



Water Quality Standards (WQS) Development and Review

Virtual WQS Academy
May 2023

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This presentation does not:

- Impose any binding requirements
- Determine the obligations of the regulated community
- Change or substitute for any statutory provision or regulatory requirement
- Change, or substitute for any Agency policy or guidance
- Control in any case of conflict between this discussion and statute, regulation, policy or guidance

The views expressed in presentation are those of the author(s) and do not necessarily represent the views or policies of the U.S. Environmental Protection Agency.

Outline

- State/Territory/Authorized Tribe's Water Quality Standards (WQS) Review and Revision Process
 - Public Participation
 - Minimum Requirements for WQS Packages
- EPA's Review of a State/Territory/Authorized Tribe's WQS
 - Actions if a State, Territory, or Authorized Tribe's WQS Do Not Meet Clean Water Act (CWA) Requirements
- Communication Strategies

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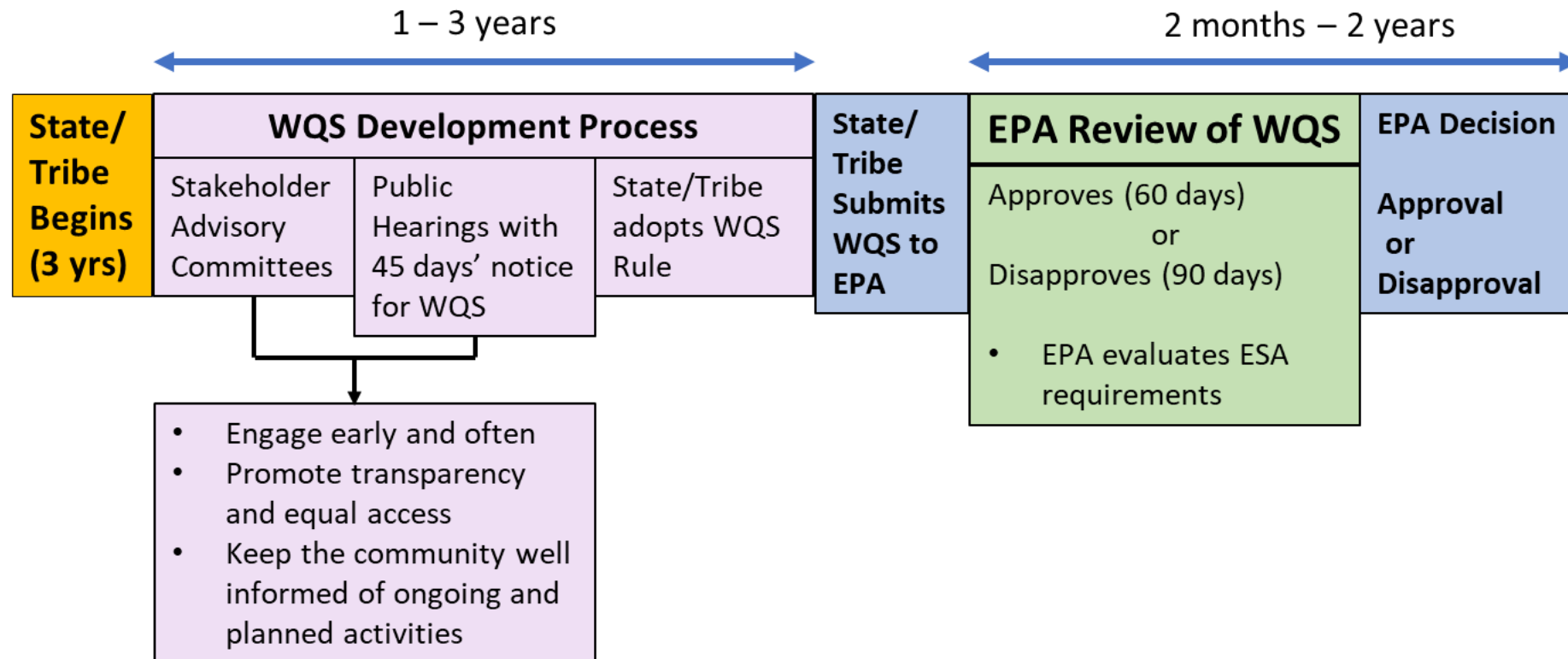
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Triennial Review

At least once every 3 years, states, territories, and authorized tribes must conduct a triennial review.

