

Water Quality Standards Backlog Strategy

EPA Region 6 Guidance

January, 2006

EPA Region 6 Guidance Water Quality Standards Backlog Strategy

Goal:

The primary goal of this Backlog Strategy is to outline a process for cooperation and understanding between EPA and Region 6 States and Tribes in the water quality standards (WQS) process. The intent of this document is to outline ways in which Region 6, States and Tribes can work together to streamline the process to meet our *common goal* of WQS approvals on new and revised standards within EPA's statutory time frame, and to allow continued progress to be made on reducing the current backlog.

This includes cooperation on the development of WQS and implementation procedures, consultation under the Endangered Species Act, action on new and revised standards and applying these processes to resolving the existing standards backlog. This document will provide some background on how the backlog developed and EPA's overall strategy to resolve it. It also outlines EPA and State authorities and statutory responsibilities. More important, it discusses actions that Region 6 and States/Tribes can take outside of the current regulatory framework that will help us meet our common goal of timely action (approval or disapproval) on new and/or revised standards and outstanding submissions.

Background:

EPA's water quality standards regulation at 40 CFR 131.21 previously provided that once adopted, State and Tribal WQS were in effect for Clean Water Act purposes. When submitted for review, EPA has 60 days to approve or 90 days to disapprove these standards. These State and Tribal standards remained in effect, even if disapproved, until EPA promulgated a Federal rule to supersede them or the State or Tribe revised the disapproved provision(s). This position was successfully challenged, and in 1997, the United States District Court for the District of Washington issued an opinion that noted that the plain meaning of the Clean Water Act (CWA) section 303(c)(3) was that new or revised State WQS *did not* become effective for CWA purposes until approved by EPA. This ruling is commonly referred to as the "Alaska rule." As part of a settlement agreement, EPA proposed and adopted revisions to 40 CFR 131.21(c) consistent with the Court's opinion.

When the Alaska rule became effective, a number of pending federal actions on State and Tribal standards submissions existed. Those pending actions were primarily the result of efforts to work through an issue rather than disapprove a provision that could possibly lead to federal rule making. The WQS Program was not equipped to address these outstanding actions while trying to keep pace with current submissions of new and revised standards within the statutory time frame described in the CWA and now reflected in the standards regulation. This mounting backlog was a significant factor in the Water Quality Standards Program being declared a Material and Agency Weakness in 1999.

EPA Strategy to Eliminate the Standards Backlog:

The Federal Manager's Financial Integrity Act (FMFIA) requires ongoing evaluations and reports on the adequacy of the systems of internal accounting and administrative control of each executive agency. Evaluations of EPA's activities showed that without timely and consistent approvals, disapprovals and promulgations, needed improvements in water quality could be delayed. To correct this problem, EPA's original goal under FMFIA was to reduce the backlog of actions to approve, disapprove and promulgate water quality standards by 2004. The FMFIA goal described above is reflected in the Region 6 Strategic Plan. These Strategic Plan goals commit the Region to review and approve State and Tribal submittals in a timely and appropriate manner.

The FMFIA goal is to reduce the outstanding disapproval backlog to no more than one State/Tribe in each EPA Region, on average, with a pre-Alaska (submitted prior to May 2000) disapproved standard by 2004. For outstanding submissions, the revised goal is to take action, in each Region, on at least 75% of the State and Tribal submissions within the 90-day, statutory time frame and action on 90% of the State and Tribal submissions within one year.

In addition, the Government Performance and Results Act (GPRA) places management expectations and requirements on federal agencies by creating a framework for more effective planning, budgeting, program evaluation and fiscal accountability for federal programs. The intent of the Act is to improve public confidence in federal agency performance by holding agencies accountable for achieving program results, and to improve congressional decision making by clarifying and stating program performance goals, measures and costs "up front." Federal agencies are required to implement GPRA through their processes for strategic plans, annual performance plans, and annual performance reports. A strategy to eliminate the existing backlog is currently being reported under GPRA, but it must be integrated with the ongoing need to manage *future submissions* consistent with the FMFIA goal and the Region 6 Strategic Plan.

