



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Frequently Asked Questions/Implementing the 2021 Recommended Clean Water Act Section 304(a) Ambient Water Quality Criteria to Address Nutrient Pollution in Lakes/Reservoirs: U.S. Environmental Protection Agency Guidance Issued

10/24/2023

The United States Environmental Protection Agency (“EPA”) issued an October 2023 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 (“FAQ”)

See EPA-820-R-23-008.

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

Section 303 of the Clean Water Act requires that each state develop water quality standards (“WQS”) for jurisdictional waters of the United states within their borders.

WQS serve a dual purpose. They establish the water quality goals for a specific body of water and also serve as the regulatory basis for the development of water-quality based effluent limits and strategies for individual point source dischargers.

A WQS consists of three parts:

1. The designated uses of a waterbody;
2. The water quality criteria (“WQC”) that are necessary to protect existing uses and to attain the beneficial uses designated by the state; and
3. An antidegradation statement or policy to protect uses in high quality water.

WQC are ambient water quality conditions deemed protective for the uses of a waterbody. States are required to adopt WQC protective of the designated uses. They represent a judgment as to what levels, concentrations, or conditions can support a desired use.

The scientific basis or rationale for a particular WQC is obviously important. States can develop their own WQC if justified by technical data. However, EPA also undertakes this task pursuant to Section 304(d) 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.

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.

A significant portion of the *FAQ* focuses on the implementation of nutrient criteria under the authority of the Clean Water Act.

The *FAQ* is divided into four sections:

- Section 1 provides information for states and authorized tribes that choose to adopt the 304(a) recommended nutrient criteria into state or tribal WQS.
- Section 2 provides information for implementing the 304(a) recommended nutrient criteria through National Pollutant Discharge Elimination System (NPDES) 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 (TMDLs) for those listed waters.
- Section 4 provides information for implementing the 304(a) recommended nutrient criteria for drinking water source protection.

A copy of the *FAQ* can be downloaded [here](#).