

<p>Technical Assistance Document</p> <p>September, 13, 2007</p> <p>U.S. EPA Region 5 Water Quality Branch</p>	<p>Information for States and Tribes on submittal of new and/or revised water quality standards to U.S. EPA for review under section 303(c) of the Clean Water Act and Federal regulations at 40 CFR 131.</p>
---	--

Reason for this document:

The purpose of this document is to assist states and tribes in preparing submittals of new and revised water quality standards by identifying required and recommended components of state and tribal WQS submittals for review and approval by U.S. EPA. A shared understanding of what comprises a WQS submittal and the supporting technical information will reduce the need to request additional information and make meeting statutory review deadlines under section 303(c)(3) of the CWA (60 days for approval, 90 days for disapproval) more likely. This should also ensure that all actions are supported by a consistent, defensible administrative record.

Relevant Federal regulations

§131.5 EPA authority

(a) Under section 303(c) of the Act, EPA is to review and approve or disapprove State-adopted water quality standards. The review involves a determination of:

- 1) Whether the State has adopted water uses which are consistent with the requirements of the Clean Water Act;
- 2) Whether the State has adopted criteria that protect the designated water uses;
- 3) Whether the State has followed its legal procedures for revising or adopting standards;
- 4) Whether the State standards which do not include uses specified in section 101(a)(2) of the Act are based upon appropriate technical and scientific data and analyses; and
- 5) Whether the State submission meets the requirements included in §131.6 of this part and, for Great Lakes States or Great Lakes Tribes (as defined in 40 CFR 132.2) to conform to section 118 of the Act, the requirements of 40 CFR 132.

§131.6 Minimum requirements for water quality standards submission.

- a) Use designations consistent with the provisions of sections 101(a)(2) and 303(c)(2) of the Act.
- b) Methods used to and analyses conducted to support water quality standards revisions.
- c) Water quality criteria sufficient to protect the designated uses.
- d) An antidegradation policy consistent with §131.12.

- e) Certification by the State Attorney General or other appropriate legal authority within the State that the water quality standards were duly adopted pursuant to State law.
- f) General information which will aid the Agency in determining the adequacy of the scientific basis of the standards which do not include uses specified in section 101(a)(2) of the Act as well as information on general policies applicable to State standards which may affect their application and implementation.

§ 131.20 State review and revision of water quality standards.

(c) *Submittal to EPA* The State shall submit the results of the review, any supporting analysis for the use attainability analysis, the methodologies used for site-specific criteria development, any general policies applicable to water quality standards and any revisions of the standards to the Regional Administrator for review and approval, within 30 days of the final State action to adopt and certify the revised standard, or if no revisions are made as a result of the review, within 30 days of the completion of the review.

Minimum components of a WQS submittal for EPA review:

The information described below is required for a WQS submittal to be reviewed by U.S. EPA; a review cannot begin if any of the components described below are relevant to the submittal and are not provided with the submittal.

General requirements applicable to all WQS submittals (signed, dated hardcopy official submittal required; electronic copies of official submittal to Branch Chief, Water Quality Branch, staff contacts, always appreciated):

- Submittal letter from State or Tribe to the Director of the Water Division, U.S. EPA, Region 5. (40 CFR 131.20) (Note: the regulation requires submittal to the Regional Administrator, however, approval of WQS submittals is delegated to the Water Division Director)
 - Identify new or revised water quality standards that State or Tribe is submitting to U.S. EPA for review.
 - If State or Tribe is submitting the **results of a triennial review that resulted in no changes to the existing water quality standards**, identify the rules that were the subject of the review, comments received and responses, and the basis for deciding not to change the WQS.
- A copy of the new or revised water quality standards. (40 CFR 131.6(a) – (d))
 - For submittals that include **revised water quality standards**, indicate the changes made from the previously approved water quality standards (using redline/strikeout or a comparable method).
 - For submittals that include new or revised **antidegradation policies**, identify the methods that will be used for implementing the policy. (40 CFR 131.12(a))

