

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov*, Attention Docket ID No. OW-2003-0072. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD-ROM.* You may submit comments on a disk or CD-ROM that you mail to the address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Docket Manager, Proposed Water Quality Standards for Puerto Rico, U.S. EPA Region 2, 290 Broadway, New York, New York 10007, Attention Docket ID No. OW-2003-0072.

3. *By Hand Delivery or Courier.* Deliver your comments to the address identified in section I.C.2., attention Docket ID OW-2003-0072. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

#### *D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## **II. Background**

### *A. Statutory and Regulatory Background*

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA or "the Act") directs States, Territories, and authorized Tribes (hereafter referred to as "States"), with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for navigable waters of the United States within the State. Section 303(c) provides that water quality standards shall include the designated use or uses to be made of the water and water quality criteria necessary to protect those uses. The designated uses to be considered by States in establishing water quality standards are specified in the Act: public water supplies, propagation of fish and wildlife, recreation, agricultural uses, industrial uses and navigation. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards.

Section 303(c) of the CWA authorizes the EPA Administrator to promulgate water quality standards to supersede State standards that have been disapproved or in any case where the Administrator determines that a new or revised standard is needed to meet the CWA's requirements. In an August 11, 2003, Opinion and Order from the United States District Court for the District of Puerto Rico in the case of *CORALations and the American Littoral Society v. United States Environmental Protection Agency, et al.* (No. 02-1266 (JP) (D. Puerto Rico)), the Court ordered EPA to prepare and publish new or revised water quality standards for those waters which are currently classified as "Class SC" (secondary contact recreation) waters by the Commonwealth of Puerto Rico. EPA is, therefore, proposing Federal water quality standards for these waters in Puerto Rico.

EPA regulations implementing CWA section 303(c) are published at 40 CFR part 131. Under these rules, the minimum elements that must be included in a State's water quality standards include: use designations for all water bodies in the State, water quality criteria sufficient to protect those use designations, and an antidegradation policy (see 40 CFR 131.6).

Water quality standards establish the "goals" for a water body through the establishment of designated uses. Designated uses, in turn, determine what water quality criteria apply to specific water bodies. Section 101(a)(2) of the Act establishes as a national goal "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and \* \* \* recreation in and on the water," wherever attainable. These national goals are commonly referred to as the "fishable/swimmable" goals of the Act. Section 303(c)(2)(A) requires water quality standards to "protect the public health or welfare, enhance the quality of water, and serve the purposes of this [Act]." EPA's regulations at 40 CFR part 131 interpret and implement these provisions by requiring that water quality standards provide for fishable/swimmable uses unless those uses have been shown to be unattainable. The mechanism in EPA's regulations used to overcome this presumption is a use attainability analysis (UAA).

Under 40 CFR 131.10(j), States are required to conduct a UAA whenever the State designates or has designated uses that do not include the uses specified in section 101(a)(2) of the CWA or when the State wishes to remove a designated use that is specified in section 101(a)(2) of the CWA or adopt subcategories of uses that require less stringent criteria. Uses are considered by EPA to be attainable, at a minimum, if the uses can be achieved (1) when effluent limitations under section 301(b)(1)(A) and (B) and section 306 are imposed on point source dischargers and (2) when cost effective and reasonable best management practices are imposed on nonpoint source dischargers. 40 CFR 131.10 lists grounds upon which to base a finding that attaining the designated use is not feasible, as long as the designated use is not an existing use: (i) Naturally occurring pollutant concentrations prevent the attainment of the use; (ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; (iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; (iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to