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Public Session: Water Quality Standards Regulatory Changes

Moderator: Grace Robiou

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1:00 p.m. EDT

Operator: Good afternoon. My name is Jessica, and I'll be your conference Operator today.

At this time, I would like to welcome everyone to the water quality standards regulatory changes conference call. All lines have been placed on mute to prevent any background noise. After the speakers' remarks, there will be a question-and-answer session. If you'd like to ask a question during this time, simply press star, then the number 1 on your telephone keypad. If you'd like to withdraw your question, press the pound key. As a reminder, today's conference is being recorded.

I would now like to turn the call over to Grace Robiou.

You may begin your conference.

Grace Robiou: Good afternoon. My name is Grace Robiou, and I'm located in EPA headquarters in Washington, DC. I want to welcome you to this listening session for the general public on EPA's proposed rulemaking to revise the water quality standards regulation.

We are at an early stage in this effort, and that's why we're holding these opportunities to gather your ideas. What we hear from you today is going to help us in formulating our proposal. There will be, however, other opportunities next year for more formal comments after we publish the details of our proposal in the *Federal Register*.

As you'll learn in a few minutes, we've been taking a close look at EPA's regulation, which governs water quality standards, to see if we can improve its effectiveness in helping restore and maintain the integrity of the nation's waters. We have come up with a targeted set of changes to the regulation, and these were outlined in the *Federal Register* notice that announced these listening sessions. This is the start of the rulemaking efforts that will result in a proposal in the *Federal Register* next summer.

For the next 20 minutes, we'll be using the briefing document that was posted on the website to describe our thinking. If you have that briefing in front of you, we will (inaudible) through it slide-by-slide, and we're currently on slide number 1. If you don't have the briefing that's also OK. We will cover the important points verbally, and then you can turn to the slides on our website for future reference.

I'm now turning to slide number two. The main purpose of today is to solicit your views on the specific provisions that we're considering for this rulemaking. We will be providing a short overview of our proposal and why we think changes in the regulation might be appropriate, but we really want to spend most of the call getting your feedback.

On slide number three, we present our schedule. As you can see, we are in the early stages of the rulemaking. We haven't made any final decisions on the contents of the proposal. Those decisions will be made after this call, as well as some other ones that we are having with states and tribes. And after we publish our proposed rule in the summer of next year, there will be a formal 60-day public comment period.

Now I'm going to turn to Christina Christensen to give you more information on the proposal.

Christina Christensen: Thank you, Grace.

Slide four provides an outline of what I will be discussing today, and I'll begin with some background on what water quality standards are and why we're considering revising our national water quality standards regulations. I'll then

give some more detail about each of the six areas we are considering for revision, which are listed on this slide.

So turning to slide number five, what are water quality standards? Under the Clean Water Act, water quality standards are provisions of state, tribal, or federal law approved by EPA that describe the desired condition of a waterbody or the level of protection. Standards are the foundation for other programs of the Act, such as discharge permits that impose enforceable water quality-based controls. Standards consist of three major components: designated uses, water quality criteria, and antidegradation policies, and can include optional general policies such as variances and mixing zones.

Slide number six shows that the Clean Water Act gives states and authorized tribes the primary role to set standards. Authorized tribes are federally recognized Indian tribes that EPA found eligible to run standards programs. This is known as treatment in a manner similar to states, or TAS. As of today, 45 tribes have been approved for TAS.

The Clean Water Act requires states and tribes to review their standards every three years. If they decide new or revised standards are needed, they must adopt these amendments and submit them to EPA for review. The Clean Water Act calls on EPA to review and approve standards within 60 days of submission or disapprove within 90 days. If EPA approves the standards, they can then be used for all purposes under the Clean Water Act, such as setting permit limits or developing total maximum daily loads. The Clean Water Act also authorizes the EPA Administrator to determine that federal water quality standards are needed to replace or augment state and tribal standards and to promulgate them as binding standards.

Now let's consider the national standards regulation on slide number seven. The regulation simply adds detail to what the Clean Water Act says on designated uses of water quality criteria and antidegradation. It requires states and tribes to engage the public before revising their standards, and it specifies the roles of states, tribes, and EPA for administering standards.

We're now on slide number eight. So why is EPA considering revising this regulation? Well, the main parts of EPA's regulation have been in place since 1983. They provided a solid foundation for controlling water quality, but there are some practical reasons for initiating this rulemaking. As we've implemented this 1983 regulation, some important issues have come up again and again that the regulation does not explicitly address. This can waste time and resources, and we'd like to try and improve that situation.

Slide number nine lists some of the work we did before settling on specific areas we'd like to improve. In 2008, EPA developed a list of over 40 potential regulatory revisions that might help provide clarity and national consistency and leads to environmental improvements. In developing this list, we considered recurring policy issues as well as case law from the past 25 years. We also reviewed our 1998 advanced notice of proposed rulemaking and considered the comments that we received on it.

In addition, we've held preliminary consultations with several state water quality standards managers and consulted with EPA regional experts to get a sense of where regulatory revisions were most needed. To narrow the field of over 40 potential revisions, EPA managers also considered how well the current regulation addresses recurring issues, whether it's equipped to handle emerging issues, and whether sufficient flexibility is provided to states and tribes when needed. Based on our review, we've narrowed our focus to six specific areas, and I will walk through each of them in sequence.

OK, turning to slide number 10, you see a list of the six targeted areas where we're considering revisions. Once I'm done going through these areas, we'll be asking you for your views. You might want to make a note of any comments you have as we go along and save them for the feedback part of this conference call. And, of course, we welcome any of your views that support our ideas, but we're also interested in hearing your views on any possible unintended consequences of changing the regulation in a specific area. We also welcome any specific suggestions for changes that you do or do not wish to see in this proposal.

Now let's turn to slide number 11 on antidegradation. The current regulations set the national policy of protecting existing uses and preventing the lowering of high water quality and what's necessary to accommodate important economic or social development. The regulation also specifies that states and authorized tribes must adopt specific antidegradation policies. Also, some tribes have adopted policies in accordance with the regulation, and we do not see a need to change this. We are concerned, however, about implementation of these policies.

Although many states have done a good job of implementation, some states have not even identified antidegradation implementation methods despite the regulation's requirement to do so. We recognize that the current regulation does not specify what the implementation methods must include, but only requires them to be consistent with the antidegradation policy. So as possible changes, EPA is considering modifying the regulation to specify that antidegradation implementation methods must meet specific minimum requirements. To do this, EPA's considering adding a paragraph that would specify minimum implementation elements to be included in a state or tribal standard. As an example, a minimum element could be a state or tribe's process for identifying high quality waters.

EPA is also considering requiring that antidegradation implementation methods be adopted into state and tribal water quality standards rather than simply being identified. The methods would thus be subject to EPA for review and approval. Our current thinking is that these changes will bring more consistent application, clarity, and transparency to the protection of high quality waters. Further, EPA's oversight role would be more clearly defined.

Our next area on slide 12 concerns the discretionary determination the EPA Administrator can make that a revised or new standard is necessary to meet the requirements of the Act. This provision is in Section 301(c)(4)(b) of the Act. If such a determination is made, EPA must promptly propose a federal standard and promulgate a standard within 90 days of proposal.