Following these guidelines, EPA is employing a two-tiered strategy in an effort to eliminate the existing backlog. In the short term, high priority is being given to resolving the outstanding disapprovals and unreviewed standards. EPA as a whole has made progress, reducing both the number of outstanding disapprovals and the number of unreviewed standards. In the longer term the Agency is working to identify and eliminate factors that have contributed to standards backlogs.

The development of a strategy to address increasingly complex and/or voluminous State and Tribal submissions in a timely manner and eliminate the existing backlog has required increases in and a redirection of resources. EPA's Office of Science and Technology (OST), as well as the Region 6 Water Quality Protection Division management have recognized this need, resulting in the expansion of OST and the Region 6 Standards Team during 2003 - 2004. OST and Region 6 have deployed new and existing staff to address the most resource intensive areas of responsibility managing large and technically complex submissions and Endangered Species Act (ESA) consultations. These resource allocations are discussed further later in this document.

EPA and State/Tribal Authority:

The Water Quality Standards program is a primacy program. Primacy means that States and authorized Indian Tribes have both the authority and responsibility for reviewing, establishing, and revising water quality standards. The CWA provides a specific time frame for these actions to be carried out. In section 303(c)(1), the CWA requires that States and authorized Tribes hold a public hearing at least once every three years to review and as appropriate, modify or adopt new water quality standards.

Although the water quality standards program is a primacy program, EPA retains an oversight role as described in Section 303(c) of the CWA and the standards regulation at 40 CFR 131. EPA's main oversight objectives when reviewing a State's or Tribe's water quality standards is to ensure that they meet the requirements of both the CWA and standards regulation. Section 303(c) of the Act requires EPA to review and to approve or disapprove State-adopted water quality standards within the 60/90 day time frame described in Section 303(c). EPA is also responsible for determining if a State or Tribe has met the statutory requirement of reviewing and if appropriate, revising its standards at least once every three years.

The specifics of EPA's review are outlined in the standards regulation. The regulation requires EPA to determine if:

- The State (or authorized Tribe) has followed its own legal procedures for revising or adopting new standards,
- Adopted water uses which are consistent with the requirements of the Act,
- Assure that where uses not specified in section 101(a)(2) of the Act are adopted, that they are based upon appropriate technical and scientific data and analyses,
- If the submission meets the requirements included in §131.6.

If EPA determines that the State's or Tribe's water quality standards are consistent with these requirements, the standards will be approved. If not, EPA must disapprove the standards and promulgate Federal standards under section 303(c)(4). EPA may also promulgate a new or revised standard when it finds that such a modification is necessary to meet the requirements of the Act. This may be necessary when new information becomes available that affects a standard or a specific criterion.

Although both the CWA and the Standards Regulation require States and Tribes to review their standards once every 3-years as mentioned above, neither provides any interpretation of how that time frame is measured. EPA has provided an interpretation in its *Water Quality Standards Handbook: Second Edition*, where it defines this 3-year period as starting the date of the letter in which the State informs EPA that revised or new standards have been adopted and are being submitted for EPA review. Although this 3-year period is an established requirement, strict adherence has not been emphasized. EPA Region 6 has never initiated a review of existing State or Tribal standards where either have failed to meet this 3-year time frame.

EPA's responsibility for determining if a State or Tribe has met this statutory requirement has become more important since the adoption of the GPRA. In addition to making this determination, Region 6 is responsible for tracking and reporting State and Tribal adherence under GPRA requirements. If a State or Tribe fails to meet the triennial time frame, the Region must report and track it as a backlog.

The *Handbook* also explains that if no changes were made in the standards, the 3-year period is based on the date of the letter in which the State or Tribe informs EPA that the standards were reviewed and no changes were made. In situations where some provisions have not been acted on by EPA, a State or Tribe could determine that it would be appropriate to wait for EPA's action on those provisions before considering them for revision again. However, there is nothing in the CWA or Standards Regulation that allows either a State or Tribe to disregard the statutory 3-year standards review requirement.

The WQS Review and Revision Process:

Initiation of Standards Revisions:

Region 6 believes that a key part of our efforts with this Strategy should be to emphasize that the standards revision process does not begin with the submission of new and revised standards to EPA, but when a State or Tribe *initiates* a review of its existing standards and implementation procedures. Region 6 recognizes that States and Tribes have varying rulemaking procedures for adopting new and revised standards. The need to meet State, Tribal and federal statutory and regulatory requirements means that a close working relationship in outlining and carrying out standards revisions, submission and review is essential.