- Hold a public hearing with at least 45 days' notice for the purpose of reviewing applicable WQS. [CWA 303(c)(1); 40 CFR 131.20]
 - Public hearing with 45 days' notice is also required if revising or adopting WQS.
- Re-examine and revise, as appropriate, any water body segments with uses less than specified in CWA 101(a)(2).
- Provide an explanation if not adopting criteria for pollutants for which EPA has published new or updated 304(a) recommendations.
- Submit review results and supporting analyses to the EPA Regional Administrator.

WQS Development and Review Process



*ESA = Endangered Species Act

Typical WQS Revision Process for a State, Territory, or Authorized Tribe

1. Engage stakeholders, EPA, and the public.
2. Review Designated Uses / classifications, criteria, antidegradation requirements, and general provisions.
 - Hold at least 1 public hearing with 45 days notice during WQS review.
3. Identify and discuss any revisions with EPA.
4. Draft and publish proposed rulemaking.
 - Hold at least 1 public hearing with 45 days notice on proposed new or revised WQS.
5. Consider comments, finalize, and adopt revisions (may involve State Commission).
6. Submit Package to EPA Region for review.

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Public Participation

40 CFR § 25.3(b)

- “Public participation is that part of the decision-making process through which responsible officials become aware of public attitudes by providing ample opportunity for interested and affected parties to communicate their views.”
- It includes:
 - Seeking input and dialogue with the public.
 - Assimilating public views and preferences.
 - Providing access to decision-making processes.
 - Demonstrating that public views have been considered.

Early and Meaningful Involvement



Engage the Public Early and Often

- EPA encourages states, and authorized tribes to reach out to the local communities and learn how they use their water body and to keep those communities informed of.
- By engaging early and often, WQS decisions will best reflect the variables and needs of a local community which will benefit the public and implementing agency.

Early and Meaningful Involvement



Engage the Public in a Meaningful Manner

- Community members should be engaged meaningfully throughout the decision-making process through public meetings, webinars, and public hearings as necessary.

Early and Meaningful Involvement



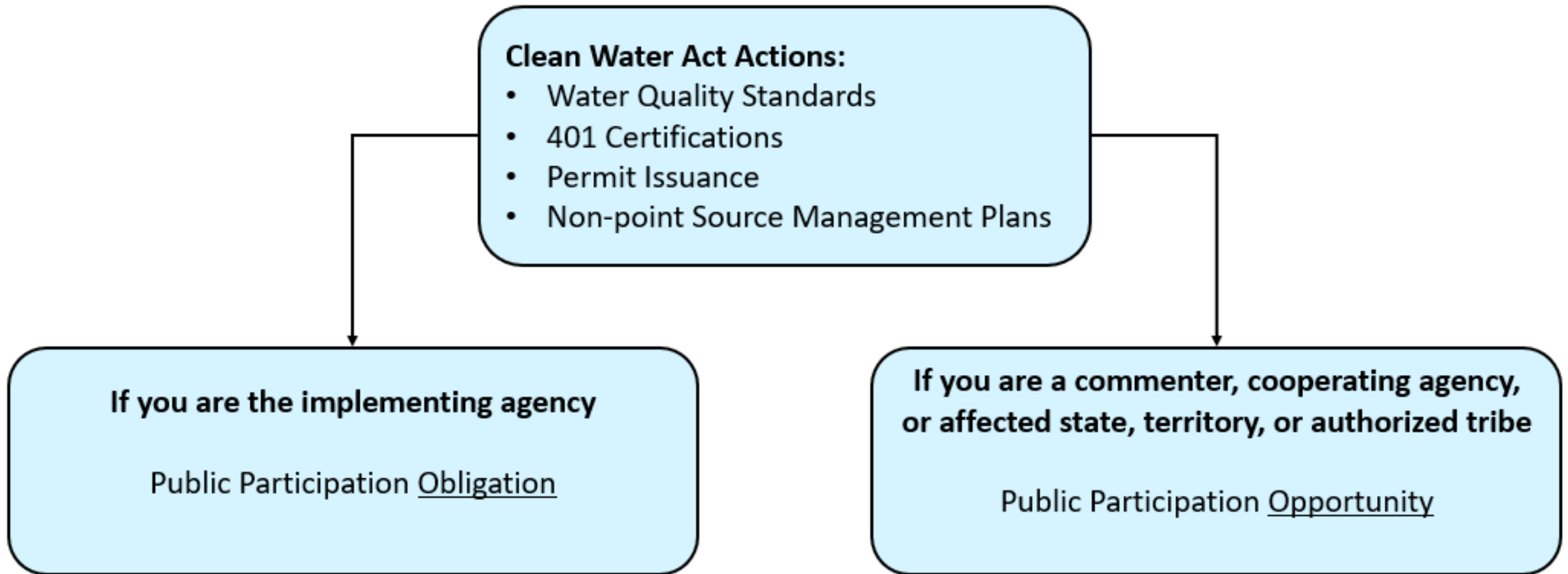
Consider the Unique Characteristics of Each Community.

