



Memorandum

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To: FWEA Utility Council

From: Chad E. Revis

Re: EPA Proposal to Revise Water Quality Standards to Protect Tribal Rights

The EPA is proposing revisions to the Federal Clean Water Act (CWA) water quality standards (WQS) regulation to set out how WQS must protect aquatic and aquatic-dependent resources reserved to tribes through applicable laws. These proposed changes could impact states that administer or oversee water quality programs, federally recognized Indian tribes with reserved rights to aquatic and/or aquatic-dependent resources, and entities that are subject to CWA regulatory programs.

The CWA requires states to adopt WQS including designated uses, water quality criteria, and antidegradation requirements. These WQS are the basis for programs such as 303(d) water body assessments, 401 certifications of federal licenses and permits, water quality-based effluent limits in some permits, and 404 permits for dredged or fill material.

EPA's existing WQS regulation does not explicitly address how WQS must protect tribal reserved rights. This proposed new rule would require jurisdictions to ensure that any WQS set protects tribal hunting and fishing rights along with any other activities that depend on the abovementioned resources. Notably, this does not just apply to waters on tribal land because these rights possessed by tribes exceed tribal borders. The EPA's proposal is two-fold:

- 1) To "amend the Federal WQS regulation at 40 CFR part 131 to require that WQS be established to protect tribal reserved rights"; and
- 2) To "establish attendant regulatory requirements for setting WQS to provide such protection."

Definitions for "tribal reserved rights" and "right holders" would be added. They also would expressly protect the exercise of these rights and add that WQS must protect "the health of the right holders to at least the same risk level as provided to the general population of the State." Other proposals including procedural changes are included. The proposed rules delve into the changes and their applicability and scope in detail. To read the proposal itself, click [here](#).