

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 131**

[WH-FRL-3539-9]

**Water Quality Standards for the
Colville Indian Reservation in the State
of Washington****AGENCY:** Environmental Protection
Agency.**ACTION:** Final rule.

SUMMARY: This rule establishes Federal water quality standards on the Colville Confederated Tribes Reservation located within the State of Washington. The standards consist of designated uses and criteria for all surface waters on the reservation.

EFFECTIVE DATE: August 7 1989.

ADDRESSES: The public may inspect the administrative record for this rulemaking and all comments received on the proposed regulation at the Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, WA 981001 between the hours of 8:00 am and 4:00 p.m. on business days. A reasonable fee will be charged for copying. Portions of the record, including the correspondence and other actions cited in this rulemaking and written public comments will be available from the Criteria and Standards Division, OWSR, 401 M Street SW., Room 919 East Tower, Washington DC 20460, during usual business hours. Inquiries can be made over the phone by calling (206) 442-8293 or (202) 475-7315.

FOR FURTHER INFORMATION CONTACT: Fletcher Shives, Environmental Protection Agency, Region X (M/S 433), 1200 Sixth Avenue, Seattle, WA 98101, (206) 442-8293.

SUPPLEMENTARY INFORMATION:

Information in this preamble is organized as follows:

- A. Background
- B. Response to Public Comments
- C. Changes to the Proposed Rule
- D. Regulatory Flexibility Act
- E. Executive Order 12291
- F. Paperwork Reduction Act
- G. List of Subjects in 40 CFR Part 131

A. Background

On February 7 1986, the Environmental Protection Agency received a request from the Colville Confederated Tribes to promulgate the Tribes water quality standards as Federal standards for waters of the reservation. Although Tribal standards had recently been adopted, the Tribe was concerned that their standards

were not Federally recognized under Clean Water Act ("CWA" or "the Act") section 303.

Section 303(c)(4) of the CWA authorizes the EPA Administrator to promulgate Federal water quality standards for waters of the Nation, including waters on Indian lands, whenever he determines a revised or new standard is "necessary to meet the requirements of the Act. The CWA does not, by itself, authorize States to implement or enforce water quality management programs on Indian lands. In some cases a State may have authority to regulate the water quality of a particular Indian land because of a treaty or a Federal statute. Where State authority may be in doubt, it may be appropriate for EPA to promulgate Federal water quality standards for waters on Indian lands.

Subsequent to receiving the request from the Colville Confederated Tribes, Congress passed the CWA amendments of 1987. These amendments established in the Act a new section 518 which addresses the issue of water quality standards on Indian lands and directs EPA to promulgate regulations specifying how Indian Tribes shall be treated as States for purposes of the water quality standards program. Despite the pending opportunity to qualify to be treated as a State for purposes of water quality standards, the Colville Confederated Tribes, in commenting on the proposed rulemaking, expressed enthusiastic support for EPA's action to promulgate Federal water quality standards for the reservation.

EPA is in the process of responding to the Section 518 directive to specify how Indian Tribes shall be treated as States for purposes of water quality standards. If, after promulgation of the regulations pursuant to section 518, the Colville Confederated Tribes qualify for the standards program and submit standards which are approved by EPA, EPA will withdraw these Federal water quality standards at the Tribes request.

EPA notes that today's rule does not establish a precedent for future EPA promulgations. This promulgation action is unique because: (1) It was initiated before the 1987 amendments to the Clean Water Act were enacted, and (2) it is based on water quality standards previously developed by the Colville Confederated Tribes for application to waters on their reservation. This process is not intended as a model for other reservations. Where other Indian Tribes wish to establish standards under the CWA, EPA would expect such Tribes to apply, under the CWA section 518 regulation, to be treated as States for

purposes of water quality standards. Once recognized by EPA as qualified to be treated as States, such Tribes would be responsible for developing their own water quality standards under the Act and making ongoing refinements to suit particular Tribal needs.

Indian Tribes should not conclude from today's action that Federal promulgation is EPA's preferred method of establishing water quality standards on reservations. Historically, EPA's preference has been to work cooperatively with States on water quality standards issues and to initiate Federal promulgation actions only where absolutely necessary. EPA believes that this preference is consistent with the intent of the Act to provide States, and Tribes qualifying for treatment as States, with the first opportunity to set standards. Today's rule represents only the ninth Federal promulgation of water quality standards to be completed by EPA. Six of the eight completed Federal promulgations have been withdrawn. Tribes should also note that Federal promulgation of water quality standards is a very deliberate process. In the case of today's rule, it took EPA more than three years (from the time of the request by the Colville Confederated Tribes until today's final action) to promulgate final water quality standards.

The CWA amendments of 1987 also added new section 303(c)(2)(B), which requires that States "shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act for which criteria have been published under section 304(a), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses. As part of the proposed rulemaking, EPA decided not to propose numeric criteria for section 307(a) pollutants for inclusion in the Colville reservation water quality standards.

