

Public Hearing for Proposed Withdrawal of Certain Federal Water Quality Standards Applicable to Maine

**September 30, 2020 10:00 am – 12:00 pm Eastern Time
Public Hearing Transcript**

>>Ashley Pasakarnis:

Hello and welcome to today's virtual public hearing titled: Proposed Withdrawal of Certain Federal Water Quality Standards Applicable to Maine. This public hearing is sponsored by the United States Environmental Protection Agency's, or EPA's, Office of Science and Technology in EPA Region 1.

The purpose of today's webinar is for EPA to provide background on the proposed rulemaking and then for interested parties to provide oral comments on the proposed rule.

I am Ashley Pasakarnis of the Horsley Witten Group, contractor to EPA, and I will be moderating today's hearing. Thank you for joining us.

Let's start by going over a few housekeeping items. We are now on Slide 2 of this presentation. Today's public hearing will begin with introductions and housekeeping items, followed by an overview of the proposed rule, and finally, open for public comments.

We are now on Slide 3 of this presentation. Use the microphone and speakers on your computer or telephone to connect to the audio. Your microphone will be muted by an organizer upon entry. If you are experiencing technical difficulties, you can type your issue in the Questions panel. The responses from our tech team will appear below the white box. Since the response area is small, you may not see all of the questions and answers. Use the scroll bar on the right side of your screen to scroll up and down to see additional text. If you cannot see the white box at the bottom of your screen, change your screen resolution by clicking on tools in your web browser and selecting Zoom Out.

Today's presentation is available for download in the Handouts panel. To view the presentation, each viewer of today's virtual public hearing must click on the blue Handouts tab on the top of your screen, scroll down to the item titled Presentation Slides and click the hyperlink to initiate the download. To return from the Downloads tab back to the presentation slides of today's virtual public hearing, click on the Slides tab on the top of your screen.

If you would like to make an oral comment, please raise your hand or submit a question in the Questions panel. You may have to wait in the queue. When it is your turn, the

Announcer will unmute your microphone and you can state your name. Directions on how to make an oral comment will be provided after the speakers have introduced the proposed rule.

Today's hearing will be recorded and transcribed and all oral comments will be considered part of the official record for this rule. As such, when developing the official response to public comments and finalizing the rule, the oral comments provided today will become part of the official record along with the written public comments submitted via the Docket for this rulemaking. If you provide an oral comment during today's virtual hearing, you do not have to submit the same comment in writing in order for it to be included in the official record.

If you are interested in making a written comment, directions will be provided during this hearing. EPA will not respond to comments today, however, EPA will respond to comments received at this hearing, along with all comments received during the comment period in EPA's Response to Comments document. EPA will not be responding to questions today.

Today's presentation for the virtual public hearing has been reviewed by EPA staff for technical accuracy, however, the views of those making an oral comment in their organizations and any supporting visual aids provided by commenters are their own and do not necessarily reflect those of EPA. Mention of commercial enterprises, products or publication does not mean that EPA endorses them.

Now that we have completed the discussion of housekeeping items, let's start today's virtual public hearing. We are now on Slide 5 of this presentation.

EPA is offering this virtual public hearing so that interested parties may provide oral comments on EPA's proposed rule. Following a brief presentation from EPA, the Agency will accept oral comments that will be limited to three minutes per commenter so each commenter has an opportunity to present his or her views.

During this brief presentation from EPA, we will hear from our speaker Jennifer Brundage. Jennifer is the Rule Manager from EPA Headquarters. One other EPA staff will also provide support during today's live hearing. Dan Arsenault is EPA Region 1 Water Quality Standards Coordinator and Acting Water Quality Standards Section Chief.

With that, we will begin the presentation by EPA. I will now turn it over to Jennifer to provide a brief overview on the proposed rule.

>>Jennifer Brundage:

Thanks, Ashley. Slide 6, Summary.

On September 3, 2020, EPA published a proposed rule to amend the federal water quality standard regulations to withdraw human health criteria for toxic pollutants applicable to waters in the State of Maine. EPA proposes this action because Maine adopted, and EPA approved, human health criteria that the Agency determined are protective of the designated uses for these waters. The withdrawal would enable Maine to implement its EPA-approved human health criteria for Clean Water Act purposes.

Slide 7, Statutory Background.