Over the years, there have been recurring instances of confusion or misunderstanding about what actually constitutes an EPA Administrator's

determination. So, for example, in some cases, EPA staff have sent routine letters suggesting priorities for states to consider when revising their water quality standards. Some courts have construed these types of communications to states as official EPA Administrator determination that oblige EPA to promulgate water quality standards.

So EPA is considering clarifying in the water quality standards regulation that an [EPA] Administrator's determination must be signed by the Administrator or someone he or she specifically authorizes, and must include a statement that the document constitutes a determination under Section 301(c)(4)(b) of the Clean Water Act. EPA's current thinking is that this type of change could ensure that it is clear when EPA has or has not made one of these determinations, and this kind of change would also allow EPA to continue to provide routine written suggestions to states and tribes without triggering the need for immediate federal action.

On slide 13, we turn to the topic of designated uses. Section 101(a)(2) of the Act establishes a national goal that wherever attainable water quality must provide for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water. And if a state or tribe wants to remove one of these goal uses, the regulation requires it demonstrate that attaining the designated use is not feasible for one of six specific factors. They must also submit a use attainability analysis, a structured scientific assessment of factors affecting attainment of designated uses.

The regulation does not, however, specify which uses, if any, must be adopted to replace the use that is being removed. Furthermore, EPA's longstanding interpretation of the Act and regulation is that Section 101(a)(2) uses are attainable unless a state or tribe demonstrates otherwise. This interpretation is central to our water quality standards' program, however, it's not articulated explicitly in the regulation. So EPA's considering clarifying that designated uses reflecting the goals of the Clean Water Act are attainable unless otherwise demonstrated.

States and authorized tribes must designate such uses unless they've conducted a use attainability analysis to support a lesser designated use and

EPA's approved that action. EPA's also considering clarifying that the highest attainable uses closest to the 101(a)(2) goal must be adopted if such a goal itself is non-attainable.

OK, on slide 14, we'll discuss variances or temporary changes to water quality standards. Our current regulation allows states and authorized tribes to adopt variances as general policies for applying and implementing their water quality standards. This is specified in Section 131.13 of the regulation. We would retain the state and tribal discretions, but the current regulation does not provide any specificity on how to use variances.

As a result, there is a lack of clarity on the proper use of variances. Furthermore, variances may often be repeatedly renewed without achieving environmental improvements in a waterbody. So EPA's considering establishing explicit provisions to guide the use of variances. So, for example, EPA's considering a provision that requires all variances to have an expiration date. Such a change could provide regulatory clarity on what is an acceptable variance versus what is not.

Slide number 15 addresses the reviews required every three years by the Clean Water Act or triennial reviews. The current regulation does not call for involving the public when states and tribes determine what they will focus on in their reviews. This can have the effect of narrowing public input to those portions of standards that the state or tribe chooses to review. A second concern is that despite the availability of new scientific information, some states or tribes may not consider it in a timely fashion, and thus may not always evaluate whether their current criteria continue to protect their designated uses.

EPA is considering revising its requirements to specify that states and authorized tribes must solicit and consider public comments in determining the scope of each triennial review. EPA is also considering establishing a new triennial requirement that states and authorized tribes must evaluate whether their current water quality criteria continue to be protective of designated uses taking into consideration any new information that has become available since the state or tribal criteria were adopted or last revised.

This will clarify that states and tribes will need to consider EPA's most recent national recommended water quality criteria published under Section 304(a). EPA's current thinking is that these changes will increase transparency by ensuring that stakeholders have input on a scope of triennial reviews. They could also strengthen oversight of whether state and tribal water quality criteria are being kept up to date and whether they continue to protect designated uses.

Slide number 16 refers to three court decisions handed down since the regulation was last revised. The complete legal citations for these cases are in EPA's *Federal Register* notice. EPA is considering codifying the results of these decisions in the regulation.

First, EPA's considering revising the definition of water quality standards that currently appears in the regulation to reflect the results of a 2004 court case concerning Florida's Impaired Waters Rule. In this case, some binding provisions of state law have the effect of changing water quality standards without EPA approval. The court decision and EPA's response to it more clearly define which kinds of provisions actually constitute water quality standards requiring EPA review.

Second, EPA's considering specifying that provisions which authorize compliance schedules are considered water quality standards, and therefore must be submitted to EPA for review and approval. Compliance schedules govern the timing of water-quality-based affluent limits in NPDES permits.

This change would codify the results of a 1990 environmental appeals board decision involving Star-Kist Caribe Incorporated. Note that while authorizing provisions would be considered water quality standards, compliance schedules themselves are not. They are permitting provisions.

Third, EPA's considering clarifying that states and authorized tribes must submit to EPA records of public participation that has occurred in reviewing and adopting standards. These records would include public comments and the state or tribe's responses to the comments. This change would codify the results in a 1996 decision involving standards affecting the City of

Albuquerque. Codifying these three positions and regulation will really help eliminate confusion could minimize future litigation on these topics.

This concludes our presentation of the proposal EPA is developing. Slide number 17 gives you several EPA websites for more information. They provide more information about these listening sessions and also about water quality standards in general. They also show you where we will be posting the transcripts and recordings of these sessions and how you can provide your views in writing if you want to add to the views you express here today.

Please note again that these are just listening sessions at a very early stage in the rulemaking process. There will still be a formal 60-day public comment period after the proposed rule is published in the summer of 2011.

Thank you all for your attention, and I'll now turn the presentation back to Grace Robiou.

Grace Robiou: Thank you.

We're going to now turn to the feedback part of the session. First, we're going to answer any clarifying questions that you may have about anything that you heard so far. We're going to dedicate between 15 and 20 minutes to answering those kinds of questions, and then we're going to turn to answering any or taking comments or views on the specific regulatory revisions that we're considering.

We're going to be relying on the Operator to help us through this process, so I'm now going to turn it to the Operator to start that feedback session.

Operator: At this time, I'd like to remind everyone, in order to ask a question, press star, then the number 1 on your telephone keypad. We'll pause for just a moment to compile the Q&A roster.

Grace Robiou: Operator; are you there?

Operator: Yes, your first question comes from Arthur Wolff, Friends of Shelby.

Arthur Wolff: Hello? Hello?

Grace Robiou: Yes, yes, you're on.

Arthur Wolff: I have a general question I think would be instructive to everybody listening or at least to me. When we talk about the Clean Water Act, does that also include and incorporate the regulations of the Safe Drinking Water Act? Are both of those involved in this discussion?

Christina Christensen: No. Today, we are specifically talking about the Clean Water Act and particularly Section 131, which is the water quality standards regulation.

Arthur Wolff: So there's no study being done on the Safe Drinking Water Act, and your study has nothing to do with that. Is that correct?

Christina Christensen: Yes, that's correct.

Arthur Wolff: All right. What if I have a situation of – at the same time there's a problem that is affecting both of these, the Safe Drinking Water Act and the Clean Water Act, as I understand it. You know who do I address that problem to? I'm sure they're both EPA, but whom specifically should I call on?

We have a problem where there's some runoff that is contaminating a river and is contaminating our aqua that provides a wonderful drinking water. The same project is doing both. How would you recommend that I address that, or to whom would you ...

Grace Robiou: Yes, I suggest, sir, that you e-mail us at the shpdcomment@epa.gov address that appears on the last slide of these presentation and we'll be happy to refer you to somebody in the drinking water program who may be able to help you.

Arthur Wolff: Oh, that'll be in the last part of this program?

