



Water Quality Standards Development and Review

**Presentation for NH WQS Advisory
Committee**

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 - Impose any binding requirements
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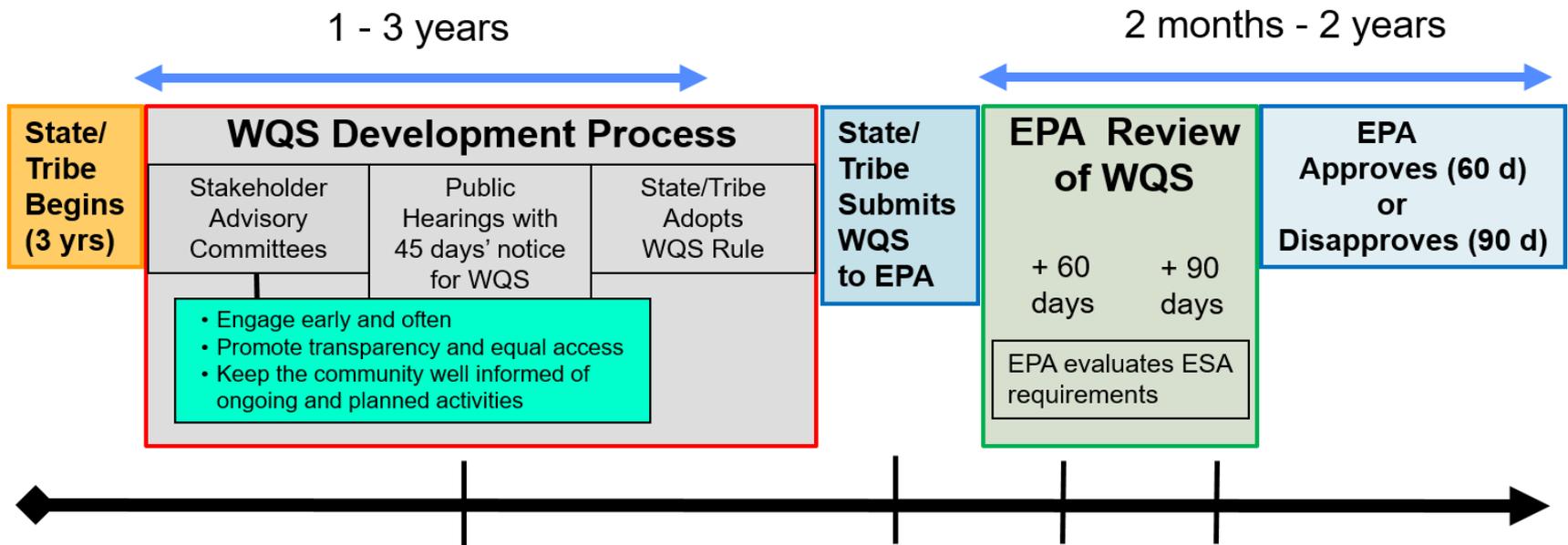
What We'll Discuss...

- State/Territory/Tribe WQS Review and Revision Process
 - Public Participation
 - Minimum Requirements for WQS Packages
- EPA's Review of a State or Authorized Tribe's WQS
 - Actions if a State or Authorized Tribe's WQS Do Not Meet CWA Requirements

Triennial Review

- At least once every 3 years, states, territories, and authorized tribes must conduct a triennial review.
 - Hold a public hearing with at least 45 days' notice for the purpose of reviewing applicable WQS [CWA 303(c)(1); 40 CFR 131.20].
 - Separate public hearing with 45 days' notice required if/when revising or adopting WQS.
 - Re-examine and revise, as appropriate, any segments with uses less than 101(a).
 - Provide an explanation if not adopting criteria for pollutants for which EPA has published new or updated 304(a) recommendations.
 - Submit review results and supporting analyses to the EPA Regional Administrator.

Water Quality Standards Development/Review Process



State WQS Revision Process

1. Engage stakeholders, EPA and the public.
2. Review Designated Uses / classifications, criteria, antidegradation requirements, and general provisions.
 1. Hold at least 1 public hearing with 45 days notice during WQS review.
3. Discuss issues identified with EPA revision.
4. Draft and publish propose rulemaking.
 1. Hold at least 1 public hearing with 45 days notice on proposed new or revised WQS.
 2. Provide an explanation if not adopting criteria for pollutants for which EPA has published new or updated 304(a) recommendations.
5. Consider comments, finalize and adopt revisions (may involve State Commission).
6. Submit Package to EPA Region.

