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Water Quality Standards Handbook

Chapter 1: General Provisions

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([40 CFR 131.1–131.6](#))

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Introduction

This chapter provides an introduction to several fundamental concepts related to water quality standards (WQS) including their purpose, basic description, waters to which they apply, and an overview of the process for EPA approval of WQS adopted by states and authorized tribes. Many of the concepts introduced in Sections 1.1-1.6 of this chapter are discussed in greater detail in other chapters of this Handbook. Specifically, Section 1.1 describes the scope of the EPA's WQS regulations at [40 CFR Part 131](#), and Section 1.2 describes the purpose of WQS. Section 1.3 describes the applicability of WQS to waters of the United States. Sections 1.4 and 1.5 describe state and tribal as well as EPA authorities, respectively, related to WQS. Section 1.6 outlines the minimum requirements for state and tribal WQS submissions. Finally, Section 1.7 describes the additional WQS requirements applicable to states and tribes within the Great Lakes watershed.

1.1 Scope of 40 CFR Part 131

The WQS regulation at [40 CFR Part 131](#) describes the requirements and procedures for states and authorized tribes to develop, adopt, review, revise, and submit WQS as well as requirements and procedures for the EPA to review, approve, disapprove, and promulgate WQS as authorized by Section 303(c) of the [Clean Water Act \(CWA\)](#).¹ This Handbook serves as guidance for implementing 40 CFR Part 131.

1.2 Purpose of Water Quality Standards

WQS are the foundation for a wide range of programs under the [CWA](#). They serve multiple purposes including establishing the water quality goals for a specific waterbody, or portion thereof, and providing the regulatory basis for establishing water quality-based effluent limits (WQBELs) beyond

¹ Throughout this document, the term “states” means the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The term “authorized tribe” or “tribe” means an Indian tribe authorized for treatment in a manner similar to a state under [CWA](#) Section 518 for purposes of Section 303(c) WQS.

the technology-based levels of treatment required by CWA Sections 301(b) and 306. WQS also serve as a target for CWA restoration activities such as total maximum daily loads (TMDLs).

WQS consist of the following elements:

- Designated use or uses such as “supporting aquatic life” or “recreation” (which are described in [Chapter 2](#) of this Handbook).
- Water quality criteria necessary to protect the designated uses (which are described in [Chapter 3](#) of this Handbook).
- Antidegradation requirements (which are described in [Chapter 4](#) of this Handbook).
- General policies affecting the application and implementation of WQS that states and authorized tribes may include at their discretion (e.g., mixing zone, variance, and critical low-flow policies, which are described in [Chapter 5](#) of this Handbook).

States and tribes establish WQS to meet the objectives set forth in Section 101(a), which are as follows:

- Restore and maintain the chemical, physical, and biological integrity of the Nation's waters.
- Wherever attainable, achieve a level of water quality that provides for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water.

Section 303(c) instructs states and tribes to consider these objectives in establishing WQS as well as the water's use and value for public water supplies and agricultural, industrial, and other purposes including navigation.

WQS establish the environmental baselines used for measuring the success of CWA programs, so adequate protection of aquatic life and wildlife, recreational uses, and sources of drinking water, for example, depends on developing and adopting well-crafted WQS. CWA programs such as TMDLs developed under Section 303(d), Section 305(b) reporting, Section 401 water quality certification, Section 404 permitting for the discharge of dredged and fill material, and WQBELs in discharge permits issued under the National Pollutant Discharge Elimination System (NPDES) under Section 402 depend on such WQS (as discussed in [Chapter 7](#) of this Handbook). Setting clear baselines is also important for other activities including watershed planning, protection, and restoration as well as innovations such as market-based incentives and trading.

1.3 Applicability of Water Quality Standards to Waters of the United States

The [CWA](#) requires states and authorized tribes to establish WQS for navigable waters, i.e., “waters of the United States.” The latter term is specified in Section 502 of the CWA and defined by the EPA and the Army Corps of Engineers at [40 CFR 230.3](#) and [33 CFR Part 328](#), respectively.

The term has also been discussed in EPA guidance and has been further interpreted by a series of legal decisions in federal courts including the United States Supreme Court. In some situations, the EPA and the Army Corps of Engineers have interpreted the case law in making jurisdictional determinations for specific waterbodies. See the EPA's [*Clean Water Act Definition of "Waters of the U.S.*](#) webpage for additional information.