Section 1182 of the Clean Water Act establishes the national goal that water quality should provide for the protection and propagation of fish, shellfish and wildlife, and recreation in and on the water. To protect people from both cancer and noncancer effects from pollutants in public water supplies and in fish and shellfish, states must establish human health criteria for their waters that are designated for such uses. After states adopt water quality standards, they must be submitted for EPA for review and action in accordance with the Clean Water Act.

The Clean Water Act authorizes EPA to promulgate federal water quality standards following EPA's disapproval of state water quality standards or an administrator's determination that new or revised water quality standards are necessary to meet the requirements of the Act.

Slide 8, Background on Federal Human Health Criteria in Maine.

On December 19, 2016, EPA promulgated a final rule titled Promulgation of Certain Federal Water Quality Standards Applicable to Maine at 40 CFR Part 131.43. This rule revised certain water quality standards applicable to Maine waters, including human health criteria for toxic pollutants applicable to tribal waters in Maine. The EPA promulgated the December 2016 rule after its 2015 disapproval of human health criteria and other water quality standards the State had submitted to EPA.

Slide 9, Background on Federal Human Health Criteria in Maine Continued.

EPA also promulgated a phenol criterion to protect human health and waters outside of Indian lands in Maine after disapproving the State's phenol criterion in 2015.

In June 2020, EPA approved the State's submission of revised human health criteria for toxic pollutants that protect designated uses in all the waters covered by the federal human health criteria. This action proposes to amend the federal regulations to withdraw all federal human health criteria for toxic pollutants promulgated for Maine in December 2016.

Slide 10, Reconsideration of EPA's 2015 decisions.

EPA's 2015 disapproval of the State's human health criteria for waters in Indian lands was based on its decision that they were inadequate to protect sustenance fishing designated uses that EPA interpreted and approved for waters in Indian lands in this same 2015 action.

On May 27, 2020, after review of the applicable provisions of the Clean Water Act's implementing regulations and EPA guidance, EPA withdrew its 2015 interpretation and approvals of the sustenance fishing designated uses and corresponding disapprovals of Maine's human health criteria that flowed from the designated use determinations.

Also on that date, EPA approved Maine's general fishing designated use for waters in Indian lands without the interpretation that it means sustenance fishing.

Slide 11, EPA Approval of Maine's New and Revised Human Health Criteria.

On April 24, 2020, the Maine Department of Environmental Protection submitted new and revised human health criteria to EPA in accordance with Section 303(c) of the Clean Water Acts.

On June 23, 2020, EPA approved the State's new and revised human health criteria as consistent with the requirements of the Clean Water Act and applicable federal regulations.

There are now two sets of State promulgated EPA-approved human health criteria in Maine. One set protects the statewide general fishing designated use and the other set protects the State's new sustenance fishing designated use subcategory that applies to specifically identified waters where sustenance fishing is or may be occurring.

Slide 12, EPA Approval of Maine's New and Revised Human Health Criteria.

Between these two sets of human health criteria, all of the waters covered by EPA's promulgated federal human health criteria for toxic pollutants in 2016 are addressed. The new and revised human health criteria also address all the toxic pollutants for which EPA promulgated federal human health criteria in 2016. All of EPA's prior decisions and documents related to these Agency actions are available on Docket ID EPA-HQ-OW-2015-0804 at www.regulations.gov.

Slide 13, Basis for Proposed Withdrawal of Federal Human Health Criteria.

As provided in 40 CFR Part 131.21(c), federally promulgated water quality standards that are more stringent than EPA approved state water quality standards remain

applicable for purposes of the Clean Water Act until EPA withdraws the federal standards. EPA's 2016 federally promulgated human health criteria are as stringent as or more stringent than the State's newly approved human health criteria. Accordingly, EPA is proposing to amend the federal regulations to withdraw those federally promulgated human health criteria by which the Agency has approved Maine's corresponding human health criteria. EPA is providing an opportunity for public comment on this proposed action.

Slide 14, Basis for Proposed Withdrawal of Federal Human Health Criteria Continued.

Consistent with the cooperative federalism structure of the Clean Water Act, once EPA approves state water quality standards addressing the same pollutants for which EPA has promulgated the federal water quality standards, it is incumbent on EPA to withdraw the federal water quality standards to enable EPA-approved state water quality standards to become the applicable water quality standards for Clean Water Act purposes. That is what the EPA is proposing to do in this proposed rulemaking.

This proposal is consistent with EPA's withdrawal of other federally promulgated water quality standards following the Agency's approval of state adopted water quality standards.

Slide 15, Proposed Withdrawal of Federal Human Health Criteria.

