




## MODULE 18

# Submittal And Review Of New And Revised Water Quality Standards

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## What We'll Discuss...

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- What are the requirements and procedures for submission of new and revised standards?
- How does EPA review a State or Tribe's adopted Water Quality Standards?
- What happens if a State or Tribe fails to submit approvable standards?
- When must EPA promulgate federal standards, and how do they do it?

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### Goals for Module:

- A) Discuss administrative procedures and regulatory requirements in submitting standards.
- B) Discuss the process EPA follows to review and approve State and Tribe adopted water quality standards.
- C) Discuss the implications of a State's or Authorized Tribe's failure to submit standards. Note: If I use the term 'State' in this module to save time - when I do so, I mean State, Territory or Authorized Tribe.
- D) Discuss the procedures for promulgation of Federal standards.



## Clean Water Act Section 303(c)(2)(A)


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**“Whenever the State (or authorized Tribe)  
Revises or Adopts a new Water Quality  
Standard, such revised or new standard  
Shall Be Submitted to the Administrator.”**

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- 1) CWA section 303(c)(1) (and 40 CFR 131.20) notes that States and authorized Tribes are required to hold public hearings for the purpose of reviewing WQS at least once every 3 years and, as appropriate, modifying and adopting new and revised standards.
  - A) some states review all waters every 3 years
  - B) some review and revise more frequently, and do a ‘rolling submission process’ that submits new/revised WQS when they are ready to go.
  - C) some States go watershed by watershed.
  
- 2) Also under 303(c), EPA is responsible to review State WQS to determine if they meet the requirements of the CWA. EPA has delegated the role for review/approval/disapproval of new and revised standards to EPA Regional offices.



## Submittal and Approval "Musts" 40 CFR 131.20

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- **At least once every 3 years, hold a Public Hearing for reviewing applicable standards**
- **Re-examine any segments with uses less than 101 (a)**
- **Submit review results and supporting analyses to the EPA Regional Administrator**