The CWA indicates that all of its programs protect waters of the United States, and as a result, there is only one definition for that key threshold term. Thus, the EPA has not defined waters of the United States separately for WQS but, instead, relies on the established definitions, interpretations, and decisions described above in administering the WQS program.

States and tribes may choose to expand their coverage of WQS beyond waters of the United States to include other waters as "waters of the state." For example, a state or tribe may specifically designate isolated wetlands (that do not meet the definition of waters of the United States) as waters to which state and tribal WQS apply.

1.4 State and Tribal Authority

1.4.1 General Provisions

Under Section 303(c) of the [CWA](#), states and authorized tribes are responsible for reviewing, revising, and adopting WQS and submitting such WQS to the EPA for review and approval or disapproval. Consistent with Section 510, states and tribes may develop WQS more stringent than required by the CWA and the EPA's implementing regulations at [40 CFR Part 131](#).

1.4.2 State and Tribal Authority over Federally Permitted Activities

Under Section 401 of the [CWA](#), states and authorized tribes have authority to issue water quality certifications for certain federally permitted or licensed activities. This authority allows states and tribes to influence the design and operation of projects affecting waters in their jurisdiction. Certifications under Section 401 ensure that federal permits and licenses for activities that may result in a discharge comply with applicable CWA requirements including state or tribal WQS as well as with any other appropriate requirements of state or tribal law. Section 401 does not apply to non-federal permits or licenses such as permits issued by a state or tribe authorized to administer the NPDES or Section 404 programs.

Section 401 applies to all federal agencies that grant a license or permit that may result in a discharge to waters of the United States. Examples of such licenses or permits include the following:

- EPA-issued permits for point source discharges under Section 402.

- Permits for discharges of dredged or fill material under Section 404.
- Permits for activities in navigable waters that may affect navigation under Sections 9 and 10 of the Rivers and Harbors Act.
- Federal Energy Regulatory Commission licenses required for hydroelectric projects issued under the Federal Power Act.

Section 401 certifications are generally issued by the state or tribe under whose jurisdiction the discharge originates.

A tribe eligible for treatment in a manner similar to a state (TAS) for purposes of WQS can likewise assume authority for issuing Section 401 certifications for project discharges originating in its reservation once it designates a certifying agency. See [40 CFR 121.1\(e\)](#) and [40 CFR 131.4\(c\)](#). The EPA retains authority for issuing water quality certifications within Indian country where a tribe has not been approved as eligible for TAS for WQS and water quality certifications.

When making a certification decision, the certifying entity may grant certification, grant certification with conditions, deny certification, or waive certification. If the state or tribe conditions its certification, all conditions must become terms of the permit or license if it is issued. If the certifying entity denies certification, the federal permitting or licensing agency is prohibited from issuing the permit or license. Certifications are subject to review and comment by neighboring states and tribes, and the federal agency must address concerns they raise.

For additional information on state and tribal authority under Section 401, see the EPA's [Water Quality and 401 Certification webpage](#).

1.5 EPA Authority

1.5.1 What Provisions Constitute New or Revised Water Quality Standards under Clean Water Act Section 303(c)

The [CWA](#) requires states and authorized tribes to adopt new or revised WQS and then submit them to the EPA for review and approval or disapproval action. The EPA has the authority and duty under CWA Section 303(c)(3) to approve or disapprove new or revised WQS.²

² In 2004, the United States Court of Appeals for the Eleventh Circuit ruled that the EPA has a mandatory duty to approve or disapprove a new or revised WQS even if the state did not submit such new or revised WQS to the EPA for review. (See *Florida Public Interest Research Group Citizen Lobby, Inc., et al. v. EPA*, 386 F.3d 1070 (11th Cir. 2004)). Thus, the EPA's authority and duty to approve or disapprove a new or revised WQS is not dependent upon whether the provision was submitted to the EPA for review. Since the 2004 decision, determining which provisions constitute new or revised WQS that the EPA has the authority and duty to review and approve or disapprove has increasingly

The EPA considers four questions when evaluating whether a provision constitutes a new or revised WQS that the EPA has the authority and duty to review and approve or disapprove under Section 303(c)(3). If the answer to **ALL** four questions is “yes,” then the provision would likely constitute a new or revised WQS that the EPA has the authority and duty to review and approve or disapprove. If the answer to any of the four questions is “no,” then the provision would not likely constitute a new or revised WQS that the EPA has the authority and duty to review and approve or disapprove.