Grace Robiou: Yes, on the very last slide there is an e-mail address where you may send comments. You can send us a question there, and we will refer it on or get back to you.

Arthur Wolff: OK, I haven't been able to pull that up. Could you please give me that e-mail address now quickly?

Grace Robiou: Sure. I'll do it quickly and then we'll move on. It's shpd – S-H-P-D ...

Arthur Wolff: Please say it again.

Grace Robiou: S as in Sam, H as in Harriett, P as in...

Arthur Wolff: S as in Sam ...

Grace Robiou: ...shpdcomment – one word...

Arthur Wolff: SAPD?

Grace Robiou: SH. . .

Arthur Wolff: SH like in Harry?

Grace Robiou: Yes.

Arthur Wolff: Say S like in Sam, H like in Harry...

Grace Robiou: P as in Paul...

Arthur Wolff: P as in Paul

Grace Robiou: ...and D as in David...

Arthur Wolff: D as in David.

Grace Robiou: ...comment – one word...

Arthur Wolff: ...promise?

Grace Robiou: Comments as in we're...

Arthur Wolff: Oh, comment. Excuse me.

Grace Robiou: That's OK.

Arthur Wolff: All right.

Grace Robiou: And then @...

Arthur Wolff: @...

Grace Robiou: ...EPA...

Arthur Wolff: ...EPA ...

Grace Robiou:gov.

Arthur Wolff:gov. Is that the federal – that'd be the federal department . .

Grace Robiou: That's ...

Arthur Wolff: ...the EPA (inaudible) ...

Grace Robiou: Yes, that's the e-mail address. We're going to receive comments on this particular rulemaking, and if you can send us a question there to referring to this conversation we'll be able to help you.

Arthur Wolff: Thank you very much.

Grace Robiou: No problem. Thank you.

Operator: Your next question comes from Michael Bloom.

Michael Bloom: You refer to a number of states being consulted early on, I was wondering if a list of those contacts or states that were involved in those discussions could be made available on the website or at some point. And then also on slide 16, I was wondering if the specific court decisions, you know the dates or the dockets or some you know reference number could be made available so that someone who wanted to look back at that particular court decision could do so.

Christina Christensen: Yes, thank you. A couple of great clarifying questions.

With regards to the list of participants from this session as well as from previous sessions, those will be made available on our website. And if you have that presentation in front of you, we identify the websites on slide 17.

Michael Bloom: OK

Christina Christensen: (Inaudible)

Michael Bloom: ... but in terms of the state – particularly the state water quality managers that were consulted that – even before this event (inaudible) (constructive) I think to see a list of those folks too.

Grace Robiou: Yes, I think that lists from the session as well as the participants who dialed in will be available, including the – kind of the organizations that they represent.

Michael Bloom: OK.

Christina Christensen: And then with regards to your second question on the court decision, I can also direct you to the *Federal Register* notice that we put out announcing these public listening sessions which, I believe, you can also find that on our website. That *Federal Register* notice identifies the specific legal citation for those cases.

Michael Bloom: OK, thank you.

Christina Christensen: You're welcome.

Operator: Your next question comes from Jon Ball.

Jon Ball: (Inaudible)

Female: My question is about the uses and the UAA. I would like to know if there are clear sort of instructions as when some of the uses are not attainable or they're conflicting uses for waterbody, and therefore, the agencies can do a UAA for those uses to be reconsidered. Are there clear instructions for that, because we haven't seen UAAs done for a long time and there clearly are now some – I can give you an example. For example, in Los Angeles, we have man-made lakes which are filled with potable water. There's no input into the storm

drain or output. They're filled with potable water and the statewide policy is to use recycled water, and we're seeing now nutrient standards, nitrogen, and phosphorus standards that we would see for a normal lake – you know a soft bottom lake applied to these man-made lake, which gets filled up with potable water. And those nitrogen standards are even lower than potable water. So it clearly asks for a revision of the use or somehow annoying UAA, and I wanted to know if there are some efforts in that area to clarify how UAA – in what case it would be looked at and it would be approved.

Christina Christensen: OK, it sounds like you are looking maybe for some information and examples of UAAs that have been done in the past. On slide 17 of our presentation we note that for further information about water quality standards under the Clean Water Act, we give you two websites to go visit. And on I believe the first website, you can actually link to some case studies we've developed; you know situations where UAA has been conducted for various reasons, and I think you might find some really helpful information on that site.

Female: (Inaudible) Thank you.

Grace Robiou: Next comment, please.

Operator: Your next question comes from Sharron Green.

Sharron Green: Yes, my question also has to do with the page that has to do with uses, and I wanted to ask a clarifying question about the bullet point of possible changes, number two, where you specified if 101(a)(2) is deemed unattainable, the highest attainable use closest to the goal must be adopted, that language.

My question, I guess, is whether your current thinking is that there would also be an elaboration or definition of what the highest attainable use language means because it's not always clear when you look at the variety of designated uses if you did remove you know one of the goal uses what the "highest attainable use" would be.

Grace Robiou: Yes, thank you. That's a very good comment, and in indeed, it seems to have reoccurred between this call today and the previous sessions that we've had,

the need for us to clarify what we mean by highest attainable use. And we will take note again of that and make sure that that's forthcoming.

Sharron Green: Thank you.

Operator: Your next question comes from Sally Shaver.

Sally Shaver: When you were talking about antidegradation policy, you made the statement that it applied or that states needed to identify high quality waters. Does antidegradation only apply to high quality waters?

Grace Robiou: No. Well, the antidegradation regulatory requirements currently describe the protection of existing uses as well as high quality waters. I think it's fair to say, though, that the targeted revisions that we are proposing for you to consider here and give a comment on are really more specific to enhancing the protection of high quality waters, otherwise known as tier two waters, in the antidegradation language.

Sally Shaver: OK, thank you.

Grace Robiou: It's a good question. Thank you.

Operator: Your next question comes from Dave Peeler.

Dave Peeler: Hi. This is Dave Peeler out in Olympia, Washington, and the question I first want to ask has to do with your work on variances. I'm wondering if that will also include any language about mixing zones for NPDES permit discharges. As I understand it, the current regulation does not address these mixing zones.

Christina Christensen: Yes, that is correct. Current regulation speaks very briefly to mixing zones. What we're considering doing for variances, I don't think we will be addressing mixing zones as part of that. I believe on our website we do have some information on mixing zones. We have a compendium of information on mixing zones that you might find useful, but not in the changes we're considering making to this regulation.

Dave Peeler: OK, and one other comment or question I had was around the uses of protection uses and updating where it talked about the states actually having to

talk about whether or not their current uses and criteria were protective. And some states, I believe, are still covered including Washington state under the National Toxics Rule adopted in 1991 or 1992 – a long time ago – and you know they've never had to demonstrate that that particular rule is still protective of the uses in those states, including my state. And it seems like some kind of a link in the rule that you're addressing here that's at NTR specifically I think would be something that would be useful. I wondered if you're considering how to address the states that are still covered by the NTR.

Christina Christensen: I think that's a great comment and thank you. We're going to make a note of that. I want to let everyone know that we have a room full of people here, and we're all taking notes on everything you're saying. So rest assured, we have your comments, and we're also recording as well.

Operator: Your next question comes from Ben Otto.