- Certification by the State Attorney General or other appropriate legal authority within the State that the water quality standards were duly adopted pursuant to State law. (40 CFR 131.6(e))
 - For **variances** and **other site-specific modifications of water quality standards**: if a state has adopted a rule authorizing variances and/or site-specific criteria for which there is an existing AG certification and which EPA has previously approved, such that state rule-making is not required to grant an individual variance, then the approved variance granted consistent with the previously approved rules may be submitted with a statement from the counsel for the state agency certifying that the variance or other site-specific action was granted consistent with the approved rules.
- Record of public comment and agency response
 - To be included:
 - Public notice
 - Notice
 - Proposed rules
 - Supporting materials
 - Public comments
 - Written comments received
 - Oral comments received at any hearings
 - Response to comments
 - State responses
 - Summary of revisions made to the proposed rules (in any as a result of public comment

Documentation requirements by type of submittal:

- New or revised **designated uses**:
 - First-time assignment of a designated use:
 - 101(a)(2) (protection of fish, aquatic life, and recreation in and on the water) compliant uses:
 - No UAA required (131.10(k))
 - Non 101(a)(2) compliant uses (131.10(g)):
 - The specific water bodies covered by the use
 - A demonstration that 101(a)(2) uses are not existing uses
 - A description of the existing uses of the segment under consideration
 - A description of the water quality necessary to protect the existing uses (131.10(g), 131.12(a)(1))
 - A UAA consistent with 40 CF 131.3(g) showing
 - why the 101(a)(2) uses are not attainable for the waterbody (131.10(j)(1))

- why the 101(a)(2) uses cannot be attained by implementing effluent limits required by sections 301(b) and 306 of the CWA (131.10(d))
 - why the 101(a)(2) uses cannot be attained by implementing cost-effective and reasonable best management practices for nonpoint source control (131.10(d))
 - the highest attainable use
 - the water quality necessary to protect the highest attainable use
- For revisions to previously-approved designated uses of waters:
 - 101(a)(2) compliant uses to replace non 101(a)(2) compliant uses:
 - No UAA required (131.10(k))
 - 101(a)(2) compliant uses with less stringent criteria replace 101(a)(2) compliant uses with more stringent criteria
 - The specific water body/ies covered by the proposed use change
 - Either a site-specific criterion demonstration showing how the use is adequately protected by a different, less stringent criterion, or a UAA consistent with 40 CFR 131.10(g) (131.10(j)(2))
 - A description of the existing uses of the segment under consideration
 - A description of the water quality necessary to protect the existing uses (131.10(g), 131.12(a)(1))
 - A UAA consistent with 40 CF 131.3(g) showing
 - why the use with the more stringent criteria are not attainable for the waterbody based on one or more factor from 131.10(g) (131.10(j)(2))
 - why the use with the more stringent criteria cannot be attained by implementing effluent limits required by sections 301(b) and 306 of the CWA (131.10(d))
 - why the 101(a)(2) uses cannot be attained by implementing cost-effective and reasonable best management practices for nonpoint source control (131.10(d))
 - the highest attainable use
 - the water quality necessary to protect the highest attainable use
 - Non 101(a)(2) compliant uses (131.10(g)):
 - The specific water body/ies covered by the proposed use change
 - A demonstration that 101(a)(2) uses are not existing uses

