

Harmful Algal Bloom Determination: U.S. Environmental Protection Agency Federal Register Notice Seeking Comment on Policy Development



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

09/25/2019

The United States Environmental Protection Agency (“EPA”) published a September 16th Federal Register Notice seeking public comment on the development of a policy for determination if a harmful algal bloom (“HAB”) or hypoxia event in freshwater is an “event of national significance.” See 84 Fed. Reg. 48610.

The amendments to the Harmful Algal Bloom and Hypoxia Research and Control Act (“HABHRCA”) provide EPA the statutory authority to make such determinations in the case of a freshwater HAB or hypoxia event.

HABs are overgrowths of algae in water. Such blooms can produce toxins that can cause illnesses in people and animals. They can occur in warm fresh, marine, or branch water if abundant nutrients are present.

Besides producing dangerous toxins, HABs can also:

- Create dead zones in the water
- Increase treatment costs for drinking water or industry facilities that need clean water

EPA states in the September 16th Federal Register Notice that it will utilize public comments in developing a policy for making determinations of what constitutes a freshwater HAB or a hypoxia. A determination that either has occurred and constitutes an event of national significance which provides the agency the authority to mobilize federal resources to assess and mitigate associated detrimental effects (if appropriations are available).

In making such determination, EPA is asking how it should define, quantify, and weigh the following statutory parameters:

- Toxicity of the harmful algal bloom
- Severity of hypoxia
- Potential to spread
- Economic impact
- Relative size of event in relation to the past five occurrences of HABs or hypoxia events that occur on a recurrent or annual basis
- Geographic scope including the potential to affect several municipalities, to affect more than one state, or to cross an international boundary

EPA is also asking whether it should consider developing additional criteria or to establish specific procedures for making such determinations. Examples provided include:

- Should the EPA consider the state's access to critical resources (human, financial, and infrastructure) in determining national significance?
- Should the EPA consider certain factors when an event impacts or threatens drinking water sources or finished drinking water?
- Should the EPA consider certain factors when an event has impacts on or threatens recreational waters?
- Should a determination of national significance be made only if funding has been appropriated to the agencies?
- What information should an impacted state provide to the EPA when requesting a determination of a freshwater event of national significance or a request to make sums available to the impacted state or local government to assess and mitigate an event of national significance?
- Should the EPA consider whether a state or local government that requests a determination that a HAB or hypoxia is an event of national significance concurrently requests other Federal relief for the same event or occurrence?
- Should the EPA require that an affected state or local government request a determination of a freshwater event of national significance within certain timeframes with respect to the start or end of the event or occurrence?
- Other than funds, what tools and methods should the EPA make available after a determination of a freshwater event of national significance is made?

The National Oceanic and Atmospheric Administration previously (July 25th) issued a notice to solicit comments on HAB or hypoxia events of national significance in marine and coastal waters.

A copy of the Federal Register Notice can be downloaded [here](#).