

U.S. EPA Office of Science and Technology

Priorities for Water Quality Standards and Criteria Programs, FY 2017-2018

Background

The purpose of this document is to outline EPA's recommended priority actions and approaches for states and tribes¹ to consider carrying out in their water quality standards (WQS) and water quality criteria (WQC) programs for the next two years. This document also describes tools, approaches and resources that EPA is developing to assist states and tribes in meeting these priorities.

Fulfilling these priorities will be a cooperative effort requiring effective working relationships between states and tribes and EPA to improve and modernize WQS and WQC programs. EPA understands that a state's or tribe's priorities may differ from those outlined here given unique circumstances and limited resources. These priorities were developed with significant input from the EPA regional staff in order to reflect local priorities and ongoing efforts.

Priorities were selected based on a number of considerations including: subject areas in which the Agency believes the greatest environmental and human health benefits can be achieved, legal obligations and litigation vulnerabilities, resources available to both EPA and the states and tribes, the public's interests and expectations, opportunities for national advancement, advances in science and technology, and recent updates to EPA's water quality standards regulations (which included goals of greater transparency and building a stronger regulatory foundation for state and tribal WQS actions).

Disclaimer

This document does not impose legally binding requirements on EPA, states, tribes, other regulatory authorities, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA, state, tribal, and other decision makers retain the discretion to adopt approaches on a case-by-case basis that differ from those in this document where appropriate.

¹ "State" in the CWA and this document refers to a state, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. "Tribe" or "Tribal" in this document refers to those federally recognized Indian tribes with authority to administer a CWA WQS program.

Recommended Priorities for State and Tribal WQS and WQC Programs

EPA recommends that state and tribes consider undertaking the following actions and approaches in their WQS and WQC programs in the next two years. These priorities reflect the EPA goals identified above and will help states and tribes meet their obligations under the CWA.

1. Comply with new 40 CFR part 131 requirements issued in 2015

Triennial Reviews:

- States and tribes must conduct a review of its standards at least once every three years to comply with the Clean Water Act and EPA's regulations at §131.20.
- Where a state or tribe does not adopt new or revised water quality criteria for which EPA has published new or updated CWA section 304(a) criteria recommendations during a triennial review, it must explain this decision when reporting the results of the triennial review to EPA.
 - For the first such triennial review a state must cover all such 304(a) criteria published since May 30, 2000. See "Supplemental Information - New or Updated CWA Section 304(a) Criteria Recommendations Published since May 30, 2000," <http://www.epa.gov/wqs-tech/final-rulemaking-update-national-water-quality-standards-regulation>.
 - For triennial reviews that follow, this explanation shall consider the CWA 304(a) criteria recommendations published since the state or tribe's most recent triennial review.
- EPA's post-2000 updated criteria recommendations in the list above include:
 - Recreational water quality criteria (2012) – see <http://www.epa.gov/wqc/2012-recreational-water-quality-criteria>. Note that the Beach Act requires certain states and tribes to adopt and submit new or revised recreational criteria within three years of EPA publication of CWA section 304 recommendations (in this case, by December 2015).
 - Freshwater aquatic life criteria for ammonia (2013) – see <http://www.epa.gov/wqc/aquatic-life-criteria-ammonia>.
 - Updated human health criteria for 94 chemical pollutants – see <http://www.epa.gov/wqc/human-health-water-quality-criteria>.
- At or prior to its next triennial review: a state or tribe may need to amend its standards to comply with the new part 131 requirements. States and tribes should pay particularly close attention to any antidegradation provisions, variance procedures, and compliance schedule authorizing provision. Some existing provision(s) may need to be submitted for EPA review if that has not been done already.

Designated uses:

- When removing uses specified in CWA section 101(a)(2) based on a required use attainability analysis (UAA), identify and adopt the highest attainable use.
- When removing or revising a non-101(a)(2) use, conduct a "use and value demonstration" or a UAA.

Antidegradation:

- Provide the opportunity for public involvement when developing and subsequently revising antidegradation implementation methods.
- When using a water body-by-water body approach, provide the opportunity for public involvement when deciding which waters will receive Tier 2 antidegradation protection, and document and keep in the public record the factors the state or tribe considered when deciding which waters will receive Tier 2 antidegradation protection.
- State and tribal antidegradation reviews must meet the new requirements of part 131, such as ensuring that, where required, decisions to allow a lowering of high water quality are only made after (a) an analysis of alternatives, and (b) an analysis related to economic or social development showing that such a lowering is necessary to accommodate important economic or social development in the area in which the waters are located.

Variations:

- States and tribes may develop and submit to EPA WQS variations consistent with new section 131.4 including appropriate justification and documentation, and provisions for reevaluating the adequacy of the WQS variance on a regular basis.