There are no specific statutory or regulatory requirements related to early interaction between EPA and States and Tribes, but EPA's *Water Quality Standards Handbook: Second Edition*, discusses the importance of early initial consultation with Regional offices *well before* the standards are formally submitted for review. Although not a regulatory requirement, EPA believes that it is in a State or Tribe's best interest to involve Regional staff as early in the process as practicable in order to take advantage of technical assistance and preliminary concurrent review of draft standards and supporting documentation by both Region 6 and EPA Headquarters. The intent is to assist in development of WQS that EPA can support and approve. It's very important for States and Tribes to provide supporting methodologies, analyses and other information used to develop standards. Early communication with EPA will provide the following benefits:

- Early discussions will allow the States/Tribes and EPA to determine where assistance may be needed and can be provided;
- States and Tribes will benefit from early understanding of potential areas of agreement and disagreement. This allows these issues to be discussed and resolved well before submission and formal review, facilitating approval.

State/Tribal Standards Submission Management:

State and Tribal standards submissions vary significantly in volume and/or technical complexity. Submissions may be limited to simple corrections, formatting changes, clarifications or update to definitions that can be quickly reviewed and acted on. Others may be voluminous and complex, particularly those that include numerous criteria modifications, use attainability analyses and/or water effect ratios. These large and complex revisions may overwhelm the “system.” This is particularly true when consultation on proposed revisions under the Endangered Species Act is considered, which will be discussed in more detail later.

As described in the introduction, it is critical for Region 6, States and Tribes to work together to streamline the process to meet our *common goal* of timely WQS approvals, and to allow continued progress to be made on reducing the current backlog. One of the most effective ways to accomplish this goal is for States and Tribes to ensure that WQS submissions meet the minimum requirements that are detailed in 40 CFR 131.6. (see **Attachment 2**) Detailed submission packages aid Region 6 in its review, approval and support of new and revised standards.

The most important subparagraphs in this provision are §131.6(b) and (f), which refer to “methods used and analyses conducted to support water quality standards revisions” and “general information which will aid the Agency in determining the adequacy of the scientific basis of the standards... which may affect their application and implementation.” EPA guidance explaining these two subparagraphs is lacking. However, EPA has established a workgroup to outline minimum submission requirements.

In the interim, Region 6 recommends that States and Tribes provide detailed supporting documentation, scientific data or other information that new or revised provisions and criteria are based on. This level of detail will aid in ensuring that WQS meet the requirements of the CWA and standards regulation, and stand up to challenge. Early EPA involvement in the revision process and detailed supporting documentation:

- Expedite EPA’s formal review and facilitate timely approval;
- Avoid potential disapproval of new and revised standards; and
- Strengthen EPA’s ability to support and defend the State/Tribes revised standards from challenges.

EPA Review:

EPA’s primary responsibility in the review of State and Tribal WQS is to determine whether they meet the requirements of the CWA and the Standards Regulation . Section 303(c)(3) of the CWA establishes a statutory time frame for EPA review and action on new and/or revised standards. This section of the CWA indicates that EPA must approve within 60 days after the date of submission of the new or revised standard, and disapprove within 90 days

of submission. The start date for review is based on the date the Region receives the submission. To be able to carry out a review and make a determination on standards submission within this statutory time frame, it is essential that early discussions between EPA and the State or Tribe to have been carried out to identify and resolve as many problems as possible prior to submission.

Although the complexity and significance of new and revised WQS may vary a great deal from one submittal to the next, there is no statutory and/or regulatory language that allows EPA to exclude any provision from the review. The exception would be in instances where a State or Tribe has adopted and EPA has approved a “performance-based” approach. The performance-based approach is described in the preamble to the “Alaska rule” [Federal Register: April 27, 2000 (Volume 65, Number 82)]. A performance-based approach relies on adoption of a process (i.e., a criterion derivation methodology) rather than a specific outcome (i.e., concentration limits for a pollutant) consistent with 40 CFR 131.11 and 131.13. When such a performance-based approach is sufficiently detailed and has suitable safeguards to ensure predictable, repeatable outcomes, approval is likely.