In response to comments received on the proposed rulemaking, EPA considered promulgating today's rule as proposed and simultaneously proposing numeric toxics criteria for the reservation. EPA decided against this action primarily because there are no known or suspected sources of toxics on the reservation. The Colville Confederated Tribes report only one point source discharger on the reservation and no toxics discovered from that discharger. EPA is aware of no other sources or potential sources of toxics in the area. Although the State of Washington has adopted twenty numeric toxics criteria for the protection of aquatic life, and the State and the

Tribes have an agreement to maintain consistent standards on common bodies of water; EPA is not a party to this agreement. For the reasons stated above, it is EPA's judgment that toxics criteria should not be proposed at this time.

This decision does not preclude the Tribes from amending their own water quality standards to include toxics criteria. Tribal adoption would allow the Tribes to develop any associated monitoring capabilities or otherwise make arrangements for such monitoring without EPA intervention.

Until numeric toxics criteria are adopted by EPA (or by the Tribes if they qualify for treatment as a State for purposes of the standards program) in response to additional information substantiating the need for numeric toxics criteria, EPA will use the Agency's 304(a) criteria guidance to implement the narrative toxics "free from" criterion in any situation that might arise concerning the discharge of toxics.

EPA believes this decision is appropriate, under the present circumstances, and that it is consistent with CWA section 303(c)(2)(B) and EPA's Indian Policy. This decision was made after careful consideration of the available information and the somewhat transitional nature of water quality management on the reservation (i.e., the pending CWA section 518 regulations). The decision not to adopt numeric toxics criteria for the reservation should not be interpreted as a general reluctance on the part of the Agency to adopt numeric toxics criteria, nor does it preclude proposing such criteria in the future.

Additional background information can be found in the proposed rulemaking, which appeared in the *Federal Register* on July 15, 1988 (53 FR 26968). Public comments on the proposal were invited until September 13, 1988. A public hearing was held August 18, 1988 on the Colville Indian Reservation in Nespelem, Washington. Fourteen people attended this hearing. EPA received four letters and statements on the proposal.

B. Response to Public Comments

Comments on the proposed rulemaking were received from the Colville Confederated Tribes, the Puyallup Tribe, Cavenham Forest Industries, Inc., and the State of Washington Department of Ecology (DOE). These comments and EPA's responses are presented below.

One commenter strongly suggested that EPA should withdraw the proposed rule. The commenter asserted that it is unnecessary for EPA to promulgate

water quality standards under section 303(c)(4)(B) of the Act because the State of Washington has already adopted and implemented standards for the reservation. The commenter contested EPA's assertion that the Act does not authorize States to implement or enforce their water quality standards on Indian lands. The commenter cited section 510 of the Act as evidence that the Act does not preempt state jurisdiction.

EPA disagrees with this analysis. Under accepted principles of Federal Indian Law, State authority to regulate activities on Indian lands is generally preempted absent an explicit Congressional statute to the contrary. *California v. Cabazon Band of Mission Indians*, 107 S.Ct. 1083, 1092 and n.18 (1987). The CWA contains no language which explicitly grants a State the authority to regulate activities related to water quality management on Indian lands. Section 510 of the Act clarifies only that the CWA does not preempt a State from adopting any water quality standard or effluent limitation more stringent than the Federal minimum. *International Paper Co. v. Ouelette*, 107 S.Ct. 805 (1987). Section 510 does not, however, address the authority of a State to implement or enforce its water quality standards on Indian lands.

EPA construes the CWA in a manner very similar to the Resource, Conservation and Recovery Act (RCRA) with respect to Congressional authorization of State jurisdiction on Indian lands. As with the CWA, RCRA does not explicitly discuss or address the extent of a State's authority to regulate environmental activities on Indian lands. On this basis, EPA decided in 1983 not to authorize the State of Washington to regulate hazardous waste activities on Indian lands in the State (48 FR 34954 (1983)). EPA rejected Washington's argument that the statutory language of RCRA authorized the State's assertion of jurisdiction over Indian lands within the State. This decision was upheld by the U.S. Court of Appeals for the Ninth Circuit. *Washington Dept. of Ecology v. EPA*, 752 F.2d 1465 (9th Cir. 1985). The court found that, in light of Congressional silence, EPA had reasonably interpreted RCRA not to grant the State jurisdiction over activities on Indian lands. The court noted that EPA's interpretation was "buttressed by well-settled principles of Federal Indian law." *Id.* at 1469. As with RCRA, EPA rejects the argument that the CWA constitutes Congressional authorization of State regulatory jurisdiction over discharges to surface waters on Indian lands.

The same commenter also argued that the State retains inherent authority to regulate water quality on fee lands owned by non-Indians. This commenter asserted that EPA promulgation of water quality standards for the Colville reservation is unnecessary because the State of Washington has already established water quality standards which apply, at a minimum, over fee lands owned by non-Indians within the exterior boundaries of the reservation. EPA does not believe it necessary to resolve this issue. First, the Tribe and Washington have an agreement that water quality standards on and off the reservation will be as similar as possible. Also, the State of Washington, in a companion agreement with EPA, has already agreed that, in the absence of Tribal NPDES program assumption, EPA will issue all future NPDES permits on the reservation (without conceding its own authority to do so under State law).¹ As a result, to give effect to these agreements, EPA believes it necessary and appropriate to promulgate the standards contained in today's rule.

