



Oregon

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Docket ID No. EPA-HQ-OW-2021-0791

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U.S. Environmental Protection Agency

Office of Water (4101M)

1200 Pennsylvania Avenue, N.W.

Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OW-2021-0791

The Oregon Department of Environmental Quality (DEQ) appreciates the opportunity to provide comments on the Environmental Protection Agency's (EPA) proposal to protect tribal reserved rights in water quality standards. In addition to EPA's federal tribal trust responsibilities, DEQ is committed to Government-to-Government consultation with tribes as relates to the establishment of WQS and other topics of mutual interests. We support the development of a rule to ensure that state and federal water quality standards will protect tribal rights. DEQ believes the proposed rule will benefit from several clarifications to make the rule more clear and provide a basis upon which the rule's requirements can be feasibly implemented by EPA, the states, and the tribes:

1. The rule needs to clearly define unsuppressed rights and how those will be determined.
2. The statement in the rule requiring protection of "the health of the right holders to at least the same risk level as provided to the general population of the state" seems to be inconsistent with the explanation in EPA's presentation provided to the states on 1/24/2023. DEQ recommends EPA clarifies the rule to be consistent with its presentation on 1/24/2023 as summarized below:
 - Establish acceptable risk (e.g., cancer risk level) for tribal members whose exercise of reserved rights may put them at greater risk than the general population, e.g., due to higher rates of fish consumption.
 - Specify that tribal members exercising applicable reserved rights should be exposed to no greater than a 1 in 100,000 cancer risk, which EPA's guidance recommends for the general population.
 - Specify that the appropriate cancer risk level must be paired with an appropriate fish consumption rate.

Please contact Connie Dou at (503)853- 6517 or Debra Sturdevant at 503-229-6691 if you have any questions regarding these comments.

Sincerely,

Connie Dou

Water Quality Program Manager

Cc: Jennifer Wigal, WQ Division Administrator

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Roxann Nayar, Tribal Liaison