1. Is it a legally binding provision adopted or established pursuant to state or tribal law? This consideration stems from the use of the terms “adopt,” “law,” “regulations”, and “promulgate” in Section 303(a)–(c) and from the EPA’s regulation at [40 CFR 131.3\(i\)](#), which specifies that WQS “are provisions of state or federal law.” The EPA considers documents incorporated by reference into state or tribal law to be legally binding provisions adopted or established pursuant to state or tribal law.

AND

2. Does the provision address designated uses, water quality criteria (narrative or numeric) to protect designated uses, and/or antidegradation requirements for waters of the United States? The CWA, the EPA’s implementing regulations, and case law have broadly established three core components of WQS, which are designated uses, criteria, and antidegradation requirements. Therefore, this consideration explicitly specifies that, for a provision to be a WQS, it must include or address at least one of these three core components.

AND

3. Does the provision express or establish the desired condition (e.g., designated uses, criteria or instream level of protection (e.g., antidegradation requirements) for waters of the United States immediately or mandate how it will be expressed or established for such waters in the future? This consideration recognizes that, if a provision meets the above two considerations and expresses the desired condition or level of protection for waters of the United States, it may be a new or revised WQS that the EPA has the authority and duty to review and approve or disapprove under Section 303(c)(3), regardless of whether that expression applies immediately or will be applied in the future. EPA action on provisions that may not apply immediately will ensure that the EPA is able to provide input as early as possible in the state’s or tribe’s WQS development process, thus enabling states, tribes, and the EPA to carry out their functions under the CWA in the most efficient, expedient manner possible.

AND

become more difficult, as state and tribal water programs are becoming more integrated with implementation policies and procedures.

4. Does the provision establish a new WQS or revise an existing WQS? While a provision may meet the first three considerations, the EPA's authority and duty to review and approve or disapprove such provisions under Section 303(c)(3) are limited to those WQS that are new or revised. A provision that establishes a new WQS or has the effect of changing an existing WQS would meet this consideration. In contrast, a provision that simply implements a WQS without revising it would not constitute a new or revised WQS.

The EPA considers non-substantive edits to existing WQS to constitute new or revised WQS that the EPA has the authority and duty to review and approve or disapprove under Section 303(c)(3). While such revisions do not substantively change the meaning or intent of the existing WQS, treating such non-substantive changes in this manner ensures public transparency concerning which provisions are effective for purposes of the CWA. The EPA notes that the scope of its action in reviewing and approving or disapproving such non-substantive changes would extend only as far as the actual non-substantive changes themselves. In other words, the EPA's action on non-substantive changes to previously approved WQS would not constitute an action on the underlying, previously approved WQS. Challenges to the EPA's prior approval of the underlying WQS would be subject to any applicable statute of limitations and prior judicial decisions.

For additional information on determining what provisions constitute new or revised WQS, see the EPA's document [What is a New or Revised Water Quality Standard Under CWA Section 303\(c\)? Frequently Asked Questions \(2012\)](#).

1.5.2 EPA Authority for Review of State and Tribal Water Quality Standards

Once the EPA determines that a provision meets the four considerations for a new or revised WQS described in Section 1.5.1 of this chapter, the next step is for the EPA to determine whether it can approve the provision.

Section 303(c) of the [CWA](#) requires the EPA to review and approve or disapprove new or revised state and tribal WQS based on the requirements of the CWA. The CWA specifies that the EPA must approve new or revised WQS within 60 days after the date of submission or disapprove such WQS within 90 days after the date of submission.

Consistent with Section 510, states and authorized tribes may adopt any requirements regarding control or abatement of pollution as long as such requirements are not less stringent than the requirements of the CWA. Thus, the EPA is generally not authorized to disapprove a state or tribal WQS on the basis that the EPA considers the WQS to be too stringent.