As part of the initial evaluation of a submission package, the individual State or Tribal coordinator will determine if the submission meets the minimum requirements found at 40 CFR 131.6 as discussed above and in **Attachment 2**. EPA considers this determination to be a critical first step prior to a more detailed review because of the limited statutory time frame for federal action. In situations where supporting documentation has not been provided (**Attachment 1, Day 1-10**), or is not adequate (**Day 10-45**), Region 6 will notify the State/Tribe that the submission is incomplete and that formal review may not have been initiated for all or part of the submission, depending on the individual situation. This notification will identify the type of supporting documentation that is needed to initiate a review. If adequate information is not received within a reasonable period to complete the review within the 60-day, statutory time frame, the Region will not have any option but to reject the submission or disapprove a particular provision.

Given the requirement to review all new and revised provisions of a submission, Regional and State/Tribal coordinators must evaluate a submission to determine the resource requirements to complete the technical review and how that review can be streamlined. Streamlining will primarily be accomplished by disseminating portions of large or technically complex submissions to one or more Water Quality Standards Team members with specific expertise as described in the following section in an effort to meet EPA’s statutory 60/90-day timeline.

EPA Action:

After completing its review, EPA will make a decision to approve or disapprove the new/revised standards. Once these decisions are made, the State/Tribal coordinator will develop both an action letter and a detailed Record of Decision (ROD) that will outline EPA’s basis for approval and/or disapproval of new/revised provisions. If a provision is disapproved, EPA will outline corrective action that must be taken in the ROD if necessary.

In most instances when a provision has been disapproved, EPA will not specify corrective action, allowing previously approved provision(s) to stand as the effective standard. Since no corrective action is required of the State, Tribe or EPA in these situations, the disapproved provision will not be considered a backlog item. If EPA believes corrective action is necessary, that action will be outlined in the ROD as mentioned above. If the State or Tribe is unable to take the corrective action within 90-days, EPA is obligated to promulgate corrective standard(s). If the State or Tribe has not corrected disapproved provisions within that 90-days, it will be considered a backlog item.

As a matter of policy, EPA prefers that States and Tribes adopt their own standards. However, under section 303(c)(4) of the Act, EPA may promulgate Federal standards. Although much less frequent, it is possible that in the course of its review, EPA may determine that a provision(s) no longer meets the requirements of the Act. This can occur when new information or science becomes available or if the State or Tribe adopts implementation provisions in its Water Quality Management Plans, Continuing Planning Process or other planning documents that alter the plain meaning or application of a standard provision. Since updates to State or Tribal management or planning documents may not necessarily coincide with a revision of the standards, EPA will look to the State/Tribe to take corrective action in those documents. If corrective action isn't taken, EPA can act under 303(c)(4) to disapprove and potentially promulgate corrective standards.

Endangered Species Act (ESA) Consultation:

Section 7 consultation is a cooperative effort to analyze the effects posed by proposed actions, such as EPA's approval of WQS, on listed species or critical habitat(s). Because of the number of triennial, interim and site-specific revisions that are adopted by States and Tribes, the Region 6 Standard Team commits a significant portion of its resources consulting on those standards under section 7.

To improve the understanding of how ESA consultation affects the review of WQS submissions, Region 6 hosted an informal Standards Streamlining Workgroup meeting at the Region 6 office in September 2003. Attendees included staff from the Fish and Wildlife Service (FWS), State, Tribal and EPA. The goals of this meeting were to describe the requirement to consult under Section 7, to emphasize that the process and time commitment necessary to carry out consultation *is not considered* in section 303 of the CWA and to demonstrate that without early extensive interaction, it will be unlikely for EPA to complete consultation within the statutory 60/90 day time frame for review of a standards submission. EPA Region 6 will look for opportunities for additional training and workshops for its own staff, as well as States and Tribes, to enhance our ability to meet the requirements of section 7 of the ESA.