Ben Otto: Hello. This is Ben Otto with the Idaho Conservation League. I just realized I think my question was answered. It was about the uses and whether the highest attainable – whether there would be some guidance about what highest attainable use means, that there's a sort of ranking system for the various uses. It sounds like you said you will offer that guidance at some point.

Manjali: This is Manjali talking. I did just want to clarify one thing is that the concept of highest attainable use is not intended to indicate that there would be a ranking system amongst the different uses. It's not about adopting aquatic life over recreation or another use over another.

What we're talking about with highest attainable use is the assumption that there is a spectrum of what is attainable for an aquatic life use, anywhere ranging from really, really bad aquatic life to a full 101(a)(2) Clean Water Act citation for aquatic life. And high attainable use is really referring to where along that spectrum state standards are established at – the use that they're established at.

Ben Otto: Very good. That is an interesting approach. And so I guess my question was just making sure that that is promulgated in some sort of...

Manjali: Yes and ...

Ben Otto: ...(inaudible) ...

Manjali: As Grace had said, we would clearly need to define it and expand on our thinking in the preamble as well.

Ben Otto: Great, very good. Thank you.

Operator: Your next question comes from Brooks Smith.

Brooks Smith: I have a question – a clarification. On page 16, you referenced potentially revising the definition of water quality standards in response to litigation involving the Florida Impaired Waters Rule.

That litigation was complicated – there's a long procedural history and a lengthy docket, and I am curious to confirm – as I understand it, in 2004 the 11th Circuit remanded an earlier district court decision back to the district court, who then asked EPA for a determination as to what might constitute or not constitute a water quality revision. In 2005 – on July 6th, 2005, EPA submitted that determination specifying what the agency believed to be interpretive changes that were tantamount to water quality standard changes subject to their review and approval, and I would like to know whether that is what you mean when you talk about the 2004 case decision and EPA's response.

Christina Christensen: Yes, yes, that is what we're referring to with revising the definition of the water quality standards.

Brooks Smith: Thank you.

Operator: Your next question comes from Gerald Blaha.

(Mark Tomasak): Yes, (inaudible), this is (Mark Tomasak) on Jerry's line.

The question is on slide 16 with compliance schedules. In the Florida water quality standards for nutrients which EPA put together, there was a discussion about restoration standards, and I'm wondering if restoration standards are off

the table and compliance schedules is envisioned and the revision are to take their place.

Grace Robiou: OK, Manjali.

Manjali: This is Manjali. Restoration standards and compliance schedules were actually to some extent independent thoughts, and what we're talking about here on slide 16 is really about the compliance schedule authorizing provisions, which in the Florida rule we were clear that Florida itself has their own compliance schedule authorizing provision.

The concept of restoration water quality standards are very similar to the concepts of variances. And so in terms of what you're seeing here in the link, many of the principles and docs would probably fall under whatever we decide to do through any changes to the variances in the regulations.

(Mark Tomasak): And do you expect that it will talk about the length of time that compliance schedules can be listed for?

Manjali: No. Again, this is where compliance schedules and variances are different. We would talk about lengths of time for variances, but as Christina had mentioned, with compliance schedules themselves, those are actual permitting provisions. So all our regulation is only going to address the relevant portion of compliance schedules that has to do with water quality standards, which is nearly the authorizing provision. Any restrictions or regulations or requirements related to the permit compliance schedules themselves are really contained in the permitting program regulations, which is not subject to change in our action here.

(Mark Tomasak): Thank you.

Operator: Your next question comes from Annette Feliberty .

Annette Feliberty : My question also regards the compliance and what EPA is (inaudible) to requiring the state to include in their water quality standard regulation, the provisions to establish (to more) regarding the process uses by the state in

approving the compliance (inaudible) or what EPA intention is to require (there some) (inaudible) of this compliance schedule to EPA.

Manjali: This is Manjali again. What we are contemplating saying is that where a state wishes to authorize itself to be able to grant compliance schedules in its permits somewhere in a binding regulation such as the water quality standards or other implementing regulations, it has to provide some sort of an authorizing provision. And while that authorizing provision doesn't necessarily have to be in their water quality standards program, it would need to have EPA approval as an effective water quality standard.

So the way our programs work is that states and territories have water quality standards, but regulations outside of the water quality standards can also be approved by us as water quality standards. The states will still have the discretion and (inaudible) discretion of where they put the authorizing provision. It just means that EPA needs to approve it under the Clean Water Act 303(c) program.

Operator: Your next question comes from Ann Coan.

Ann Coan: Hello. This is Ann Coan. Some of this has already been talked about and I guess I need a little more clarification.

The water quality high attainable use information, if I understood you correctly, you say that you will not be publishing a hierarchy that recreation is higher than fish propagation. My question is this; what if a state has additional designated uses, how would that fit into this?

Grace Robiou: You mean as if the state had maybe a subcategory of use?

Ann Coan: Yes, for example, nutrient sensitive waters, potential water supply.

Manjali: This is Manjali. The concept of high attainable use is really referring to the spectrum within one set of uses, whether it's related to aquatic life or recreation. So it wouldn't necessarily talk about the differences between (inaudible) uses unless there are multiple designated uses you know for aquatic life let's say. Our regulations say that states need to protect for the

most sensitive use in the – you know in the (inaudible) that are adopted in the standards.

Ann Coan: So if I have a state that has aquatic use standard for shellfish, endangered species versus aquatic use standard for fish propagation, you're saying that would be a hierarchy.

Manjali: Shellfish is a little harder because some states have shellfish sort of protected separately from the regular aquatic life, but I think in theory – right, in theory if it's all related to aquatic life, yes, there would be probably a hierarchy. But the idea also declares that we will not be establishing any sort of list of hierarchical uses in the rule of the preamble. We are only going to be saying that the states must evaluate what is a high attainable use that is attainable.

Ann Coan: When you review water quality standards submitted by the states will you expect them to designate the hierarchy?

Manjali: Not the hierarchy, but to reflect that they have evaluated what is the high attainable use.

Ann Coan: OK, thank you.

Operator: Your next question comes from Art O'Brien.

Art O'Brien: Yes, my question relates to slide 15 on the triennial review. I was wondering if you could clarify if the current regulation or the possible changes require states or tribes to actually implement the recommendations that come out of the triennial review.

Grace Robiou: We actually got a similar comment on Tuesday during the public session, meaning that we got the comment about whether EPA is going to be evaluating the states' consideration of public comments. I think that we are taking that as a comment, and we'll see where we land on it. But initially that is not the intent of this provision here.

Art O'Brien: So in California oftentimes we do the triennial reviews and come up with a long list of recommendations, but there's no requirement to go through and implement those list of recommendations.

Christina Christensen: And these are recommendations from the public on what they think your triennial review should cover?

Art O'Brien: No, they're recommendations from the state regulatory folks – the regional board of – likely the regional board to actually – here's what they recommend, but we often don't see an implementation of those recommendations.

Grace Robiou: Thank you.

Operator: Your next question comes from Jeff Salt.

Jeff Salt: Jeff Salt in St. Lake City. I have several questions, one regarding beneficial designated uses. Will there be any opportunity to address the threshold time period in the law for establishing that beneficial use?

Here in Utah, we have a situation where waterways were used for certain recreational uses, but then those uses were precluded through the '50s and '60s by industrial discharges in sewer plants. And now we're being told we can't establish the regulatory authority to bring back those beneficial uses that were precluded before the 1970s cutoff time.

