

## ATTACHMENT 2

### EPA Region 6 Water Quality Standards Submission Checklist

#### Regulatory Background

In May 2000, EPA revised the water quality standards regulation at 40 CFR 131.21 (c)(1). The revised rule, EPA Review and Approval of State and Tribal Water Quality Standards (Volume 65, Number 82, Page 24641-24653), also referred to as the *Alaska Rule*, affects the effective date of water quality standards submitted by States and Tribes. Under the previous regulation, standards became effective for Clean Water Act (CWA) purposes and immediately available for implementation when adopted and certified by a State or authorized Tribe.

The revised regulation requires that EPA approve standards before they become effective for CWA implementation purposes. In order for EPA to be able to complete thorough review of a new and revised standards within the statutory 60/90 day time frame established in the CWA, EPA Regions must ensure that State and Tribal submissions meet the minimum requirements established in 40 CFR 131.6. While clearly a regulatory requirement, the practical aspect of submitting supporting documentation consistent with 40 CFR 131.6 is that doing so will streamline EPA review and facilitate more timely action on State and Tribal submissions. Although not a regulatory requirement, States and Tribes are strongly encouraged to provide early drafts to the Region so that any issues that may arise can be resolved prior to final submission. A redline/strike-out version of the revised WQS (or a functionally equivalent document identifying revisions made) would be useful.

#### EPA's Internal Standards Review

Standards submissions that are sent to EPA must be consistent with this checklist to be considered complete prior to review under 303(c)(3) and 40 CFR 131.21(a). EPA cannot consider standards submitted for review and approval unless supporting documentation as required by 40 CFR 131.6 is provided. The Region recommends that States and Tribes provide an annotated summary of these 40 CFR 131.6 checklist elements as part of the submission package. Inclusion of such a summary will greatly facilitate EPA's review and response concerning fulfillment of 40 CFR 131.6 and ultimately our approval of submitted standards. EPA will notify the State or Tribe as soon as practicable regarding the adequacy of a submission. This is expected to be no later than the *Day 10-45* detailed review as described in Attachment 1.

The general elements of an EPA review outlined below. The majority are taken or adapted from the Water Quality Standards Handbook: Second Edition. The elements of EPA's review include:

- 1) Determining whether new/revised standards designate uses consistent with the goals of the Act (commonly referred to as "fishable/swimmable") have been assigned to all waters or has supporting documentation in the form of a use attainability analysis (UAA) been provided in their absence. EPA reviews the adequacy of the UAA(s).

- 2) Determining whether the State's/Tribe's water quality criteria are sufficient to protect the designated uses by ensuring that all numeric criteria are based on CWA Section 304(a) guidance, or 304(a) guidance modified to reflect site-specific conditions, or other scientifically defensible methods. EPA's decision to accept criteria based on site-specific calculations or alternative scientific procedures is based on a determination of the validity and adequacy of the supporting scientific procedures and assumptions and not on whether the resulting criterion is more or less stringent than the EPA guideline.
- 3) Ensuring that uses and/or criteria are consistent throughout the water body and that downstream standards are protected. Typically, EPA will review designations for downstream waters that are on or cross interstate and international boundaries. Where the analyses supporting any changes in the standards are inadequate, EPA will identify how the analyses need to be improved and suggests the type of information or analyses needed. For waters where uses have not been designated in support of the fishable/ swimmable goal of the CWA, EPA determines whether the alternative uses are based on an acceptable UAA and whether such UAAs have been reviewed every 3 years as required by 40 CFR 131.20(a).
- 4) Ensuring that the State standards include or reference a method for implementing the narrative toxics "free from" criterion for toxic pollutants where EPA has not issued guidance or it is not known which toxicant or toxicants are causing the problem. Narrative criteria may include general "free from" statements that provide protection for all waters at all flows from substances that settle to form objectionable deposits; float as debris, scum, oil, or other matter; produce objectionable color, odor, taste, or turbidity; are acutely toxic; or produce undesirable or nuisance aquatic life. (40 CFR 131.11(2) provides for establishing narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria)
- 5) Determining whether the State/Tribe has included criteria for CWA section 307(a) "priority" pollutants sufficient to satisfy the requirements of CWA section 303(c)(2)(B). For toxic pollutants where EPA has not issued guidance or it is not known which toxicant or toxicants are causing the problem, EPA ensures that the State standards include or reference a method for implementing the narrative toxics "free from " criterion.
- 6) Ensuring that the State's/Tribe's antidegradation policy meets the requirements of section 131.12 of the Water Quality Standards Regulation. EPA reviews whether the State has provided or referenced a procedure for implementing the antidegradation policy. Where (optional) general policies are included in the State/Tribal water quality standards (e.g., mixing zone provisions, variance policies, low-flow exemption policies), EPA reviews whether the policies are consistent with the latest EPA guidance.
- 7) Reviewing comments and suggestions on previous State/Tribal water quality standards to ensure that any areas for improvement or conditions attached to previous approvals have been acted upon satisfactorily.
- 8) Reviewing whether the general policies are consistent with the latest EPA guidance and regulatory requirements.

