



Federal Baseline Water Quality Standards for Indian Reservations: Advance Notice of Proposed Rulemaking (ANPRM)

Public notice webinar presentation – November 16, 2016

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Purpose of Today's Webinar

1. To provide an overview of the September 2016 Advance Notice of Proposed Rulemaking (ANPRM) on potential Baseline Water Quality Standards (WQS) for Indian reservations.
2. To obtain input from tribes, states, the public, and other stakeholders on whether to establish such federal baseline WQS and, if so, what those WQS should be and how they should be implemented.



Outline of Today's Webinar

- Why Baseline standards?
- Why an ANPRM?
- Potential coverage
- Potential Baseline WQS – EPA's current thinking and options
 - Designated uses
 - Water quality criteria
 - Antidegradation requirements
 - Implementation provisions
- Submitting Formal Comments



Why Baseline Standards?

EPA is exploring a rulemaking to establish federally-promulgated baseline WQS for Indian reservations that do not have Clean Water Act (CWA) effective WQS.

- Would be aimed at closing the gap in WQS for Indian reservation waters. Fewer than 50 of over 300 tribes with Indian reservations have WQS effective under the CWA.
- Individually promulgating federal standards “one tribe at a time” would take many years and strain resources.
- Not all tribes may seek TAS; and even with a streamlined TAS process, many tribes may continue to experience obstacles to establishing their own CWA-effective WQS.
- Reservation waters without CWA-effective WQS do not have the full suite of protections afforded under the CWA.



Baseline WQS would NOT...

- Change existing NPDES permit responsibilities; EPA generally issues NPDES permits now on reservation waters and will continue to issue them.
- Affect the scope of existing EPA-approved state programs.
- Affect the 43 tribes that currently have EPA-approved WQS.
- Diminish a tribe's ability to apply for TAS and establish their own WQS. Once approved, the tribal WQS would supersede the federal baseline WQS.

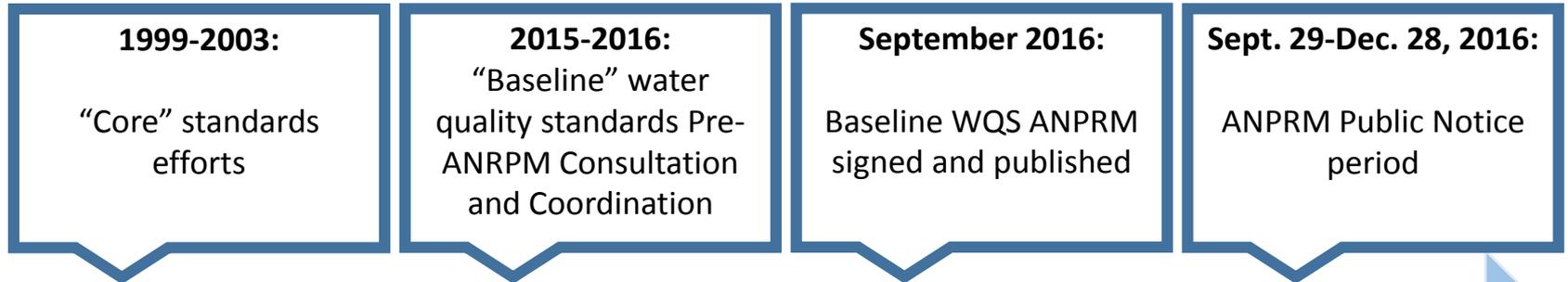


EPA Tribal Trust Responsibility

- This ANPRM is part of a broader effort to narrow gaps in CWA-effective WQS coverage in Indian country.
 - **May 16, 2016** – *Revised Interpretation of Clean Water Act Tribal Provision*
 - **September 26, 2016** – *Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act*
- EPA is also developing tools to assist tribes obtain CWA-effective WQS
 - Streamlined TAS Application
 - Model WQS
 - Human Health Criteria calculator



Why an ANPRM?



- In September 2016, EPA published an ANPRM that provides details of a potential proposed rule and invites input from tribes, states, and the public.
- ANPRM provides an opportunity to engage substantively with tribes and states on the concept and obtain tribal, state, and other perspectives.
- The ANPRM will help identify potential issues before moving forward on a potential rulemaking.
- The ANPRM can be accessed and comments can be submitted through the [Docket ID No. EPA-HQ-OW-2016-0405](https://www.epa.gov/docket/epa-hq-ow-2016-0405)



Where Would Potential Baseline Standards Apply?