Another question would be whether your recommended changes would provide an opportunity to require states to have only narrative standards to force them or to encourage them to develop criteria so that those narrative standards could then evolve and have water quality standards – numeric standards applied to them.

Another question would be, will your revisions provide an opportunity to refine and update and clarify the list of designated beneficial used. For example, recreational boating is typically classified as to be non-contact or secondary contact activity, when in fact much of the non-motorized boating that's done in this country is primary contact – kayaking. And so can we look to this opportunity to refine those definitions?

And lastly, is there an opportunity to allow in the triennial review adoption of water quality standards or modifications of water quality standards that are not tied to a problem identified in the state's 303(d) list so we can go outside of the current 303(d) list and make recommendations and not be precluded from doing that during that triennial cycle?

Grace Robiou: Those are pretty loaded questions.

Christina, can you start with the second one maybe?

Christina Christensen: Well, I think what I was going to suggest is in the interest of time we were hoping to move ahead to our discussion where we ask people for their comments and views. And since those were very in-depth questions...

Female: (Inaudible) states.

Christina Christensen: Yes, very specific to some situations in your state. I think what we'll suggest is you could send those questions to us in an e-mail to the SHPD comments e-mail address that Grace provided and that's identified on slide 17.

Jeff Salt: Sure.

Christina Christensen: If you could send those questions to us, I think it'll be more efficient if we get back to you via e-mail.

Jeff Salt: OK, great. Thanks.

Christina Christensen: Thank you.

Operator: Your next question comes from Lisa Zemba.

(Kevin Stetter): This is actually Kevin Stetter on Lisa's line, but I had a question regarding variances and the question or the concern about how to use those variances and whether the focus would be on trying to look at who would be or what situations would be applicable to allow a variance, or if a variance is granted there'd be certain requirements on the permitting to follow through with. Kind of what the focus

would (inaudible).

Manjali: This is Manjali speaking – I think we are looking at trying to figure out regulatory requirements on both of them.

Christina Christensen: And we are open to any suggestions that you or anyone else on our call might have on specific things you'd like us to consider when identifying regulatory expectations (inaudible).

(Kevin Stetter): OK, I guess the concern is that there is some flexibility for variances to apply to multiple entities, let's say. You know you can't be too restrictive of what's required, but at the same time, this starts to get pretty close to basically compliance schedules. So it's how the two are different.

Christina Christensen: OK.

Grace Robiou: I want to use this opportunity to end the period of taking clarifying questions and move to taking your comments and views on specific reg revisions.

Operator: At this time, I would like to remind everyone, in order to state a comment, press star, then the number 1 on your telephone keypad.

Your first comment comes from Ben Otto.

Ben Otto: Hi. It's Ben Otto again with Idaho Conservation League.

First of all, we think that your move – the proposals for antidegradation are timely and very appropriate. We definitely appreciate the EPA's work on this. We think that this is a very positive step forward in implementing the Clean Water Act. So the proposal so far looks very good. We are highly supportive. We think they're critical to effectively enforcing the Act and urge you to move rapidly forward on that front.

And also the same with triennial reviews. Essentially (inaudible) we have the same position on that. But antidegradation looks like a patchwork across the country, and I think it's good for EPA. I think it's good for everybody that the EPA's going to put some certainty and clarity and some minimum standards

on that requirement. So, again, thanks, and you can be a strong effort in that regard.

And that's the end of my comments. Thank you.

Christina Christensen: Great. Thank you very much.

Operator: Your next comment comes from Sally Shaver.

Sally Shaver: Yes, thank you.

I'm not sure whether this is a question or a comment, maybe a little bit of both. But on the uses and attainability of those uses, I would be concerned about how swimmable is treated, and I don't know how that is now, but I would be concerned if states had to demonstrate that swimmable was not an appropriate use where depths make it impossible. You understand what I'm saying?

Grace Robiou: Yes, we do know.

Sally Shaver: And I don't know how that's currently dealt with.

Grace Robiou: So is your comment that you would like to see us address that as part of this rule or clarify that or ...

Sally Shaver: I would hate for us to require states to do a lot of demonstration and paperwork to show that swimmable is not a designated use when you know it's just not viable because of the water depths and stuff. I mean, that just seems like a waste of effort and time, and I just don't think it's worthy of a lot – I mean, this should be clear (inaudible), but I don't think a lot of paperwork should have to be done by the state in terms of demonstrating that that's not an appropriate use even though I understand that that's a goal of the Clean Water Act that's been in there for a long time. But if you move to this demonstration type approach, it sounded like to me there might be a lot more paperwork that could be unnecessary in the case of swimmable for some waters.

Christina Christensen: Thank you. That was a good comment.

Sally Shaver: Thank you.

Operator: Your next comment comes from David Peeler.

David Peeler: Hi. This is Dave Peeler again with People for Puget Sound in Olympia, Washington, and I wanted to echo the first commenter that I think overall this is a really, really positive, constructive proposal and the various courses you have here on uses, antidegradation, variances, et cetera, I think really make a lot of sense overall. Of course, as we all know, it will be difficult to get all the details just right so that it actually accomplishes what you want to do without doing things you don't want to do. So we'll look forward to those.

I did want to come back to the National Toxics Rule for a moment. I think that where you have the issue of uses not being protective and the administrative's determination in another section about things that the state needs to do to correct water quality standards. I think that would be an excellent place to start to address states that are still covered by the National Toxics Rule. I think that's extremely important that that rule be basically taken off the books by having states adopt their own criteria.

The other issue that I was thinking about here, and I think this could be tricky, is that I do believe that having more specificity about the process of the triennial review, as you indicate on slide 15, is critical. But one thing that isn't included there, at least I didn't see it, is what happens at the end of the state's triennial review process. You're going to clarify that they must consider public input and they must demonstrate that they got that input. But as with one of the previous commenter's I think where is it that the state actually makes a determination about what it then is going to do with that information and why or why not it's going to proceed you know with certain changes or additions to its standards.

And states for the most part I think – well, I shouldn't – I won't generalize here – I think it's a difficult step for states, and I know that they don't want to have yet one more decision point that could be appealable, so I don't – I don't think I really want to push it that far. But I do think there needs to be a very

straightforward sort of determination made by the state that (inaudible) at the EPA.

The other thing I would say here is that my experience tells me that states are really not on a 3-year schedule here and probably haven't been for a number of years. And so there doesn't seem to be anything sort of built in currently into the rule that sort of pushes states to really want to keep up with a more current type of scheduling for the triennial reviews.

Female: Thank you.

Female: Thank you.

Operator: Your next comment comes from Shannon Filarecki.

Shannon Filarecki: Yes, my question is, here in Michigan we seem to have some confusion as to how some of the EPA regulations get enforced or carried out through the local municipalities. We have cities, villages, and townships, and townships are oftentimes being asked to (right) things that they have no control or authority over.

They don't maintain roads, they don't have storm sewer systems. Those are all typically handled through a county (drink) commission or a road commission. I'd like to see some clarification in the rules and regulations as to how to address those communities that don't have authority over the waters and what can actually be expected from them.

Christina Christensen: Thank you.

Operator: Your next comment comes from Katherine Baer.

Katherine Baer: Yes, hi. This is Katherine Baer from American Rivers and also we'd like to echo the other comments that we think this is a positive step on many of the components that EPA is proposing today.

