

CWA Section 303(c)(2)(B), added to the CWA in the 1987 amendments to the Act,⁹ requires states to adopt numeric criteria, where available, for all toxic pollutants listed pursuant to CWA Section 307(a)(1) (i.e., priority toxic pollutants¹⁰) for which EPA has published CWA Section 304(a) recommended criteria, the discharge or presence of which could reasonably be expected to interfere with the states' designated uses. As articulated in EPA's December 12, 1988, *Guidance for State Implementation of Water Quality Standards for CWA Section 303(c)(2)(B)* ('1988 Guidance'), EPA identified three options that states could use to meet the requirements of CWA Section 303(c)(2)(B).¹¹ Option 1 is to adopt statewide numeric water quality criteria for all priority toxic pollutants for which EPA has issued CWA Section 304(a) recommendations, regardless of whether those pollutants are known to be present in a state's waters.¹² Option 2 is to adopt chemical-specific numeric water quality criteria for those priority toxic pollutants for which EPA has issued CWA Section 304(a) recommendations, and "where the State determines based on available information that the pollutants are present or discharged and can reasonably be expected to interfere with designated uses."¹³ Option 3 is to adopt a procedure to be applied to a narrative water quality standard to be used in calculating derived numeric criteria.¹⁴ In the 1992 National Toxics Rule, EPA promulgated water quality criteria for priority toxic pollutants for 14 states based on the Administrator's Determination that new or revised criteria were needed to bring those states into compliance with the requirements of CWA Section 303(c)(2)(B).¹⁵

States are required to hold a public hearing to review applicable WQS at least once every three years and, if appropriate, revise or adopt new standards (CWA Section 303(c)(1); 40 CFR 131.20(a)). This includes adopting criteria for additional priority toxic pollutants and revising existing priority toxic pollutant criteria as appropriate based on new information.¹⁶ Any new or revised WQS must be submitted to EPA for review and approval or disapproval (CWA Section 303(c)(2)(A) and (c)(3)). CWA Section 303(c)(4)(B) independently authorizes the Administrator to determine that a new or revised standard is necessary to meet CWA requirements. The authority to make a Determination under CWA Section 303(c)(4)(B) is discretionary and resides with the Administrator, unless delegated by the Administrator (40 CFR 131.22(b)). For the purposes of this Determination, the Administrator has delegated this authority to EPA's Assistant Administrator for the Office of Water.

II. History of Florida's Water Quality Standards Subject to this Determination

Florida's Existing Human Health Criteria for Priority Toxic Pollutants

Florida elected to comply with CWA Section 303(c)(2)(B) by following Option 2 in EPA's 1988 Guidance.¹⁷ In accordance with Option 2, Florida adopted HHC for 43 priority toxic pollutants in 1992,

⁹ Water Quality Act Amendments of 1987, Pub. L. 100-4, 101 Stat. 7.

¹⁰ See 40 CFR part 423, Appendix A – 126 Priority Pollutants.

¹¹ U.S. EPA. (December 1988). Transmittal of Final "Guidance for State Implementation for Water Quality Standards under CWA Section 303(c)(2)(B)," <https://www.epa.gov/sites/production/files/2014-10/documents/cwa303c-hanmer-memo.pdf>; see also U.S. EPA. (Dec. 22, 1992). *Establishment of Numeric Criteria for Priority Toxic Pollutants*, 57 FR 60848, 60853.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 60857.

¹⁶ *Id.* at 60873 (Explaining that "EPA expects to request States to continue to focus on adopting criteria for additional toxic pollutants and revising existing criteria in future triennial reviews which new information indicates is appropriate.").

¹⁷ U.S. EPA. (December 1988). Transmittal of Final "Guidance for State Implementation for Water Quality Standards under CWA Section 303(c)(2)(B)," <https://www.epa.gov/sites/production/files/2014-10/documents/cwa303c-hanmer-memo.pdf>