

# Proposal of Certain Federal Water Quality Standards Applicable to Maine

## Summary

EPA is proposing new and revised federal Clean Water Act water quality standards (WQS) that would apply to waters under the state of Maine's jurisdiction. First, EPA proposes human health criteria (HHC) for waters in Indian lands and waters subject to sustenance fishing rights. Further, EPA proposes six additional WQS for waters in Indian lands in Maine, two WQS for all waters in Maine including waters in Indian lands, and one WQS for waters in Maine outside of Indian lands.

## Background

Section 101(a)(2) of the Clean Water Act establishes the national goal that water quality should provide for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water. States must establish WQS for waters under their jurisdiction that protect these goals, including designated uses and criteria to protect the uses. EPA periodically publishes criteria recommendations under Clean Water Act section 304(a) for states to consider using to protect their designated uses.

In decisions issued in February, March, and June 2015, EPA disapproved a number of Maine WQS as not adequately protective of human health or aquatic life. Most of the disapprovals only applied to waters in Indian lands; however, a few applied to all Maine waters. The Clean Water Act requires EPA to promptly promulgate replacement WQS to remedy such disapprovals unless the state adopts and EPA approves protective WQS.

If Maine adopts and submits new or revised water quality standards (WQS) and EPA approves them before finalizing this proposed rule, EPA would not proceed with the final rulemaking for those waters and/or pollutants for which EPA approves Maine's new or revised standards. If EPA finalizes this proposed rule, and Maine subsequently adopts and submits new or revised WQS that EPA finds meet Clean Water Act requirements, EPA proposes that once EPA approves Maine's WQS, they would become effective for Clean Water Act purposes, and EPA's corresponding promulgated WQS would no longer apply.

## Fish consumption and tribal sustenance fishing use

There are four federally recognized Indian tribes in Maine represented by five governing bodies. State and federal settlement acts that resolved litigation between Maine and the tribes create a unique arrangement granting the state of Maine authority to set WQS for waters in Indian lands. EPA concluded that the settlement acts protect sustenance fishing practices in those waters; that under the Clean Water Act sustenance fishing is a designated use; and that criteria must be adequate to protect that use.

Maine's human health criteria are based on a fish consumption rate of 32.4 grams per day of fish. The best available information indicates that the human health criteria to protect tribal sustenance fishers in Maine should be based on a much higher fish consumption rate. Because the state of Maine has not addressed the WQS disapprovals stemming from

the above, EPA is proposing federal human health criteria applicable to waters in Indian lands, incorporating new data and scientific information on exposure and pollutant toxicity.

### **Scope of the proposed rule**

EPA is proposing human health criteria for 96 pollutants that would apply to waters in Indian lands. EPA is proposing six additional WQS for waters in Indian lands:

- Recreational and shellfishing bacteria criteria to protect human health
- Tidal temperature, pH, and ammonia criteria to protect aquatic life;
- A mixing zone policy; and
- Clarification that natural conditions provisions cannot be applied to human health criteria.

EPA is proposing two WQS for all waters in Maine including waters in Indian lands:

- Dissolved oxygen criteria for Class A waters to protect aquatic life; and
- Clarification that the Clean Water Act does not allow the commissioner of the Maine Department of Environmental Protection to waive compliance with WQS in case of oil spills.

Finally, EPA is proposing one WQS for waters in Maine outside of Indian lands:

- Phenol criteria to protect human health

EPA disapproved all of these WQS in 2015 because they were not based on the latest science or protective of designated uses.

### **Basis for the proposed human health criteria**

EPA derives human health criteria for carcinogenic effects using the following inputs:

- cancer slope factor;
- cancer risk level;
- body weight;
- drinking water intake rate;
- fish consumption rate; and
- a bioaccumulation factor (or factors).

For non-carcinogenic and nonlinear carcinogenic effects, EPA uses a reference dose in place of a

cancer slope factor and cancer risk level, as well as a relative source contribution, which is intended to ensure that an individual's total exposure from all sources does not exceed the reference dose.

In deriving criteria for waters in Indian lands in Maine, in general, EPA is proposing to use the same cancer slope factors, cancer risk level, body weight, drinking water intake rate, bioaccumulation factors, reference doses and relative source contribution factors that the Agency used in its most recent Clean Water Act section 304(a) recommended human health criteria. To protect tribal sustenance fishers in Maine, EPA proposes to derive the criteria using a fish consumption rate of 286 g/day. This rate accounts for information in an anthropological/historical study of the tribes' traditional cultural practices and reflects input from affected tribes.

### **Public hearings on the proposed rule**

EPA is offering two virtual public hearings on the proposed rule so that interested parties may provide oral comments. The first hearing will be on Tuesday, June 7, 2016 from 5:00pm to 7:00pm Eastern Time. The second hearing will be on Thursday, June 9, 2016 from 9:00am to 11:00am Eastern Time.

### **Where can I find more information?**

Contact Jennifer Brundage at (202) 566-1265, [brundage.jennifer@epa.gov](mailto:brundage.jennifer@epa.gov) or Jeanne Voorhees at (617) 918-1686, [voorhees.jeanne@epa.gov](mailto:voorhees.jeanne@epa.gov). To access the proposed rule, federal register notice, supporting documents, and hearing registration information, visit EPA's Water Quality Standards website at: <http://www.epa.gov/wqs-tech/proposed-rule-maine-water-quality-standards>