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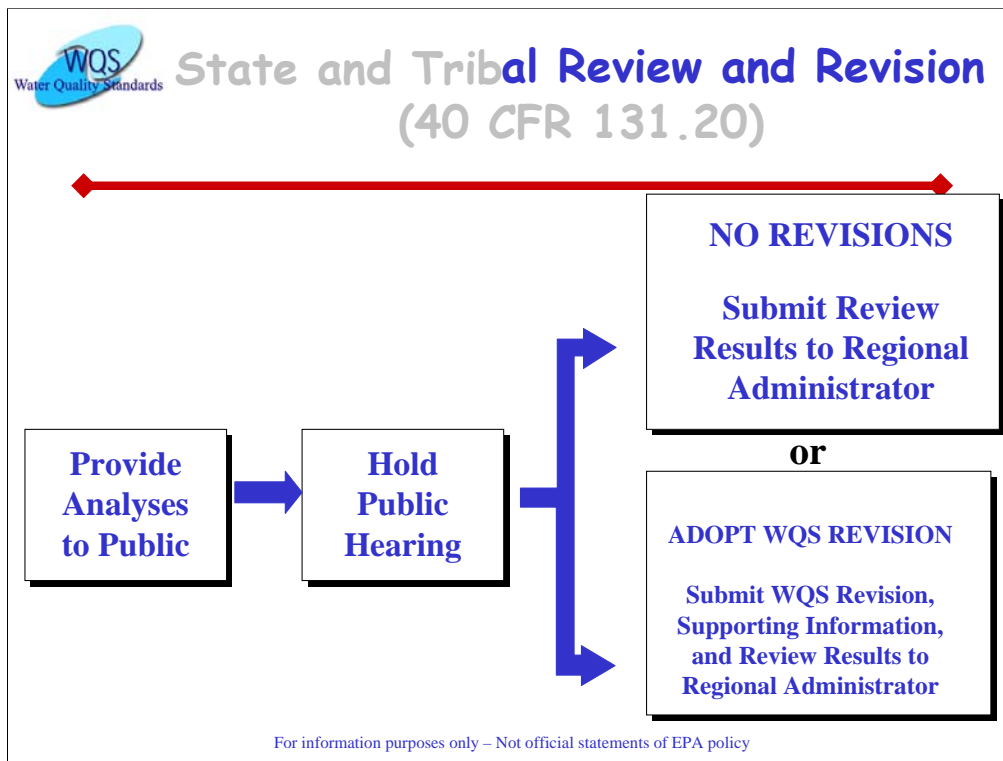
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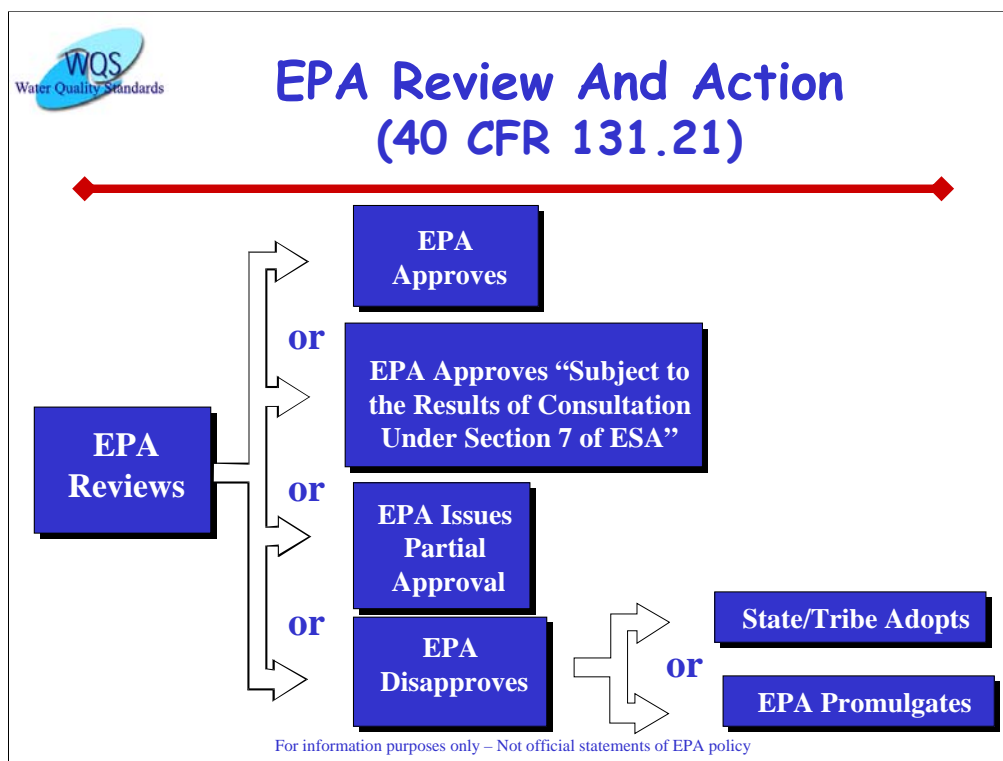
**Sec. 131.20 State review and revision of water quality standards.**

(a) State review. The State shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Any water body segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act shall be re-examined every three years to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process.

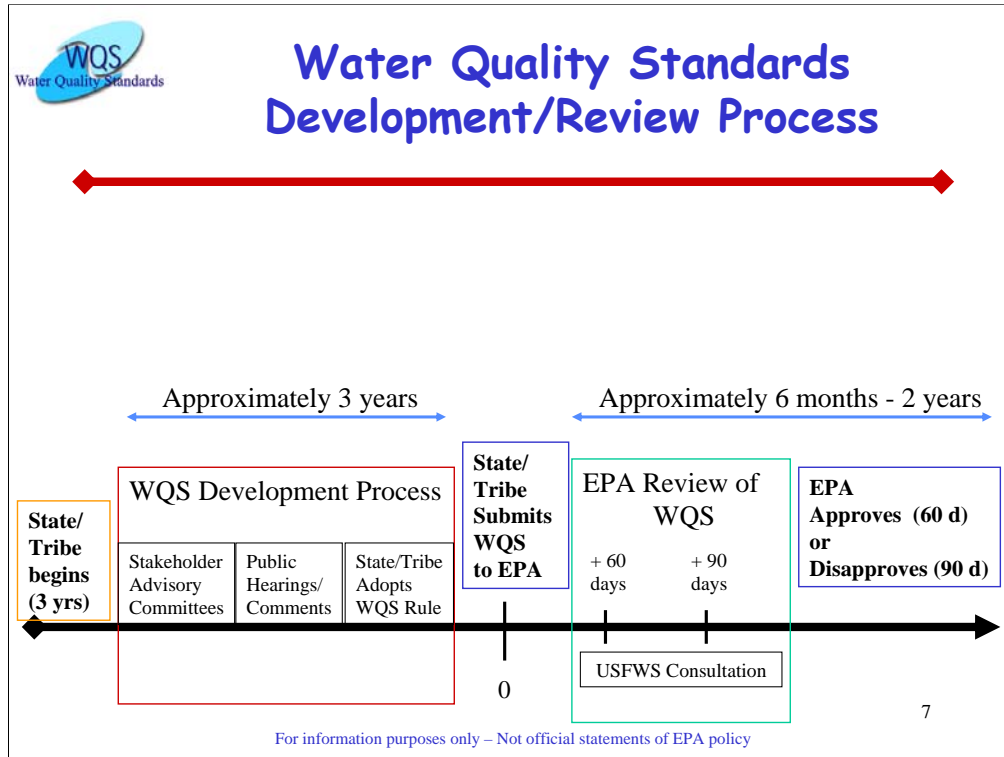
(b) Public participation. The State shall hold a public hearing for the purpose of reviewing water quality standards, in accordance with provisions of State law, EPA's water quality management regulation (40 CFR 130.3(b)(6)) and public participation regulation (40 CFR part 25). The proposed water quality standards revision and supporting analyses shall be made available to the public prior to the hearing.

