



Public Webinar #2:

Water Quality Standards Regulatory Clarifications Proposed Rule

Prepared by EPA Office of Water
Office of Science and Technology
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EPA Representatives

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Logistics

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Purpose

- Provide information to the public about EPA's proposed rule.
- Provide opportunity for the public to ask clarifying questions. EPA cannot respond to:
 - Questions beyond the scope of the rulemaking; or
 - Comments expressing opinions or suggestions.
- Describe ways to provide written comments by the end of the public comment period (December 3, 2013).

Rulemaking Schedule

- Conducted pre-proposal outreach and consultation – August 2010
- Published proposed rule – Summer 2013
 - Public Comment Period: September 4, 2013 to December 03, 2013
- Completed Outreach
 - Public Webinar 1—September 24, 2013
 - Public Meeting—October 29, 2013
- Continue outreach and consultation
 - Tribal Consultation Webinar—November 19, 2013
- Publish final rule – *(date to be determined)*

Outline

- What are water quality standards (WQS)?
- Why revise the WQS regulation?
- What sections are revised in the proposed rule?
 - A. Designated Uses
 - B. WQS Variances
 - C. Antidegradation
 - D. Triennial Reviews
 - E. Administrator's Determination
 - F. Compliance Schedule Authorizing Provision

General Background

Water quality standards are:

- Legally binding provisions of law that describe the desired condition of a waterbody or the level of protection or mandate how it will be expressed or established for such waters in the future.
- The foundation of the water quality-based control program mandated by the Clean Water Act (CWA).

Water quality standards consist of:

- Designated uses of the water body (e.g., recreation, water supply, aquatic life, agriculture).
- Water quality criteria to protect designated uses (numeric pollutant concentrations and narrative requirements).
- Antidegradation requirements to maintain and protect existing uses and high quality waters.
- General policies addressing implementation issues.

General Background

Who sets WQS?

- Under the CWA, states and authorized tribes establish standards.
- States and tribes must hold public hearings to review their standards every 3 years and revise them as necessary.
- EPA must approve the standards in order for them to be in effect for CWA purposes.
- The CWA requires EPA to impose federal WQS, if EPA disapproves WQS or determines that new or revised WQS are necessary to meet the requirements of the CWA, unless the state or tribe adopts WQS that meet CWA requirements.

General Background

What Does the WQS Regulation Do?

Adds detail to the CWA provisions for standards:

- Defines when and how designated uses may be revised.
- Requires criteria to protect uses.
- Requires water quality achieved to be maintained, except under certain circumstances.
- Requires states/tribes to review their WQS every three years and engage the public in any changes to WQS.
- Specifies roles of states, tribes, and EPA, and administrative procedures.

Rulemaking Background

Why Revise the WQS Regulation?

- The core requirements of the regulation have been in place since 1983.
- The intent of the EPA's proposed rule is to address targeted areas so that the regulation:
 - Provides sufficient tools, flexibility and accountability to manage water resources.
 - Allows for an open dialogue between the EPA, states, tribes, and the public to facilitate collective and transparent water quality management.
 - Provides more transparent, well-defined pathway for maintaining and restoring the biological, chemical, and physical integrity of the nation's waters.

Rulemaking Background

How Did EPA Develop the Targeted Areas?

- Identified recurring issues.
- Analyzed case law.
- Reviewed the 1998 advance notice of proposed rulemaking (“ANPRM”).
- Consulted with:
 - State WQS managers
 - Tribal Leaders
 - Front-line EPA experts in Regional offices
- Narrowed focus to areas where regulation changes seemed most essential.