- Each community has unique considerations, and outreach should be tailored to meet those needs.
- Considerations when engaging the local community might include language, age, rural/urban population, community work schedules, income and education levels, literacy rates, and community demographics.

Early and Meaningful Involvement

- **Identify** community stakeholders (those affected, influenced, or concerned).
- **Encourage** and enable community members to get involved.
- **Listen carefully** to what the community is saying.
- **Take the time** needed to address community concerns.
- **Change** planned actions where community comments or concerns have merit.
- **Keep the community well informed** of ongoing and planned activities.
- **Promote transparency** and explain to the community what has been done and why.
- Example Resources
 - The National Environmental Justice Advisory Council's Model Plan for Public Participation (2013)
 - EPA Superfund Community Involvement Toolkit

Public Participation – Obligations and Opportunities



Specific Public Participation Requirements for New & Revised WQS

- 40 CFR § 131.20 requires public hearing:
 - In accordance with public hearing requirements at 40 CFR part 25 and state or tribal law.
 - Before the hearing, agency makes available:
 - Proposed WQS.
 - Supporting analyses/background information.
- Same minimum requirements apply to adopting new WQS and to WQS revisions.

Minimum Requirements for Public Hearings

(40 CFR 25.5)

- **Public Notice:**

- “Well publicized” and mailed to interested/affected parties at least 45 days before the hearing
 - (or 30 days if no substantial documents to be reviewed for effective participation, nor complex or controversial matters to be addressed by the hearing).
- Identifies topics and list of relevant materials.

- **Location and Time:**

- Facilitates attendance by the public (e.g., accessible by public transportation, evening and weekend hearings, online participation).

Minimum Requirements for Public Hearings

(40 CFR 25.5)

- **Testimony / Scheduling Presentations:**
 - Both scheduled and unscheduled.
- **Conduct of Hearing:**
 - Provide information regarding issues/decisions, information needed from public.
 - Consider Q&A. “Procedures shall not unduly inhibit free expression of views.”
- **Record:**
 - Provide transcript or recording of proceedings at no more than cost.

Modernizing Public Hearings for WQS

“Public Notice” **25.5 (b)**



- Advertise online to help “well publicize” a public hearing.
- Use emails and group email lists (e.g., listservs) to “mail” notices to “interested and affected parties.”
- Post relevant public hearing materials online to make them “available.”

“Location and Time” **25.5 (c)**



- Conduct an online public hearing using only a web conferencing platform (or simultaneously with an in-person hearing).

<https://www.epa.gov/wqs-tech/options-modernizing-public-hearings-water-quality-standard-decisions-consistent-40-cfr-255>

Modernizing Public Hearings for WQS

“Scheduling Presentations” 25.5 (d)

- Use the Internet to “schedule witnesses in advance.”
- Allow commenters to electronically submit relevant materials or visual aids in advance of a WQS public hearing.
- Allow unscheduled presenters to register to provide oral comments during an online public hearing.

“Conduct” 25.5 (e)

- Allow comments and questions to be made orally through a web conferencing platform.
- Use a web conferencing platform’s instant messaging capabilities.

“Record” 25.5 (f)

- Record the proceedings of the public hearing using a web conferencing platform’s “record” option.
- Post the “complete record” of a public hearing online.

Additional Tools for Public Participation

40 CFR Part 25 also specifies:

- **Informational Repositories:** Keeping central collection of rule documents.
- **Mailing Lists:** Maintaining a list of interested parties.
- **Public Notification:** Notifying interested/affected parties of timetables, issues, applicable laws, and participation opportunities.
- **Response to Comments:** Summarizing public's views (including significant comments, criticisms, and suggestions) and describe responses or modifications of rule based on input.
- **Public Meetings:** Holding informational sessions with no formal presentation or record of proceedings.