(c) Submittal to EPA. The State shall submit the results of the review, any supporting analysis for the use attainability analysis, the methodologies used for site-specific criteria development, any general policies applicable to water quality standards and any revisions of the standards to the Regional Administrator for review and approval, within 30 days of the final State action to adopt and certify the revised standard, or if no revisions are made as a result of the review, within 30 days of the completion of the review.





Approvals may be “subject to the results of Section 7 Consultation.” This is discussed in the Endangered Species Act Module.




- This slide shows a time frame for State and Tribal water quality standards development and the period of EPA review.
- CWA 303(c) establishes these timeframes for triennial reviews and EPA reviews.
- For the most efficient development of WQS, the State should contact EPA and the Services early in their process.
- preferably, before the State goes to out for public review and conducts hearings, the State has already talked with EPA regarding their plans/expectations for their triennial review.

A) State would identify what changes if any that they're planning;

B) EPA would identify what, if any, new regulations have been promulgated and what, if any, new criteria/guidance has been published that may affect plans to update/develop new WQS.



## *Submittal & Approval Hint*



**The State or Indian Tribe should confer with the EPA Region and, as necessary, the Services throughout development & review process**

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It is strongly recommended that the State or Indian Tribe meet with EPA regional staff in early stages of development of water quality standards, and communicate throughout the entire submission process.

Preferably, before the State and Tribe go to out for public review and conducts hearings, the State and Tribe have already talked with EPA regarding their plans/expectations for their triennial review.

Mention also Services, where appropriate

This is also discussed in the ESA module



## WQS Review: Regulatory Timelines

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**3 years (approx):**

- States/Tribes develop and adopt new or revised WQS (40 CFR 131.20(a))

**45 days notice:**

- Before conducting a hearing, State will notify public of the hearing and where to review documents. (40 CFR 25.5(b))


**30 days notice IF:**

- No complex or controversial issues occur.
- No substantive documents must be reviewed to have an effective hearing. (40 CFR 25.5(b))

**30 day period:**

- States must submit adopted WQS to EPA. (40 CFR 131.20(c))

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Slides 9 through 12 provide a breakdown of the schedule deadlines noted in EPA’s regulation or the Clean Water Act related to water quality standards.

- We’ll talk more later about these timeframes, but in sum, here’s a breakdown of the schedule deadlines noted in EPA’s regulation or the CWA related to water quality standards:

Triennial Review Period Schedules:

- States have 3 years to review WQS.
  - The requirement is to “hold a public hearing” every three years.
  - 45 days before conducting a hearing, State must notify public of the hearing and where to review documents. If no complex or controversial issues, and if no substantive documents must be reviewed to have an effective hearing, only 30 days notice is needed (40 CFR 25.5(b))
- 1) States have 30 days to submit adopted WQS to EPA (40 CFR 131.20(c)).
  - 2) This means that once the State legislature or other authorized body in the State adopts the WQS, the State has 30 days to package the adopted WQS and submit them to the EPA Regional office with the ‘certification’ letter from the Attorney General’s office.



## EPA Review And Action Timeline

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**After Submission, EPA has...**

**60 days:**

- To approve the new/revised WQS.  
(40 CFR 131.21(a)(1))

**90 days:**


- To disapprove the new/revised WQS.  
(40 CFR 131.21(a)(2))



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- Once submitted, EPA has 60 days to notify the State or Tribe that the revisions are approved (40 CFR 131.21(a)(1))
- Once submitted, EPA has 90 days to notify the State or Tribe that the revisions are disapproved (40 CFR 131.21(a)(2)). Such notification of disapproval shall specify the changes needed to assure compliance with the Act and the regulation, and shall explain to the State or Tribe why the standard is not in compliance with such requirements.

