

Fact Sheet: Final Rule on Certain Federal Water Quality Standards Applicable to Maine

Summary

EPA has issued final federal Clean Water Act water quality standards (WQS) that apply to water bodies under the state of Maine's jurisdiction. First, EPA has finalized human health criteria (HHC) to protect the sustenance fishing designated use in waters in Indian lands and in waters subject to sustenance fishing rights under the Maine Implementing Act (MIA). EPA has finalized six additional WQS for waters in Indian lands in Maine, two WQS for all waters in Maine including waters in Indian lands, and one WQS for waters in Maine outside of Indian lands. These WQS take into account the best available science, including local and regional information, as well as applicable EPA policies, guidance, and legal requirements, to protect human health and aquatic life.

Background

Clean Water Act section 101(a)(2) establishes the national goal that water quality should provide for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water. States must establish WQS for waters under their jurisdiction that protect these goals, including designated uses and criteria to protect the uses. EPA periodically publishes criteria recommendations under Clean Water Act section 304(a) for states to consider using to protect their designated uses.

Until 2015, EPA had never approved any Maine WQS for waters in Indian lands. In 2014, the state of

Maine sued EPA to make approval or disapproval decisions on all backlogged WQS. In decisions issued in February, March, and June 2015, EPA disapproved a number of Maine WQS as not adequately protective of human health or aquatic life. Most of the disapprovals applied only to waters in Indian lands; however, a few applied to all Maine waters. The Clean Water Act requires EPA to promptly promulgate replacement WQS to remedy such disapprovals unless the state adopts and EPA approves protective WQS.

If Maine adopts and submits new or revised WQS that EPA finds meet Clean Water Act requirements, EPA would withdraw its federal promulgation for those waters and/or pollutants for which EPA approves Maine's new or revised standards.

Fish consumption and tribal sustenance fishing use

There are four federally recognized Indian tribes in Maine represented by five governing bodies. State and federal settlement acts that resolved litigation between Maine and the tribes create a unique arrangement granting the state of Maine authority to set WQS for waters in Indian lands. EPA concluded that the settlement acts provide for sustenance fishing practices in those waters; that under the Clean Water Act sustenance fishing is a designated use; and that criteria must be adequate to protect that use.

Maine's HHC are based on a fish consumption rate of 32.4 grams per day of fish. The best available information indicates that the HHC to protect tribal sustenance fishers in Maine should be based on a much higher fish consumption rate. Because the state of Maine has not addressed the WQS disapprovals stemming from this information, EPA has finalized federal HHC applicable to waters in Indian lands and waters outside of Indian lands that are subject to sustenance fishing rights. EPA has incorporated a fish consumption rate that represents a level of fish consumption by the tribes unsuppressed by pollution concerns as well as new data and scientific information on exposure and pollutant toxicity.

Scope of the final rule

EPA has finalized HHC for 96 pollutants that apply to waters in Indian lands. EPA has finalized six additional WQS for waters in Indian lands:

- Recreational and shellfishing bacteria criteria to protect human health
- Tidal temperature, pH, and ammonia criteria to protect aquatic life;
- A mixing zone policy; and
- Clarification that natural conditions provisions cannot be applied to HHC.

EPA has finalized two WQS for all waters in Maine including waters in Indian lands:

- Dissolved oxygen criteria for Class A waters to protect aquatic life; and
- Clarification that the Clean Water Act does not allow the commissioner of the Maine Department of Environmental Protection to waive compliance with WQS in case of oil spills.

Finally, EPA has finalized one WQS (phenol criteria to protect human health) for waters in Maine outside of Indian lands.

EPA disapproved all of these WQS in 2015 because they were not based on the latest science or protective of designated uses.

Basis for the human health criteria

EPA derives HHC for non-threshold carcinogens using the following inputs:

- cancer slope factor;
- cancer risk level;
- body weight;
- drinking water intake rate;
- fish consumption rate; and
- bioaccumulation or bioconcentration factor.

For non-carcinogens and threshold carcinogens, EPA uses a reference dose in place of a cancer slope factor and cancer risk level, as well as a relative source contribution, which is intended to ensure that an individual's total exposure from all sources does not exceed the reference dose.

In deriving criteria for waters in Indian lands in Maine, in general, EPA used the same cancer slope factors, cancer risk level, body weight, drinking water intake rate, bioaccumulation factors, reference doses and relative source contribution factors that the Agency used in its most recent Clean Water Act section 304(a) recommended HHC. To protect tribal sustenance fishers in Maine, EPA derived the criteria using a fish consumption rate of 286 g/day. This rate accounts for information from an anthropological/historical study of the tribes' traditional cultural practices and reflects input from affected tribes in Maine.

Where can I find more information?

Contact Jennifer Brundage at (202) 566-1265, brundage.jennifer@epa.gov or Jeanne Voorhees at (617) 918-1686, voorhees.jeanne@epa.gov.

To access the final rule, federal register notice and supporting documents, visit EPA's Water Quality Standards website at: <https://www.epa.gov/wqs-tech/final-rule-certain-federal-water-quality-standards-applicable-maine>