EPA notes that there may be some doubts as to whether the State of Washington would be able to adequately demonstrate its authority under State law to regulate activities affecting surface water quality on the Colville reservation in light of the relevant precedents regarding preemption of state regulatory authority on Indian lands.² As the commenter noted, the proper test for determining the extent of State regulatory authority was clearly stated by the Supreme Court in *Cabazon*.

State jurisdiction is pre-empted if it interferes or is incompatible with Federal and tribal interests reflected in Federal law unless the State interests at stake are sufficient to justify the assertion of State authority. The inquiry is to proceed in light of traditional notions of Indian self-government, including its overriding goal of encouraging tribal self-sufficiency and economic development.

Cabazon, 107 S.Ct. at 1092 (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333-35 (1983)). EPA believes that the adoption of section 518 of the CWA evinces strong Congressional preference for Tribal

¹ A copy of both cooperative agreements is available in the docket for today's rule.

² EPA has also determined that the State of Washington cannot adequately demonstrate its authority to regulate hazardous waste activities and underground injection activities on Indian lands in the State, and has declined to authorize Washington to administer these programs on Indian lands. See *Washington Dept. of Ecology v. EPA*, 752 F.2d 1465 (9th Cir. 1985) (hazardous waste); 53 FR 42,080 (1988) (underground injection).

control of water quality on Indian reservations, where the Tribe meets the statutory criteria. Thus, the Federal interest in ensuring enforcement of tribal water quality standards is strong and the continued applicability of the State standards may be subject to question. However, in light of the fact that both the Tribe and the State have "plac[ed] environmental protection ahead of jurisdictional conflicts in developing the (tribal water quality management) plan,"³ EPA does not today attempt to finally resolve this question, nor does it feel that it must resolve this question before it can find that today's rule is necessary under section 303(c)(4)(B) of the CWA. Thus, EPA declines to do so.

Finally, this commenter argued that EPA may not promulgate these standards, since the Confederated Tribes of the Colville Reservation have not qualified to be treated as a State under section 518 of the CWA for purposes of developing water quality standards for EPA approval under section 303 of the CWA. EPA believes that the commenter may have misunderstood the statutory basis for today's action. Section 518(e) establishes statutory prerequisites that must be satisfied by a Tribe before it may submit water quality standards for approval by EPA under section 303. EPA is in the process of developing regulations to implement section 518 for purposes of the standards program, which it plans on proposing in the summer of 1989 for public comment. However, today's action is not an approval of Tribal standards under section 303(a)(3)(A), but Federal promulgation of standards under 303(c)(4)(B). Section 518 does not affect EPA's authority to promulgate Federal water quality standards.

The statutory context in which today's rule is adopted is very similar to the situation presented to the U.S. Court of Appeals in *Phillips Petroleum Co. v. EPA*, 803 F.2d 545 (10th Cir. 1986). In that case, Phillips challenged EPA's regulation promulgating a Federal Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA) for the Osage Mineral Reserve. Phillips argued that EPA lacked the authority to promulgate such regulations prior to the 1986 SDWA Amendments, which explicitly authorized EPA to promulgate Federal UIC programs on Indian lands. The

Tenth Circuit upheld EPA's regulations, stating that the strong national interest in applying SDWA regulatory standards "ocean to ocean" overcame Congress' failure to address the implementation of SDWA on Indian lands. *Id.*, at 553, 555-56. The Court also noted that its conclusion that "the SDWA empowered the EPA to prescribe regulations for Indian lands is also consistent with the presumption that Congress intends a general statute applying to all persons to include Indians and their property interests. *Id.* at 556. EPA believes that same logic applies to the CWA, both prior to and subsequent to the adoption of section 518.

EPA disagrees that today's action would be premature or inconsistent with the regulations to be developed under section 518. One commenter stated that adoption of section 518 supersedes EPA's 1984 Indian Policy statement and the cooperative agreements discussed above, which were adopted pursuant to the policy. EPA disagrees with this statement. Adoption of section 518 grew out of EPA's efforts to implement the CWA on Indian lands in a manner consistent with the 1984 policy. There is no legislative history to suggest Congress intended EPA to alter its 1984 policy; indeed it suggests the opposite. Furthermore, section 518(d) of the CWA explicitly authorizes States and Tribes to enter cooperative agreements "to jointly plan and administer the requirements of (the CWA), precisely what the Tribe and the State have done.

