



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 22 2016

OFFICE OF
WATER

Dear State or Intergovernmental Association Colleague:

The U.S. Environmental Protection Agency (EPA) is developing an advance notice of proposed rulemaking (ANPRM) to establish baseline water quality standards (WQS) under the Clean Water Act for waters on Indian reservations that do not have EPA-approved WQS in place. The purpose of this letter is to invite you and your association's members to learn more about the ANPRM and to pose questions or provide views on any aspects of the action.

The ANPRM will provide a valuable opportunity for the EPA to engage in further meaningful dialogue about potential baseline WQS and to obtain input from the states. Water quality standards define the designated uses for water bodies and establish the criteria that must be met to support those uses, serving as the foundation for controlling pollution as mandated by the Clean Water Act. By promulgating baseline WQS on Indian reservations, the EPA will be better equipped to work with tribal and state partners to protect human health and the environment.

Recognizing the importance of this action to our intergovernmental and state partners, the EPA would like to invite you and your association's members to a webinar about the baseline WQS. In the webinar, EPA will present an overview of the ANPRM now under development and invite questions, comments, and views from participants.

“Baseline Water Quality Standards for Indian Reservations: Upcoming ANPRM”

August 8, 4-5 pm (Eastern)

Call in number: 866-299-3188; code: 503-326-5873#

<http://epawebconferencing.acms.com/bwqso/> (No pre-registration required)

Enclosed is an outreach plan that includes a description of the ANPRM, information on how you and your association representative(s) can provide feedback, and a schedule of outreach events, including the above webinar.

We are requesting the assistance of the following intergovernmental associations in notifying their members about the webinar: the National Governors Association, the National Conference of State Legislatures, the Council of State Governments, the Western Governors Association, the Southern Governors Association, the Midwestern Governors Association, the Coalition of Northeastern Governors, the Environmental Council of the States, the Association of Clean Water Administrators, and the Western States Water Council.

Please let us know if you will be able to participate in any of the offered outreach opportunities, or have suggestions for additional dialogue, by contacting Mary Lou Soscia at soscia.marylou@epa.gov or (503) 326-5873, or Zoe Ruge at ruge.zoe@epa.gov or (202) 566-2325 in the EPA's Office of Water.

If you have any questions regarding the ANPRM, you may contact Mary Lou Soscia at soscia.marylou@epa.gov or (503) 326-5873. We look forward to hearing from you on this important matter.

Sincerely,

A handwritten signature in black ink that reads "J Beauvais". The signature is written in a cursive, flowing style.

Joel Beauvais
Deputy Assistant Administrator

Enclosure

State and Intergovernmental Outreach Plan

Baseline Tribal Water Quality Standards

July 2016

Background Information

The EPA is considering a federal rulemaking to establish baseline water quality standards (WQS) for waters on Indian reservations that do not have Clean Water Act (CWA) standards in place.

The EPA is involved in a number of important efforts to better protect water resources of importance to tribes. These include:

- The January 2016 proposed rule enabling tribes to apply for the CWA section 303(d) program for listing impaired waters and developing total maximum daily loads (TMDLs) (see <http://www.epa.gov/tmdl/proposed-rule-treatment-indian-tribes-similar-manner-states-purposes-section-303d-clean-water>).
- The February 2016 final guidance describing the process by which the EPA will honor and respect tribal treaty rights and engage with tribes during consultation on EPA actions (see <https://www.epa.gov/tribal/tribal-treaty-rights>).
- The May 2016 final interpretive rule to streamline the process for tribes to be treated in a similar manner as a state (TAS) (see <https://www.epa.gov/wqs-tech/revised-interpretation-clean-water-act-tribal-provision>).

The EPA recognizes, however, that even with these efforts, it is likely that the majority of reservation waters nationally will continue to lack full CWA protections for years to come. Fewer than 50 tribes out of over 300 with reservations currently have EPA-approved WQS. While this number with standards may grow, the absence of standards in the meantime means that the EPA's ability to fully protect tribal water uses is limited.

The potential baseline WQS would close the standards gap in Indian reservation waters and better position the EPA to work with its tribal and state partners to realize the human health and environmental protections and benefits envisioned in the CWA. Such baseline WQS could be used in water quality permitting decisions and other actions that protect waters in and downstream from reservations.

Developing an Advance Notice of Proposed Rulemaking

To initiate such an effort, we have decided to develop an Advance Notice of Proposed Rulemaking (ANPRM) on the baseline WQS. The ANPRM will provide a valuable opportunity for the EPA to engage in meaningful dialogue with tribes, states, and other stakeholders to obtain public input. As you may be aware, an ANPRM invites comments on key issues and on whether the Agency should proceed to develop a proposed rule. Publication of the ANPRM would be followed by a public comment period and continued dialogue with states and intergovernmental associations.

Potential Benefits

The potential benefits of baseline federal WQS would be significant, and include:

- Establishing goals for the quality of reservation waters that are recognized under the CWA;
- Providing a basis for enforceable National Pollutant Discharge Elimination System (NPDES) permits to require controls beyond basic technology-based controls (water discharges allowed by NPDES permits must meet WQS set under the CWA for those receiving waters);

- Providing a mechanism to control discharges through other federal licenses and permits (CWA section 401 certification);
- Facilitating tribal participation with states and the federal government to inform CWA based water quality management decisions impacting those waters on the reservation; and
- Protecting reservation water quality from upstream discharges flowing into reservation waters from other jurisdictions.

Outline of Potential Baseline WQS

The EPA is considering various water quality standards under the Clean Water Act, including CWA section 101(a)(2) designated uses, antidegradation provisions, numeric criteria, narrative “free from” criteria, general WQS provisions, and implementation provisions including mixing zones and compliance schedules.

EPA recognizes the importance of any final federal baseline WQS rulemaking to our intergovernmental and state partners, and is interested in receiving their feedback on the standards under consideration.

State Outreach Process and Time Frame

The schedule below represents some of the outreach steps currently planned, and is meant as a starting point. The EPA will also resume outreach with states and intergovernmental associations after the ANPRM is published, likely concurrent with the public comment period that immediately follows publication of an ANPRM.

- ❖ **August 8:** Outreach Webinar, “Baseline Water Quality Standards for Indian Reservations: Upcoming ANPRM” (see letter for details)
- ❖ **August 17:** ACWA Annual Meeting in Seattle, WA, Breakfast Outreach Session
- ❖ **September 1:** Joint ACWA and ECOS webinar
- ❖ **By end of 2016:** Publish ANPRM in Federal Register

States and intergovernmental associations may submit written comments by email or mail and request additional information:

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Portland, OR 97205

For additional information on the Clean Water Act and Water Quality Standards, please visit:
<http://www.epa.gov/laws-regulations/summary-clean-water-act> and <https://www.epa.gov/standards-water-body-health>.