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Minimum Requirements for WQS Submissions to EPA

Whenever a state or tribe submits new or revised WQS, the submission will include one or more of the following:

- **Use Designations:** Consistent with 101(a)(2) and/or supported by a use attainability analysis (UAA).
- **Criteria:** Sufficient to protect designated uses and based on sound science.
- **Antidegradation Requirements:** Consistent with 40 CFR 131.12.
- **General Policies (*If Applicable*):** Mixing Zones (131.13), Variances (131.14), Compliance Schedule Authorizing Provisions (131.15).

Minimum Requirements for WQS Submissions to EPA: Supporting Information



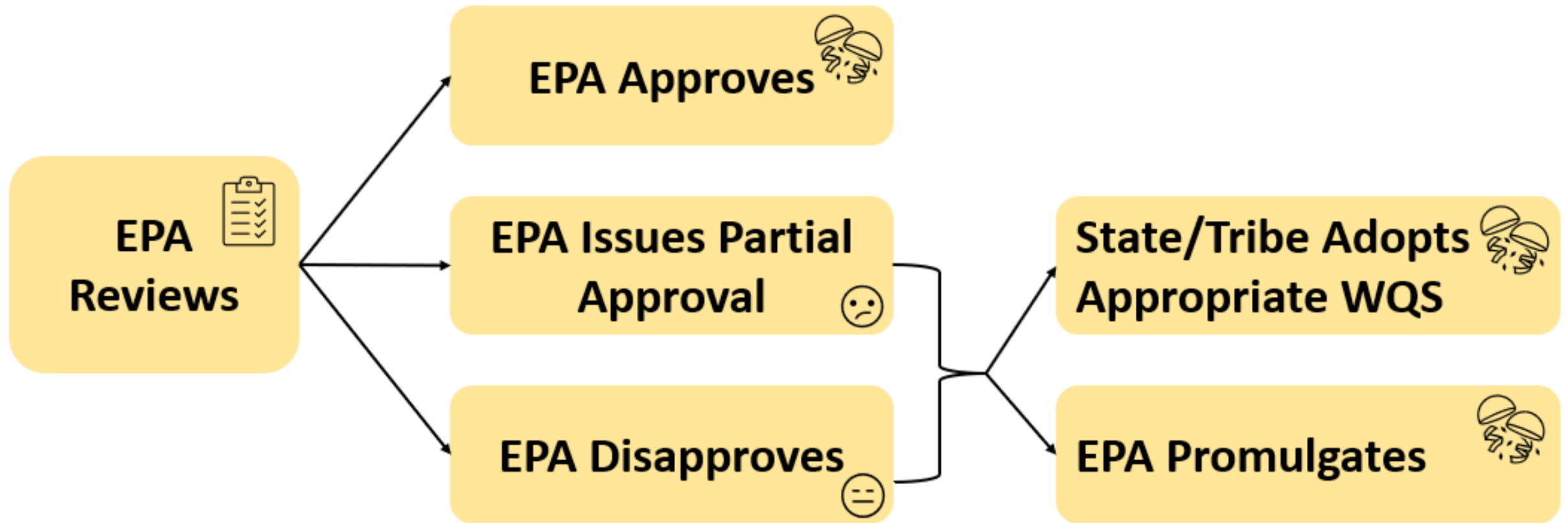
- **Methods used and analyses conducted** to support the WQS provisions.
- **Certification** by the state attorney general, tribal legal authority, or other appropriate legal authority within the state or tribe that the WQS were duly adopted pursuant to state or tribal law.
- **Supporting information for use designations** where relevant, including UAAs and information on existing uses.
- **Information on general policies** applicable to state and tribal WQS that may affect their application and implementation.