EPA does not believe that today's action must wait for section 518 regulations to be finalized. The Confederated Tribes requested EPA to promulgate the Tribal water quality standards as Federal standards on February 7, 1986, nearly one year before passage of the Water Quality Act of 1987. EPA sees no reason to delay promulgation of this rule while regulations are developed under section 518. EPA notes that, in a draft of the regulations to be proposed under section 518 which has been made publicly available, Federal promulgation of standards on Indian lands is mentioned as one method of implementing the water quality standards program (although not the preferred method, as discussed above), where the Tribe is not yet able, or chooses not to qualify for treatment as a State and submit its own standards for approval. Consistent with the draft regulations, EPA believes that today's action is entirely consistent with section 518 of the CWA. EPA would also point out that if, after promulgation of the regulations authorizing Indian Tribes to develop water quality standards, the

Confederated Tribes of the Colville reservation qualify for the standards program and submit standards which are approved by EPA, EPA will withdraw these Federal water quality standards at the Tribes' request.

One commenter noted that although a narrative toxics "free from" criterion was included in the proposal, numeric criteria were not, and recommended that EPA consider the fact that the State of Washington adopted numeric criteria for certain toxics in January, 1988, and propose to adopt equivalent criteria for reservation/State boundary waters.

Although an agreement exists between the State and the Tribe to maintain consistent water quality standards on boundary waters, this agreement does not involve EPA. It is EPA's judgment that, at present, it is appropriate not to propose numeric toxics criteria for waters of the Colville reservation. A primary factor in this decision is that EPA knows of no toxic pollutant that can reasonably be expected to be interfering with designated uses of the reservation. The Colville Tribes report only one point source discharger on the reservation and no toxics discovered from that discharger. EPA is aware of no other source of toxics in the area. Given these circumstances, numeric criteria for CWA section 307(a) pollutants are not required by CWA section 303(c)(2)(B). Until the Tribes qualify for treatment as a State for purposes of the standards program, or until additional information substantiating the need for numeric toxics criteria leads EPA to adopt numeric toxics criteria, EPA believes it is sufficient for the Agency to use the Agency's 304(a) criteria guidance to implement the narrative toxics "free from" criterion in any situation that might arise concerning the discharge of toxics.

One commenter noted that EPA erroneously noted in the Preamble to the proposed rulemaking that the Colville Water Quality Standards Act was amended by resolution (#1985-20) after the August 28, 1985 EPA approval of the Colville Water Quality Management Program, when in fact the amendment occurred before such EPA approval. EPA acknowledges the error.

One commenter noted several differences between the standards adopted by the State of Washington and the proposal. First, the State standards use the fecal coliform organism as a bacterial indicator, instead of enterococcus as used in the proposal. Second, the proposed Class III (equivalent to State B waters) includes primary contact recreation as a

³ See letter from Ernesta Barnes, Regional Administrator, Region X, to the Honorable Booth Gardner, Governor, State of Washington, August 28, 1985, copy of which is in the docket for today's rule.

designated use, while State Class B does not. Third, the proposed Class III and IV have different oxygen criteria than equivalent State Class B and C.

With regard to the first difference, EPA uses enterococcus because research has established that it is a better indicator. EPA encourages the State to change its bacterial indicator to be consistent with EPA's section 304(a) guidance. With regard to the second difference, EPA has included primary contact recreation as a designated use in support of the fishable/swimmable goal of the Clean Water Act, and assumes that the State conducts Use Attainability Analyses during each triennial review to determine whether the primary contact recreation use is attainable in their Class B waters. With regard to the third difference, EPA has based the dissolved oxygen criteria on the 1986 dissolved oxygen criteria document, and encourages States to update their criteria to reflect the most recent aquatic effects research.

C. Changes to the Proposed Rule

On EPA's initiative, the definition of "Reservation" was changed in the final rule to be consistent with the statutory definition provided in section 518 of the CWA. Specifically, the definition of "Reservation" which appeared in the proposed rulemaking was expanded to also include the language which was used in defining "Federal Indian Reservation" in CWA section 518(h) (i.e., "Federal Indian Reservation" means all land within the limits of any Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation). Since the definition of "reservation" in section 518(h) tracks the common definition of the term (see 18 U.S.C. 1151(a)), this change will have no substantive effect on the rule. The change is meant only as a clarification.

On EPA's initiative, paragraph (c)(2) was re-written to be consistent with the requirements of § 131.13 of the water quality standards regulation. Section 131.13 authorizes the States to adopt general policies affecting the application of their water quality standards such as mixing zone, variance, and low-flow policies, but only if such policies are included as a part of the State's water quality standards. Proposed paragraph (c)(2), however, would have allowed the Regional Administrator to implement such general policies without including such policies in § 131.35. The new paragraph (c)(2) establishes a mixing zone policy in § 131.35, consistent with § 131.13, which authorizes the Regional

Administrator to designate mixing zones, provided that such mixing zones are consistent with the most current EPA mixing zone guidelines in the Water Quality Standards Handbook and the Technical Support Document for Water Quality Based Toxics Control. EPA notes that a low-flow policy was already included in proposed paragraph (c)(6). At this time, EPA declines to establish a variance policy in § 131.35.

On EPA's initiative, the definition of "Acute toxicity" was changed in the final rule to be more consistent with the definition of "acute" in EPA's Technical Support Document for Water Quality Based Toxics Control. The proposed definition limited acutely toxics effects only to mortality and the period of exposure only to 96 hours.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. EPA has determined that, because a Tribal regulation is already in place which is essentially equivalent in stringency to this rule, this Rule will not have significant adverse impact on small entities.

E. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of preparing a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers; individual industries; Federal, State, and local government agencies; or geographic regions; or
- (3) Significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this rule does not meet the definition of a major regulation; therefore, no Regulatory Impact Analysis is required. Also, as required by Executive Order 12291 this rule has been reviewed by the Office of Management and Budget (OMB). Any written comments from OMB to EPA and any response to those comments are available for public inspection through contacting the person listed at the beginning of this notice.

F Paperwork Reduction Act

Promulgation of Federal water quality standards was one of the actions contemplated under the water quality standards regulation, which is covered by ICR # 2040-0049 approved by OMB. Since there are no significant additional information collection provisions in this rule, there is no requirement for approval of an additional ICR by OMB for the Paperwork Reduction Act of 1980.

G. List of Subjects in 40 CFR Part 131

Indian Reservation water quality standards, Water pollution control, Water quality standards.

Date: June 23, 1989.

William K. Reilly,
Administrator.

For the reasons set out in the SUPPLEMENTARY INFORMATION section, Part 131 of the Title 40 of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for Part 131 continues to read as follows:

Authority: Clean Water Act, P.L. 92-500, as amended; 33 U.S.C. 1251 *et seq.*

2. Section 131.35 is added to read as follows:

§ 131.35 Colville Confederated Tribes Indian Reservation.

The water quality standards applicable to the waters within the Colville Indian Reservation, located in the State of Washington.

(a) *Background.* (1) It is the purpose of these Federal water quality standards to prescribe minimum water quality requirements for the surface waters located within the exterior boundaries of the Colville Indian Reservation to ensure compliance with section 303(c) of the Clean Water Act.

(2) The Colville Confederated Tribes have a primary interest in the protection, control, conservation, and utilization of the water resources of the Colville Indian Reservation. Water quality standards have been enacted into tribal law by the Colville Business Council of the Confederated Tribes of the Colville Reservation, as the Colville Water Quality Standards Act, CTC Title 33 (Resolution No. 1984-526 (August 6, 1984) as amended by Resolution No. 1985-20 (January 18, 1985)).

(b) *Territory Covered.* The provisions of these water quality standards shall apply to all surface waters within the

exterior boundaries of the Colville Indian Reservation.

(c) *Applicability, Administration and Amendment.* (1) The water quality standards in this section shall be used by the Regional Administrator for establishing any water quality based National Pollutant Discharge Elimination System Permit (NPDES) for point sources on the Colville Confederated Tribes Reservation.

(2) In conjunction with the issuance of section 402 or section 404 permits, the Regional Administrator may designate mixing zones in the waters of the United States on the reservation on a case-by-case basis. The size of such mixing zones and the in-zone water quality in such mixing zones shall be consistent with the applicable procedures and guidelines in EPA's Water Quality Standards Handbook and the Technical Support Document for Water Quality Based Toxics Control.

(3) Amendments to the section at the request of the Tribe shall proceed in the following manner.

(i) The requested amendment shall first be duly approved by the Confederated Tribes of the Colville Reservation (and so certified by the Tribes Legal Counsel) and submitted to the Regional Administrator.

(ii) The requested amendment shall be reviewed by EPA (and by the State of Washington, if the action would affect a boundary water).

(iii) If deemed in compliance with the Clean Water Act, EPA will propose and promulgate an appropriate change to this section.

(4) Amendment of this section at EPA initiative will follow consultation with the Tribe and other appropriate entities. Such amendments will then follow normal EPA rulemaking procedures.

(5) All other applicable provisions of this Part 131 shall apply on the Colville Confederated Tribes Reservation. Special attention should be paid to §§ 131.6, 131.10, 131.11 and 131.20 for any amendment to these standards to be initiated by the Tribe.

(6) All numeric criteria contained in this section apply at all in-stream flow rates greater than or equal to the flow rate calculated as the minimum 7-consecutive day average flow with a recurrence frequency of once in ten years (7Q10); narrative criteria (§ 131.35(e)(3)) apply regardless of flow. The 7Q10 low flow shall be calculated using methods recommended by the U.S. Geological Survey.

(d) *Definitions.* (1) Acute toxicity" means a deleterious response (e.g., mortality, disorientation,

immobilization) to a stimulus observed in 96 hours or less.

(2) "Background conditions" means the biological, chemical, and physical conditions of a water body, upstream from the point or non-point source discharge under consideration. Background sampling location in an enforcement action will be upstream from the point of discharge, but not upstream from other inflows. If several discharges to any water body exist, and an enforcement action is being taken for possible violations to the standards, background sampling will be undertaken immediately upstream from each discharge.

(3) "Ceremonial and Religious water use" means activities involving traditional Native American spiritual practices which involve, among other things, primary (direct) contact with water.

(4) "Chronic Toxicity" means the lowest concentration of a constituent causing observable effects (i.e., considering lethality, growth, reduced reproduction, etc.) over a relatively long period of time, usually a 28-day test period for small fish test species.