9) Ensuring that the State/Tribe has met the minimum requirements for a standards submission as outlined in section 131.6 of the Water Quality Standards Regulation.

10) Determining whether the State/Tribe has complied with the procedural requirements (e.g., public participation - 40 CFR 25) for conducting water quality standards reviews.

#### **40 CFR 131.6 - Minimum Requirements for Submission**

The following includes the CFR text (*in italics*) and guidance (**bold**) on how this part of the regulation should be interpreted.

**Submissions that do not include supporting documentation will not trigger the CWA §303(c)(3) statutory time frame for review and action on new and/or revised standards. Submission with no supporting documentation will be identified during *Day 1-7* of the initial review. After briefing the Section Chief on *Day 10*, EPA will inform the State or Tribe of its decision.**

**Inadequate supporting documentation will be identified during the *Day 10-45* detailed review. EPA will request additional documentation as early as practicable during that time frame. If adequate supporting documentation is provided within a reasonable time frame to allow EPA to complete its review w/in its 60/90 day time frame, the documentation will be reviewed and the provision will be acted on. If the documentation is not provided in a reasonable time or does not adequately support the revision, it will be disapproved. In the event of such disapprovals, the effective standard will be the previously approved provision or criteria.**

*§131.6 Minimum requirements for water quality standards submission.*

*The following elements must be included in each State's water quality standards submitted to EPA for review.*

a) *Use designations consistent with the provisions of sections 101(a)(2) and 303(c)(2) of the CWA.*

**Where States or authorized Tribes adopt uses that are not specified or consistent with those in 101(a)(2) of the CWA, Supporting documentation must be provided as a basis for uses that are inconsistent with the Act. Without detailed supporting documentation, the standards submittal cannot be considered complete. Supporting documentation for use designations that are inconsistent with the Act must conform to 40 CFR 131.10. Supporting documentation may include expert opinion of State, Tribal and federal wildlife agencies, academia, or other credible, independent experts and should reflect documentation of full review by the public pursuant to 40 CFR 131.20 and 40 CFR part 25.**

b) *Methods used and analyses conducted to support water quality standards revisions.*

**Such supporting documentation must be provided to EPA upon submission of new and revised standards. This includes an explanation of the basis for the modification as well as the**

scientific and technical support for the revision(s). Such documentation may include expert opinion of State, Tribal and federal wildlife agencies, academia, or other credible, independent experts, and should reflect documentation of full review by the public pursuant to 40 CFR 131.20 and 40 CFR part 25. A summary of changes to the WQS rule and/or a redline/strikethrough copy should also be provided to facilitate EPA review.

c) *Water quality criteria sufficient to protect the designated uses.*

**Supporting documentation is necessary to allow EPA to develop a defensible basis for approving criteria that deviate from EPA recommendations and guidance. This includes the basis for the modification and formulae and equations/calculations used to derive the criteria. If adequate documentation is not provided, this portion of the standards submittal will not be considered complete.**

d) *An antidegradation policy consistent with 40 CFR 131.12.*

**Antidegradation is an integral component to protecting water quality. To be consistent with 40 CFR 131.12, the standards submittal must include methods for implementation of the antidegradation policy. Antidegradation implementation is based on a set of procedures to be followed when evaluating activities that may impact waters quality and specify, on a case-by-case basis whether, and to what extent water quality may be lowered. EPA's review of the implementation procedures is limited to ensuring that procedures are included that describe how the State will implement the required elements of the antidegradation review**

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.*

**EPA's review pursuant to CWA 303 (c)(3) and 40 CFR 131.21 (a) will not be initiated without certification that the standards were adopted in accordance with State or Tribal law/rule making procedures.**

f) *General information which will aid the Agency in determining the adequacy of the scientific basis of the standards which do not include the 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.*

**As stated previously, EPA must receive credible, defensible documentation to support the designation of uses that are less protective than those described in CWA 101(a)(2) and for criteria that differ from EPA guidance. Region 6 also interprets this to include a summary of any methodologies, policies or legislation related to the development, assessment and implementation of standards. Unless these documents have been transmitted to EPA previously, copies should be included in the WQS submittal package.**