And (inaudible) there's a wide range of issues that have been discussed, I wanted to focus my comment today on tier three policy under antidegradation, and we feel that tier three waters represent a key part of the Clean Waters Act

water quality standards and one that should really be better utilized to protect some of our highest quality waters. I think the federal policy in this area remains too vague and really needs to be improved to provide a better impetus for states to designate and protect tier three waters.

As you know, in many cases the (inaudible) designations are either not used or fully defined and underutilized. This really represents a missed opportunity to protect some of our high quality and healthy waters. And it was just interesting to note that in the EPA's recently released coming together for clean water strategy, the protection of high quality waters is actually listed as a priority/ So this is a great opportunity to bring those things together.

In an analysis done for American Rivers, we found that across the country only 27 states even have waters designated as tier three, and in some of those 27 states only – some of those states only have one or two waters designated (showing) really we're not doing a great job of using tier three to fully protect our outstanding and healthy waters.

So we recommend that we look at some of the best examples around the country as a way to possibly inform federal regulations in how to define and provide implementation guidance and requirements for states. So some states around the country – the ones who had a well-written policy that really expanded on the minimum guidance provided in a federal policy, these policies often include some of the following; some states automatically designate waters within federal and state protected land such as federal, wild and scenic rivers that don't necessarily get clean water protections upon designation, many states also define degradation as one of the tier two policy, you know defines degradation as more than just a expanded point source of pollution but recognizing that flow alteration and non-point source pollution are often sources of degradation.

In accordance with the federal definition, some states also designate ecologically significant waters, such as waters that provide habitat for federally listed, endangered-threatened species at tier three waters, and that's something that really needs more emphasis to reach the Clean Water Act's goals of biological integrity. We really hope that under this rulemaking that

EPA should provide a more clear and (inaudible) policy to make more robust use of tier three protection, including some of those things that some of the strong states are doing.

This would also include an accessible public nomination process for designated waters that would include a mandatory response time because in some states we know that people have petitioned to have tier three waters, but those petitions in fact (inaudible) for several years at this point. So we support EPA's proposal on to really require antidegradation implementation adopted into state and tribal water quality standards, and we'd like to continue working with you to make this happen.

And finally in terms of triennial review process, we also support EPA's proposal on to make this a mechanism where the public is meaningfully involved and that people should be able to petition for a change in the standards and ensure that states actually conduct these reviews on the three-year schedule. Thank you.

Grace Robiou: Great. Thank you. Those are very helpful comments.

Operator: Again, if you'd like to make a comment, press star, then the number 1 on your telephone keypad.

Your next comment comes from Mary Ware.

Mary Ware: Hello. This is Mary Ware from Memphis, Tennessee, and I wanted to know what provisions under degradation would cover coal ash storage, which is always close to rivers and you know what happened in East Tennessee. But I don't know if any of this is covered now.

Christina Christensen: That is a very interesting question and we're all kind of looking at each other.

Grace Robiou: Could you restate the question.

Christina Christensen: Yes, maybe you could tell us a little bit more briefly about coal ash storage. I don't know if we're that familiar with ...

Mary Ware: Coal power plants have to store the coal ash that is left over and they frequently do it in these large reservoirs that's right next to the rivers that they use for cooling. And we had a terrible disaster in East Tennessee, which ruined hundreds of miles of rivers there. But all of our coal power plants have these coal ash – some type of storage facility that can potentially pollute all of our waters like here in Memphis on the Mississippi River going all the way down. What provisions do you have to safeguard these from polluting our water?

Grace Robiou: Our current regulation does provide for states to adopt water quality criteria to protect designated uses and...

Mary Ware: I don't think those are used to ...

Grace Robiou: Yes.

Mary Ware: ...regulate these coal ash storage. I don't think anything regulates this beyond what just the power companies want to do.

Grace Robiou: Yes, I guess we're a little puzzled because I'm not sure that we are prepared to answer to your question or help you in any way. If you are able to provide us with more information via e-mail, we...

Mary Ware: I (inaudible) ...

Grace Robiou: ...will direct you to somebody who can help you more. We're not seeing a direct link between the problem that you're highlighting for us and our ability to act on it as part of this action that's the subject of this call.

Mary Ware: OK, can I ask one other (impossible)...

Grace Robiou: Sure.

Mary Ware: .. question? Have you considered doing any regional standards for areas that have multi-state problems as in the Mississippi River dead zone and the Chesapeake Bay dead zones? There's multiple states that are involved with this that cause it.

Grace Robiou: And when you say it's the coal ash problem?

Mary Ware: No, no, no. I'm saying the dead zone in ...

Grace Robiou: Right.

Mary Ware: ...the lower Mississippi River where there's no fish at all. There's also a dead zone in the Chesapeake Bay.

Grace Robiou: Yes, I think

Mary Ware: (Inaudible) by pollution from multiple states upriver.

Grace Robiou: Yes, I think that you're asking very relevant environmental questions and (inaudible) ...

Mary Ware: It takes more than one state to solve it is what I'm saying, so there needs to be yes multiple states working on consistent standards for the whole region.

Grace Robiou: Right, and in fact some other caller previously mentioned the draft strategy for clean water that was put out for public comment last week. In that document, the EPA proposes to dedicate a lot of resources to the Chesapeake Bay and use that as a model for restoration of other waterbodies across the nation. And so I think there's numerous activities that EPA is undertaking in this program and other programs with a goal of restoring these waters and dealing with a high (inaudible) zone in the Gulf of Mexico.

We can provide you with information about where to go with your questions. (Inaudible) our action – this specific rulemaking here would not be dealing with any region-specific, state-specific issue. This is more looking at changing the fundamental water quality standards regulation to try to allow states to use the regulations to drive towards maintenance and restoration efforts with more power and more authority.

Mary Ware: Right. Well, my only comment on that as long as each state sets their own standards and implementation plans then it doesn't come together to have a regional action that's required, or at least it hasn't happened yet.

Grace Robiou: OK, thank you.

Operator: Your next comment comes from Jessica Baca.

Jessica Baca: Hi. I just wanted to comment. Is this – your NPDES permits will be related or will you take into consideration the (inaudible) river that these NPDES permits are the point source where they're emptying into rivers – the antidegradation laws will take that into consideration when issuing permits?

Grace Robiou: Well, I believe currently antidegradation needs to be considered in the issuance and renewal rule of NPDES permits. Our proposed rulemaking here regarding water quality standards wouldn't change that in any way. It's more looking at the contents of the implementation methods and allowing EPA to have an opportunity to review those and approve them as part of water quality standards. So I'm not sure that I'm answering your question, but we're not looking at changing anything in the permit regulations dealing with antidegradation.

Female: OK, I guess I just wanted to make sure that you know we were not going to continue to pollute already polluted streams, if there was going to be included in the antidegradation section, or to further pollute an already polluted – or how that was going to be addressed actually.

Grace Robiou: We got your comment. There are other efforts in the permitting arena that I think are more relevant to your comment and we'll pass your comments along to those people.

Operator: Your next comment comes from Jennifer Hecker.

Jennifer Hecker: Hi. This is Jennifer Hecker from the Conservancy of Southwest Florida, and I just had a couple of questions/comments and follow-up to the ones we offered on Tuesday.

