

# Proposed USEPA Changes to Water Quality Standards



Utah Water Quality Standards Workgroup  
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Comments due to EPA by December 3,  
2013



# When EPA administrator can require new standards

- ❖ Amends §131.22(b) to add a requirement that an Administrator's Determination must be signed by the Administrator and state it is a determination.



# Designated Uses

- ❖ Amends §131.10(g) to provide that where a use specified in section 101(a)(2) of the Act or a subcategory of such a use is not attainable, the highest attainable use (HAU) and criteria to protect that use shall be adopted in its place. It also amends §131.10(g), (j) and (k) to be clear when a UAA is and is not needed.



# Designated Uses

- ❖ *Highest attainable use* is the aquatic life, wildlife, and/or recreation use that is both closest to the uses specified in section 101(a)(2) of the Act and attainable, as determined using best available data and information through a use attainability analysis defined in § 131.3(g).



# Designated Uses

- ❖ Pursuant to § 131.10(j), States may designate or remove a ~~designated~~ use or a sub-category of a use as long as the action does ~~which is not~~ remove protection for an existing use, as defined in §131.3, or establish sub-categories of a ~~use if, and~~ the State can demonstrate that attaining the use is not feasible because: of one of the six factors in this paragraph. If a State adopts new or revised water quality standards based on a use attainability analysis, the State shall also adopt the highest attainable use and the criteria to protect that use. To meet this requirement, States may, at their discretion, utilize their current use categories or subcategories, develop new use categories or subcategories, or adopt another use which may include a location-specific use.



# Designated Uses

## ❖ UAA not required when:

- (1) The State designates or has designated uses for a water body for the first time that include the uses specified in section 101(a)(2) of the Act, or
- (2) The State wishes to remove a designated use that is not specified in section 101(a)(2) of the Act, or designate a sub-category of a use specified in section 101(a)(2) of the Act which requires criteria at least as stringent as previously applicable.



# Antidegradation

- ❖ The State shall develop and make available to the public statewide methods for implementing the antidegradation policy adopted pursuant to paragraph (a) of this section. A State's antidegradation implementation methods shall be designed to achieve antidegradation protection consistent with paragraph (a) of this section. Such methods must ensure that:
  - (1) High quality waters are identified on a parameter-by-parameter basis or on a water body-by-water body basis at the State's discretion, but must not exclude any water body from high quality water protection solely because not all of the uses specified in CWA section 101(a)(2) are attained; and
  - (2) The State will only make a finding that lowering high water quality is necessary, pursuant to paragraph (a)(2) of this section, after conducting an alternatives analysis that evaluates a range of non-degrading and minimally degrading practicable alternatives that have the potential to prevent or minimize the degradation associated with the proposed activity. If the State can identify any practicable alternatives, the State must choose one of those alternatives to implement when authorizing a lowering of high water quality.



# Variations

- ❖ Water quality standards variance (WQS variance) is a time-limited designated use and criterion for a specified pollutant(s), permittee(s), and/or water body or waterbody segment(s) that reflect the highest attainable condition during the specified time period. WQS variances are water quality standards subject to EPA review and approval or disapproval and must be consistent with this section. Any such WQS variances adopted after *[effective date of the final rule]* must be consistent with this regulatory section.



# Variance Applicability

- ❖ (1) All applicable WQS not specifically addressed by the WQS variance remain applicable.
- ❖ (2) (i) Where a state adopts a WQS variance, the State regulations must continue to reflect the underlying designated use and criterion unless the State adopts and EPA approves a revision to the underlying designated use and criterion consistent with § 131.10 or § 131.11.
- ❖ (ii) The interim requirements specified in the WQS variance are in effect during the term of the WQS variance and apply for CWA section 402 permitting purposes and in issuing certifications under section 401 of the Act for the permittee(s), pollutant(s), and/or water body or waterbody segment(s) covered by the WQS variance. For these limited purposes, the interim requirements will be the standards applicable for purposes of the CWA under 40 CFR 131.21(c)-(e).



# Variance Applicability

(3) A WQS variance shall not be granted if the designated use and criterion addressed by the proposed WQS variance can be achieved by implementing technology-based effluent limits required under sections 301(b) and 306 of the Act.



# Variance Submissions

- ❖ Identifying information: A WQS variance must identify the pollutant(s), permittee(s), and/or the water body or waterbody segment(s) to which the WQS variance applies.
- ❖ WQS that apply during a variance for CWA section 402 permitting purposes and in issuing certifications under section 401 of the Act: A WQS variance must specify:
  - ❖ (A) The highest attainable interim use and interim numeric criterion, or
  - ❖ (B) An interim numeric effluent condition that reflects the highest attainable condition for a specific permittee(s) during the term of the variance. Neither (A) nor (B) of this paragraph shall result in any lowering of the currently attained water quality unless a time-limited lowering of water quality is necessary during the term of a variance for restoration activities, consistent with paragraph (b)(2)(ii) of this section.



# Variance Submittals

- ❖ Date the WQS variance will expire: States must include an expiration date for all WQS variances, consistent with paragraph (b)(2) of this section. WQS variances must be as short as possible but expire no later than 10 years after state adoption.



# Variance Submittals

The State must submit a demonstration justifying the need for a WQS variance. For a WQS variance to a use specified in section 101(a)(2) of the Act or a sub-category of such a use, the State must submit a demonstration that attaining the designated use and criterion is not feasible during the term of the WQS variance because:

- One of the factors listed in § 131.10(g) applies, or
- Actions necessary to facilitate restoration through dam removal or other significant wetland or stream reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.



# Variance Submittals

- ❖ For a waterbody variance, the state must identify and document any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant(s) and location(s) specified in the WQS variance that could be implemented to make progress towards attaining the designated use and criterion. A State must provide public notice and comment for any such documentation.



# Implementing Variances in NPDES Permits

- ❖ Consistent with paragraph (a)(2)(ii) of this section, a WQS variance serves as the basis of a water quality-based effluent limit included in a NPDES permit for the period the variance is in effect. Any limitations required to implement the WQS variance shall be included as conditions of the NPDES permit for the permittee(s) subject to the WQS variance.



# Implementing Variances in NPDES Permits

*WQS variance renewals:* EPA may approve a WQS variance renewal if the State meets the requirements of this section and provides documentation of the actions taken to meet the requirements of the previous WQS variance. For a waterbody WQS variance renewal, the state must also provide documentation of whether and to what extent BMPs have been implemented to address the pollutant(s) subject to the WQS variance and the water quality progress achieved during the WQS variance period. Renewal of a WQS variance may be disapproved if the applicant did not comply with the conditions of the original WQS variance, or otherwise does not meet the requirements of this section.



# Compliance Schedules

A State may, at its discretion and consistent with state law, authorize schedules of compliance for water quality-based effluent limits (WQBELs) in NPDES permits by including a compliance schedule authorizing provision in its water quality standards or implementing regulations. Any such provision is a water quality standard subject to EPA review and approval and must be consistent with sections 502(17) and 301(b)(1)(C) of the Act. Individual compliance schedules issued pursuant to such authorizing provisions are not themselves water quality standards. Individual compliance schedules must be consistent with CWA section 502(17), the state's EPA-approved compliance schedule authorizing provision, and the requirements of §§ 122.2 and 122.47.



# Triennial Review

- ❖ A State shall re-examine its water quality criteria to determine if any criteria should be revised in light of any new or updated CWA section 304(a) criteria recommendations to assure that designated uses continue to be protected.





**Questions,  
Comments,  
Suggestions,  
Concerns**