



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

MEMORANDUM

SUBJECT: Decision-Making Principles for EPA Headquarters' Concurrence on Water Quality Standards Decisions

FROM: Deborah G. Nagle, Director
Office of Science and Technology

TO: Water Division Directors
Regions I-X

The purpose of this memorandum is to describe the general decision-making principles that the Environmental Protection Agency's (EPA's) Office of Water (OW) will follow when providing EPA Headquarters' concurrence on an EPA region's recommended action on water quality standard(s) (WQS) submitted by a state or authorized tribe. These general principles are intended to improve the efficiency of EPA's decision-making, ensure that EPA is able to act on WQS submittals within the required statutory timeframes, and support evidence-based decisions guided by the best available science and data that meet Clean Water Act (CWA or the Act) requirements.

Background

Under the CWA, new or revised WQS adopted by states and authorized tribes require EPA approval to become the applicable WQS for CWA purposes. When a state or authorized tribe submits a WQS to EPA for review, the Act requires EPA to approve the submittal within 60 days or disapprove within 90 days of the date of submission.¹ In 1976, the authority to approve or disapprove WQS was delegated to the ten EPA regions. EPA codified this delegation of authority at 40 CFR § 131.21 in 1983. EPA receives a significant number of WQS submittals each year – approximately 60 on average – ranging from simple revisions to a single provision to more complex revisions to multiple WQS provisions.

On May 9, 2000, then Director of the Office of Science and Technology (OST) Geoffrey Grubbs issued the memorandum *National Coordination of EPA's Water Quality Standards Actions* (since referred to as the "national coordination memo" or "2000 Grubbs memo") to describe how OST in Headquarters and EPA's regional offices would coordinate on WQS actions. The 2000 Grubbs memo explains that the EPA regions are the primary reviewers of state and authorized tribal WQS, but the regions coordinate with OST on WQS that "raise issues of first impression, deviate from national guidance or policy, or entail possible disapproval" to ensure national consistency in the WQS program. The 2000 Grubbs memo further established a single point of contact within OST for each EPA region – Regional WQS

¹ CWA section 303(c)(3); 40 CFR § 131.21(a).

Liaisons in the Standards and Health Protection Division (SHPD) – to promote rapid review of WQS and ensure timely coordination and elevation within Headquarters when necessary. This structure has served OW and the regions well and continues to govern OW’s WQS review processes.

While the 2000 Grubbs memo addresses both approvals and disapprovals of WQS, this memo focuses on disapprovals as those generally require more extensive coordination with Headquarters.

WQS disapprovals are generally rare,² and EPA invests significant resources in helping states and authorized tribes develop new and revised WQS that are based on the best available science and data and protect the designated uses. However, on the occasions when EPA receives a new or revised WQS that does not meet the requirements of the CWA and EPA’s implementing regulations, EPA must disapprove that WQS and specify the changes necessary to meet those requirements.³ If the state or authorized tribe does not adopt the specified changes within 90 days of receiving EPA’s disapproval, EPA is required to “promptly prepare and publish proposed regulations” and then finalize those regulations within 90 days of proposal, unless prior to promulgation, the state or authorized tribe has adopted a new or revised WQS that meets CWA requirements.⁴ Because the issuance of a WQS disapproval could potentially bind the EPA Administrator to a federal rulemaking, OST and the EPA regions coordinate closely on all WQS disapprovals. The 2000 Grubbs memo specifies that before issuing a WQS disapproval, the relevant EPA region will obtain concurrence from EPA Headquarters, generally at the OST Office Director level.

Over the last 20 years, as the complexity of the issues and the frequency of litigation increased, it became common practice to elevate requests for Headquarters’ concurrence on all WQS disapprovals, no matter the complexity, beyond the OST Office Director level to senior leadership in OW. This often resulted in the EPA regions having to wait extended periods of time for Headquarters’ concurrence and missing the CWA statutory deadlines for acting on WQS. As a result, the EPA WQS program steadily built up a sizeable backlog of potential WQS disapprovals, creating uncertainty for the regulated community and compromising EPA’s ability to collaborate effectively with its co-regulators to protect the Nation’s waters. Additionally, elevation sometimes resulted in a greater emphasis on policy considerations rather than on data and scientific evidence.

The general principles outlined below are intended to serve as a decision guide for whether the OST Office Director will either concur with or elevate to senior leadership in OW a proposed disapproval of a new or revised WQS.

Decision-Making Principles

When a potential WQS disapproval scenario largely aligns with all five general decision-making principles below, it is reasonable to presume that the disapproval will not be particularly complex or controversial and therefore there would generally be no need for the OST Office Director to consult with senior leadership in OW prior to providing Headquarters’ concurrence.

² For reference, out of approximately 60 WQS submittals received each year since 2000, EPA has disapproved 6 per year on average.

³ CWA section 303(c)(3); 40 CFR § 131.21(a).

⁴ CWA sections 303(c)(3) and 303(c)(4).

In accordance with the processes outlined in the 2000 Grubbs memo, the EPA region will coordinate as early as possible with the respective SHPD Regional Liaison in OST on any potential disapprovals of new or revised WQS adopted by a state or authorized tribe. The Regional Liaison and EPA region will work together to determine how the scenario aligns with the five decision-making principles below and the Regional Liaison will inform OST management of the conclusions. When the potential disapproval scenario aligns with all five decision-making principles, the OST Office Director will provide Headquarters' concurrence to the corresponding regional water quality program manager. For potential disapprovals that do not align with all five general principles, the OST Office Director will work with the corresponding regional manager to obtain concurrence from regional and OW senior management, as appropriate.

Decision-Making Principles	
1	The best available data and evidence indicate that the WQS is not consistent with the requirements of the CWA and EPA's implementing regulations.
2	The EPA Region and Headquarters agree that the WQS is not consistent with the requirements of the CWA and EPA's implementing regulations.
3	The state or authorized tribe recognizes that the WQS is not consistent with the requirements of the CWA and EPA's implementing regulations.
4	Disapproval of the WQS is generally not expected to be controversial or lead to litigation.
5	A corresponding, previously approved WQS provision remains in effect for CWA purposes and/or the state or authorized tribe is actively working on the changes necessary to meet the requirements of the CWA and EPA's implementing regulations such that a protective WQS will be in place absent a federal promulgation.

WQS disapprovals that align with these five decision-making principles are not expected to require extensive follow up. As explained in the 2000 Grubbs memo, and consistent with EPA's longstanding practice, prior to issuing a WQS disapproval, the EPA region and OST will have a mutual understanding of any required follow up actions, which will be tailored to the specific WQS disapproval scenario.

Conclusion

EPA is responsible for ensuring that state and authorized tribal WQS comply with the CWA objective to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Congress mandated that EPA review and act on WQS submittals within specific timelines, and thus envisioned that EPA would strive for efficiency in its decision-making. However, efficiency cannot come in contravention of the available evidence and at the expense of sound science. This memorandum recognizes that EPA career officials are best suited to support EPA senior leadership by making evidence-based scientific decisions where appropriate and judiciously elevating decisions when necessary, thus ensuring effective and efficient operation of the WQS program.