EPA must approve or disapprove WQS by sending a letter to the State Agency responsible for developing WQS.




## EPA Promulgation Timeline

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**90 days:**


- If the State does not adopt the changes specified by EPA within 90 days after notification of EPA's disapproval, EPA will promptly propose and promulgate the changes specified by EPA (40 CFR 131.22(a))
- EPA will finalize/promulgate the WQS once EPA proposes federal WQS in the Federal Register. WQS (CWA Section 303(c)(4))




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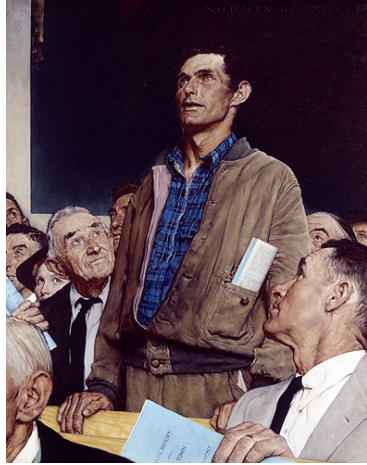
- If the State does not adopt the changes specified by EPA within 90 days after notification of EPA's disapproval, EPA will promptly propose and promulgate the changes specified by EPA (40 CFR 131.22(a)).
- Once EPA proposes federal WQS in the Federal Register, EPA has 90 days (three months) to finalize/promulgate the WQS (CWA Section 303(c)(4)).



## Public Hearings



**A Public Hearing Must Be Held When a State/Tribe Changes Any Element of a Standard**



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- Public hearings are required by EPA regulations and the Clean Water Act.
- One hearing is required to both ‘review’ and ‘revise’ WQS (per 40 CFR 131.20(b); 40 CFR 130; 40 CFR 25).
- State/Tribal laws may also have separate requirements for hearings.
- 40 CFR 25.3(b) notes that public agencies should encourage full presentation of issues to the public at an early stage so that issues can be resolved and timely decisions can be made.
- EPA recommends that States keep the public actively involved throughout the entire WQS process.
- Why encourage public involvement?
  - may improve the scientific basis of decisions.
  - may bring in more data to improve the decision.
  - may clarify areas of uncertainty
  - may help build support for proposed decisions.



## Public Hearings

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**Formal Public Hearing Requires a Notice 45 Days Prior to the Hearing, Which Includes:**

- Time
- Location
- Agenda
- Major Issues
- Location of Supporting Documents

**Hearings Must Be in Accordance with BOTH State and Federal Laws**

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- 45 days before conducting a hearing, State must notify public of the hearing, where to review documents and data, and summarize for the public any major issues. State may notify public only 30 days before a hearing if there are no major issues.
- If State/Tribal rules require more notice (e.g., 60 days prior to a hearing), those rules must be followed.
- generally, EPA recommends that hearings be held in localities that are affected.
- an opportunity for comment at the hearing must occur.
- States must keep transcripts and develop summaries of the hearings, and make them available to the public.

Cite public participation regulations

40 CFR 131.20

40 CFR Part 25

40 CFR 130.3(b)(6)???

Information on Public Involvement: <http://www.epa.gov/publicinvolvement>



## Minimum Requirements For WQS Submission 40 CFR 131.6

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1. Use Designations Consistent with the Act
2. Methods and Analyses Used
3. Water Quality Criteria to Protect Uses
4. Antidegradation Policy and Implementation Procedures
5. Attorney General Certification or Tribal Legal Authority
6. Information to Support Uses Not Specified in Section 101(a)(2) of the Act
7. General State Policies Affecting Application and Implementation

