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Implementing the 2021 Recommended Clean Water Act Section 304(a) Ambient Water Quality Criteria to Address Nutrient Pollution in Lakes and Reservoirs: U.S. Environmental Protection Agency Publishes Draft FAQs

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The United States Environmental Protection Agency (“EPA”) Office of Water published a draft document titled:

Frequently Asked Questions: Implementing the 2021 Recommended Clean Water Act Section 304(a) Ambient Water Quality Criteria to Address Nutrient Pollution in Lakes and Reservoirs (“FAQs”)

See EPA-820-P-23-001.

The stated purpose of the *FAQs* is to support states, authorized tribes, and territories interested in adopting and/or implementing EPA’s 2021 Clean Water Act Section 304(a) recommended Ambient Water Quality Criteria to Address Nutrient Pollution in Lakes and Reservoirs.

EPA describes recommended criteria in this context as:

. . . models for total nitrogen and total phosphorus concentrations in lakes and reservoirs to protect three different designated uses—aquatic life, recreation, and drinking water source protection—from the adverse effects of nutrient pollution.

The phrase “nutrients” refers to nitrogen and phosphorus.

Water Quality Criteria (“WQC”) are ambient water quality conditions developed to protect the use established for a waterbody. States are required to adopt WQC to protect designated uses pursuant to Section 303 of the Clean Water Act.

The WQC must specify maximum concentrations of pollutants that may be present in the water without impairing its suitability for certain uses. The scientific basis or rationale for a particular WQC is obviously important. They represent a judgment as to what levels, concentrations, or conditions can support a desired use for a water body. An indication of the importance of the WQC is the Clean Water Act’s requirement that EPA periodically issue new or revised WQC.

States can develop their own WQC if justified by technical data. However, EPA also undertakes this task pursuant to Section 304 of the Clean Water Act. As a result, EPA WQC are frequently used by the states in establishing or revising their water quality standards.

EPA has for a number of years been considering strategies to develop nutrient WQC for lakes and reservoirs. The federal agency issued guidance in 2013 referencing a combined criterion approach. This approach was not limited to numeric phosphorus and nitrogen limits.

Excessive nitrogen and phosphorus can stimulate excess growth of algae. This can impair the recreational use of lakes or reservoirs and also increase organic matter which (when decomposed) can depress dissolved oxygen concentrations harming aquatic life. Further, excessive nutrients can stimulate nuisance algae which can produce cyanotoxins.

The draft *FAQs* are divided into the following sections:

- Section 1 provides information for states, etc., that choose to adopt 304(a) recommended nutrient criteria into state or tribal WQC
- Section 2 provides information for implementing the 304(a) recommended nutrient criteria through National Pollutant Discharge Elimination System Permits
- Section 3 provides information for implementing the 304(a) recommended nutrient criteria in monitoring and assessing ambient waters, determining whether to list waters as not attaining their WQS, and developing Total Maximum Daily Loads for those listed waters
- Section 4 provides information for implementing the 304(a) recommended nutrient criteria for drinking water and source protection

A link to the draft *FAQs* can be found [here](#).