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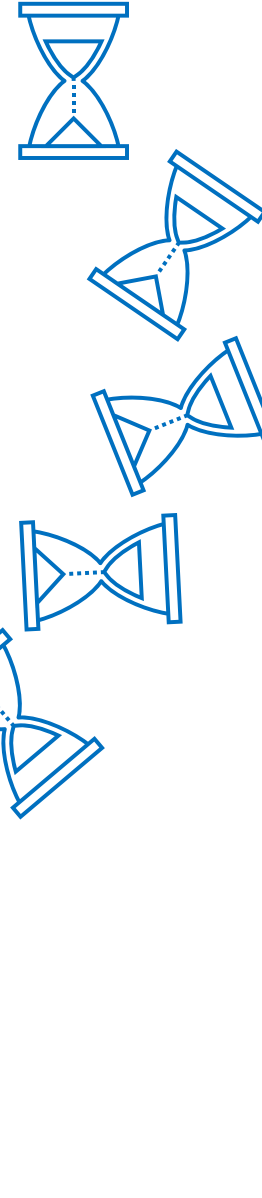
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EPA Review and Action

(40 CFR 131.21)



EPA Review and Action Timeline



After Submission, EPA has:

- **60 days to approve** the WQS
 - 40 CFR 131.21(a)(1)
- **90 days to disapprove** the WQS
 - 40 CFR 131.21(a)(2)

EPA's Key Questions for Approval / Disapproval Decisions

1. Is this a new or revised WQS under **CWA 303(c)(3)** upon which EPA must act?

Four-part test (see FAQ in module handout):

1. Is it legally binding?
 2. Does it address uses, criteria, and/or antidegradation?
 3. Does it establish desired condition or instream level of protection?
 4. Is it new or revised?
2. Do the submitted standards meet the requirements of the Clean Water Act and the implementing regulations at **40 CFR 131**?

Endangered Species Act (ESA) and National Environmental Policy Act (NEPA)

- ESA Requirements
 - 7(a)(2): Federal agencies shall “consult” with U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) to ensure actions are not likely to jeopardize listed species or adversely modify designated critical habitat.
 - Approving WQS considered to be a federal action.
 - Thus, for aquatic life or wildlife criteria and other standards that may affect listed species or critical habitat, EPA consults with FWS and/or NMFS.
- National Environmental Policy Act (NEPA) Requirements
 - CWA Section 511(c)(1) excludes most EPA activities under the CWA from NEPA, including standards approvals/ disapprovals.

When WQS are Applicable

- WQS submitted to EPA do not become the “applicable” WQS for CWA purposes until approved by EPA.
- Approved WQS remain the CWA-effective WQS until EPA approves revisions or promulgates more stringent replacement WQS.

Requirements for State Adoption / EPA Promulgation After Disapproval

- States or authorized tribes must adopt the changes specified by EPA in disapproval letter within 90 days after notification of EPA's disapproval.
- Otherwise, EPA shall promptly propose and promulgate the changes specified by EPA.
- EPA has 90 days to finalize the promulgations.
- Reference: [40 CFR 131.22\(a\)](#) and [CWA section 303\(c\)\(4\)](#).

Requirements for State Adoption / EPA Promulgation After Disapproval

“Promptly” Propose and Promulgate

- The Clean Water Act does not contain a specific timeline for EPA proposals where State does not remedy disapproval.
- In the past, courts have:
 - Declined to establish a bright-line rule regarding such a timeline, and
 - Instead adopted a more flexible, case-specific analysis.
- Therefore, case-specific circumstances can, and should, inform what constitutes prompt action under **CWA 303(c)(4)**.

What About Gaps in Existing WQS?



- EPA Administrator may make a determination that a new or revised standard is necessary to meet the requirements of the Clean Water Act, which triggers EPA's duty to promptly propose and promulgate such WQS.
- The state or authorized tribe can forestall finalization of such an EPA rule by adopting a new or revised standard that EPA deems to be in accordance with CWA requirements before EPA promulgation.
- Reference: [CWA 303\(c\)\(4\)\(B\)](#)

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Communication Strategy

Elements of a Communication Strategy:

- Outline the objective/goals of what needs to be communicated.
- Identify stakeholders (interested, affected, or concerned parties).
- Define key messages.
- Establish a timeline.
- Determine methods for communicating.

Resources:

- International Association for Public Participation Toolbox (see handouts for website)
- Improving Communication from the Federal Government to the Public Website (see handouts for website)

Communication Strategy Tips

- Begin outreach efforts early
 - Public notice required 45-days prior - the more time the better!
 - Local population demographics and geographic size may warrant more extensive outreach efforts.
- Select the appropriate venue
 - Make an effort to “meet people where they are.”
 - Consider estimated number of attendees, accessibility, proximity to public transportation, etc.
- Manage registration system/database
 - Offering registration to attendees ahead of time helps to manage expectations of meeting space size and number of staff needed on site.



Questions?

More information is available in the
Handout for WQS Repository

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