Memorandum of Agreement

The Region 6 Standards Team and Service actions in Section 7 consultations have been guided by the 2001 *Memorandum of Agreement between EPA, Fish and Wildlife Service, and National Marine Fisheries Service Regarding Enhanced Coordination under the Endangered Species Act and the Clean Water Act* (MOA). The MOA describes National procedures for interagency coordination and elevation of issues to speed decisions and improved consultation procedures for EPA approval of State and Tribal water quality standards. Consultations themselves should be carried in at the same time as advance work with the State and/or Tribe on their standards as shown in **Attachment 1**.

The MOA is intended to facilitate greater interaction between the Services and States/Tribes, it does not change the legal requirements that States or Tribes must meet in adopting water quality standards or in issuing NPDES permits, and does not require States or Tribes to perform any information-gathering or other analyses that would not be required under existing legal requirements. Rather, the MOA is intended to enhance communication between the Services, EPA and States/Tribes about how to ensure that water quality standards and NPDES permits will protect endangered and threatened species.

The MOA directs EPA and the Services to establish Regional and local review teams. Regional teams consist of Regional level representatives from EPA and the Services, and local teams consist of individual State/Tribal standards coordinators and Service Field Office staff. These teams have been established and are charged with meeting periodically to identify upcoming priorities and workload requirements and generally ensure close coordination on the full range of activities involving water quality and endangered and threatened species protection. The MOA also includes a procedure for elevating issues that may arise among Regional and Service Field Offices, including formal or informal consultations. These review teams will work together to develop procedures for working with States and Tribes on standards issues.

State/Tribal and Federal Interaction

As the introduction to this section suggests, section 7 consultation is a cooperative process between States, Tribes, EPA, FWS and National Marine Fisheries Service (collectively referred to as the Services). From an operational standpoint, water quality standards are a valuable tool for all groups involved in our efforts to conserve aquatic resources. Understanding that the consultation process itself can affect not only the timing, but the outcome of the review of a standards submission reinforces the importance of involving EPA and the Services early in the process. By involving both federal agencies, States and Tribes not only to take advantage of technical expertise, but can help assure timely standards approvals.

Early interaction and cooperation is important for two very different but related reasons. First, as mentioned above, standards are a valuable tool in conserving aquatic resources. Timely approval of WQS assures greater protection of these resources. Although none of the

organizations involved have all the answers when it comes to developing appropriate standard and criteria, by working cooperatively we can do a great deal to conserve these resources. Second, all of the organizations involved operate under varying statutory and regulatory requirements, making early planning essential for a smooth progression through the revision process, initiation of consultation, submission, conclusion of consultation and finally approval of the proposed standards.

The statutory and regulatory requirements makes it important for States and Tribes to take into consideration the time frames for action under the two federal statutes when planning and carrying out a standards revision. Early involvement in ESA consultations and standards actions under CWA will maximize the likelihood that the statutory 60/90 day time frame for review and approval of a standards submission can be met. EPA has the option to make an approval under section 7(d) of the ESA. An approval under section 7(d) means that EPA cannot make any irreversible or irretrievable commitment of resources with respect to the approval of revised standards that would prevent the formulation or implementation of any reasonable and prudent alternative measures developed by the Services. A reversal of EPA's approval could encumber water quality protection, such as requiring the reopening of NPDES permits.

There are clear benefits to States and Tribes for working with both EPA and the Services early in the standards development process. By working cooperatively with both federal agencies, States/Tribes can identify proposed standards that may adversely affect listed species and critical habitat, and revise those provisions or criteria *before* they are adopted and submitted to EPA for review. If EPA and the Services know what the State or Tribe has adopted, or at least have high confidence in what will be adopted well in advance of submission, consultation can be underway prior to actual submission of the revised standards. Early cooperation will benefit States, Tribes and both federal agencies by:

- Allowing EPA to focus and streamline its review to meet the 60/90 day time frame,
- Avoiding potential EPA disapproval of standards not protective of threatened and endangered species and critical habitat, and
- Reduce the number of EPA approvals subject to Section 7(d) that could eventually result in disapproval of a new/revised standard, requiring NPDES permit modifications.

