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Overview Presentation: *Water Quality Standards Regulatory Revisions Final Rule*

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

- Access the audio portion of today's webinar by:
 - Option 1: Using your computer speakers and/or headphones
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 - Type the question in the 'Chat' box
 - Email us at WQSRegulatoryClarifications@epa.gov

Purpose and Disclaimer

- Provide information to the public about EPA's Water Quality Standards Regulatory Revisions final rule.
- Provide opportunity for the public to ask clarifying questions about the final rule.
- This webinar does not:
 - Impose any binding requirements
 - Determine the obligations of the regulated community
 - Change or substitute for any statutory provision or regulation requirement
 - Represent, change or substitute for any Agency policy or guidance
 - Control in any case of conflict between this discussion and statute, regulation, policy or guidance

Outline

- What are water quality standards (WQS)?
- Why update the federal WQS regulation and when is the final regulation effective?
- What sections are updated in the final rule?
 1. Administrator's Determination
 2. Designated Uses
 3. Triennial Reviews
 4. Antidegradation
 5. WQS Variances
 6. 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).
- **Core components of water quality standards:**
 - 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.
- **Optional components of water quality standards:**
 - General policies addressing implementation issues.
 - Water quality standards variances
 - Provisions authorizing the use of compliance in permits

General Background

Who sets WQS?

- Under the CWA, states and authorized tribes establish standards.
- States and authorized tribes must hold public hearings to review their applicable standards every 3 years and to revise their standards as appropriate.
- EPA must approve the standards in order for them to be in effect for CWA purposes.
- The CWA requires EPA to propose and promulgate 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 authorized tribe adopts WQS that meet CWA requirements.

Why Update the Federal WQS Regulation ?

- Provide a more effective, flexible and practicable approach for the implementation of WQS and protecting water quality
- Allow for better and more transparent communication among EPA, states, authorized tribes, stakeholders and the public
- Ensure better protection and maintenance of high quality waters
- Facilitate use of tools by states and authorized tribes, in an accountable way, to make incremental progress in improving water quality, rather than pursuing a downgrade of the underlying WQS
- Reduce confusion and mixed interpretation of the existing regulation

Effective Date of the Final WQS Regulation

- Regulation is effective on October 20, 2015, which is 60 days after publication in the Federal Register
- Any necessary revisions to state/authorized tribal WQS will need to occur within the next triennial review initiated after publication of the rule
- For a short period of transition and under certain circumstances, EPA will review new or revised state/authorized tribal WQS based on consistency with the previously applicable (1983) WQS regulation if:
 - (1) the new or revised WQS was submitted before the effective date of the final rule, or
 - (2) if the state/authorized tribe has held its public hearing(s) and the public comment period has closed before the effective date of this rule and the state/authorized tribe submits the new revised WQS within nine months of the effective date of the final rule.

Administrator's Determination that New/Revised WQS are Necessary under CWA section 303(c)(4)(B)

Final Rule:

- Requires a determination that new/revised WQS are necessary 1) be signed by the Administrator (or authorized delegate), and 2) specify that it is a determination under CWA section 303(c)(4)(B)

Importance:

- Minimizes potential for misunderstanding by distinguishing such determinations from routine EPA communications
- Allows direct/transparent written feedback from EPA to states/ authorized tribes
- Preserves limited resources that would otherwise be spent resolving the confusion through litigation

Designated Uses: Adoption of Highest Attainable Use after UAA

Final Rule:

- Requires adoption of the highest attainable use when adopting revised standards based on a required use attainability analysis (UAA)
- Defines highest attainable use (HAU)

Importance:

- Concept of HAU is fundamental to the WQS program
- Builds/maintains resilient and robust ecosystems by ensuring that states/authorized tribes retain and designate the highest attainable physical, chemical and biological uses, even when removing unattainable uses
- Serves the purposes of the CWA by continuing to strive for uses specified in CWA section 101(a)(2) uses, where attainable

Designated Uses: When a UAA is/is Not Required

Final Rule:

- UAA is only required when removing or modifying a use specified in CWA 101(a)(2) or subcategory of such a use
- A UAA is not required when removing or modifying a non-101(a)(2) use, but requires documentation consistent with CWA section 303(c)(2)(A) (i.e., a “use and value demonstration”) and 131.10(a)

Importance:

- Improves the process to designate and revise uses, which guide actions to restore and protect water quality
- Reduces confusion, inconsistency and unnecessary litigation that can hinder environmental progress

Questions?

- Please enter your questions in the '**Chat**' box on the right side of your screen. We will respond to a few of those questions today.
 - **General WQS and Rulemaking Background**
 - **Effective Date of the Final WQS Regulation**
 - **Administrator's Determination**
 - **Designated Uses**

- **Reminder:** Following today's webinar, you may continue to submit your questions by emailing them to WQSRegulatoryClarifications@epa.gov and we will address as many as time allows during Wednesday's question and answer session webinar.

Triennial Review (1)

Final Rule:

- When conducting triennial reviews, if a state/authorized tribe chooses not to adopt new or revised criteria for any parameters for which EPA has published new or updated CWA section 304(a) criteria recommendations, they must explain their decisions when reporting the results of their triennial review to EPA.

- When conducting triennial reviews, states/authorized tribes must review all applicable WQS adopted into state/authorized tribal WQS and any federally promulgated WQS, including
 - Designated uses, water quality criteria, antidegradation, general policies, WQS variances, and provisions authorizing the use of schedules of compliance for WQBELs in NPDES permits.

Triennial Review (2)

Importance:

- Ensures public transparency in how states/authorized tribes consider the latest science as reflected in the CWA section 304(a) criteria recommendations.