2. Expand efforts to establish numeric criteria for:

- Biocriteria
- Nutrient criteria
- Toxics criteria (including adopting methods for translating narrative criteria for priority toxic pollutants into numeric values for pollutant control actions, as discussed in the WQS *Handbook*.)²

3. Improve online public access to EPA-approved state and tribal WQS**4. Consider environmental justice and protection of tribal treaty resources**

- When establishing standards in Indian Country and/or where tribal resource rights are implicated, ensure any treaty or other federally-reserved rights are protected, consistent with federal law. See <http://www.epa.gov/tribal/tribal-treaty-rights>.
- Emphasize the development of and reliance on local fish consumption rate surveys in the establishment of fish consumption rates.
- When updating human health criteria, explore opportunities and available data to establish a fish consumption rate that accounts for suppression due to lack of availability or actual or perceived contamination.
- Where appropriate, use tribal fish consumers as the target population in setting human health criteria.

² *Water Quality Standards Handbook*, EPA, <http://www.epa.gov/wqs-tech/water-quality-standards-handbook>. See Chapter 3 (Water Quality Criteria), section 3.4.1, “Option 3,” pp. 23-25.

5. **Address implementation as part of the criteria and standards development process:**
 - Expand efforts to address implementation issues early in the criteria and standards development process, including close coordination among state and EPA permitting, TMDL and assessment staff.
 - For complex criteria, outline implementation approach as part of the standards submission to EPA.
6. **When reviewing and revising state or tribal standards, as appropriate, take into account EPA's new guidance or direction on:**
 - Downstream Protection pursuant to 40 CFR 131.10(b) – see <http://www.epa.gov/wqs-tech/decision-tool-downstream-water-quality-protection>
 - Determining Natural Conditions and Developing Criteria Based on Natural Conditions – see <http://www.epa.gov/wqs-tech/framework-defining-and-documenting-natural-conditions-development-site-specific-natural>

EPA Activities to Support State and Tribal WQS and WQC Programs

The products listed below are available or will become available over the next few years. Note that other tools and products will likely be developed to assist States and Tribes as needs arise and resources allow. See EPA's website at <http://www.epa.gov/standards-water-body-health> for up-to-date information on EPA's products and activities described under "Regulations and Resources" (<http://www.epa.gov/wqs-tech>) and "Water Quality Criteria website" (<http://www.epa.gov/wqc>).

1. **Update guidance and training materials to reflect EPA's 2015 revisions to the Water Quality Standards regulation (40 CFR part 131).** EPA will work with states and tribes to develop a prioritized list of guidance, case studies, or other tools to assist them in implementing the WQS program, including elements addressed by the 2015 revisions: Administrator's determinations that new or revised WQS are necessary; designated uses; triennial reviews; antidegradation; WQS variances; provisions authorizing the use of schedules of compliance for WQBELs in NPDES permits; and other changes.
2. **New and updated CWA section 304(a) criteria (<http://www.epa.gov/wqc>),** including:
 - Updates to Human Health criteria
 - Recreational criteria for microcystins and cylindrospermopsin
 - Update aquatic life criteria for metals (cadmium, aluminum, copper freshwater and saltwater)
 - Updates to nutrient criteria
3. **Finalize Criteria and Standards guidance, technical reports and implementation tools,** including:
 - Numeric nutrient criteria development information. See <http://www.epa.gov/nutrient-policy-data>.
 - *Recommended Estimates for Missing water quality Parameters for BLM.* See <http://www.epa.gov/wqc/aquatic-life-criteria-copper>.

- Recommended field-based Method for States to Develop Aquatic Life Criteria for Specific Conductivity
 - Methodology to conduct fish consumption rate surveys
 - Technical Report: *Protecting Aquatic Life from Effects of Hydrologic Alteration*
 - Wetlands criteria development
 - Biological criteria – technical support documents. See <http://www.epa.gov/wqc/biological-assessment-technical-assistance-documents-states-tribes-and-territories>.
4. **Support WQS to protect tribes**, including:
- Further clarify the application of Tribal treaty rights in the WQS context.
 - Reinterpretation of Clean Water Act TAS Provision – Final Rule; streamlining Tribal TAS applications. Explore other approaches to streamline adoption of standards. See <http://www.epa.gov/wqs-tech/proposed-rule-revised-interpretation-clean-water-act-tribal-provision>.
 - Implementation of the three approaches (non-regulatory approach, Tribal law approach, and EPA-approved WQS approach) for protecting water quality contained in EPA's *Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act*. See <http://www.epa.gov/water-pollution-control-section-106-grants/tribal-grants-under-section-106-clean-water-act>.
 - Pursue effort to establish baseline water quality standards for certain Indian reservations via federal rule. See a description of this action in EPA's October 2015 Action Initiation List at <http://www.epa.gov/laws-regulations/actions-initiated-month>.
5. **Provide scientific support and/or guidance on emerging needs**, for example:
- Contaminants of Emerging Concern. See <http://www.epa.gov/wqc/aquatic-life-ambient-water-quality-criteria>.
 - Ocean Acidification. See <http://www.epa.gov/wqc/aquatic-life-ambient-water-quality-criteria>
 - Aquatic- Dependent Wildlife Criteria
 - Cyanobacteria/cyanotoxin criteria. See <http://www.epa.gov/nutrient-policy-data/cyanohabs>.