



Campaign to Safeguard America's Waters (C-SAW)

Box 956 Haines, Alaska, 99827 Phone/Fax 907-766-3005
gershon@aptalaska.net

The Honorable Christine Todd-Whitman, Administrator
United States Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

10/18/02

Dear Administrator Whitman,

Today is the 30th anniversary of the Clean Water Act. No one will deny that significant progress has been made to control water pollution in our country since the CWA was passed in 1972. Advances have clearly been made in controlling point-source pollution. We now have Best Available Technology controls identified and required for many potentially polluting practices, many sewage treatment plants across the United States have been upgraded (although much more needs to be done), and New Source Performance Standards are in place for 28 major industries.

However, many significant problems remain – storm-water runoff, non-point source pollution, inappropriate destruction of wetlands and natural waters, failure to implement antidegradation policies, the continued discharge of persistent toxics, etc., to name but a few. At the same time, progress on the elimination of point source pollution has slowed dramatically, and will continue to be frustrated, as long as dischargers are not required to discharge wastestreams that meet state water quality standards (WQS) at the “end of the pipe.”

On behalf of the 80 organizations listed below, pursuant to the Administrative Procedures Act¹, we petition your agency to close a major loophole in federal regulation undermining the fundamental purposes of the Clean Water Act (CWA.) Since 1983, federal regulation has provided states with the authority to adopt policies and implementation procedures such as mixing zones, i.e., pollution-dilution zones:

¹ 5USC §553(e).

States may, at their discretion, include in their State standards, policies generally affecting their application and implementation, such as mixing zones...²

The states, tribes, and commonwealths of the United States have misused this regulation to circumvent the most basic goal of the CWA: “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”³

One of the most fundamental regulatory changes supporting the transition from the Federal Water Pollution Control Act of 1948⁴ to the Clean Water Act is the EPA regulation that prohibits states from adopting waste transport or waste assimilation as a designated use for any waters of the United States.⁵ This regulation clearly supports the interim goals of the CWA to eliminate the discharge of pollutants into navigable waters, to achieve “fishable-swimmable” status for all national waters, and to prohibit the discharge of toxic pollutants in toxic amounts.⁶

However, waste assimilation is still routinely employed as a de facto use of our nation’s waters. Thousands of National Pollution Discharge Elimination System (NPDES) permits incorporate dilution factors into effluent limits that circumvent state water quality criteria and legalize the dilution and dispersion of pollutants into public waterbodies at otherwise illegal concentrations. EPA’s laissez faire attitude towards state mixing zone regulations directly contributes to the elimination of existing, beneficial uses from countless miles of streams, rivers, lakes, and coastal waters in the United States.

In 1998, EPA published an Advanced Notice of Public Rule Making (ANPRM)⁷ that acknowledged the numerous and widespread problems with state mixing zone authorizations resulting from deficient federal guidance and control. Unfortunately, the ANPRM process resulted in no changes to EPA’s regulation authorizing states to draft and implement mixing zone policies. A recent state-by-state survey⁸ of mixing zone use clearly demonstrates that the application of mixing zones by the states continues to be out of control:

1. Tens of thousands of discharges that exceed state WQS are diluted into public waterbodies every day, resulting in the release of billions of gallons of polluted wastes.
2. All manner of pollutants are discharged into mixing zones in excess of WQS: metals, hydrocarbons, organochlorines and other bioaccumulative and persistent toxics, as well as conventional pollutants such as fecal coliform bacteria from sewage, suspended solids, pH, temperature, and materials that remove the oxygen from the water critical to the survival of all aquatic life.

² §40 CFR 131.13

³ Clean Water Act, Pub. L. No. 95-217, 91 Stat.1566 (1977) 1251(a)(1), (hereinafter CWA).

⁴ Water Pollution Control Act, Pub. L. No. 80-845, 62 Stat. 1155, (1948), (hereinafter FWPCA).

⁵ §40 CFR 131.10(a).

⁶ CWA §1251(a)(1),(a)(2),(a)(3).