One has to do with variances, and I wondered what EPA was doing to address what we're observing here in Florida with more widespread practice of not listing impaired waterbodies on the 303(d) list based on "natural conditions" that they're not exceeding – that they're exceeding state water quality

standards based on "natural pollution". And EPA guidance is very clear that even if there is you know a natural source, as long as there are human identified sources or plausible sources that it should still be listed.

But our state is not doing that, so I wondered if EPA could, number 1, put some defined guidance as part of this rulemaking that addresses that in any way, perhaps under the variances section because our state is not going through any formal variance process when it does this. And so that was my first question. And the second one has to do with uses, and it was in follow up to a comment that was earlier about swimmable, and I would just encourage EPA to consider that swimmable should not be eliminated as a use based on physical characteristics of the waterbody alone, such as depths, that we're really talking about having a water quality condition that's safe for primary contact.

And so you know rather than a literal interpretation of swimmable, I think we need to be emphasizing: more the primary contact public health and safety aspect and make sure that things that are just shallow aren't "swimmable".

Thank you. I just want a feedback on those two things.

Grace Robiou: Yes, and just in brief response, when you have an opportunity to comment on our proposal the place where that would appear would be in reference to high attainable use. So you might want to take a look at that whenever that's made available and see if that is sufficiently clear to you.

Jennifer Hecker: OK, so do you anticipate that EPA will not be eliminating swimmable as the high attainable use based on physical characteristics alone?

Grace Robiou: We haven't made any decisions about the extent to which we're going to be making new policy a part of this rulemaking in the context of what factors may be used to change a recreational use. So far, our thinking has been limited to creating or not creating but reinforcing the concepts that if you are changing your users and doing a UAA that the high attainable use that's closest to the 101(a)(2) to use is what should be put in place instead.

Jennifer Hecker: OK, well, we would encourage you. It's definitely a big movement here to make the argument to downgrade swimmable/fishable waterbodies based on physical characteristics like locks (inaudible), things of that nature, as well as depths, and we would discourage EPA from moving in that direction. Is there any feedback you could give us on this whole natural conditions issue?

Grace Robiou: You know not really, honestly. I think we need to think about that and we are taking it down as a comment that we need to really kind of consider this. I guess we hadn't honestly looked at the connection between variances and natural resources, and I think we need to do a little research if we're able to answer substantively.

Jennifer Hecker: Well, I guess my comment is just that they should have to do something in lines of going through some kind of formal variance process. They can't just ignore the requirement to list these waterbodies if they're not meeting state water quality standards because they say they're natural. And in many cases you know – for instance, like iron, there'll be a small contribution from ground water and they'll just be listed for you know informally, just not continue to list it based on that even though there are anthropogenic iron contributions are well.

So I want to make sure that you all are aware of that, and if there's any way that you can address that and reinforce EPA guidance that those waterbodies should in fact be listed and continue to be listed.

Manjali: This is Manjali. I just wanted to clarify one thing. I think some part of your problem may be more rich from how they list the waters and live independent of the water quality standards and the variance process. It sounds as if there is some concern over whether or not their list are appropriately reflecting what is impaired and whether our quality standards are being attained.

So – but separate from that in relation to your variance thought, some of the thinking that we have been going through in terms of what we would add in the variances would be to clarify what are the expectations for these waters in relation to 303(d) decisions when a waterbody is indeed granted a variance or

when there is a variance that's somehow applicable somewhere on the waterbody.

We have been talking about you know whether we would clarify in regulation what does that mean for 303(d) listing, but if the concern is that the state is not listing waters appropriately, that is probably something that would not be directly addressed through this regulation.

Jennifer Hecker: Well, I should clarify. They list it as not meeting standards. They just put it as in our state 4C, which means it's not meeting standards but they're not moving forward with any TMDL development because they believe it to be due to natural conditions. But then they don't get a science specific alternative criteria, and they don't go through the processes delisting. So they don't really prove their case, but they don't move forward either. It just kind of sits in purgatory and if you could address that, we would greatly appreciate it.

Thank you, and that was the comment.

Operator: Your next comment comes from Judith Petersen.

Judith Petersen: I'm sorry. Did you say Judith Petersen?

Operator: You're on – yes, you're on.

Judith Petersen: OK, sure. Sorry. I had a problem understanding her.

Well, this is Judith Petersen. I'm with Kentucky Waterways Alliance.

I'd like to echo some of the previous callers' comments. In particular, for the most part, I think that our organization very much supports most of what EPA is trying to do here, and we will be submitting written comments. I would also like to echo the commenter from Florida recently with the concern about possibly removing swimmable or other uses just based on physical characteristics of a waterbody, and again just state that we interpret that as needing to meet primary contact for a variety of reasons. It could be children's contact, it could be a whole host of uses notwithstanding the traditional definition of swimming.

But primarily, I wanted to comment on antidegradation. And as you may know or may not know, Kentucky has a very long history with antidegradation implementation, including rules that are before EPA right now. I'd like to echo Katherine Baer's comments regarding tier three ONRW and the need to clarify and make additional procedures and make it easier for citizens to nominate tier three waters and some sort of guidance – clarifying regulations that states need to at leader make – need to rule on any complete submissions for tier three waters that are – that are before that as a part of the triennial review process.

And some of that would be I think included in EPA's move here to make sure that triennial reviews are complete review of water quality standards, and that citizens' comments are sought prior to determining what a state will modify as a part of the triennial review.

But in particular, I wanted to comment on antidegradation. In general, again, we very much support EPA's move here to clarify the minimum requirements and make sure that they are adopted into a state or tribe water quality standards and that those are submitted for EPA's approval and review. But what I would also like to urge EPA is not to leave the issue at just that.

That is, there are other Clean Water Act permits that we believe very strongly require an antidegradation analysis, in particular 401, water quality certifications. These should be required to undergo antidegradation review, and it's unclear to me whether or not that kind of review would be explicitly stated in EPA's proposed actions here. Thank you.

Female: Thank you.

Female: Thank you.

Grace Robiou: I want to do a little bit of a wrap-up and we have two callers with comments or views pending, but I want to do the wrap-up and then turn to those two so that we can wrap up on time. I want to communicate that if you have additional thoughts or views after the call here's several ways to proceed.

You can communicate those thoughts to us by e-mail to the e-mail address that have been provided a couple of times and I'll provide once more, which is shpdcomment@epa.gov. Or you could write us a letter to the address shown on slide number 19. For those of you that are listening only the addressee would be Thomas Gardner at the Office of Science and Technology, and you need to indicate where this correspondence needs to be sent to. So please include our mail code, which would be 4305T, and that would be EPA, 1200 Pennsylvania Avenue Northwest in Washington, DC, 20460. So again, Thomas Gardner, Office of Science and Technology. The mail code is – please indicate it – 4305T, EPA, 1200 Pennsylvania Avenue Northwest, Washington, DC, 20460.

We will take any written comments by e-mail or mail that you choose to submit by September 10th. This is a little different from what the slide says. The slide currently says September 3rd. We've extended that to allow for a little bit more time for you to think about this and submit your comments. But it's important for us to get those comments by then because after that time we cannot promise that they will be considered as part of our decision making. We are on a schedule here obviously and they would be most useful if they're provided to us by September 10th.

And then I'll now turn it back to the Operator. We seem to have three comments left, but we have seven minutes so we'll try to cover them all. Please try to be succinct.