- A description of the existing uses of the segment under consideration
- A description of the water quality necessary to protect the existing uses (131.10(g), 131.12(a)(1))
- A UAA consistent with 40 CF 131.3(g) showing
 - why the 101(a)(2) uses are not attainable for the waterbody (131.10(j)(1))
 - why the 101(a)(2) uses cannot be attained by implementing effluent limits required by sections 301(b) and 306 of the CWA (131.10(d))
 - why the 101(a)(2) uses cannot be attained by implementing cost-effective and reasonable best management practices for nonpoint source control (131.10(d))
 - the highest attainable use
 - the water quality necessary to protect the highest attainable use
- **Water quality criteria:**
 - **NOTE:** States or tribes that choose to adopt U.S. EPA's 304(a) recommended criteria without modification (see <http://www.epa.gov/waterscience/criteria/wqcriteria.html>) should indicate this in their submittal letter and need not provide the documentation identified below.
 - Human health
 - Toxicity data (RfD/q1^{*})
 - Data source
 - Data used in deriving the criterion
 - Basis for selecting the data used to derive the criterion (**NOTE:** It is sufficient for states or tribes using the same RfD or q1^{*} used by U.S. EPA in deriving the national recommended criteria to simply indicate this in the submittal)
 - Exposure data
 - BAF information considered
 - BAF information selected
 - Calculation of the criterion (**NOTE:** U.S. EPA's review is greatly simplified if a copy of any spreadsheet used for criteria calculation is provided with the submittal)
 - Aquatic Life
 - Toxicity data
 - Data used in deriving the criterion (i.e., EPA criteria documents table 1 (acute toxicity data), table 2 (chronic toxicity data), table 3 (ranked GMAVs, SMAVs, and species acute to chronic ratios), table 4 (plant toxicity data))

- Data considered but not used in the calculation of the criterion and the reason why the data were discarded. (i.e., EPA criteria documents, table 6, Other data)
 - Calculation of the criterion (**NOTE:** U.S. EPA's review is greatly simplified if a copy of any spreadsheet used for criteria calculation is provided with the submittal)
- For submittals that include **variances** from water quality standards, provide the following information:
 - the specific area affected by the variance,
 - the criteria from which the variance is being sought,
 - the uses the criteria are intended to protect,
 - the level of water quality currently achievable by the facility and the basis for this determination
 - the reason for concluding that the water quality standards cannot be attained by implementing effluent limits required by section 301(b) and 306 of the CWA and cost-effective and reasonable best management practices for nonpoint source control (40 CFR 131.10(d))
 - the reason for the variance (one or more of the factors in 40 CFR 131.10(g)) and the data to show why the WQS are not attainable,
 - a description of the existing uses of the segment, the water quality necessary to support the existing uses, and how the variance ensures that the water quality necessary to support the existing uses will be maintained and protected.
 - GL-specific requirements (132, appendix F, Procedure 2):
 - Data showing that the variance is not likely to jeopardize listed species (2.A.2.)
 - Data showing that the WQS cannot be attained by implementing effluent limits required under section 301(b) and 306 of the CWA (2.A.3.)
 - Show that the variance conforms to the State's or Tribe's antidegradation procedures (2.C.2.a.)
 - Characterize the extent of any increased risk to human health and the environment associated with granting the variance compared to compliance with the WQS absent the variance, such the State or Tribe is able to conclude that any such increased risk is consistent with the protection of the public health, safety, and welfare (2.C.2.b.)
 - Submission requirements of 2.I.:
 - Permittee application pursuant to section D of procedure 2;
 - Public comments received and the records of any public hearings pursuant to section E. of procedure 2; State or Tribal final decision on the variance pursuant to section F. of procedure 2

Recommended supporting materials to expedite WQS reviews:

The following information will facilitate review and approval and reduce the likelihood of a successful challenge of EPA's approval.

- criterion calculation spreadsheets
 - Providing this information makes it much easier for EPA to evaluate proposed criteria. This information also clearly demonstrates the process used by the State or Tribe to derive the proposed criteria.
- ESA
 - Identification of federally-listed species present in the area affected by the new or revised rules
 - Identification of the effects, if any, that the new or revised rules may have on listed species in the area affected by the new or revised rules
 - Document any communication between USFWS and the State or Tribe relating to the effects of the new or revised rules on listed species
 - Document any communication between the WQS and endangered resources staff within the State or Tribal agency regarding any potential impacts of the new or revised rules on listed species

Recommended process for submittal of final (adopted) new/revised WQS to U.S. EPA for review:

- Formal submittal (no later than 30 days after adoption (40 CFR 131.20(c)))
 - Letter to RA
 - Revised rules (preferably a
 - AG certification
 - Supporting materials
- Copies (electronic version, if possible)
 - Water Quality Branch Chief
 - Water Quality Staff contact