

It should be noted that EPA's current regulations also provide that at a minimum uses are deemed attainable if they can be achieved by the application of technology-based effluent limitations on point source dischargers required under CWA section 301(b) and 306 and cost-effective and reasonable best management practices for nonpoint source control. 40 CFR 131.10(d) and (h). Pursuant to this regulation, EPA would take into consideration the controls being implemented by other sources on a specific waterbody or segment in determining the attainability of any use.

Federal Agency Submission to EPA

In proposed 40 CFR 131.39(g), EPA provides a process by which a Federal agency responsible for a Federally-owned or operated dam may petition EPA to revise a water quality standard.

Federal Agency Documentation

First, proposed 40 CFR 131.39(g)(1) provides that the petition must be based on a demonstration that the operation of the dam precludes the attainment of the use, that reasonable alternatives are not feasible to restore the water to its original condition, and, that there are no feasible and practicable changes to the operation, maintenance or structure of the dam, consistent with the purposes for which it was authorized by Congress, that can be implemented that would result in attainment of the water's designated use. This language approximates the language in EPA's current regulation at 40 CFR 131.10(g)(4). As discussed below, in response to a petition, EPA will conduct a use attainability analysis (UAA) and determine whether the promulgated use is attainable. The information provided by the Federal agency with the petition will be critical to EPA's decision.

EPA expects that this demonstration would include a description of the current function and purpose of the dam (and how well the dam is performing its intended function). Further, EPA expects that this demonstration will include a discussion of potential changes in operation or maintenance of the dam and potential structural modifications, accompanied by results of trial runs where practicable, an engineering analysis, and results of modeling. EPA also expects that the demonstration would show how much improvement towards attainment of the standard could be expected from feasible and practicable alterations. This information would be relevant to EPA should it decide to revise the standard. Federal agencies that own or operate dams in Oregon must provide EPA with

the following information as specified in today's proposed rule at 40 CFR 131.39(g)(2):

- (1) The current purpose and function of the dam including information on how well the dam is performing in meeting the established purpose and function;
- (2) Any feasible, practicable alternatives to current operation and maintenance of the dam that could improve water quality, including coordination of operations between dams;
- (3) Any feasible, practicable structural modifications to the dam that could improve water quality; and
- (4) Any relevant studies of the above factors.

In addition, Federal agencies that own or operate dams in Oregon are encouraged to consider and submit any results from the following analyses to expedite EPA's use attainability determination:

- With regard to the analysis of any feasible, practicable alternatives to current operation and maintenance of the dam
- Have alternative methods of operating turbines been utilized or explored to encourage better mixing where there is a horizontally- or vertically-stratified forebay?
- Have modifications to flood control rule curves been used or explored to allow additional flows in the summer months without impacting refill?
- Have modifications to upper reservoir refill probabilities been used or explored to allow additional flows in the summer months?
- Have reductions in the cross-section areas of the water columns behind the dams been utilized or explored? [Such reductions could, in turn, reduce the resident time for water particles, which reduces exposure times and surface area, which also reduces exposure history. This is related to increasing velocity, which can be done either by increasing flows, or decreasing area. $Q(\text{flow}) = V(\text{velocity}) \times A(\text{area})$]
- With regard to the analysis of any feasible, practicable structural modifications to the dam, have low level outlet controls been used or explored to allow selective withdrawals resulting in temperature improvements in the waterbody?

Federal Agency Public Process

Second, proposed 40 CFR 131.39(g)(1)(iii) provides that the responsible Federal agency provide an opportunity for the affected jurisdictions and public to comment on a draft of the agency's demonstration and to submit any additional

information or analyses (e.g., analyses of how trading could improve water quality) before it is submitted to EPA. EPA expects that the Federal agency would take these comments into consideration in preparing a final demonstration that it will submit to EPA in support of its petition to revise one or more water quality standards. The proposed rule would also require that the Federal agency submit to EPA the Federal agency's response to the comments that the agency received during its public comment process.

EPA's Process for Responding to Petitions

Once the complete petition is submitted to EPA, 40 CFR 131.39(g)(3) of the proposed rule would provide that EPA will conduct a UAA, determine if a change in water quality standards is appropriate, and respond to the petitioning agency within nine months. In making such a determination, EPA will carefully consider all of the information provided by the Federal agency and any comments by the affected jurisdictions and public. 40 CFR 131.39(g)(4) would provide that if EPA determines after developing a UAA that the promulgated standards should be revised, EPA will propose to amend the promulgated standards through a Federal rulemaking and take final action within 15 months. EPA may also extend either of these deadlines if a large number of petitions are received during this time. If EPA determines that the standards do not need to be revised, proposed 40 CFR 131.39(g)(5) provides that EPA will respond to the petition by providing its reasons for not proposing to revise the standards.

If EPA determines that a use revision is appropriate and the use revision may affect threatened or endangered species, EPA would need to consult with NOAA Fisheries and/or FWS under section 7 of the ESA. EPA is consulting with the Services regarding the promulgation of today's rule. EPA also consults with affected Tribes if designating a use that requires less stringent criteria.

Federal agencies that own or operate dams have also expressed concern over the status and potential legal vulnerability of dams during the period that EPA is considering a petition submitted under this provision. EPA requests comment on how it might address this concern in the rule.

Availability of the Petition Process to Entities Besides Federally-Owned or Operated Dams

Of course, any person may petition EPA to revise a water quality standard that EPA promulgates. Any of the six