Operator: Your next comment comes from (inaudible).

Female: Hey. I'm (calling the) comment that maybe related back to a earlier moment about the antidegradation policy implementation.

My understanding is that the current antidegradation policy does not allow for changes to state technology standards that have been incorporated into a state (inaudible) permit even if those state technology requirements are exceeding the federal requirements. The problem we have is a state technology requirement for multi-filtration that relates to drinking water purposes but it's in the (inaudible) permit and now we are looking to remove that. There

wouldn't be any change to the designated use or the water quality, but it seems to be that once it's in the permit it can't come out. Would that – is that a proper understanding, and would the antidegradation implementation policy possibly address that?

Grace Robiou: That's not our current understanding unless we're interpreting your question differently. I'm not sure. I feel like maybe just a brief answer here would not give you – give (inaudible) appropriate for this.

Female: OK.

Grace Robiou: I would encourage you to submit a question to our e-mail address, and we can be more thoughtful in our response that way.

Female: OK.

Operator: Your next comment comes from Ann Coan.

Ann Coan: This is Ann Coan. I represent the North Carolina Farm Bureau, and I have tremendous amount of concerns about our land and our agricultural land, and I feel that EPA as they're considering changes to water quality standards need to take into account unintended consequences such as increased contaminants in bio solids that are then applied to land, or if they're taking a discharge thing that a facility cannot discharge into a certain water that that is then land applied with consequences to the land.

And I just want EPA to consider as they're considering these water quality standards that they're not working in a vacuum. That there is another aspect of where people live and work and have their food produced that it is very important to protect as well. And that's my comment.

Christina Christensen: Thank you.

Operator: Your next comment comes from Ray Tahir.

Ray Tahir: Hello. As you know, the USEPA commission is studying the state of urban storm water management in the nation, which was conducted by the National Resources Council. The study was released in 2009 and included dramatically

in fact that the national storm water program's in need of an overhaul and recommended that USEPA implement several of its recommendations.

My questions are, one, does USEPA intend to implement any of the study's recommendations, and two, if so, when will those recommendations be implemented?

Grace Robiou: I want to make sure that you're aware that EPA is undertaking a separate rulemaking for storm water that was announced not long ago. If you'd like us to point you in the direction of a specific person that you can talk to we will be happy to do that.

Ray Tahir: That would be helpful.

Grace Robiou: OK, send us an e-mail, and we'll provide you with a contact.

Ray Tahir: Great.

Grace Robiou: Christina reminded me that I should mention that we will not be responding to the written comments you submit by e-mail or mail except that if you're specifically asking us to put you in contact with somebody else or seeking some clarification. But the specific comments or views on the content of our reg revisions will not be responding throughout this time because this is not our official public comment period.

We'll be taking that input and factoring it into our thinking and our recommendations moving forward, and it's important for you to know that both this audio feed as well as any comments that you provide to us in writing will become part of a public record for this action. And that public docket or record is going to be available to anybody.

So just be thoughtful for that reason. And with that, unless anybody else has another comment, I'd like to thank you all. This has been very helpful to us. We have a lot to think about and welcome your feedback as well on the effectiveness of these sessions to provide us with your input.

It seems like we have one more comment and then, Operator, you can wrap it up.

Operator: Your next comment comes from Jennifer Chavez.

Jennifer Chavez: Hi. This is Jennifer Chavez from Earthjustice. I know everyone's been patient here so I'll be quick.

Quickly echo that there are many positive steps here and we generally support them. I'm a little concerned about Proposal B regarding the Administrator's determination that revised or new water quality standards need to be adopted by a state. That hasn't gotten a lot of attention here, and it seems incongruous to us with the other proposals because it doesn't really strengthen water quality protections. It addresses the process question, and as it's described, it's basically aimed at protecting EPA from inadvertently creating a legal duty for itself you know, which is understandable.

We suggest that EPA consider not only clarifying new process point, but also expanding the scope of this change to include substantive factors or guidelines that will be considered for when the Administrator should make that determination that a state needs to adopt water quality standards. And this all sounds very technical, but it's very crucial when a state waters quality standards are too weak to accomplish anything and need to be revised. When would EPA consider expanding this change to include a substantive factor or guidance on that point?

Grace Robiou: I take your observation as a comment, and we'll take it and think about it (inaudible) other ways that we can achieve our objectives.

(Jennifer Travis): OK, thank you.

Grace Robiou: Thank you.

OK,. I'm turning it back to the Operator. Oh, we have one more? Do we actually have that line open (inaudible)? OK, well, we'll take one more comment from (Sandra).

Operator: Your next comment comes from (Sonya Borhasen).

(Sonya Borhasen):Hello. My name is (Sonya Borhasen). I'm from Portland, Oregon.

I'm glad EPA's considering changes to water quality standards regulation, however, I don't think they really go far enough. I'd like to see EPA take more of a look at the bigger picture. And so consistent with this I'd like to propose an approach to protecting our nation's waters from toxics. The current approach which involves setting water quality standards for toxics on a chemical-by-chemical basis is not effective.

This is evidenced by the fact that EPA has managed to set standards for less than one percent of the chemicals (and using) our economy, and I'm surprised by the silence around this. The assumption at which the current approach is based is that in order to protect water quality from toxics we have to define safe levels of these chemicals. While this seems perfectly logical – in fact this is very difficult to do – in many cases, the chemicals for which EPA is trying to develop standards for or should be trying to develop standards for have already been introduced into the environment sometimes in large quantities.

The debate over how much (inaudible) is not used (inaudible) to delay action. We need to shift our focus from defining safe levels of chemicals to developing disincentives for using them when there's scientific evidence that they can cause harm even if that evidence is not sufficiently developed for us to be able to define a level at which they may be considered safe.

What might be these disincentives look like? Well, one option would be to require manufacturers to provide toxicity ratings on the labels of consumer products. The rating could appear as say a score from one to 10 and coming up with these ratings may not be difficult. For consumer products they go down the drain. And at the treatment plants it could be done using an existing regulatory tool for which EPA's already developed extensive guidance.

This tool is known as whole effluent toxicity testing, or WET testing. It's currently used to evaluate the toxicity of sewage treatment plant (inaudible). It basically involves assessing the impact of treated effluent on the growth and survival of a select group of aquatic species. WET tests could be used to

evaluate the toxicity of consumer products and the results translated into a toxicity rating to appear on the label of the product

By giving consumers a way to distinguish between more or less hazardous products, manufacturers would have a reason to reduce their toxicity perhaps well ahead of when water quality standards may develop – may be developed for all of the water – all of the chemicals they contain. Manufacturers who are already producing less toxic products would have a competitive edge. The field of green chemistry would get a boost.

It cost on the order of \$5,000 to run a set of WET tests on a sample of sewage effluent. This is trivial compared to what manufacturers might spend to advertise a single product. It's also modest compared to the cost of treating a single case of cancer. In fact, compared to trying to determine which of the 80,000 chemicals currently in use in our economy are safe and (inaudible) concentrations this proposal to use whole effluent toxicity testing to evaluate the toxicity of consumer products is modest. And thank you for the opportunity to comment.

Grace Robiou: Thank you for your thoughtful comment.

I think we're going to wrap it up again. Thank you very much and that's it. Have a nice day.

Operator: This concludes today's conference call. You may now disconnect.

END