If the EPA determines that the new or revised state or tribal WQS are consistent with the CWA and [40 CFR Part 131](#), the EPA approves the WQS. However, the EPA disapproves the WQS if they are not consistent with the CWA. In the case of disapproval, the EPA must promptly propose federal WQS under Section 303(c)(4)(A) and promulgate such WQS within 90 days of proposal, provided that the

state or tribe does not make appropriate corrections within 90 days. The EPA may approve some provisions and not others within the same WQS submission.

The EPA may also promulgate a new or revised federal WQS where the Administrator determines under Section 303(c)(4)(B) that such a WQS is necessary to meet the requirements of the CWA, and no WQS have been submitted for the EPA to disapprove under Section 303(c)(4)(A). This situation could occur, for instance, if the EPA determines that particular WQS provisions are missing from a state's or tribe's currently applicable WQS or that the current WQS do not otherwise meet the requirements of the CWA.

[Chapter 6](#) of this Handbook describes the EPA's WQS review process in more detail.

1.6 Minimum Requirements for State and Tribal Water Quality Standards Submissions

When states or authorized tribes submit new or revised WQS for the EPA to review, they must include both the WQS provisions themselves as well as certain accompanying information, consistent with [40 CFR 131.6 and 131.20\(c\)](#). The submitted WQS provisions may include one or more of the following elements:

- Use designations consistent with the provisions of Sections 101(a)(2) and 303(c)(2) of the [CWA](#).
- Water quality criteria sufficient to protect the designated uses.
- An antidegradation policy consistent with 40 CFR 131.12.³

Additionally, under 40 CFR 131.13, states and tribes may, at their discretion, include in their WQS general policies affecting the application and implementation of WQS (e.g., mixing zone, variance, and critical low-flow policies). Whenever a state or tribe submits new or revised WQS provisions, the submission must also include the following items:

- Methods used and analyses conducted to support the WQS provisions.
- Certification by the state attorney general, tribal legal authority, or other appropriate legal authority within the state or tribe that the WQS were duly adopted pursuant to state or tribal law.
- General information to aid the EPA in determining the adequacy of the scientific bases of the WQS that do not include the uses specified in Section 101(a)(2) as well as information on

³ States and authorized tribes must also identify the methods for implementing the antidegradation policy in accordance with [40 CFR 131.12\(a\)](#).

general policies applicable to state and tribal WQS that may affect their application and implementation.

The EPA may also request additional information from the state or tribe to aid in determining the adequacy of the WQS.

1.7 Requirements for States and Authorized Tribes within the Great Lakes Watershed

Water Quality Guidance for the Great Lakes System at 40 CFR Part 132, which arose as part of a larger effort called the Great Lakes Initiative or GLI, imposes additional requirements on the WQS, TMDL, and NPDES permit programs of Great Lakes states and authorized tribes in accordance with Section 118(c)(2) of the [CWA](#).⁴ This regulation applies with respect to waters within the Great Lakes watershed, which includes the Great Lakes themselves and all the streams, rivers, lakes, and other waterbodies within the portion of the Great Lakes drainage basin under jurisdiction of the United States.

States and tribes with waters in the Great Lakes watershed must comply with both [40 CFR Part 131](#) and 40 CFR Part 132. Thus, the EPA recommends that such states and tribes use this Handbook, which is focused on 40 CFR Part 131, in conjunction with 40 CFR Part 132 in establishing and managing their WQS programs. As a general matter, a state or tribe may not use a provision in 40 CFR Part 131 to negate a counterpart provision in 40 CFR Part 132 or vice versa.

The EPA has established the online [Great Lakes Initiative Clearinghouse](#) as a central location for information on water quality criteria, toxicity data, exposure parameters, and other supporting documents used in developing WQS in the Great Lakes watershed. States and tribes can use the Clearinghouse to help derive criteria for pollutants without specific numeric criteria published in 40 CFR Part 132. The target audience for the Clearinghouse is state and tribal environmental agencies in the Great Lakes watershed as well as other interested parties with a technical background.

⁴ Although [CWA](#) Section 118(c)(2) uses the term “guidance,” the EPA issued [40 CFR Part 132](#) as a binding regulation because the statute *requires* Great Lakes states and authorized tribes to adopt provisions consistent with the guidance.