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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MEMORANDUM

OFFICE OF
WATER

SUBJECT: Compliance with CWA Section 303(c)(2)(B)

FROM: Martha G. Prothro, Director *Martha Prothro*
Office of Water Regulations and Standards (WH-551)

TO: Water Management Division Directors, Regions I-X

The purpose of this memorandum is to reiterate that to fulfill the statutory requirements of the Clean Water Act Section 303(c)(2)(B), States need to adopt both aquatic life and human health numeric criteria for Section 307(a) toxic pollutants. Some States have adopted criteria to protect only aquatic life even though designated uses include activities related to human health (e.g., human consumption of fish, drinking water). Others have adopted inappropriate human health criteria (e.g., a maximum concentration limit (MCL) when fish ingestion is considered an important activity). Although States are required to adopt standards only for pollutants, "the discharge or presence of which in the affected waters could reasonably be expected to interfere with...designated uses", there is no statutory, regulatory or policy exclusion for human health related criteria.

To comply with the statute, a State must adopt aquatic life and human health criteria where necessary to support the appropriate designated uses. Criteria for the protection of human health are needed for waterbodies designated for public water supply. The Agency policy on use of MCLs developed under the Safe Drinking Water Act or Section 304(a) human health criteria is stated at 45 FR 79318, November 28, 1980. For the protection of public water supplies, EPA encourages the use of MCLs. When fish ingestion is important, then the water quality criteria value developed under Section 304(a) of the Clean Water Act based on fish consumption should be used.

For those pollutants designated as carcinogens, the recommendation for a human health criterion generally is more stringent than the aquatic life criterion for the same pollutant. In contrast, the aquatic life criteria recommendations for non-carcinogens generally are more stringent than the human health recommendations.

When a State adopts a human health criterion for a carcinogen, the State must select a risk level. EPA provides criteria values at risk levels of 10^{-5} , 10^{-6} , and 10^{-7} in its criteria documents under one set of exposure assumptions. A State is not limited to choosing among the risk levels published in the Section 304(a) criteria documents nor is a State limited to the base case exposure assumptions. The State will need to choose the risk level for its program even if it adopts EPA's criteria guidance by reference, because the criteria documents are not self-implementing standards in the absence of this information.

If a State has not adopted enough criteria or appropriate criteria to address human health, the State should immediately establish an accelerated schedule to achieve compliance with Section 303(c)(2)(B). The EPA Regional Offices should be sure there is explicit agreement with regard to the additional State actions needed and the schedule for State action. The schedule should reflect a compliance date which is prior to February 4, 1990 (three years after the enactment of the Water Quality Act of 1987). When necessary, the Regional Office may grant an extension to this requirement to States that were close to completing a triennial review at the time the Water Quality Act was passed. These States may have until the end of FY 1990 to comply with Section 303(c)(2)(B). Regional Offices are responsible for assuring that States understand that time is of the essence in complying with Section 303(c)(2)(B), and that delays until a subsequent triennial revision are not allowed under the law.

If you have any questions on this matter, please contact me or have your staff contact David K. Sabock at FTS 475-7318.

cc: Rebecca W. Hanmer