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- Water quality standards submitted by States or Tribes to EPA must contain seven elements.
  - All seven of these elements are also required under either 40 CFR 131.4 or 131.5.
  - It is useful to reiterate why States adopt water quality standards. As noted in 40 CFR 131.2, States adopt water quality standards “to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (the Act).”
  - let’s quickly go through the seven elements. We’ll get into more detail on each element soon.
1. Use designations consistent with provisions of Clean Water Act sections 101(a)(2) and 303(c)(2)(A); **(see 131.4(a)(1); and 131.6(a))**
  2. The methods used and analyses conducted to support revisions to water quality standards; **(see 131.6(b))**
  3. Water quality criteria sufficient to protect designated uses; **(see 131.5(a)(2); and 131.6(c))**
  4. An antidegradation policy and implementation method consistent with 40 CFR 131.12; **(see 131.6(d))**
  5. General information that will assist EPA in determining if there is adequate scientific basis for standards that do not include the uses specified in section 101(a)(2) of the Clean Water Act; **(see 131.5(a)(4); and 131.6(f))**
  6. Information on general policies applicable to the State standards that may affect their application and implementation (for example, mixing zones, design low flows, and variances); **(see 131.6(f))** and
  7. Certification by the State Attorney General (or by another appropriate State or Tribal legal authority) that the water quality standards were duly adopted pursuant to State law. **(see 131.6(e))**



## State/Indian Tribal Standards Submission Must Include:

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1. Use Designations Consistent with the Act
  - NO Waste Transport or Waste Assimilation Use Classification
  - Use Designations for All Waterbodies
  - Adequate Use Attainability Analysis

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-EPA reviews State use classifications for waterbodies.


- Regardless of state classification systems, all waters must be designated for 101(a) uses or a UAA has been submitted at some point in time to justify another use.

- Regarding UAA's, the discussion during the UAA module already covered what should be in them.

- To reiterate, if submitted WQS remove or sub-categorize designated uses and assign uses that do not meet other requirements of Section 101(a) of the Act (fishable/swimmable where attainable), 131.10(g) notes that the submittal must include a UAA that adequately demonstrates that attaining the designated use is not feasible due to at least one of six factors noted in EPA's regulation. EPA thus reviews the UAA for adequate demonstrations that one of the following six factors (more completely described in the regulation and in the module on UAAs) have been met.



**State/Indian Tribal Standards  
Submission Must Include:**



**2. Methods Used and Analyses Conducted  
to Support WQS revisions**

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For example, if the state or tribe has developed any site specific criteria, or criteria based on “other scientifically defensible” methods

(40 CFR 131.11(a)(b)(1)(iii))



## State/Indian Tribal Standards Submission Must Include:

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### 3. Criteria Adequate to Protect Designated Uses

- Adequate "Free from" Narrative Criteria
- Adequate Numeric Criteria
- Criteria for Priority Toxic Pollutants
- Downstream Uses Protected

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**NOTE: Should get Reg cites for these-**

EPA reviews criteria:

- compares state adopted criteria with EPA's criteria recommendations for the same pollutants or parameters
- if state submitted criteria is more stringent than EPA recommended criteria, EPA must approve it
- if less stringent, what do you think happens?
- EPA could still approve it if it's scientifically defensible

40 CFR 131.11(b) notes that in adopting criteria, States should:

a) establish numeric criteria based on

- 1) EPA's 304(a) guidance;
- 2) 304(a) guidance as modified to reflect site conditions; of
- 3) other scientifically defensible methods; and

b) establish narrative criteria or criteria based on biomonitoring methods to supplement numerics or to provide criteria where numerics can't be established.



## State/Indian Tribal Standards Submission Must Include:

4. Antidegradation Policy and Implementation Procedure:

- Antidegradation Policy That Meets Minimum Requirements of 40 CFR 131.12

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- 131.12 notes that States “shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy”



**5. Attorney General Certification or Tribal Authority**

*· Attorney General's or other appropriate State or Tribal legal authority that the water quality standards were duly adopted pursuant to State/Tribal law*


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- It may seem unlikely that a State could go through this entire process and later discover that it didn't follow procedures, but this does happen:
  - EPA approval of Kentucky WQS was later deemed invalid;
  - in 1989, Indiana adopted WQS that didn't follow Indiana procedures;
  - in 1990, Alaska's Attorney General ruled that the State WQS on toxics were improperly adopted.

Some States also require that their Secretary of State or legislative committees sign the certifications.

An example certification is included in handout 1 on page 18-19. This is a letter signed by the Attorney General noting the adopted water quality standards have appropriate legal authority and assures EPA that the adopted water quality standards legally apply in that jurisdiction.



