



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

WATER DIVISION

September 30, 2020

Ms. Laura Watson
Director
Washington State Department of Ecology
PO Box 47600
Olympia, Washington 98504-7600

Re: EPA's Approval of Washington State Department of Ecology's General Allowance for Compliance Schedules Pertaining to Aquatic Life Uses

Dear Ms. Watson:

On August 1, 2016, Washington submitted revisions to the "General allowance for compliance schedules" provision at WAC 173-201A-510(4). On November 15, 2016, EPA took Clean Water Act (CWA) section 303(c) action to approve the revised provision pertaining to uses other than aquatic life, including human health uses, but deferred action on Washington's revised compliance schedule provision that pertains to aquatic life uses at WAC 173-201A-510(4)(a)(i).

Pursuant to section 303(c)(3) of the CWA, 33 U.S.C. § 1313(c)(3), and 40 CFR Part 131, today EPA approves Washington's revised compliance schedule provision pertaining to aquatic life uses. The details of EPA's action are discussed below.

EPA's action applies only to waters in the State of Washington and does not apply to waters that are within Indian Country, as defined in 18 U.S.C. § 1151. In addition, nothing in this action shall constitute an approval or disapproval of a water quality standard that applies to waters within Indian Country. EPA, or authorized Indian Tribes, as appropriate, retain responsibilities for water quality standards for waters within Indian Country.

I. Background

Clean Water Act Requirements for Water Quality Standards

Under the CWA section 303(c), 33 U.S.C. 1313(c), and EPA's implementing regulations at 40 CFR 131.4, states have the primary responsibility for reviewing, establishing, and revising water quality standards (WQS), which include the designated uses of a waterbody or waterbody segment and the water quality criteria necessary to protect those designated uses. At least once every three years, states are required to review their applicable WQS and, as appropriate, modify those standards and/or adopt new standards. 40 CFR 131.20. The CWA section 303(c) also requires states to submit new or revised WQS to EPA for review, as EPA must ensure that any revisions to WQS are consistent with the CWA and EPA's implementing regulations. In addition, in accordance with 40 CFR 131.5, the state must follow its own legal procedures for adopting such standards and submit certification by the state's attorney general, or other appropriate legal authority within the state, that the WQS were duly adopted pursuant to state law, 40 CFR 131.6(e).

Ecology's Water Quality Standard Submittal

Ecology's August 1, 2016 submittal included a newly adopted definition of "compliance schedule" and revised language in the state's "General allowance for compliance schedules" at WAC 173-201A-510(4). In the revised language, Ecology removed the categorical 10-year time limit for compliance schedules and identified circumstances when a compliance schedule can go beyond the term of a permit. Ecology also added language to describe the interaction of compliance schedules with Total Maximum Daily Loads (TMDLs).

Below is the portion of the revised "General allowance for compliance schedules" that EPA is approving today, specifically WAC 173-201A-510(4)(a)(i). The underlined text indicates language that is new and strikeout text indicates the language that was removed. As noted above, EPA previously approved the revisions identified below with the exception of WAC 173-201A-510(4)(a)(i).

WAC 173-201A-510 Means of implementation.

(4) General allowance for compliance schedules.

(a) Permits(~~(,)~~) and orders(~~(, and directives of)~~) issued by the department for existing discharges may include a schedule for achieving compliance with effluent limits and water quality (~~(criteria contained in this chapter)~~) standards that apply to:

- (i) Aquatic life uses; and
- (ii) Uses other than aquatic life.

II. EPA Action

In accordance with its CWA authority, 33 U.S.C. § 1313(c)(3) and 40 CFR Part 131, EPA approves WAC 173-201A-510(4)(a)(i). Ecology's revised version of the "General allowance for compliance schedules" provision is now effective for CWA purposes for all designated uses.

Unlike individual variances, which must be approved by EPA as water quality standards pursuant to 40 CFR 131.14, the inclusion of individual compliance schedules in National Pollutant Discharge Elimination System (NPDES) permits is not subject to EPA's approval under CWA section 303(c). Under CWA section 402(d), EPA maintains NPDES permit oversight to ensure, among other things, that compliance schedules are implemented in a manner consistent with the CWA. Additionally, in approving the "General allowance for compliance schedules" submission pursuant to CWA section 303(c), EPA is not reviewing or taking action on this provision as a NPDES program modification.

III. EPA Rationale

A compliance schedule refers to an enforceable sequence of actions or operations in a NPDES permit that leads to compliance with water quality-based effluent limits (WQBELs) contained in a NPDES permit in accordance with the CWA. Compliance schedules provide a method by which dischargers are given a limited time period to comply with their NPDES permit limits, generally due to technological or financial inability to comply immediately. Compliance schedules are predicated on achieving compliance with the existing applicable WQS as soon as possible. A compliance schedule may only be included in a NPDES permit if a state (or authorized tribe) has clearly indicated in its WQS or implementing regulations that it intends to allow them.

In August 2015, EPA finalized water quality standards regulatory revisions that included specific federal requirements for compliance schedule authorizing provisions at 40 CFR 131.15.¹ The rule clarified that a permitting authority may only issue compliance schedules for WQBELs in NPDES permits if the state (or authorized tribe) has authorized the use of such compliance schedules in their WQS or implementing regulations. The final rule also requires that, if adopted by the state (or authorized tribe), such authorizing provisions must be approved by EPA as WQS under CWA section 303(c).

EPA has determined that Ecology's use of the "General allowance for compliance schedules" for aquatic life uses is consistent with the federal requirements for compliance schedule authorizing provisions at 40 CFR 131.15.

EPA appreciates Ecology's commitment and ongoing work to update Washington's WQS for consistency with EPA's federal regulations. If you have any questions regarding this letter, please contact me at (206) 553-1855, or Matthew Szlag, Water Quality Standards staff lead, at (907) 271-1208.

Sincerely,

DANIEL
OPALSKI

Digitally signed by
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Daniel D. Opalski
Director

cc: Ms. Melissa Gildersleeve, Water Quality Management Section Manager, Washington State
Department of Ecology
Mr. Chad Brown, Water Quality Management Unit Supervisor, Washington State Department of
Ecology

¹ USEPA. August 21, 2015. *Water Quality Standards Regulatory Revisions; Final Rule (40 CFR Part 131)*. Federal Register Vol. 80, No. 162. 51019-51050. <https://www.gpo.gov/fdsys/pkg/FR-2015-08-21/html/2015-19821.htm>.