**Implementing Water Quality Standards for Toxic Pollutants in Clean Water Act Permits**

 Draft Issue Paper

Water Quality Restoration Standards

1. description of tool

Restoration water quality standards have been proposed in situations where waterbodies cannot meet water quality standard goals set by state and federal regulations and are not expected to meet standards for a long period of time due to the magnitude of the exceedence, source of pollutants, or availability of treatment technologies to consistently remove very low levels of contaminants. On January 26, 2010, EPA published proposed water quality standards for nutrients for the state of Florida[[1]](#footnote-1) in the [Federal Register](http://edocket.access.gpo.gov/2010/pdf/2010-1220.pdf). As part of this proposed rulemaking, EPA is seeking comments on the overall viability of implementing restoration standards as an alternative to compliance tools such as variances. This specific requirement of the proposed rule would apply to water quality standards for nutrients in Florida waters. However, the principles and implementation strategies explored in the FR can be considered by other states seeking a similar approach under the current federal regulations. The majority of the discussion here references this document.

As proposed in the FR and other discussions outside the FL rule, water quality restoration standards would be a waterbody-specific water quality standard that a state could adopt for an impaired water. The state would retain the current designated use as the ultimate designated use. However, under this approach, the state would also adopt interim, less stringent designated uses and criteria that would be the basis for enforceable permit requirements and other control strategies during a prescribed timeframe. The state would need to demonstrate that the interim uses and criteria and applicable timeframe are based on a UAA evaluation of what is attainable and by when. The water quality standards revision for the waterbody, including the interim uses, criteria, and timeframe, would all be incorporated into a state WQS on a site specific basis, just as would be required for any other designated use change or adoption of a site specific criterion.

1. applicability/scope

As proposed, any waterbody not meeting water quality standards could be eligible to implement a water quality restoration standard for a pollutant once an adequate assessment had been performed (and subsequently adopted into state standards and approved by EPA). Elements of this assessment as described in the proposed Florida regulation would include:

* an inventory of point and nonpoint sources within the watershed
* an evaluation of current ambient conditions and the necessary reductions to achieve the numeric criteria
* a determination of control strategies and management practices available and resources to implement them
* a demonstration that it is infeasible to attain the long-term designated use in the short term
* a timeframe to establish each restoration phase which would include interim restoration designated uses and associated water quality criteria
1. deq recommendations

Based on the information provided in Florida’s proposed Federal Register Notice, DEQ sees the potential for using restoration standards to make water quality standards improvements in a logical, step wise fashion for waterbodies where meeting water quality standards may take many years. However, before restoration standards can be adopted, work must be done to conduct the assessment described above and to develop the interim uses and criteria. A specific waterbody has not yet been identified where restoration standards could be applied as part of this rulemaking, however, the Department is open to pursuing restoration standards, where applicable, under a separate rulemaking. Once these waterbodies are identified, DEQ anticipates further discussions on determining enforceable interim designated uses and water quality criteria.

policy issues and objectives

The objective of restoration standards is to provide an alternative approach to compliance in situations where impaired water quality conditions have been identified and the expectation for that waterbody is that it will take many years to show improvement. In some cases, it may not be feasible within a relatively long time horizon (e.g.,20 years) to attain water quality standards established to meet goals of the CWA. Developing interim goals within a regulatory framework can provide a clear regulatory pathway to promote active restoration, maintain progressive improvement, and ensure accountability.

One of the most significant issues with implementing this approach is collecting and evaluating the data necessary to establish load reductions needed to meet enforceable interim criteria and designated uses. In watersheds where a TMDL has not been completed, gathering this information to do a UAA would require a significant amount of monitoring and analysis.

1. policy evaluation

Advantages and disadvantages

Advantages:

* This approach provides a regulatory alternative to compliance in situations where waterbodies are impaired for pollutants which may take many years to reduce (e.g. nutrients, legacy pollutants).
* Promotes active restoration from both point and nonpoint sources

Disadvantages:

* **This approach only applies to a specific waterbody —This tool does not apply on a statewide waterbody scale**
* **Enforceable interim designated uses and criteria must be determined and approved through rulemaking. Determining what these criteria levels should be at a point sometime in the future could be challenging.**
* **A significant amount of information needs to be collected in order to do the analysis. In the absence of a TMDL, data collection would be challenging.**
1. proposed rule language

Rulemaking is not applicable at this time.

1. authority and precedence

To date, there are no water quality restoration standards that have been approved by EPA, however, water quality restoration standards are available under current regulations and do not depend on the outcome of the FL rule, although that will help inform EPA and others on public opinion. DEQ has the regulatory authority to use this tool under their current rules, therefore, no additional authorizing language is needed. However, specific rule language would be needed once a waterbody was identified.

1. other supporting information
2. implementation information

To be determined.

1. Environmental Protection Agency, Federal Register Notice, 40 CFR Part 131, Water Quality Standards for the State of Florida’s Lakes and Flowing Waters; Proposed Rules. January 26, 2010. [↑](#footnote-ref-1)