(5) "Council" or "Tribal Council" means the Colville Business Council of the Colville Confederated Tribes.

(6) "Geometric mean" means the "nth" root of a product of "n" factors.

(7) "Mean retention time" means the time obtained by dividing a reservoir's mean annual minimum total storage by the non-zero 30-day, ten-year low-flow from the reservoir.

(8) "Mixing Zone" or "dilution zone" means a limited area or volume of water where initial dilution of a discharge takes place; and where numeric water quality criteria can be exceeded but acutely toxic conditions are prevented from occurring.

(9) "pH" means the negative logarithm of the hydrogen ion concentration.

(10) "Primary contact recreation" means activities where a person would have direct contact with water to the point of complete submergence, including but not limited to skin diving, swimming, and water skiing.

(11) "Regional Administrator" means the Administrator of EPA's Region X.

(12) "Reservation" means all land within the limits of the Colville Indian Reservation, established on July 2, 1872 by Executive Order, presently containing 1,389,000 acres more or less, and under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

(13) "Secondary contact recreation" means activities where a person's water

contact would be limited to the extent that bacterial infections of eyes, ears, respiratory, or digestive systems or urogenital areas would normally be avoided (such as wading or fishing).

(14) "Surface water" means all water above the surface of the ground within the exterior boundaries of the Colville Indian Reservation including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs, seeps and wetlands.

(15) "Temperature" means water temperature expressed in Centigrade degrees (C).

(16) "Total dissolved solids" (TDS) means the total filterable residue that passes through a standard glass fiber filter disk and remains after evaporation and drying to a constant weight at 180 degrees C. it is considered to be a measure of the dissolved salt content of the water.

(17) "Toxicity" means acute and/or chronic toxicity.

(18) "Tribe" or "Tribes" means the Colville Confederated Tribes.

(19) "Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

(20) "Wildlife habitat" means the waters and surrounding land areas of the Reservation used by fish, other aquatic life and wildlife at any stage of their life history or activity.

(e) *General considerations.* The following general guidelines shall apply to the water quality standards and classifications set forth in the use designation Sections.

(1) *Classification Boundaries.* At the boundary between waters of different classifications, the water quality standards for the higher classification shall prevail.

(2) *Antidegradation Policy.* This antidegradation policy shall be applicable to all surface waters of the Reservation.

(i) Existing in-stream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(ii) Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Regional Administrator finds, after full satisfaction of the inter-governmental coordination and public participation provisions of the Tribes' continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which

the waters are located. In allowing such degradation or lower water quality, the Regional Administrator shall assure water quality adequate to protect existing uses fully. Further, the Regional Administrator shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(iii) Where high quality waters are identified as constituting an outstanding national or reservation resource, such as waters within areas designated as unique water quality management areas and waters otherwise of exceptional recreational or ecological significance, and are designated as special resource waters, that water quality shall be maintained and protected.

(iv) In those cases where potential water quality impairment associated with a thermal discharge is involved, this antidegradation policy's implementing method shall be consistent with section 316 of the Clean Water Act.

(3) *Aesthetic Qualities.* All waters within the Reservation, including those within mixing zones, shall be free from substances, attributable to wastewater discharges or other pollutant sources, that:

- (i) Settle to form objectionable deposits;
- (ii) Float as debris, scum, oil, or other matter forming nuisances;
- (iii) Produce objectionable color, odor, taste, or turbidity;
- (iv) Cause injury to, are toxic to, or produce adverse physiological responses in humans, animals, or plants; or
- (v) produce undesirable or nuisance aquatic life.

(4) *Analytical Methods.* (i) The analytical testing methods used to measure or otherwise evaluate compliance with water quality standards shall to the extent practicable, be in accordance with the "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (40 CFR Part 136). When a testing method is not available for a particular substance, the most recent edition of "Standard Methods for the Examination of Water and Wastewater" (published by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation) and other or superseding methods published and/or approved by EPA shall be used.

(f) *General Water Use and Criteria Classes.* The following criteria shall apply to the various classes of surface

waters on the Colville Indian Reservation:

(1) *Class I (Extraordinary)*—(i) *Designated uses.* The designated uses include, but are not limited to, the following:

- (A) Water supply (domestic, industrial, agricultural).
- (B) Stock watering.
- (C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting.
- (D) Wildlife habitat.
- (E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria.* (A) *Bacteriological Criteria.* The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 8 per 100 milliliters, nor shall any single sample exceed an enterococci density of 35 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) *Dissolved oxygen*—The dissolved oxygen shall exceed 9.5 mg/l.

(C) *Total dissolved gas*—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) *Temperature*—shall not exceed 16.0 degrees C due to human activities. Temperature increases shall not, at any time, exceed $t = 23/(T + 5)$.

(1) When natural conditions exceed 16.0 degrees C, no temperature increase will be allowed which will raise the receiving water by greater than 0.3 degrees C.

(2) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from nonpoint source activities shall not exceed 2.8 degrees C, and the maximum water temperature shall not exceed 10.3 degrees C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.2 units.

