



July 20, 2023

United States Environmental Protection Agency  
Attn: James Ray, Office of Science and Technology, Standards and Health Protection Division  
1200 Pennsylvania Avenue NW  
Washington, DC 20004

Re: Docket ID No. EPA-HQ-OW-2016-0405 *Federal Baseline Water Quality Standards for Indian Reservations*

Dear Mr. Ray,

Montana Department of Environmental Quality (DEQ) appreciates the opportunity to comment on the proposed rule, "Proposed Federal Baseline Water Quality Standards for Indian Reservations."

Montana DEQ is committed to continue collaboratively engaging with EPA under our cooperative federalism approach to administering Clean Water Act programs. DEQ is also committed to coordinating with our tribal and state partners to achieve shared goals of water quality protection.

Montana DEQ supports the adoption of water quality standards that protect beneficial uses of water bodies and are based on sound scientific rationale. Montana DEQ also supports opportunities for public input to be provided as standards are adopted and implemented across Clean Water Act programs.

Several Montana tribes have obtained TAS and have adopted water quality standards that have been approved by EPA; others are pursuing these actions. Montana DEQ applauds these efforts and appreciates EPA's acknowledgement of these achievements in the proposed rule.

This proposed rule will impact several Montana DEQ programs, including Montana Pollutant Discharge Elimination System (MPDES) permitting, beneficial use support and impairment assessment, Total Maximum Daily Load development, and our 401 and 404 certification programs. With this letter, Montana DEQ submits our comments on the proposed rule, "Proposed Federal Baseline Water Quality Standards for Indian Reservations."

#### Applicability

States must be able to distinguish where the proposed federal baseline water quality standards apply and where state water quality standards apply. States must also accurately identify the spatial boundaries of lands to which this rule applies to evaluate water body assessment unit boundaries and evaluate potential for downstream impacts of pollutant discharges. EPA has noted difficulty in acquiring accurate spatial information depicting boundaries of certain categories of tribal lands.

Montana DEQ requests that EPA maintain accurate maps that clearly distinguish the spatial boundaries of the formal and informal Indian reservation lands (including applicable trust lands) covered by this rule, as well as those lands that are considered exceptions including off-reservation allotments or dependent Indian communities and make them readily available to states and tribes.

### Narrative Translation Procedures

The proposed rule includes narrative criteria and binding translation procedures which EPA would use to determine case-specific numeric values protective of applicable designated uses for use in CWA program implementation. States must know the numeric values that are applicable to downstream waters to ensure adequate downstream protections when issuing permits. States also take upstream water quality conditions and downstream protections into consideration when performing waterbody assessments, reasonable potential analysis, TMDL development, and other CWA program actions.

Montana DEQ recommends EPA provide clarity and guidance related to the following technical aspects of the proposed rule's narrative translation procedures:

- Expectations for the type, quantity and quality of regional and location-specific information which may be incorporated when selecting case-specific numeric values using the narrative translation procedures, including natural (nonanthropogenic) conditions.
- How EPA will ensure the most appropriate narrative translation procedure option is selected for a specific pollutant or circumstance.
- What timing and rationale is considered acceptable to retranslate the narrative for a pollutant to which the translator was already applied, particularly if the retranslation may result in a numeric value that differs from a previous translation outcome.
- How EPA will or will not ensure the same numeric values produced via narrative translation is implemented across all Clean Water Act programs.
- How differences, if they exist, between federal baseline water quality standards and adjacent state water quality standards will be reconciled when issuing permits or other CWA program actions.

Montana DEQ recommends EPA provide clarity and guidance related to the following logistical aspects of the proposed rule's narrative translation procedures:

- How and when states may request that EPA perform a narrative standard translation for downstream waters.
- Who within EPA will perform the narrative translation to case-specific numeric values.
- Who will serve as EPA's point of contact for coordination with states pertaining to narrative standard translation and implementation.
- How EPA will track translated numeric values and make them readily available to states, tribes, and the public.

### Public Participation and Information Sharing

Public participation is foundational to water quality standards development, adoption, and evaluation through time.

- Montana DEQ urges EPA to implement all reasonable public participation opportunities when implementing the proposed baseline WQS, including public notice and triennial review.
- Montana DEQ urges EPA to create a means of signing up to receive notification of significant actions related to this rule, including narrative translation, for states, tribes, and any interested persons.

Montana DEQ recommends that EPA develop a consolidated online platform for sharing information pertaining to this proposed rule, including notices of narrative translation, the numeric values that result from narrative translation procedures, comment opportunities, and other relevant information.

### Best Available Science and Documentation

Water quality standards must be based on based on sound scientific rationale and must protect designated uses of water bodies. Rigorous documentation and certainty in how the criteria were developed is foundational to water quality standards approval.

- Montana DEQ urges EPA to document the scientific rationale used when implementing the narrative standard and translation procedures, including documenting the rationale for the selected translation procedure option and the scientific basis of the numeric value produced.

### EPA Regional Capacity and Impacts to State Clean Water Act Programs

Montana DEQ urges EPA to ensure that their regional offices receive adequate additional resources to enhance their capacity to perform additional workload related to this proposed rule.

- Montana DEQ urges EPA to consider additional resource demands that result from this proposed rule including but not limited to performing narrative translations, coordinating with states and tribes, issuing permits, performing and reporting on impairment determinations, and managing and sharing information related to the baseline water quality standards for Indian country.

Montana DEQ urges EPA to communicate to states to what degree the practical implementation of this proposed rule may affect EPA regional offices' capacity and resulting effects to states' state Clean Water Act Programs, including:

- Review and approval of state-issued permits.
- Review and approval of Total Maximum Daily Load documents.
- Review and approval of 303d/305b water quality reports.

### Conclusion

Thank you again for the opportunity to provide comments on this proposed rule. We look forward to ongoing coordination with EPA, states, and tribes on water quality standards.

Sincerely,

Katie Makarowski  
Water Quality Standards and Modeling Section Supervisor  
Montana Department of Environmental Quality  
PO Box 200901  
Helena, Montana 59601