

Potential Baseline Water Quality Standards Rulemaking Effort

Consultation and Coordination
Pre-Rulemaking
(August 11-November 6, 2015)

United States Environmental Protection Agency
Office of Water, Water Quality Standards Program

Purpose

- EPA has initiated consultation and coordination with federally recognized Indian tribes to explore a rulemaking to establish federally-promulgated baseline water quality standards (WQS) for Indian reservations that do not have EPA-approved, Clean Water Act (CWA)-effective WQS in place.
 - Aimed at closing the gap in WQS for tribal waters.
 - Adds to a growing list of initiatives EPA is undertaking that recognize the importance of tribal waters, tribal sovereignty, and the need to better protect the water resources that tribes rely on.
- EPA solicits feedback from tribes on all aspects of this potential rulemaking, including how best to structure and develop baseline WQS for Indian reservations which currently do not have EPA-approved WQS.
- Feedback obtained during this consultation phase will be used to inform EPA decision-making regarding the structure and content of a potential proposed rule moving forward.

Tentative Timing

- Ken Kopocis, the Deputy Assistant Administrator for the Office of Water, signed the consultation letter on August 11th, 2015 to initiate outreach on this effort.
- Currently in pre-rulemaking consultation phase with all federally recognized tribes (August 11 – November 6, 2015).
- EPA decision-making regarding structure and content of proposed rule informed by feedback obtained during this consultation period (Winter 2015/2016).
- Development of proposed rule (2016).
- Proposed rule signed (estimated prior to 2017).
- EPA will continue to support all tribes that want to obtain Treatment in a Similar Manner as a State (TAS) to adopt their own WQS under the CWA.

Why is EPA Considering Baseline WQS?

- EPA strongly supports and will continue to encourage eligible tribes to obtain TAS under the CWA in order for tribes to establish their own WQS for approval by EPA and to administer their own WQS program.
- EPA recognizes, however, that not all tribes may seek TAS and some tribes may continue to experience challenges to establishing their own WQS.
 - Out of over 300 tribes with Indian reservations, only 42 have EPA-approved tribal WQS in place.
- This means those tribal waters without WQS may not have the full suite of protections afforded under the CWA.

Importance of Water Quality Standards

- WQS are regulations that define the water quality goals of a water body, or waterbody segment by:
 - designating the use or uses to be made of the water;
 - setting criteria necessary to protect the uses;
 - protecting water quality through antidegradation provisions.
- WQS serve as the foundation of the water quality-based pollution control program mandated by the CWA to protect human health, recreation, wildlife, aquatic life, and other uses.
- WQS are the cornerstone to prevent future degradation in waters, and improve water quality in impaired waters, by providing a basis to assess the health of water bodies, and impose limits in permits to control pollution discharges.

Benefits of Water Quality Standards

- The benefits of having federal WQS in place for reservation waters where no EPA-approved WQS exist include:
 - Facilitating tribal participation with states and the federal government to inform water quality management decisions impacting those waters on the reservation;
 - Establishing goals for the quality of reservation waters that are recognized under the CWA;
 - Providing a basis for enforceable National Pollutant Discharge Elimination System (NPDES) permits to require controls beyond basic technology-based controls. (Water discharges allowed by NPDES permits must meet WQS set under the CWA for those receiving waters);
 - Providing a mechanism to control discharges through other federal licenses and permits (CWA section 401 certification); and
 - Protecting reservation water quality from upstream discharges flowing into reservation waters from other jurisdictions.

Prior “Core” WQS Rulemaking Effort

- Some tribal leaders may recall that between 1999 and 2003, EPA developed a draft rulemaking of federal WQS for those waters in Indian country that did not have EPA-approved WQS. EPA is interested in building on elements of that earlier effort to ensure a baseline level of human health and environmental protection exists for reservation waters.

Baseline Water Quality Standards

- Baseline WQS would potentially include a combination of:
 - CWA 101(a)(2) designated uses (e.g. fishable/swimmable)
 - Numeric criteria
 - Narrative “free from” criteria
 - Antidegradation provision
 - General WQS provisions
- EPA may also consider providing some very limited regional adjustments (i.e. minimal tailoring of the baseline WQS), including for consistency with other federal actions. However, EPA recognizes that fully customized WQS are best achieved by a tribe with TAS that develops its own WQS for approval by EPA.
- At any time, tribes, with assistance from EPA, could still seek to obtain TAS authority to adopt and administer their own tribal-specific WQS for EPA approval. Tribe-adopted, EPA-approved WQS would supersede any baseline WQS established by this potential rulemaking.

Questions Relating to Tribes' Interests in Protecting Water Quality

- What would an effective federal rulemaking look like to you and your tribe?
- What water quality protection issues (or issues specifically related to WQS) are you and your tribe facing that should be considered in this potential rulemaking?
 - Concerns for reservation water quality and degradation of water quality?
 - Concerns for upstream sources of water pollution?
 - Concerns for neighboring state WQS?
 - Concerns for water uses relating to equity, safety, drinking water, treaty rights, or economic interests?
- Do tribes have examples of situations they are facing regarding water quality that could help inform, or that should be addressed, by this potential rulemaking?

Questions Relating to EPA's CWA Implementation Responsibilities:

- What approaches in a potential rulemaking should EPA consider to implement CWA WQS on reservations and be most effective for you and your tribe?
- Do you have any concerns about this action? Are there any sensitivities or unintended consequences that EPA should consider before moving forward on this action?
- If EPA provided baseline WQS, would this change your tribe's interest in pursuing TAS?
 - Would your tribe be more likely to pursue TAS? If yes, would your tribe be interested in using baseline standards as a starting point to develop more specific standards for reservation waters?
 - Would your tribe be more likely **not** to pursue TAS?
 - No effect?

Tribal Consultation and Coordination Process

- Consultation and coordination with tribes on a proposed rulemaking will proceed according to the table provided in the August 11th consultation letter (and on the following slide).
- If EPA decides to move forward with a proposed rulemaking, tribes will have the opportunity to further consult with EPA once the rule is proposed. In addition, tribes may provide input as part of the public comment period that immediately follows the publication of a proposed rule.

Tribal Consultation and Coordination Process and Timeline

| August 11, 2015 through November, 6 2015 | Consultation and coordination period |
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| September 9-11, 2015 | Informational presentation at the R10 Region Tribal Operations Committee meeting. EPA's Office of Water will participate in this conference by telephone. Details will be announced via the Tribal Consultation Opportunities Tracking System (TCOTS) at http://tcots.epa.gov/oita/TConsultation.nsf/TC?OpenView |
| September 23, 2015 Time: 2:00-4:00 EDT | Tribes-only informational, coordination and consultation webinar. Details will be announced via TCOTS and email. |
| October 18, 2015 | 72 nd Annual Meeting, National Congress of American Indians, San Diego, CA. Session details to be determined. EPA officials will participate in this conference, and will be available for consultation discussions during the conference. |
| October 26, 2015 | Informational presentation and discussion at the R9 RTOC meeting in Reno, NV. EPA's Office of Water will participate in the accompanying Annual Tribal/EPA conference, and will be available for consultation discussions during the conference. Details will be announced via TCOTS and email. |

Contact Information

- Tribes may submit written consultation comments by email or mail to:

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- We look forward to hearing from you on this important matter.