## State/Indian Tribal Standards Submission Must Include:

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**6. Information to Support Uses Not Specified in Section 101 (a)(2) of the Act**

- *Information on Appropriate Technical and Scientific Data/Analyses To Support Changes in Designated Uses*


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- Regarding general information requested by EPA: sufficient information must be submitted to support the submittal.
- information on existing uses may also be needed in the submittal, to identify what the ‘baseline’ uses are that must always be protected.
- Recall that in the “Uses” module, we discussed the CWA’s “ rebuttal presumption” of attainment of 101(a) uses. These uses must therefore apply to a water body unless it is affirmatively demonstrated with appropriate documentation that such uses are not attainable



## State/Indian Tribal Standards Submission Must Include:



### 7. General State Policies that Affect Application and Implementation

- **Mixing Zones**
- **Low Flows**
- **Variances**

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Any general policies in the State's/Authorized Tribe's submitted WQS are subject to EPA review and approval:



## What is EPA's question for approval?



*Do the submitted standards meet the requirements of the Act and the implementing regulations at 40 CFR 131?*

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## EPA does NOT review or act on...




Elements of State/Tribal WQS that are not subject to Clean Water Act Authority, e.g.

- groundwater criteria

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## When do the Adopted State or Tribal Standards become applicable?

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- WQS Submitted to EPA Do Not Become the “Applicable” WQS for CWA Purposes Until Approved by EPA
- “Applicable” WQS Remain the CWA WQS Until EPA Approves Revisions or Promulgates Replacement WQS
- Standards and Supporting Documents Generally on file in Regions
- Repository of WQS at:  
[www.epa.gov/waterscience/standards/wqslibrary](http://www.epa.gov/waterscience/standards/wqslibrary)
- EPA's review/comments on submittals are not subject to formal public review and comment

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1) Regarding the first bullet, as discussed earlier, existing State WQS stay ‘in effect’ until the State revises and EPA approves the WQS, or EPA promulgates new WQS. This is based on the “Alaska” rule decision. EPA modified 40 CFR 131.21 to reflect this court ruling.

- New and Revised Standards submittal to EPA after May 30, 2000 must be approved before being used for CWA purposes Sec. 65 FR24641.

2) Regarding dockets, dockets are generally located in EPA Regional offices. The dockets contain ‘applicable’ water quality standards (i.e., adopted, submitted, and approved WQS).

“Question and Answers on EPA’s Alaska Rule” memo from Geoff Grubbs to addressers September 15, 2000.




## Partial Approvals Can Be Granted

If Portion(s) of the Standards Meet Requirements of the Act and Regulations


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- 1) EPA may approve part of WQS, and disapprove other parts.



**If The State/Indian Tribe Fails  
To Revise Its Standards**



**EPA Promulgates  
Federal Standards**

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1) Regarding promulgation: if EPA has a reasonable expectation that the State is acting to change the WQS to address a disapproval, but hasn't met the 90 day deadline specified in the CWA, EPA may extend the 90 day deadline for submittal of new/revised and adopted WQS.

2) Realistically, EPA generally knows states usually can't change regulations in 90 days - while statute compels EPA to begin taking action, EPA will generally work with state to revise as expeditiously as possible.



## Federal Promulgation Includes:

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- Coordination with EPA Headquarters
- Coordination with Other Agencies  
- OMB, USFWS...
- Publication of Proposed Standard
- Public Hearings
- Public Comments
- Publication of Final Standard

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1) To promulgate, EPA conducts a rulemaking action that follows federal rules and administrative procedures mandated by Congress:

- a) EPA Headquarters works with the Regional office to prepare a proposed rule
  - EPA Promulgations are subject to the same CWA and Federal Regulation requirements as state WQS.
- b) EPA HQ's sends the proposed rule through the White House's Office of Management and Budget (OMB)
- c) EPA HQ's publishes the proposed rule in the federal register with a request for public comment. A typical comment period would be 30 days or more.
- d) EPA provides an opportunity for a public hearing;
- e) EPA addresses comments received during the hearing and in writing, and publishes a final rule.
  - If state rectifies disapproval, obviates need for federal rule making.
  - If state fixes after final rule, EPA initiates withdrawal of Federal rule.



## What About Existing WQS?

- EPA Administrator may publish proposed regulations when necessary to meet the requirements of the Act  
CWA 303(c)(4)(B)


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Region may ask EPA Administrator to make a determination that new or revised standards are necessary to meet the requirements of the Clean Water Act “Administrator finding”.



## Take Home Messages:

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- States/Tribes provide for a WQS Public Hearing every 3 years
  - EPA WQS Review occurs in the Region
  - EPA has 60 days to approve, 90 days to disapprove
  - New/Revised WQS not effective until approved
  - EPA promulgates Federal WQS to meet the requirements of the Act, if necessary

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