(F) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(2) *Class II (Excellent)*—(i) *Designated uses.* The designated uses include but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria.* (A) *Bacteriological Criteria*—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 16/100 ml, nor shall any single sample exceed an enterococci density of 75 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) *Dissolved oxygen*—The dissolved oxygen shall exceed 8.0 mg/l.

(C) *Total dissolved gas*—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) *Temperature*—shall not exceed 18.0 degrees C due to human activities. Temperature increases shall not, at any time, exceed $t = 28/(T + 7)$.

(1) When natural conditions exceed 18 degrees C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3 degrees C.

(2) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from non-point source activities shall not exceed 2.8 degrees C, and the maximum water temperature shall not exceed 18.3 degrees C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.

(F) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(3) *Class III (Good)*—(i) *Designated uses*. The designated uses include but are not limited to, the following:

(A) Water supply (industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(F) Commerce and navigation.

(ii) *Water quality criteria*. (A) *Bacteriological Criteria*—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 ml, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen.

	Early life stages	Other life stages
7 day mean	9.5 (6.5)	* NA
1 day minimum	8.0 (5.0)	6.5

These are water column concentrations recommended to achieve the required intergravel dissolved oxygen concentrations shown in parentheses. The 3 mg/L differential is discussed in the dissolved oxygen criteria document (EPA 440/5-86-003, April 1986). For species that have early life stages exposed directly to the water column, the figures in parentheses apply.

* Includes all embryonic and larval stages and all juvenile forms to 30-days following hatching.

NA (not applicable)

All minima should be considered as instantaneous concentrations to be achieved at all times.

(C) Total dissolved gas concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature shall not exceed 21.0 degrees C due to human activities.

Temperature increases shall not, at any time, exceed $t = 34 / (T + 9)$.

(1) When natural conditions exceed 21.0 degrees C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3 degrees C.

(2) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from nonpoint source activities shall not exceed 2.8 degrees C, and the maximum water temperature shall not exceed 21.3 degrees C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.

(F) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(4) *Class IV (Fair)*—(i) *Designated uses*. The designated uses include but are not limited to, the following:

(A) Water supply (industrial).

(B) Stock watering.

(C) Fish (salmonid and other fish migration).

(D) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(E) Commerce and navigation.

(ii) *Water quality criteria*. (A) Dissolved oxygen.

	During periods of salmonid and other fish migration	During all other time periods
30 day mean.....	6.5	5.5
7 day mean.....	NA	NA
7 day mean minimum.....	5.0	4.0
1 day minimum *	4.0	3.0

NA (not applicable). All minima should be considered as instantaneous concentrations to be achieved at all times.

(B) Total dissolved gas—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(C) Temperature shall not exceed 22.0 degrees C due to human activities.

Temperature increases shall not, at any time, exceed $t = 20 / (T + 2)$.

(1) When natural conditions exceed 22.0 degrees C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3 degrees C.

(2) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(D) pH shall be within the range of 6.5 to 9.0 with a human-caused variation of less than 0.5 units.

(E) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(F) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(5) *Lake Class*—(i) *Designated uses*. The designated uses include but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria*. (A) *Bacteriological Criteria*. The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 ml, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen—no measurable decrease from natural conditions.

(C) Total dissolved gas concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature—no measurable change from natural conditions.

(E) pH—no measurable change from natural conditions.

(F) Turbidity shall not exceed 5 NTU over natural conditions.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those which may affect public health, the natural aquatic environment, or the desirability of the water for any use.

(6) *Special Resource Water Class (SRW)*—(i) *General characteristics.* These are fresh or saline waters which comprise a special and unique resource to the Reservation. Water quality of this class will be varied and unique as determined by the Regional Administrator in cooperation with the Tribes.

(ii) *Designated uses.* The designated uses include, but are not limited to, the following:

(A) Wildlife habitat.

(B) Natural foodchain maintenance.

(iii) Water quality criteria.

(A) Enterococci bacteria densities shall not exceed natural conditions.

(B) Dissolved oxygen—shall not show any measurable decrease from natural conditions.

(C) Total dissolved gas shall not vary from natural conditions.

(D) Temperature—shall not show any measurable change from natural conditions.

(E) pH shall not show any measurable change from natural conditions.

(F) Settleable solids shall not show any change from natural conditions.

(G) Turbidity shall not exceed 5 NTU over natural conditions.

(H) Toxic, radioactive, or deleterious material concentrations shall not exceed those found under natural conditions.

(g) *General Classifications.* General classifications applying to various surface waterbodies not specifically classified under § 131.35(h) are as follows:

(1) All surface waters that are tributaries to Class I waters are classified Class I, unless otherwise classified.

(2) Except for those specifically classified otherwise, all lakes with existing average concentrations less than 2000 mg/L TDS and their feeder streams on the Colville Indian Reservation are classified as Lake Class and Class I, respectively.

(3) All lakes on the Colville Indian Reservation with existing average concentrations of TDS equal to or exceeding 2000 mg/L and their feeder streams are classified as Lake Class and

Class I respectively unless specifically classified otherwise.