⁷ Water Quality Standards Regulation, 63 Fed. Reg. 36,742 (July, 1998)

⁸ Campaign to Safeguard America’s Waters, *National Mixing Zone Survey*, September 26, 2002, [data from 46 states]

3. Every state allows discharges into mixing zones to exceed chronic aquatic life criteria – scientifically determined limits for pollutants beyond which it is assumed there will be long-term reproductive, neurological, development, competitive, etc., impacts to aquatic life.
4. At least 45 states allow discharges into mixing zones to exceed acute aquatic life criteria – scientifically determined limits for pollutants beyond which it is assumed there will be immediate, mortal impacts to aquatic life.
5. 21 states apply mixing zones generically with no site-specific evaluation of the receiving water.
6. Only 3 states evaluate the risks to people when human health criteria are exceeded in the mixing zone.
7. No state regulations require a reduction or elimination of mixing zone use over time (aside from the 8 Great Lakes states required under federal law to eliminate mixing zones for bioaccumulative chemicals by 2010.)
8. Nearly every state permits mixing zones to be authorized within any state water, for all classes of waters, including within legally impaired waters and waters containing threatened or endangered species.
9. Only 8 states undertake a biological examination of the receiving water prior to mixing zone approval.
10. Only 2 states reported performing cost/benefit analyses to determine the economic impacts of authorizing mixing zones on either the discharger or the public.
11. Only 5 states reported regular monitoring of mixing zone boundaries or the performance of long-term impact analyses of mixing zones on aquatic ecosystems.
12. No states post informational signs in mixing zone areas or inform residents of pollutants in the mixing zones, and only 1 state reported maintaining any publicly accessible list or map of mixing zone areas.
13. No state records the individual or cumulative volumes or quantities of pollutants discharged into mixing zones, or the miles of streams, rivers, lakes, or coastal waters under their jurisdiction directly or indirectly impacted by mixing zones.

The undersigned organizations therefore respectfully request your initiation of a rule making procedure to substantially strengthen the federal mixing zone regulation @ 40 CFR 131.13. The regulation must contain guidance to ensure mixing zones are applied in a manner consistent with the CWA. This rule should address at minimum:

1. Prohibitions against allowing water quality within mixing zones to fall below the CWA “fishable/swimmable” standard in any portion of a waterbody.
2. Requirements for evaluating and communicating the receiving water, biota, and human health risks to the public prior to mixing zone approval.
3. Prohibitions against authorizing mixing zones in impaired waters or waterbodies containing threatened or endangered species.
4. Prohibitions against the authorization of mixing zones for pollutants that persist, bioconcentrate or bioaccumulate in the food chain.
5. Monitoring requirements at mixing zone boundaries to ensure mixing zones perform as predicted and do not impact beneficial uses of the waterbody.
6. State reporting practices to inform the government and the public on the extent and impacts of individual and cumulative mixing zone authorizations.
7. Notification procedures for identifying and posting of all mixing zone locations in a manner that adequately describes the mixing zone location and what is being diluted, and the risks the mixing zones represent to local communities and the environment.
8. Mandatory procedures for reducing the number and size of mixing zones and the need for a timetable to ultimately phase out mixing zone use completely.

Thank you for considering this petition. We know we share with you and your staff a sincere commitment to furthering the goals and objectives of the Clean Water Act, and look forward to working with you to close the mixing zone loophole. In the words of former EPA Administrator Ruckelshaus in 1972: “...we don’t believe the solution to pollution is dilution.”⁹

Sincerely,

Gershon Cohen Ph.D., Project Director
Campaign to Safeguard America’s Waters (C-SAW)
Earth Island Institute

⁹ Senate Committee on Public Works, 93rd Cong., A Legislative History of the Water Pollution Control Act Amendments at 1228 (1973).

Russell Long, Ph.D. Executive Director
Bluewater Network
311 California Street, Suite 510
San Francisco, CA 94104

Pamela K. Miller, Director
Alaska Community Action on Toxics
505 West Northern Light Blvd.
Suite 205 Anchorage, Alaska 99503

Robert M. Ferris Vice-President
Environmental Protection and
Restoration
Chesapeake Bay Foundation
6 Herndon Ave.
Annapolis, Maryland 21403

John Knox Executive Director
Earth Island Institute
300 Broadway Suite 28
San Francisco, CA 94133

Shoren Brown
Water Quality and Mining Organizer
Southeast Alaska Conservation Council
419 6th St. Suite 200
Juneau, Alaska 99801

[Albert Ettinger](#)
Environmental Law and Policy Center
of the Midwest
35 E. Wacker, Suite 1300
Chicago, Illinois 60601

[Page Else, Research Director](#)
[Sitka Conservation Society](#)
[Rm 4., 201 Lincoln St. Sitka, AK 99835](#)

[Brad McLane Executive Director](#)
[Alabama Rivers Alliance](#)
[The Bradford Building](#)
[2027 2nd Avenue North, Suite A](#)
[Birmingham, Alabama 35203](#)

