

Policy & Guidance: EPA Review and Approval of State and Tribal Water Quality Standards

Summary

The U.S. EPA revised its regulation that specifies when new and revised State and Tribal water quality standards become effective for Clean Water Act purposes. Under EPA's regulation, such new and revised standards, if submitted to EPA after the effective date of the final rule, will not be used for Clean Water Act purposes until approved by EPA. The final rule also provides that standards already in effect and submitted to EPA by the effective date of the new rule may be used for Clean Water Act purposes, whether or not approved by EPA. EPA will however review and approve these standards, as appropriate, soon. The timing of this final rule is designed to comply with a settlement agreement requiring EPA to promulgate a final rule by March 30, 2000.

Background

EPA's water quality standards (WQS) regulation at 40 CFR Part 131.21 previously provided that State and Tribal WQS were in effect once adopted by the State or Tribe. EPA has 60 days to approve or 90 days to disapprove such WQS. State and Tribal WQS remained in effect, even if EPA disapproved them, until the State or Tribe revised them or EPA promulgated a Federal rule to supersede the State or Tribal WQS.

In 1996, a coalition of environmental groups sued EPA, alleging that EPA was violating the CWA by applying new and revised standards adopted by Alaska before EPA had approved the standards (*Alaska Clean Water Alliance v. Clark*, No. C96-1762R (W.D. Wash.)). On July 8, 1997, the United States District Court for the District of Washington (the Court) issued an opinion in this case holding that, notwithstanding 131.21(c) of EPA's regulation, the plain meaning of CWA section 303(c)(3) was that new or revised State water quality standards did not become effective for CWA purposes until

approved by EPA. The parties to the lawsuit entered into a settlement agreement under which EPA agreed to propose revisions to 40 CFR 131.21(c) consistent with the Court's opinion no later than July 1, 1999. EPA also agreed to take final action within nine months of the proposal. EPA proposed modifications to 40 CFR 131.21 on July 9, 1999 (64 FR 37072) and solicited public comment. EPA's final rule is issued in accordance with this settlement agreement.

Today's Action

EPA's final rule:

1. Deletes 131.21(c) and replaces it with new language which explains that standards submitted to EPA after the effective date of the rule do not become the "applicable" WQS for CWA purposes until approved by EPA, and that "applicable" standards remain the CWA standards until EPA approves State or Tribal revisions or promulgates replacement WQS; and,
2. Replaces EPA's existing annual Federal Register notice of WQS approval actions with establishment of a CWA WQS docket containing copies of all effective State and Tribal water quality standards. Any WQS which went into effect under the old rule and was submitted to EPA prior to the effective date of today's rule will remain in effect for CWA purposes, whether or not approved by EPA, until replaced by Federal water quality standards or approved State or Tribal standards.

EPA's final rule only addresses a single administrative aspect of the WQS approval process (i.e., the timing of the "effectiveness" of State WQS under the CWA). There are no revisions to existing submission requirements and no revisions to EPA's standards for review.