(4) All reservoirs with a mean detention time of greater than 15 days are classified Lake Class.

(5) All reservoirs with a mean detention time of 15 days or less are classified the same as the river section in which they are located.

(6) All reservoirs established on pre-existing lakes are classified as Lake Class.

(7) All wetlands are assigned to the Special Resource Water Class.

(8) All other waters not specifically assigned to a classification of the reservation are classified as Class II.

(h) *Specific Classifications.* Specific classifications for surface waters of the Colville Indian Reservation are as follows:

(1) Streams:

Alice Creek.....	Class III
Anderson Creek.....	Class III
Armstrong Creek.....	Class III
Barnaby Creek.....	Class II
Bear Creek.....	Class III
Beaver Dam Creek.....	Class II
Bridge Creek.....	Class II
Brush Creek.....	Class III
Buckhorn Creek.....	Class III
Cache Creek.....	Class III
Canteen Creek.....	Class I
Capoose Creek.....	Class III
Cobbs Creek.....	Class III
Columbia River from Chief Joseph Dam to Wells Dam.	
Columbia River from northern Reservation boundary to Grand Coulee Dam (Roosevelt Lake).	
Columbia River from Grand Coulee Dam to Chief Joseph Dam.	
Cook Creek.....	Class I
Cooper Creek.....	Class III
Cornstalk Creek.....	Class III
Cougar Creek.....	Class I
Coyote Creek.....	Class II
Deerhorn Creek.....	Class III
Dick Creek.....	Class III
Dry Creek.....	Class I
Empire Creek.....	Class III
Faye Creek.....	Class I
Forty Mile Creek.....	Class III
Gibson Creek.....	Class I
Gold Creek.....	Class II
Granite Creek.....	Class II
Grizzly Creek.....	Class III
Haley Creek.....	Class III
Hall Creek.....	Class II
Hall Creek, West Fork.....	Class I
Iron Creek.....	Class III
Jack Creek.....	Class III
Jerred Creek.....	Class I
Joe Moses Creek.....	Class III
John Tom Creek.....	Class III
Jones Creek.....	Class I
Kartar Creek.....	Class III
Kincaid Creek.....	Class III
King Creek.....	Class III
Klondyke Creek.....	Class I
Lime Creek.....	Class III
Little Jim Creek.....	Class III

Little Nespelem.....	Class II
Louie Creek.....	Class III
Lynx Creek.....	Class II
Manila Creek.....	Class III
McAllister Creek.....	Class III
Meadow Creek.....	Class III
Mill Creek.....	Class II
Mission Creek.....	Class III
Nespelem River.....	Class II
Nez Perce Creek.....	Class III
Nine Mile Creek.....	Class II
Nineteen Mile Creek.....	Class III
No Name Creek.....	Class II
North Nanamkin Creek.....	Class III
North Star Creek.....	Class III
Okanogan River from Reservation north boundary to Colum- bia River.	Class II
Olds Creek.....	Class I
Omak Creek.....	Class II
Onion Creek.....	Class II
Parmenter Creek.....	Class III
Peel Creek.....	Class III
Peter Dan Creek.....	Class III
Rock Creek.....	Class I
San Poil River.....	Class I
Sanpoil, River West Fork.	Class II
Seventeen Mile Creek.....	Class III
Silver Creek.....	Class III
Sitdown Creek.....	Class III
Six Mile Creek.....	Class III
South Nanamkin Creek.....	Class III
Spring Creek.....	Class III
Stapaloop Creek.....	Class III
Stepstone Creek.....	Class III
Stranger Creek.....	Class II
Strawberry Creek.....	Class III
Swimplkin Creek.....	Class III
Three Forks Creek.....	Class I
Three Mile Creek.....	Class III
Thirteen Mile Creek.....	Class II
Thirty Mile Creek.....	Class II
Trail Creek.....	Class III
Twentyfive Mile Creek.....	Class III
Twentyone Mile Creek.....	Class III
Twentythree Mile Creek.....	Class III
Wannacot Creek.....	Class III
Wells Creek.....	Class I
Whitelaw Creek.....	Class III
Wilmont Creek.....	Class II

(2) Lakes:

Apex Lake.....	LC
Big Goose Lake.....	LC
Bourgeau Lake.....	LC
Buffalo Lake.....	LC
Cody Lake.....	LC
Crawfish Lakes.....	LC
Camille Lake.....	LC
Elbow Lake.....	LC
Fish Lake.....	LC
Gold Lake.....	LC
Great Western Lake.....	LC
Johnson Lake.....	LC
LaFleur Lake.....	LC
Little Goose Lake.....	LC
Little Owhi Lake.....	LC
McGinnis Lake.....	LC
Nicholas Lake.....	LC
Omak Lake.....	SRW
Owhi Lake.....	SRW
Penley Lake.....	SRW
Rebecca Lake.....	LC
Round Lake.....	LC
Simpson Lake.....	LC
Soap Lake.....	LC
Sugar Lake.....	LC
Summit Lake.....	LC
Twin Lakes.....	SRW

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