Diana Combs Coastal Counsel
Coast Alliance
600 Pennsylvania Ave., SE
Suite 340 Washington, DC 20003

Gregg Small Executive Director
Washington Toxics Coalition
4649 Sunnyside Ave. N, Suite 540
Seattle, WA 98103

Lexi Shultz, Legislative Director
Mineral Policy Center
1612 K Street, NW, Suite 808,
Washington DC 20006

Ed Hopkins Director
Environmental Quality Program
Sierra Club
408 C Street, NE
Washington DC 20002

Marco A. Gonzalez, Esq.
Senior Attorney
San Diego BayKeeper
Environmental Law & Policy Clinic
2924 Emerson Street Suite 220
San Diego, CA 92106

Paul Schwartz
Clean Water Action
National Campaigns Director
4455 Connecticut Ave., NW
Suite A-300
Washington, DC 20008

Bob Shavelson Executive Director
Cook Inlet Keeper
P.O. Box 3269
Homer, AK 99603

Nancy Stoner Clean Water Project
Natural Resources Defense Council
1200 NY Ave., NW
Washington, DC 20005

Randy Virgin
Executive Director
Alaska Center for the Environment
807 G Street Suite 100
Anchorage AK 99501

Steve Fleischli Executive Director
Santa Monica BayKeeper
P.O. Box 10096
Marina del Rey, CA 90295

Tony Tweedale, Montana-CHEER
(Coalition for Health, Environmental &
Economic Rights)
224 E. Pine (2)
Missoula, MT 59802

Mike Fremont, President
Rivers Unlimited
515 Wyoming Ave.
Cincinnati, Ohio 45215

Michael Mullen
Coastal Plain Water Watch
207 Gail Street Troy, AL 36079

Coralie Breen President, CEO
Oceans Blue Foundation (USA)
1420 Fifth Avenue, Suite 2200
Seattle, Washington 98101

Chris Zimmer
Transboundary Watershed Alliance
419 6th Street, #232
Juneau, AK 99801

Mary C. Mitchell Executive Director
Rock Creek Alliance
1319 N. Division St.
Sandpoint, ID 83864

Solomon Simon Executive Director
Mississippi River Revival
51 E 4th St, Suite 305
Winona, MN 55987

Tom Atkinson Executive Director
Alaska Conservation Voters
Alaska Conservation Alliance
810 N St, Suite 203
Anchorage, Alaska 99501

Citizens for Victor!
Bill Clymer, President
4701 Hackamore Dr. S
Colorado Springs, Co. 80918

Michelle C. Fried General Counsel
Upper Chattahoochee Riverkeeper
1900 Emery Street, Suite 450
Atlanta, GA 30318

Gar Smith, Earth Island Institute
Roving Editor, The-Edge
PO Box 27
Berkeley, CA 94701

Cyndy deBruler, ED
Columbia Riverkeeper
PO Box 912
Bingen, WA 98605

David Kliegman, Executive Director
Okanogan Highlands Alliance
PO Box 163
Tonasket, WA 98855

Catherine L. Hazlewood, J.D.
Acting Director
Clean Oceans Program
The Ocean Conservancy
1725 DeSales Street NW Suite 600
Washington DC 20036

Dave Murphy, Kansas Riverkeeper
Friends of the Kaw
P.O. Box 328
Shawnee Mission, KS 66201-0328

Kathy Andria
American Bottom Conservancy
527 Washington Place
East St. Louis, IL 62205

Steve Jones
Watershed Protection Program Attorney
Wyoming Outdoor Council
262 Lincoln St.
Lander, WY 82520

Don McEnhill
Russian Riverkeeper
PO Box 1335 Healdsburg, CA 95448

David M. Chambers Ph.D.
Center for Science in Public
Participation
224 North Church Avenue
Bozeman, MT 59715-3706

Nina Faust Board of Directors
Kachemak Bay Conservation Society
3734 Ben Walters Lane, Suite 202
Homer, Alaska 99603

Michael Finkelstein
Campaign Manager
Alaska Rainforest Campaign
201 Lincoln, Rm #1 Sitka, AK 99835

Justine Thompson
Georgia Center for Law in the Public
Interest
175 Trinity Avenue, SW
Atlanta, GA 30303

Alfredo Quarto, Executive Director
Mangrove Action Project
PO Box 1854
Port Angeles, WA 98362

Deborah Sheppard, Executive Director
Altamaha Riverkeeper, Inc.
P.O. Box 2642
Darien, Georgia 31305

