United States Environmental Protection Agency

Office of Water
EPA 820-F-16-011
September 2016

Fact Sheet: Potential Federal Baseline Water Quality Standards for Indian Reservations

Summary

Currently, fewer than 50 of over 300 tribes with reservation lands have water quality standards (WQS) effective under the Clean Water Act (CWA), leaving a gap in CWA protection of human health and the environment. To address this gap, EPA published an Advance Notice of Proposed Rulemaking (ANPRM) to invite comments on whether to establish federal baseline WQS for Indian reservation waters that do not currently have CWA-effective WQS in place, and if so, what those WQS should be and how they should be implemented.

Background

Water quality standards, which are required by section 303(c) of the CWA, are the foundation of the water quality-based pollution control program mandated by the Act and they serve a dual purpose. First, WQS define the goals for a water body by designating its uses, setting criteria to protect those uses, and establishing antidegradation requirements. Second, WQS serve as the basis of water quality-based limits in National Pollutant Discharge Elimination System (NPDES) permits (CWA sections 301(b)(1)(C) and 402), as the measure to assess whether waters are impaired (CWA section 303(d)(1)(A)), for assessing and reporting on water quality biannually under CWA section 305(b), and as the target for a total maximum daily load (TMDL) or "pollution budget" to aid in the restoration of impaired waters (CWA section 303(d)(1)(C)). Under CWA section 401, WQS serve as a basis for granting or denying federal licenses or permits for activities that may result in a discharge to waters covered by such WQS.

Clean Water Act section 303(c) and EPA's implementing regulation at 40 CFR part 131 outline requirements that could comprise federal baseline WQS for water bodies, including:

Designated uses which communicate environmental management objectives and water quality goals to the public and are essential in maintaining actions necessary to restore and protect water quality and meet the requirements of the CWA.

Water quality criteria which protect designated uses and must be based on sound scientific rationale, contain sufficient parameters to protect the designated use, and may be expressed in either narrative or numeric form. Narrative criteria are descriptions of the conditions necessary to attain a water body's designated use, while numeric criteria are values expressed as levels, concentrations, toxicity units or other numbers that quantitatively define the desired condition of the water body.

Antidegradation requirements which play a critical role in maintaining and protecting valuable water resources and complement designated uses and criteria by providing a framework for making

decisions regarding changes in water quality.

General provisions which include certain discretionary policies that generally affect how WQS are applied or implemented. Most common among such provisions are those addressing mixing zones, compliance schedules authorizing provisions, and WQS variances.

Who can develop WQS?

WQS can be developed by states, territories, authorized tribes, or, where necessary, EPA can establish federal WQS. To become authorized to implement a WQS under the CWA, an interested tribe must obtain treatment in a manner similar to a state (TAS) under CWA section 518 to administer a WQS program and must develop and submit WQS for EPA approval under CWA section 303(c). To date, 53 of the over 300 federally recognized tribes with reservation lands have been authorized to administer a WQS program, and 42 of these have submitted and had their WQS approved by EPA. EPA has promulgated federal WQS for one tribe.

What is the purpose of this ANPRM?

EPA is publishing this ANPRM to initiate an informed dialogue with tribes, states, the public, and other stakeholders regarding whether EPA should initiate a rulemaking to establish federal baseline WQS for Indian reservations currently lacking such WQS and, if so, what approach EPA should take regarding key policy issues raised by such a rulemaking.

What does the ANPRM do?

The ANPRM invites comment on whether and how EPA should approach establishing any federal baseline WQS and provides EPA's current thinking on WQS components which include: designated uses, narrative and numeric criteria, antidegradation requirements, and other WQS policies such as a mixing zone policy, a compliance schedule authorizing provision, and a WQS variance procedure.

The ANPRM discusses different options for establishing federal baseline WQS. The ANPRM seeks input on whether EPA should establish one set of WQS that apply universally to the reservation waters covered by any potential federal baseline WQS rule. EPA also seeks input on whether or not EPA should pursue establishing federal baseline WQS that offer limited tailoring opportunities by establishing cultural and traditional designated uses that account for unique practices observed by particular tribes; criteria that account for higher fish consumption patterns of particular tribes by establishing human health criteria using more site specific fish consumption rates; and establish greater protection for high quality and Outstanding National Resource Waters of particular importance to the tribe through the antidegradation requirements.

Who may be interested in this ANPRM?

Federally recognized Indian tribes with reservation lands that currently do not have CWA-effective WQS, and tribes and states near or bordering Indian reservations currently without CWA-effective WQS.

Federal Agencies with projects or other activities near surface waters on Indian reservations.

Industries or municipalities discharging pollutants to surface waters on Indian reservations currently without CWA-effective WQS, or that may affect such surface waters on Indian reservations.

Where can I find more information?

Contact Mary Lou Soscia by email at Soscia.Marylou@epa.gov or by phone at (503) 326-5873, or visit EPA's Water Quality Standards website at: https://www.epa.gov/wqs-tech/advance-notice-proposed-rulemaking-federal-baseline-water-quality-standards-indian