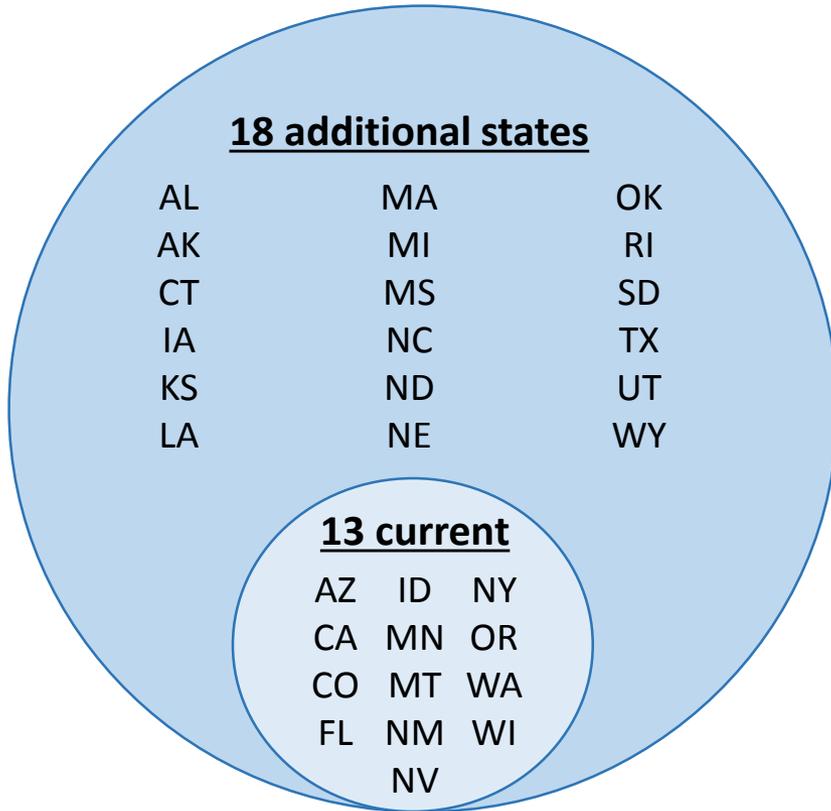
EPA seeks input in the ANPRM on:

- **Whether baseline WQS should apply to all Indian reservations without CWA-effective WQS?**
 - Reservation waters include: waters in formal reservations and waters in lands not located within formal reservations that are held in trust for tribal governments.
 - Are there any concerns that would warrant not including a particular tribe in a final rule?
- **In addition to the automatic exclusions listed below, should there be other exclusions where federal baseline WQS do not apply?**
 - Indian reservation waters where the tribe has adopted CWA-effective WQS through TAS.
 - Instances where EPA has approved states to adopt WQS on reservations or parts of reservations.
 - Indian reservation waters for which EPA has promulgated other, reservation-specific federal WQS.

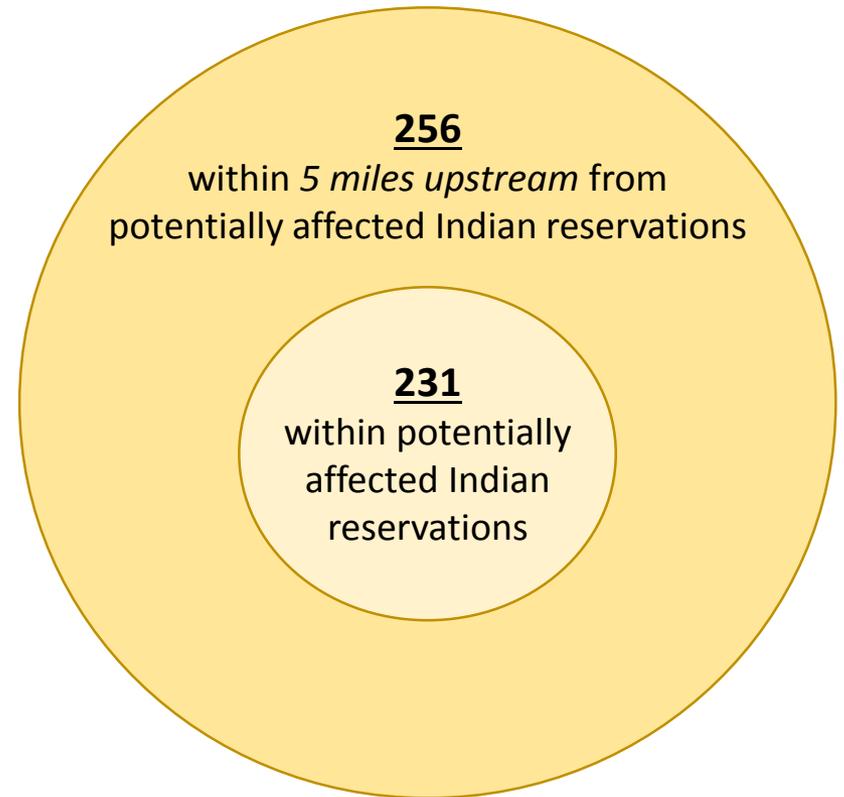


Potential Coverage of Baseline WQS

31 total states with Indian reservations that could be covered by BWQS



Approximately 487
NPDES individual discharger permits





What Might Be Included in Potential Baseline Standards?