Mara C. Bacsujlaky
Assistant Director/Mining Coordinator
Northern Alaska Environmental Center
830 College Road
Fairbanks, AK 99701

Justin Hayes Program Director
Idaho Conservation League
PO Box 844
Boise, ID 83701

Pam Johnson, Field Director
People for Puget Sound
911 Western, Ste. 580
Seattle, WA 98104

Brian Shields, Executive Director
Amigos Bravos
P.O. Box 238
Taos, NM 87571

Tom Blanchard
Boulder-White Clouds Council
Box 225
Bellevue, Idaho 83313

Todd Ambs Executive Director
River Alliance of Wisconsin
306 E Wilson St., 2W
Madison, WI 53703

Harry Browne
Gila Resources Information Project
306 N. Cooper St.
Silver City, NM 88061

Diana Combs Coastal Counsel
Coast Alliance
600 Pennsylvania Ave., SE
Suite 340 Washington, DC 20003

Cesar Hernandez
Cabinet Resource Group
P.O.B. 238
Heron, MT 59844

L. Lisa Harris
Commencement BayKeeper
Citizens for a Healthy Bay
917 Pacific Ave, Suite 406
Tacoma WA 98402

Paul Horton Executive Director
CLIMATE SOLUTIONS
610 4th Avenue East
Olympia, WA 98501

Judith Petersen, Executive Director
Kentucky Waterways Alliance, Inc.
Munfordville, KY

Ella Filippone Executive Administrator
Passaic River Coalition
Basking Ridge, New Jersey 07920

Kelly D. H. Lowry, Esq.
General Counsel and Water Program
Director
Vermont Natural Resources Council
9 Bailey Avenue, Montpelier, VT 05602

Robyn du Pre
North Sound Baykeeper
RE Sources for Sustainable
Communities
1155 N. State St. #623
Bellingham, WA 98225

Ernie Rivers
Pensacola Gulf Coastkeepers
811 West Garden St
Pensacola, FL 32503

Elmer Makua, Executive Director
Tongass Conservation Society
Ketchikan, Ak. 23377

Ivy Sager-Rosenthal
Environmental Advocate
WashPIRG
3240 Eastlake Ave. E. #100
Seattle, WA 98102

Stan Stephens, President
Alaska Forum for Environmental
Responsibility
Box 188
Valdez, Alaska, 99686

Beth Wentzel, Watershed Scientist
Prairie Rivers Network
809 S. Fifth Street
Champaign, IL 61820

Andrew C. Hanson, Attorney
Midwest Environmental Advocates
702 E. Johnson St.
Madison, WI 53703

David J. Zaber
Habitat Education Center
Monona, WI 53716

Mikhail Davis, Director
The Brower Fund
300 Broadway
San Francisco, CA 94133

Dan Heilig Executive Director
Wyoming Outdoor Council
262 Lincoln St.
Lander, WY 82520

Sarah Peisch
Centro de Accion Ambiental
1357 Av. Ashford #187
San Juan, PR 00907

Douglas O'Malley
Clean Water Associate
New Jersey PIRG
11 North Willow Street
Trenton, NJ 08608

Cindy Zipf Executive Director
Clean Ocean Action
18 Hartshorne Dr.
Box 505, Sandy Hook
Highlands, NJ 07732

Julia Page, Chair
Northern Plains Resource Council's
Hard Rock Mining Task Force
2401 Montana Avenue #200
Billings, MT 59101

Robin Cunningham Development Dir.
Montana Fishing Outfitters
Conservation Fund
PO Box 67
Gallatin Gateway, MT 59730

Marco A. Gonzalez, Esq.
Chairman, Surfrider Foundation
San Diego Chapter

Tim Wagner
Bear River Watershed Council
Logan, Utah

Dana Owen Executive Director
Friends of Berners Bay
949 Goldbelt
Juneau, Alaska 99801

Mary Lou King Executive Director
Taku Conservation Society
1700 Branta Rd.
Juneau, Alaska 99801

Anissa Berry-Frick
Executive Director
Lower Chatham Conservation Society
PO Box 8118
Port Alexander, Alaska
99836

John Wisenbaugh President
Chichagof Conservation Council
Box 512
Tenakee Springs Alaska 99841

Rae Schnapp, Ph.D.
Water Policy Director
Hoosier Environmental Council
1915 W. 18th St.
Indianapolis, IN 46202

Caroline Snyder President
Citizens for a Future New Hampshire
PO Box 38
North Sandwich NH 03259