This action proposes to amend the federal regulations to withdraw for tribal waters in Maine federal human health criteria for 96 toxic pollutants, for waters outside of Indian lands in Maine the federal phenol human health criteria, and for the consumption of water plus organisms. All other federal water quality standards for Maine waters at 40 CFR Part 131.43 will remain in effect for Clean Water Act purposes.

Slide 16, Next Steps.

The public notice period closes October 19, 2020. Following this EPA will review and provide written responses to all public comments, make any revisions to the proposed rule if appropriate, and publish the final rule and response to comments.

Slide 17, Further Information.

To access the proposed rule and supporting documents, visit EPA's Water Quality Standards website at www.epa.gov/wqs-tech/federalwaterqualitystandardsapplicableMaine.

Written comments must be received on or before October 19, 2020.

I'll turn it back over to Ashley now.

>>Ashley Pasakarnis:

Thank you, Jennifer, for providing an overview of the proposed rule. If listeners would like to contact our speakers following today's presentation, their contact information is on this slide. I will pause here for a few moments to allow time to record this contact information.

In a moment, we will provide instructions for making an oral comment today by using the GoToWebinar platform, but first we will provide instructions for submitting written comments in one of the following ways.

You can submit a written comment through the website regulations.gov, email your written comment, mail your comment, or submit a written comment via hand delivery. The instructions for submitting a written comment through these mechanisms are explained in more detail on this slide. In addition, you can also obtain this information if you navigate to the Downloads tab in this webinar. Find the document titled Comment Submittal Instructions and download it as needed.

Remember when submitting a written comment, please make sure to reference the Docket ID number EPA-HQ-OW-2015-0804.

I will pause here for a few moments to allow time to record this information.

We will now open the hearing for interested parties to make an oral comment. Oral comments will be taken through the platform only. Raise your hand or identify you would like to make an oral comment in the Questions panel. You may have to wait in the queue. When it is your turn, the Announcer will unmute your microphone and you may state your name. Remember, EPA will not respond to comments today, however, EPA will respond to comments received at this hearing along with all comments received during the comment period in EPA's Response to Comments documents. In addition, EPA will not be answering any questions during the hearing today.

Participants will be prompted to record their names and affiliations. Please speak clearly as this audio will be used in the public record along with your comments.

If you missed the oral comments instructions, directions will be provided on multiple slides throughout the virtual public hearing.

Each commenter will be announced before providing an oral comment. Each commenter will have a maximum of three minutes to make an oral comment. A timer will appear on the screen indicating approximately how much time each caller has left. Commenters are responsible for watching their own time. At the three minute mark the

slide will read 'Time is up' and your microphone will be muted. After you have made your comments, you will be able to listen to the rest of the hearing.

If there are a number of speakers wishing to make a public comment, you may be placed in a queue to speak. Please wait patiently as others provide their oral comments. When it is your time to make an oral comment your name will be announced and your microphone will be unmuted. At this point, your three minute time will start.

If you provide one oral comment and would like to provide a second comment, you may do so after all commenters have provided their first comments. Please listen as the announcer says your name. Please restate your name and affiliation prior to making your comments.

We will now hear from our commenters. There may be a short pause before the first caller is introduced.

Operator, do we have any commenters on the line?

>>Operator:

There are no commenters currently in the queue.

>>Ashley Pasakarnis:

Thank you. We will pause here to wait for more commenters.

This is the moderator. While we are waiting, let's talk about how to submit a written comment on the rule.

As previously mentioned, if you would like to submit a written comment, there are several ways that you can do this. If you provide an oral comment, you do not have to submit the same comment in writing in order for it to be included in the official record. You can submit a written comment through [regulations.gov](https://www.regulations.gov), email your written comment, mail your comment or submit a written comment via hand delivery. The instructions for submitting a written comment through these mechanisms are explained in more detail on this slide.

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As a reminder, you can access the proposed rule and supporting documents by visiting EPA's Water Quality Standards website listed on the slide.

Please note that written comments must be received on or before October 19, 2020.

This is the virtual public hearing titled Public Hearing for Proposed Withdrawal of Certain Federal Water Quality Standards Applicable to Maine. This public hearing is sponsored by the United States Environmental Protection Agency's, or EPA's, Office of Science and Technology in EPA Region 1.

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At this time, I'd like to conclude today's public hearing. Thank you to everyone who joined us. Remember, if you would like to provide a comment, you can submit a written comment to the Docket.

That ends our hearing for today. Thank you again for joining us. Have a great day.