of but rare nevertheless," noting the Trump administration denied an earlier petition.

Specifically, the petition alleged that DEP failed to adopt new water quality criteria for 67 toxic pollutants, adopted criteria for 19 that are less stringent than EPA's recommended national water quality criteria, and failed to revise existing water quality criteria for 32 toxic pollutants, the petitioners said.

In response to the petition, EPA found that 40 of the state's current HHCs are not protective of designated uses, such as the state's daily FCR, and that additional HHCs are needed for 37 other priority toxic pollutants for which Florida lacks any HHCs. The state last updated its HHCs in 1992.

New & Revised Standards

Fox writes that under CWA section 303, she determined "that new and revised [WQS] in Florida are necessary. . . . Specifically, EPA has determined that new and revised [HHC] are needed to protect against adverse human health effects related to pollutants in Florida's surface waters."

Fish consumption has increased since 1992 and the revised HHC must take that into account, as well as updated science over the last 30 years, she adds.

The state previously developed updated criteria but those were never finalized and has said it is surveying residents on fish consumption, a multi-year process with no deadline.

"EPA is taking this step to make clear that new and revised HHC are necessary in Florida to meet CWA requirements," Fox writes.

EPA also determined that Florida needs HHC for the priority toxic pollutant methylmercury, while acknowledging the state did establish a 2013 total maximum daily load (TMDL) for the pollutant to address its many impaired waterbodies.

Fox adds that "12 months is a reasonable timeframe" for DEP "to develop proposed federal regulations setting forth protective HHC for Florida."

The Florida DEP could not be reached for comment at press time.

Ludder adds that the fact EPA refers to fish consumption by sustenance fishers -- which is generally a much higher rate than the average consumers -- could prompt the agency to require more stringent criteria to better protect those environmental justice populations. "We will have to wait and see what rate Florida or EPA regard as sustenance."

The petitioners also submitted [a June 22 supplement](#) along with a history of the state's [WQS actions](#) to underscore their points. -- Dawn Reeves (dreeves@iwpnews.com)