Effective Date:

- In the next triennial review initiated following publication of the rule, states/authorized tribes must provide an explanation for why they did not adopt new or revised criteria for parameters for which EPA has published new or updated CWA section 304(a) criteria recommendations since May 30, 2000.

Antidegradation: Identifying High Quality Waters

Final Rule:

- Reaffirms both approaches for Tier 2 protection - either a parameter-by-parameter or a waterbody-by-waterbody basis
- For waterbody-by-waterbody basis, states/authorized tribes shall provide opportunity for public input on when they will provide Tier 2 protection and the factors considered
- States/authorized tribes must not exclude water bodies from Tier 2 protection solely because water quality does not exceed levels necessary to support all of the CWA section 101(a)(2) uses

Importance:

- Serves the purposes of the CWA and regulation by ensuring antidegradation implementation is consistent
- Increases transparency and opportunities for public involvement, while preserving states/authorized tribes flexibility to manage waters
- Increases antidegradation implementation, thereby preserving assimilative capacity in the water and ultimately leading to resiliency to the effects of climate change and other stressors

Antidegradation: Alternatives Analysis

Final Rule:

- Before allowing a lowering of high water quality, states/tribes must find, after an analysis of alternatives, that such a lowering is necessary to accommodate important economic or social development in the area in which the waters are located
- That analysis must evaluate a range of practicable alternatives that would prevent or lessen the degradation associated with the proposed activity
- When an analysis identifies one or more such practicable alternatives, states and authorized tribes may only find that a lowering is necessary if one such alternative is selected for implementation

Importance:

- Assures that degradation only occurs where found to be truly necessary
- Structured analysis of alternatives increases transparency and consistency of antidegradation implementation

Antidegradation: Implementation Methods

Final Rule:

- States and authorized tribes must provide opportunity for public involvement during development and revision of implementation methods, and to make the implementation methods publically available
- Antidegradation implementation methods (whether or not those methods are adopted into rule) must be consistent with state/authorized tribal antidegradation policy and federal requirements under §131.12(a)

Importance:

- Ensures a predictable, publically transparent state/authorized tribal decision-making process related to maintaining and protecting water quality, especially high quality waters.

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WQS Variances (1)

Final Rule:

- Establishes a regulatory framework for WQS variances that maximizes flexibility and accountability.
 - Includes a definition of WQS variance
 - Explicitly authorizes states/authorized tribes to adopt WQS variances
 - WQS variances are WQS subject to EPA review
 - WQS variances can apply to a single discharger, multiple dischargers, or to a water body/waterbody segment

Importance:

- Provides clear mechanism to make incremental progress when applicable WQS are not attainable in the near-term but may be attainable in the future
- Provides regulatory certainty and accountability in making progress toward attaining underlying WQS
- Promotes the appropriate use of WQS variances

WQS Variances (2)

Specific information is required in the legally binding WQS variance:

- Pollutant/water quality parameter and the water body/waterbody segment; term; *quantifiable* expression of the highest attainable condition; and specific provisions about reevaluations (if term is >5 years)

Specific documentation must be submitted to support the WQS variance:

- Justification of: the need, the term (by listing the actions), and the highest attainable condition
- For WQS variance applicable to a water body/waterbody segment additional documentation needed:
 - For initial WQS variance: identification and documentation of NPS BMPs
 - For subsequent WQS variance: whether and to what extent BMPs were implemented and progress achieved

WQS Variances (3)

Reevaluations (for WQS variance > 5 years):

- States and authorized tribes must:
 - Set a reevaluation schedule (no longer than 5 years);
 - Establish how to receive public input;
 - Use all existing and readily available information to reevaluate the highest attainable condition (HAC);
 - Include a provision that specifies the requirements of the WQS variance are either the HAC or any “higher” HAC found during a reevaluation; and
 - Include a provision that the WQS variance will no longer be applicable if the reevaluation is not conducted or the results not submitted to EPA within 30 days

Authorizing Permit Compliance Schedules

Final Rule:

- Requires that if a state/authorized tribe intends to use compliance schedules in NPDES permits, it must first adopt a permit compliance schedule authorizing provision
- Such authorizing provision must be consistent with the CWA and is subject to EPA review and approval as a WQS
- Authorizing provision can be housed in other regulations as long as it is submitted for EPA review and approval as a WQS

Importance:

- Provides the regulatory framework to ensure compliance schedules are legal under the CWA
- Ensures states' /authorized tribes' decision to allow permit compliance schedules is transparent

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Informational Webinar Series

Overview of Final Rule:

- Presentation: Monday, September 28, 2015, 1:00–2:00 PM Eastern
- Q&A: Wednesday, September 30, 2015, 1:00–2:00 PM Eastern

In-Depth Topic Webinars:

- WQS Variances
 - Presentation: Monday, October 5, 2015, 1:00–2:30 PM Eastern
 - Q&A: Wednesday, October 7, 2015, 1:00–2:00 PM Eastern
- Antidegradation
 - Presentation: Tuesday, October 13, 2015, 1:00–2:00 PM Eastern
 - Q&A: Thursday, October 15, 2015, 1:00–2:00 PM Eastern
- Designated Uses
 - Presentation: Tuesday, October 20, 2015, 1:00–2:00 PM Eastern
 - Q&A: Thursday, October 22, 2015, 1:00–2:00 PM Eastern

Registration details found at:

http://water.epa.gov/lawsregs/lawsguidance/wqs_index.cfm

Water Quality Standards Regulatory Revisions Final Rule

Key Dates:

- FR publication - August 21, 2015
- Effective Date - October 20, 2015
(60 days after FR publication)

More Information:

- Final preamble/rule, supplemental material, and planned outreach information can be found at:
http://water.epa.gov/lawsregs/lawsguidance/wqs_index.cfm
- Submit questions about the final rule to:
WQSRegulatoryClarifications@epa.gov