Non-federal Designation

Consultation under section 7 is a federal responsibility. Although there is no regulatory requirement to do so, Region 6 believes that there may be situations where it would be beneficial for a State or Tribe to consider taking the lead as a non-federal designee in some ESA consultations, particularly when site-specific criteria are being developed. When such a

designation is made, EPA must give written notice to the Services that a non-federal representative has been designated. When an action agency such as EPA designates a non-federal entity, the federal agency remains ultimately responsible for section 7 obligations.

The actual process of carrying out an informal section 7 consultation would be the same for a non-federal designee as it would be for EPA, although the primary responsibility remains with the agency. The Services' Endangered Species Consultation Handbook, *Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act*, 1998, (hereafter referred to as the "Handbook"), has a great deal of information on consultations from the Services perspective. Chapter 3 of the Consultation Handbook provides some specifics on informal consultation.

This chapter of the Handbook explains that most consultations are conducted informally with the federal agency or designated non-federal representative. Informal consultation on standards isn't necessarily limited to the Service and EPA or a non-federal representative, but may include a permittee, or consultants. As it suggests, "informal" means an unstructured approach to meeting consultation requirements. Informal consultation can include phone contacts, meetings, conversations, letters, e-mail, project modifications and concurrences from the Services. There is no required timetable for informal discussions and it may continue as long as all involved are actively working to complete the consultation. But there are time frames for some individual elements of informal consultation which are recommended in the Handbook. In general, the intent of informal consultations is to:

- Clarify which (if any) listed or proposed species and designated or proposed critical habitats may be in the action area;
- Determine what effects the action may have on these species or critical habitats;
- Modify the action to reduce or remove adverse effects to the species or critical habitats;
- Determine the need to enter into formal consultation for listed species or designated critical habitats, or discuss proposed species or proposed critical habitats; and
- Explore the design or modifications of an action to benefit the species.

Team Structure/Assignments:

The Water Quality Standards Team has historically been structured with a individual coordinator working with a particular State(s)/Tribe(s) through an entire triennial revision process. While this basic structure is appropriate, there is significant interaction between Team members when it's beneficial to distribute portions of some revision to other Team members

depending on workload and technical expertise and experience. In such situations, Team members may be involved in the review of water effect ratios, variance or other site-specific criteria and ESA consultations. The Team currently consists of 5 full-time staff persons. Primary and other potential responsibilities are as follows:

Russell Nelson - Regional/National coordination, New Mexico, ESA;
Diane Evans - Texas, Tribes, TX Site-specific criteria/variances, Tribal ESA;
Stephen Bainter - Louisiana, TX/OK WER, TX ESA;
Melinda Nickason - Arkansas, Oklahoma Tribes, TX ESA;
Renee Bellew - Oklahoma, Oklahoma Tribes, Tribal ESA

EPA Headquarters Staff Redirection and Additional Resources:

EPA HQ has recognized the need to provide additional technical assistance for all EPA Regions to help resolve existing backlogs and current issues. Some staff from HQ's Engineering and Analysis Division (EAD) have been redeployed to the Standards and Health Protection Division (SHPD) and within OST. These are highly qualified and knowledgeable people with some depth in WQS and related areas with skills that will help the Regions achieve the goal of eliminating the backlog. OST staff, to the extent possible, will assist in ensuring national consistency and technical soundness of proposed standards.

In addition, EPA HQ has provided extramural funding for work on standards related issues such as . EPA HQ and Region 6 are working with contractors in the development and completion of biological evaluations to support ongoing consultations.

State/Tribal Submission Evaluation and Assignment:

State and Tribal revisions and supporting documentation will be evaluated at the time they are submitted to determine the resource and time requirements that will be necessary to complete the technical review within EPA's statutory time frame. In addition, the resources needed to complete the parallel ESA consultation will be identified. The Attachment 1 flowchart describes the overall process and is described below:

Day 1-10 State/Tribal Coordinator Evaluation of Submission:

Submissions will be assigned to the State/Tribal coordinator team member responsible for that particular State, Tribe or submission type. The individual coordinator will make an initial assessment of the submission to evaluate the volume and technical complexity of the submission. This evaluation will include an initial determination of whether adequate supporting scientific or technical information (40 CFR 131.6) has been submitted, identification of any politically complex/sensitive issues and a preliminary determination of provisions that are clearly approvable or disapprovable. This information will be used to determine if the submission requires additional staff resources to complete the review within the statutory time frame.