Topic Areas

- A. Designated Uses:** Ensure states/tribes continue striving to meet the national goal of the CWA , even where a use associated with CWA 101(a)(2) goals are determined to be unattainable at a particular time.
- B. WQS Variances:** Establish a detailed regulatory structure and transparency for use of WQS variances.
- C. Antidegradation:** Strengthen state and tribal implementation of antidegradation by clarifying EPA's expectations.
- D. Triennial Reviews:** Strengthen the triennial review requirements.
- E. Administrator's Determination:** Clarify what constitutes an Administrator's determination under 303(c)(4)(B).
- F. Compliance Schedule Authorizing Provision:** Clarify what must be done for states/tribes to utilize permit compliance schedules.

A. Designated Uses

Highest Attainable Use

- Current Regulation:
 - A use attainability analysis (UAA) must be conducted per § 131.10(j).
- Issue:
 - While the current WQS regulation allows for unattainable CWA 101(a)(2) uses to be removed, it does not clearly articulate that attainable uses must be retained.
- Proposed Regulatory Revisions:
 - Clarify that where a state/tribe adopts new or revised WQS based on a required UAA, it must adopt the Highest Attainable Use (§ 131.10(g)).
 - Define Highest Attainable Use (§ 131.3(m)).
 - Specify options available to states and tribes to articulate the Highest Attainable Use (§ 131.10(g)).

A. Designated Uses

Clarifying When a UAA Is/Is Not Required

- Current Regulation:
 - A use attainability analysis (UAA) is required in specific circumstances outlined in § 131.10(j) and is not required as per § 131.10(k).
- Issue:
 - § 131.10(g), § 131.10(j), and § 131.10(k) are closely related provisions, but are not well integrated, thus leading to confusion as to when each provision is relevant and applicable.
- Proposed Regulatory Revisions:
 - Use consistent terminology amongst all three provisions.
 - Clarify in rule that the factors specified in § 131.10(g) are only required to be considered when § 131.10(j) requires a UAA.
 - Make 131.10(j) and 131.10(k) transparent opposites to avoid confusion about when a UAA is or is not required.

Questions?

Please enter clarifying questions in the 'Q&A' box on the right side of your screen. We will respond to as many as time allows.

- **Designated Uses**
- **General Rulemaking Background**
- **General Water Quality Standards Background**

Reminder: Entries submitted in the 'Q&A' box do not substitute for providing your written views to the Rulemaking docket.

B. WQS Variances

- Current Regulation
 - States and tribes may adopt WQS variances and variance policies.
- Issue
 - Uncertainty concerning appropriate use of WQS variances because it is not explicitly addressed in regulation.
- Proposed Regulatory Revision
 - Establishes explicit regulatory provisions to guide the adoption of WQS variances and ensure appropriate, consistent, and effective implementation that is transparent to both the regulated community and the public while making environmental progress.

B. WQS Variances

Proposed Regulatory Revisions

- A new subpart to 40 CFR § 131 (131.14) specifically dedicated to WQS variances.
- Addresses the following key topic areas:
 - definition and applicability,
 - submission requirements,
 - implementation in NPDES permits,
 - renewal requirements.
- Conforming changes to § § 131.34 and 131.40.

B. WQS Variances

Definition and applicability

- A time-limited designated use and criterion.
- Specific permittee(s) and/or waterbody or waterbody segment(s).
- Specific pollutant(s).
- Reflects the highest attainable condition during the specified time period.
- All other water quality standards are applicable.
- Variances are only applicable to NPDES permitting (CWA § 402) and state/tribal certifications that federal actions are consistent with WQS (CWA § 401).

B. WQS Variances

Submission requirements

- Permittee(s) and/or waterbody or waterbody segment(s).
- Pollutant(s).
- Interim Requirements reflecting the highest attainable condition
 - Interim designated use and criterion or,
 - interim effluent condition.
- Expiration date.
- Justification
 - For CWA 101 (a)(2) uses, at least one of the six factors listed in 40 CFR 131.10(g), or to facilitate restoration activities,
 - For water body variances, identify and document non-point source best management practices.

