



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3123

OFFICE OF
WATER AND
WATERSHEDS

JUL 26 2018

Mr. Andrew Sayers-Fay
Director, Division of Water
Alaska Department of Environmental Conservation
555 Cordova Street
Anchorage, Alaska 99501

Re: Revisions to Alaska's Water Quality Standards Addressing Antidegradation Policy and Antidegradation Implementation Methods, March 9, 2018 Submittal

Dear Mr. Sayers-Fay:

Pursuant to section 303(c)(3) of the Clean Water Act and 40 CFR Part 131, the U.S. Environmental Protection Agency approves the new and revised water quality standards addressing antidegradation policy and antidegradation implementation methods submitted by the Alaska Department of Environmental Conservation on March 9, 2018. Details of the submitted water quality standards and the EPA's action are outlined below and in the enclosed support document.

Background

By letter dated March 9, 2018, the ADEC submitted new and revised water quality standards at 18 AAC 70.015, 18 AAC 70.016, and 18 AAC 70.990 of Alaska's water quality regulations. These new and revised water quality standards were adopted by ADEC on February 28, 2018; were certified by the Alaska Attorney General on March 7, 2018 as being duly adopted pursuant to state law; and became effective under Alaska state law on April 6, 2018. Prior to adoption, ADEC provided an opportunity for public comment, including a public hearing, as described in ADEC's public notice and ADEC's response to public comment ("Antidegradation Implementation Methods: Notice of Proposed Changes to the Water Quality Standards Regulations of the Department of Environmental Conservation," ADEC, May 31, 2017; and "Antidegradation Implementation Methods Regulations Responsiveness Summary," ADEC, November 2017; respectively).

The water quality standards changes submitted to the EPA for review and action are identified in an enclosure to ADEC's March 9, 2018 submittal letter, and include limited clarifying revisions to Alaska's antidegradation policy at 18 AAC 70.015, antidegradation implementation methods in rule at 18 AAC 70.016, and associated new definitions at 18 AAC 70.990 (Attachment to Memorandum, Scott Meriwether, Office of Lieutenant Governor, to Gary Mendivil, Department of Environmental Conservation, RE: Filed Permanent Regulations, March 9, 2018).

The implementation methods section at 18 AAC 70.016 is new, represents the majority of ADEC's submittal, and generally replaces Alaska's 2010 interim antidegradation implementation guidance. However, in its response to comments when addressing a concern that Alaska's rule making did not include a process for nominating and designating waters for Outstanding National Resource Water protection, ADEC referred to the interim antidegradation implementation guidance. ADEC stated that

Tier 3 designation methods are still present and available, and that ADEC will continue to work with all stakeholders on a final nomination and designation process (see "Antidegradation Implementation Methods Regulations Responsiveness Summary," ADEC, November 2017, Comment Summary 51).

The EPA's Action

Pursuant to section 303(c)(3) of the CWA and 40 CFR Part 131, the EPA approves the submitted changes at 18 AAC 70.015, 18 AAC 70.016, and 18 AAC 70.990, except as identified below and in the EPA's support document. Today's approval addresses only those submitted changes to 18 AAC 70 that are new or revised water quality standards for the purposes of CWA section 303(c). The EPA is not acting on unrevised language and previously existing provisions.

The EPA is also not acting on the following portion of the newly promulgated 18 AAC 70.016(a)(2)(B):

...the responsible party whose actions or lack of action necessitated an emergency response action shall address any lowering of water quality that is not temporary and limited; existing law may be used to address restoration, rehabilitation, replacement, or acquisition of the equivalent for the affected natural resources, including long-term water quality impacts;

Rather than stating a desired water quality condition, the provision addresses inconsistency with a desired condition. Such provisions are of an enforcement nature and therefore are not water quality standards subject to EPA action in accordance with CWA section 303(c) (see "What is a New or Revised Water Quality Standard under 303(c)(3), Frequently Asked Questions," October 2012, EPA Publication No. 820F12017).

The EPA's action applies only to water bodies in the State of Alaska, and does not apply to waters that are within Indian Country, as defined in 18 U.S.C. § 1151. In addition, nothing in this action shall constitute an approval or disapproval of a water quality standard that applies to waters within Indian Country. The EPA, or authorized Indian Tribes, as appropriate, will retain responsibilities for water quality standards for waters within Indian Country.

The EPA looks forward to future work with Alaska on water quality standards pursuant to our responsibilities under the CWA. If you have any questions regarding this letter, please contact me at (206) 553-1855 or Bill Beckwith of my staff at (206) 553-2495.

Sincerely,



Daniel D. Opalski, Director
Office of Water and Watersheds

Enclosure

cc: Mr. Earl Crapps, ADEC (email only)
Ms. Nancy Sonafrank, ADEC (email only)
Mr. Brock Tabor, ADEC (email only)