

*Proposed Rulemaking to Revise  
the Federal Water Quality  
Standards Regulation*

Water Quality Standards  
Quarterly Public Meeting

November 4, 2010

# Why Revise the WQS Regulation?

- The core requirements of the regulation have been in place since 1983.
- The regulation has provided a solid foundation for water quality- based controls.
- The intent of the changes EPA is considering is to add or modify provisions to address the targeted areas described later in this briefing.
- The regulation provides limited guidance on recurring issues; EPA tends to “lead by its practice” in individual WQS actions which has resulted in:
  - Some unresolved issues that constantly recur with different fact patterns; and
  - Some resolved issues not being codified for future use.

# Targeted Areas EPA Is Considering

- Antidegradation: Require implementation methods to be adopted in rule and specify minimum requirements.
- Administrator's determination: Clarify what constitutes an Administrator's determination under 303(c)(4)(B).
- Uses: Clarify EPA's minimum expectations for designated uses.
- Variances: Establish a regulatory structure and transparency for use of variances.
- Triennial Reviews: Strengthen the triennial review requirements.
- Reflect Court Decisions: Define a WQS, address compliance schedule authorizing provisions, and revise WQS submittal requirements.

# Antidegradation

- Current regulation:  
Specifies that states and tribes must adopt specific antidegradation policies, and must identify implementation methods.
- Issues:  
Confusion concerning what implementation methods must include.  
Uncertainty about the role of implementation methods and EPA's oversight authority.
- Possible changes:  
Require antidegradation implementation methods to meet certain minimum requirements and to be adopted into states' and tribes' WQS and thus submitted to EPA for review and approval or disapproval.

# 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:  
Regulation does not specify the process by which the Administrator utilizes the authority to determine if a state or tribe needs new or revised WQS.
- Possible change:  
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).

# Uses

- Current regulation:  
Section 101(a)(2) of the CWA establishes a national goal for water quality: “protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water,” wherever attainable.  
A “use attainability analysis” is required to justify removing a designated use that is specified in 101(a)(2).  
EPA’s longstanding interpretation is that 101(a)(2) uses are attainable unless otherwise demonstrated.
- Issue:  
Regulation does not specify what uses, if any, must replace a 101(a)(2) use that is removed, after an appropriate UAA.
- Possible changes:  
Clarify that 1) the CWA goal uses are attainable unless otherwise demonstrated, and 2) where a use specified in 101(a)(2) is deemed unattainable, the Highest Attainable Use (HAU) closest to the goal must be adopted.

# Variations

- Current regulation:  
States and tribes may adopt variations to WQS.
- Issue:  
Confusion concerning how to use variations.
- Possible change:  
Establish regulatory expectations for variations to support consistent, appropriate, transparent and enforceable implementation.

# Triennial Reviews

- Current regulation:  
States and authorized tribes must hold a public hearing for the purpose of reviewing their WQS every three years and revise or adopt standards as appropriate.
- Issues:  
Regulation does not require that states and tribes solicit public comments when determining the scope of their review.  
Regulation does not explicitly require periodic evaluation of whether criteria still protect the use.
- Possible changes:  
Clarify that states/tribes must solicit and consider public input in determining the scope of a triennial review.  
Require that states/tribes evaluate whether water quality criteria are still protective of designated uses, taking into consideration any new information (e.g. EPA recommendations).

# Reflect Court Decisions

- Definition of WQS (Florida Impaired Waters Rule)  
Revise the definition of “water quality standards” at 40 CFR 131.3 to more clearly define types of state/tribal provisions that need to be submitted to EPA for review and action.
- Compliance schedule authorizing provisions (Starkist)  
Specify that compliance schedule authorizing provisions must be adopted as part of a state or tribe’s water quality standards, and therefore be submitted to EPA for review and action.
- Submittal of public comments (Albuquerque v. Browner)  
Clarify that state or tribal records of public participation and comment response related to State or Tribal review and revision of WQS must be submitted to EPA.

# Rulemaking Schedule

- Conduct pre-proposal outreach and consultation  
– August 2010
- Publish proposed rule – Summer 2011
- Continue outreach and consultation
- Publish final rule – *(date to be determined)*