B. WQS Variances

Implementation in NPDES Permits

- A variance serves as the basis for water quality based effluent limits in a NPDES permit.
- Effluent limits implementing a variance must be included as conditions in the NPDES permit

Renewal requirements

- Have met the requirements of the previous variance.
 - Describe actions taken.
 - For a waterbody variance, describe whether and how best management practices were implemented.
 - Description of progress made.
- Meet the requirements of 131.14.

Questions?

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- **Water Quality Standards Variances**
- **Designated Uses**
- **General WQS and Rulemaking Background**

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C. Antidegradation

- Current Regulation:
 - States and tribes must adopt specific antidegradation policies, and must identify implementation methods; both must be consistent with 131.12
- Proposed Regulatory Revisions:
 - Clarify and define the options available to states and tribes when identifying high quality waters (“Tier 2”).
 - Clarify that states and tribes must conduct an alternatives analysis during a “Tier 2” review and choose among such options.
 - Specify that states and tribes must develop and make available to the public the implementation methods.

C. Antidegradation

Identification of High Quality Waters

- Current Regulation:
 - Does not specify how to identify high quality waters; EPA's established view is that states and tribes may use a parameter-by-parameter approach or a waterbody-by-waterbody approach.
- Issue:
 - Some w-b-w approaches have been implemented such that a state or tribe may deny Tier 2 protection solely based on a 303(d) listing, even though the water body is still of high quality for another use specified in CWA 101(a)(2).
- Proposed Regulatory Revision:
 - States and tribes may choose how to identify high quality waters, as long as they do not exclude waters from Tier 2 protection solely because one of the uses specified in CWA section 101(a)(2) is not attained.
 - Requests comment on whether to specify how a state or tribe determines for which parameters Tier 2 review must be conducted, depending on the approach used to identify high quality waters.

C. Antidegradation

Alternatives Analysis

- Current Regulation:
 - Does not specify how states and tribes evaluate whether a lowering of high quality water is necessary to accomplish the activity.
- Issue:
 - States and tribes may decide to authorize a lowering of water quality without evaluating any alternatives and thus without an appropriate finding consistent with the regulation.
- Proposed Regulatory Revision:
 - A decision to authorize lowering of a Tier 2 water may only be made after conducting an alternatives analysis that evaluates a range of non-degrading or minimally degrading practicable alternatives. If such alternatives are identified, the state or tribe must choose one of those alternatives to implement.

C. Antidegradation

Implementation Methods

- Current Regulation:
 - States and tribes must adopt specific antidegradation policies, and must identify implementation methods.
- Issue:
 - Despite the requirement, some states and tribes have not developed or identified antidegradation implementation methods.
- Proposed Regulatory Revision:
 - States and tribes must develop and make available to the public antidegradation implementation methods.
 - If a state or tribe adopts implementation methods, the EPA would review whether those methods are consistent with § 131.12.
 - Requests comment on whether the EPA should, (A) require the adoption of implementation methods or (B) specify that adoption is not required.

C. Antidegradation

Minimum Elements of an Antidegradation Implementation Method

- Scope and applicability
- Existing uses protection
- High quality water protection, including
 - Identification of high quality waters
 - Alternatives analysis and social/economic analysis
- Public Participation and intergovernmental coordination
- Expectations for point and nonpoint sources
- ONRW protection
- Thermal Discharges

Questions?

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- **Antidegradation**
- **Water Quality Standards Variances**
- **Designated Uses**
- **General WQS and Rulemaking Background**

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D. Triennial Reviews

- Current Regulation:
 - States and authorized tribes must hold a public hearing for the purpose of reviewing their applicable WQS every three years and revise or adopt standards as appropriate.
- Issue:
 - States and tribes may be retaining unprotective criteria even after EPA has published new or updated 304(a) criteria.
- Proposed Regulatory Revision:
 - Require that states/tribes evaluate whether water quality criteria are still protective of designated uses, taking into consideration any new or updated 304(a) criteria recommendations.