EPA seeks input in the ANPRM on:

- **Should EPA establish “one set of WQS that apply universally”?** And:
 - Allow limited tailoring by establishing cultural and traditional designated use to account for unique practices?
 - Provide limited range of fish consumption rates used in HHC?
 - Ensure greater protection for high quality and outstanding natural resource waters of particular importance to tribe through antidegradation?
- **Which specific components of water quality standards should be included to ensure CWA water quality protection of all waters on Indian reservations?**
 - (Discussed further on following slides.)



Components of WQS

Water quality standards generally consist of the following elements:

1. Designated uses
2. Water quality criteria
3. Antidegradation requirements
4. Implementation provisions



1. Designated Uses

EPA seeks input in the ANPRM on:

- **Which designated uses should be established and whether and how to differentiate designated uses for different waters?**
 - EPA would designate the CWA section 101(a)(2) uses of protection and propagation of fish, shellfish, and wildlife and recreation in and on the waters (“fishable, swimmable”) for all waters.
 - Two options for protection of specific or general ***cultural and traditional*** uses of water and aquatic resources.
 - Option A:** Include “cultural and traditional uses of the water by a tribe” *explicitly* in the Baseline Water Quality Standards designated uses.
 - Option B:** Cover cultural and traditional uses *implicitly* in the BWQS under sections 101(a)(2) and 303(c) of the CWA, and/or through criteria adjustments.
- Designation of a public water supply use for all waters.



2. Water Quality Criteria

EPA seeks input in the ANPRM on:

- **Whether and how to include numeric and/or narrative nutrient criteria in any potential federal baseline WQS rule?**
 - **Narrative** (*qualitative*): used to express the protective condition of a water body when pollutants are unknown, unstudied or cannot be precisely measured.
 - **Numeric** (*quantitative*): specify precise, measurable levels of particular chemicals or conditions allowable in a water body.



2. Water Quality Criteria

EPA seeks input in the ANPRM on:

- **Whether to include narrative criteria and, if so, how best to approach the development of such criteria?**

The baseline WQS water quality criteria could include:

- Requirement for waters to be “free from” certain adverse conditions and types of substances, per longstanding EPA guidance.
- Narrative to protect cultural and traditional uses.
- Narrative for downstream protection per recent EPA guidance developed with states.
- Narrative wetlands WQS currently being developed.
- Narrative temperature criterion that is protective of the most thermally sensitive species.



2. Water Quality Criteria

EPA seeks input in the ANPRM on:

- **Whether to establish numeric criteria for all parameters for which EPA has published CWA section 304(a) human health and aquatic life criteria recommendations, or for some other set of parameters?**
 - Options for default fish consumption rates (FCR) may include:
 - 175 g/day based on Northwest tribes' surveys
 - 160 g/day half of the USDA recommended daily protein intake
 - 142 g/day EPA default "subsistence" rate
 - 22 g/day national human health criteria default
 - Options for default cancer risk levels (CRL) may include:
 - One in one hundred thousand (10^{-5})
 - One in one million (10^{-6})
 - One in ten million (10^{-7})



3. Antidegradation Requirements

EPA seeks input in the ANPRM on:

- **Whether to include both an antidegradation policy consistent with all three tiers of maintenance and protection and detailed antidegradation implementation methods?**

Antidegradation Tiers:

Tier 1. Existing in-stream uses for all waters of the United States

- Applies a minimum level of protection to all waters even when another tier is also assigned.

Tier 2. High quality waters (where water quality is better than the levels necessary to support the CWA section 101(a)(2) uses)

- Provides a process (Tier 2 review) to allow measured consideration prior to allowing a lowering of water quality.

Tier 3. Outstanding National Resource Waters (ONRW)

- Includes a prohibition of any lowering of water quality.



4. Implementation

EPA seeks input in the ANPRM on:

- **Whether it would be appropriate to include general provisions and, if so, which provisions and how they should be framed?**
 - Standards could include **implementation** flexibilities (*e.g.*, authorizing provisions for mixing zones, compliance schedules, and WQS variances).
 - Implementation would occur with full opportunities for public engagement as provided in EPA regulations.
 - EPA would also consult with tribes and states on specific decisions as appropriate.



Providing Formal Comments

EPA welcomes and encourages your feedback on the components and options outlined in the ANPRM.

Please submit comments at: <https://www.regulations.gov>
And search for [Docket ID No. EPA-HQ-OW-2016-0405](#)

Or click

<https://www.regulations.gov/docket?D=EPA-HQ-OW-2016-0405>

Deadline for comments is December 28, 2016



For More Information

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- ANPRM Website:
<https://www.epa.gov/wqs-tech/advance-notice-proposed-rulemaking-federal-baseline-water-quality-standards-indian>
- Environmental protection in Indian Country:
<https://www.epa.gov/tribal>
- Tribes and Water Quality Standards:
<https://www.epa.gov/wqs-tech/tribes-and-water-quality-standards>
- Clean Water Act and Water Quality Standards:
<https://www.epa.gov/standards-water-body-health>
- Aquatic and Human Health Criteria:
<https://www.epa.gov/wqc/national-recommended-water-quality-criteria>