The *Day 1-10* evaluation will give the reviewer an indication of not only those that are clearly approvable or disapprovable, but more importantly, those that require technical analysis and review and those that should be deferred while working to reach resolution of issues such as a need for additional supporting documentation. Depending on the volume and technical complexity of the submission, portions of the technical review or ESA work may be assigned to other team members. Extensive or technically complex submissions - those that include water effect ratios (WERs), multiple use attainability analyses (UAAs) and/or politically sensitive issues will be assigned to team members based on their area of expertise and current work load as described in *Team Structure/Assignments*. On *Day 10*, the Regional and/or State/Tribal coordinator(s) will brief the Section Chief on the Review Strategy, stressing politically sensitive issues.

Day 10-45 State/Tribal Coordinator / Team Review of Submittal

The bulk of the technical review for State and Tribal submissions will be carried out during the *Day 10-45* time frame. Reviewers will determine whether the new/revised provision(s) meet the minimum requirements as described in 40 CFR 131.6, specifically if the methodology and supporting scientific analyses provided support the revisions. If possible, during the first 10 days in the review of particularly complex provisions such as WERs or UAAs, the provision itself or supporting documentation does not allow a supportable decision, the reviewer(s) will request additional supporting information from the State or Tribe. Review of WER will be guided by Attachment 3. If additional supporting information cannot be provided to the Region within a reasonable time to allow completion of the review within the regulatory time frame, the provision will be recommended for disapproval.

Day 45 - 60 Preparation for and Final EPA Action

The review of all provisions will be completed within 45 days. During the *Day 45-55* time frame, the State/Tribal Coordinator will prepare a draft letter and Record of Decision (ROD) describing the final EPA action and briefing materials based on the ROD for Region 6 management and EPA Headquarters (as necessary). Briefing will include the status of the concurrent ESA consultation. Action on State/Tribal submissions prior to concurrence from the Services can be taken under Section 7(d) of the ESA. During the *Day 55 - 60* time frame, a final EPA approval letter and ROD will be developed and be routed for concurrence.

Reporting Progress:

As noted earlier, the current standards backlog is being tracked under the GPRA. As discussed, GPRA requires agencies to report each year on their progress toward achieving their strategic goals through Annual Performance Reports. These Performance Reports are intended to allow EPA managers to evaluate and adjust strategies, program directions, and resource allocations to achieve program results.

In practice, reporting under GPRA often does not reflect 1) incremental progress that has been made on submissions, 2) the dependence on State/Tribal or EPA Headquarters action for resolution, 3) management decisions to delay action on specific provisions or entire submissions, or 4) instances where submissions may be double counted by being listed in more than one backlog category. To address the problems with reporting under GPRA, OST has developed and recently deployed the Water Quality Standards Actions Tracking Application (WATA) database. The WATA database is intended to allow more “real-time” tracking of standards actions and provide more discrimination in reporting. The Region 6 Standards Team is working with OST to populate and refine the WATA database. Refinements sought are to allow consistent reporting and a recognition of the incremental progress that is being made on voluminous and complex submissions that the current GPRA tracking does not provide.

The Standards Team will use the WATA as a basis for reporting status and progress on backlog and new State and Tribal submissions. Progress reports will be provided through monthly briefs to Division management. When schedules prevent direct briefings, these reports will be provided via email.

Summary

This document has provided background on how the current WQS backlog developed and EPA’s strategy through FMFIA and GPRA to track and manage the backlog. This will include use of extramural funds and redirection of resources. The document outlines both EPA, State and Tribal statutory and regulatory authorities and requirements, paying particular attention to the importance of meeting the minimum submission requirements outlined in the WQS regulation. It also provides a description of how EPA will evaluate WQS submissions and an associated timeline for specific actions to be accomplished. Most importantly, it discusses the critical importance of working cooperatively throughout the process. This may mean going beyond our respective regulatory requirements in the WQS revision and the ESA consultation processes, to meet our common goal of timely WQS approvals and eliminating the backlog of outstanding actions. It describes how the Region will report and track progress on meeting this important goal.