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Public Participation

40 CFR § 25.3(b)

- “Public participation is that part of the decision-making process through which responsible officials **become aware of public attitudes** by providing **ample opportunity for interested and affected parties to communicate their views.**”
- It includes:
 - Seeking input and dialogue with the public.
 - Assimilating public views and preferences.
 - Providing access to decision-making process.
 - Demonstrating that public views have been considered.

Specific Public Participation Requirements for New & Revised WQS

- 40 CFR § 131.20 requires public hearing:
 - In accordance with public hearing requirements at 40 CFR part 25 and state or tribal law.
 - Before the hearing, agency makes available:
 - Proposed WQS.
 - Supporting analyses/background information.
- **Same minimum requirements** apply to adopting new WQS and to WQS *revisions*.

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Minimum Requirements for WQS Submissions to EPA

Whenever a state or tribe submits new or revised WQS, the submission will include one or more of the following:

Use designations

- Consistent with 101(a)(2) and/or supported by UAA.

Criteria

- Sufficient to protect designated uses and based on sound science.

Antidegradation requirements

- Consistent with 40 CFR 131.12.

If applicable: General Policies

- Mixing Zones (131.13), Variances (131.14), Compliance Schedule Authorizing Provisions (131.15).

Minimum Requirements for WQS Submissions to EPA: Supporting Information

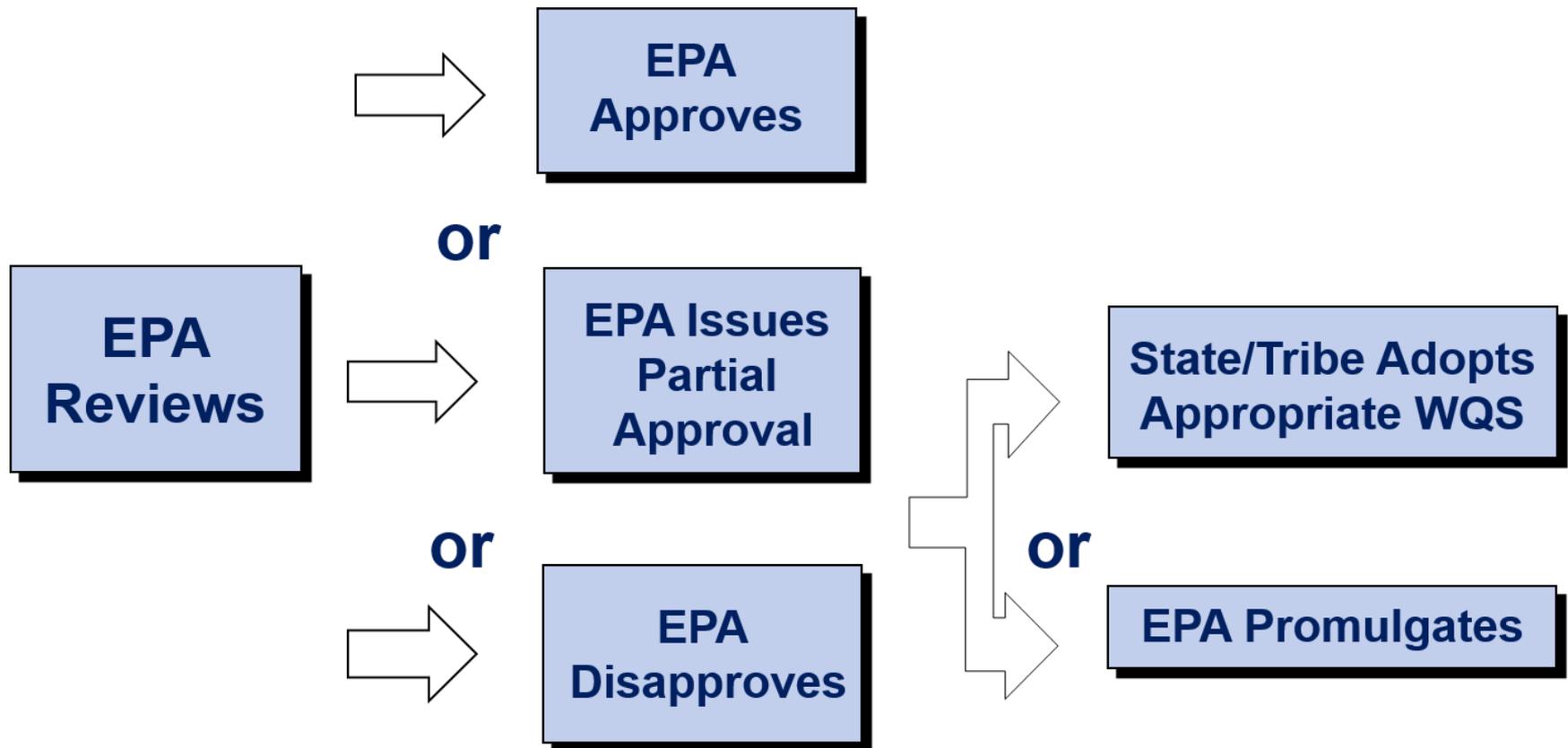
- **Methods used and analyses** conducted to support the WQS provisions.
- **Certification by the state attorney general**, tribal legal authority, or other appropriate legal authority within the state or tribe that the WQS were duly adopted pursuant to state or tribal law.
- **General information** to aid the EPA in determining the adequacy of the scientific bases of the WQS that do not include the uses specified in Section 101(a)(2) as well as information on general policies applicable to state and tribal WQS that may affect their application and implementation.