E. Administrator's Determination

- Current Regulation:
 - EPA Administrator may determine that a revised or new standard is necessary to meet the requirements of the CWA.
 - This determination then obliges EPA to promptly propose and finalize federal standards, unless the state or tribe revises its standards beforehand.
- Issue:
 - Formal communication between EPA and a state or tribe can be construed as an Administrator's Determination when it is not intended as such.
- Proposed Regulatory Revision:
 - Clarify that an Administrator's determination must be signed by the Administrator (or designee) and include a statement that the document is a determination under 303(c)(4)(B).

F. Compliance Schedule Authorizing Provisions

- Current Regulation:
 - Does not address compliance schedule authorizing provisions.
- Issue:
 - Permitting authorities are including compliance schedules in NPDES permits, despite the EPA Administrator's decision in *In the matter of Star-Kist Caribe, Inc* (1990) that compliance schedules may only be issued in permits if the state/tribe has authorized them in their WQS or implementing regulations.
- Proposed Regulatory Revision:
 - Specify that compliance schedule authorizing provisions must be approved as part of a state or tribe's water quality standards in order for permitting authorities to issue compliance schedules. Such authorizations are at the discretion of the state or tribe.

Questions?

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 - General WQS and Rulemaking Background
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Economic Analysis

Potential Incremental Administrative Burdens and Costs of the Proposed Rule (2013\$)

Provision	One-time Activities			Annual Activities		Total Annual Cost (millions/year)
	Burden (hours)	Cost (millions)	Annualized Cost ¹ (millions/year)	Burden (hours/year)	Annual Cost (millions /year)	
Rulemaking Activities	9,500 – 47,500	\$0.46 - \$2.28	\$0.03 - \$0.15	--	--	\$0.03 - \$0.15
Designated Uses	--	--	--	240 – 1,200	\$0.01 - \$0.06	\$0.01 - \$0.06
Antidegradation	33,600 – 67,200	\$1.61 - \$3.23	--	97,070 – 145,605	\$4.61 - \$7.04	\$4.61 - \$7.04
Variances	--	--	--	4,620 – 5,310	\$0.22 - \$0.26	\$0.22 - \$0.26
National Total	43,100 – 114,700	\$2.07 - \$5.51	\$0.03 - \$0.15	101,930 – 152,115	\$4.84 - \$7.36	\$4.87 - \$7.51

'--' = not applicable

1. Although the EPA expects one-time rulemaking activity costs to be incurred over an initial three-year period, costs are annualized at 3% discount rate over 20 years for comparative purposes.

Overall Benefits

- Provide sufficient tools, flexibility and accountability to manage water resources.
- Allow for an open dialogue between the EPA, states, tribes, and the public to facilitate collective and transparent water quality management.
- Provide more transparent, well-defined pathway for maintaining and restoring the biological, chemical, and physical integrity of the nation's waters.
- Water quality improvements generate benefits, such as:
 - Market value: water supply and use (drinking water, agricultural, industrial); commercial fishing; property
 - Nonmarket use value: human health risk reductions (from consumption of fish, exposure to water during recreation); recreational (boating, fishing, swimming, wildlife viewing, hunting)

For More Information

- For more information and updates about this rulemaking and upcoming outreach:
 - http://water.epa.gov/lawsregs/lawsguidance/wqs_index.cfm
- Written comments may be submitted until December 03, 2013 by one of the following methods:
 - <http://www.regulations.gov>; Docket ID No. EPA-HQ-OW-2010-0606
 - Email: ow-docket@epa.gov
 - Mail
 - Hand Delivery
- For further information, but not to submit written comments:
 - WQSRegulatoryClarifications@epa.gov
 - 202-566-1860

Questions?

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A. Designated Uses

B. WQS Variances

C. Antidegradation

- **General WQS and Rulemaking Background**

D. Triennial Reviews

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- **Economic Analysis**

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