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EPA Review and Action

(40 CFR 131.21)



EPA Review and Action Timeline

After Submission, EPA has...

60 days:

- To **approve** the WQS.
(40 CFR 131.21(a)(1))

90 days:

- To **disapprove** the WQS.
(40 CFR 131.21(a)(2))



EPA's Two Key Questions for Approval / Disapproval Decisions

1. Is this a new or revised WQS under CWA 303(c)(3) upon which EPA must act?

Four-part test (see FAQ in module handout):

1. Is it legally binding?
 2. Does it address uses, criteria, and/or antidegradation?
 3. Does it establish desired condition or instream level of protection?
 4. Is it new or revised?
2. Do the submitted standards meet the requirements of the Act and the implementing regulations at 40 CFR 131?

Endangered Species Act (ESA) and National Environmental Policy Act (NEPA)

- ESA Requirements
 - 7(a)(2): Federal agencies shall “consult” with FWS/NMFS to ensure actions are not likely to jeopardize listed species or adversely modify designated critical habitat.
 - Approving WQS considered to be a federal action.
 - Thus, for aquatic life or wildlife criteria and other standards that may affect listed species or critical habitat, EPA consults with FWS and/or NMFS.
- National Environmental Policy Act (NEPA) Requirements
 - CWA Section 511(c)(1) excludes most EPA activities under the CWA from NEPA, including standards approvals/disapprovals.

When WQS are Applicable

- WQS submitted to EPA do not become the “applicable” WQS for CWA purposes until approved by EPA.
- Approved WQS remain the CWA-effective WQS until EPA approves revisions or promulgates more stringent replacement WQS.

Requirements for State Adoption / EPA Promulgation After Disapproval

- Authorized tribe or state must adopt the changes specified by EPA in disapproval letter within 90 days after notification of EPA's disapproval.
- Otherwise, EPA shall promptly propose and promulgate the changes specified by EPA.
- EPA has 90 days to finalize the promulgations.
- Reference: 40 CFR 131.22(a) and CWA section 303(c)(4)

What About Gaps in Existing WQS?

- EPA Administrator may make a determination that a new or revised standard is necessary to meet the requirements of the Act, which triggers duty to promptly propose and promulgate such WQS.
- The state or authorized tribe can forestall finalization of such an EPA rule by adopting a new or revised standard that EPA deems to be in accordance with CWA requirements before EPA promulgation.
- Reference: CWA 303(c)(4)(B)

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Questions?

**See Handout for
WQS Repository Website**