

Update on Draft

STATE WATER QUALITY STANDARDS FOR WETLANDS



Jon Kusler, 518-872-1804;
jon.kusler@aswm.org
Jeanne Christie, 207-892-3399
jeanne.christie@aswm.org

We Need Your Help

- Review and comment on draft regulations. Be as specific as possible (e.g. suggested language)
- Suggest how the draft wetland water quality regulations could help you fill gaps in your own wetland programs
- Suggest what EPA could do to help you adopt and administer wetland water quality standards for wetlands

Goals for Preparing Draft State Wetland and Water Quality Standards

Goals for drafting state wetland and water quality standards include the following:

- Build consensus concerning practical and scientifically sound provisions which states might include in their wetland and water quality standards;
- Provide the states with examples of draft standards including:
 - Draft standards for inclusion in broader water quality standards;
 - Draft stand-alone standards.

Basis for Draft Standards

The Association of State Wetland Managers (ASWM) draft state water quality standards for wetlands are based upon:

- **A literature search**; web search; and legal statutory and regulatory search of the terms “state water quality standards”; “state wetland water quality standards; “state water quality; tribal water quality; “tribal wetland water quality standards” and variety of other relevant terms;
- **Existing state and tribal water standards.** We have examined the standards adopted by all of the states and tribes which have approved water quality standards;
- A series of **conference calls and Webinars** with the states conducted by ASWM in cooperation with many states in the fall of 2011;
- **The conduct of three one day seminars** with state staff concerning the role of wetland/water quality standards; and
- Discussions with individual **state staff concerning the content, strengths, and weaknesses of existing water quality standards.**

Schedule

- February 1-16, 2012 Expert Review of Draft Language
- February 16, Webinar Discussion of Draft Language
- February 16-May 17 Broader Review of Draft Regulations, Draft Regulations Revised, Gaps Filled. Possible Conference Calls on Selected Issues
- May 17, 3:00p.m.-4:30p.m. Webinar Discussion of Final Draft Water Quality Standards for Wetlands

General Comments

- The principal client for the draft regulations are states with Section 401 and 402 regulations but without independent wetland protection regulations. We see states or tribes taking what may be useful from the draft materials to supplement their existing regulations.
- There will be unresolved issues in draft regulations such as
 - What should be the full range of designated uses (e.g. should the draft include agriculture, forestry, water supply)? What standards should be applied to these uses?
 - Should there be tiered wetlands? If so, what classifications should be created?

State Wetland/Water Quality Standards for Wetlands: Essential Provisions to Be Integrated Into Broader Regulations

- Broad definition of “state” or “tribal” waters to include wetlands.
- Broad and explicit definition of “wetlands
- Broad definition of “regulated activities”.
- Explicit antidegradation policy for wetlands.
- Designated uses.
- Standards for protection of designated use.

Stand Alone

State Wetland/Water Quality Standards for Wetlands

- Statutory Authority
- Findings of Fact
- Regulatory Goals
- Definitions
- Antidegradation Policy
- Designated Uses
- Permits Required for Activities in Wetlands and Wetland Buffer Areas
 - An individual permit
 - A water quality certification
 - A general permit

Stand Alone

State Wetland/Water Quality Standards for Wetlands

- Overall Standards for All Wetlands and Activities
 - No net loss of function, value, and acreage.
 - Environmental impact statement requirements.
 - Toxic substances.
 - “Free froms”
 - Protection of wetland and wetland buffer areas.
 - Protection of adjacent areas from pollution.
 - Protection of hydrology.
- Tiered Waters (?)
- Impact Reduction and Compensation Measures
- Special Scrutiny for Activities With Potentially High Impact Upon Wetlands
- Outstanding Natural Resource Wetlands
- Standards for Designated Uses

Proposed Table of Contents: Stand Alone State Wetland/Water Quality Standards for Wetlands

- Standards for Impact Compensation
 - General Standards
 - Priority of Replacement
 - Location
 - Timing
 - Compensation Ratios
 - Use of Mitigation Banks
 - Wetlands Restoration Projects Not Proposed As Mitigation
- Administration
 - Fees
 - Evaluation, Monitoring, Reporting Requirements
- Penalties

Unresolved Issues

What does one do with “impaired” wetlands? Does one survey them under 305? Does one designate them impaired under Section 303? Does one adopt TMDL’s for all? For a portion? What are the other options for addressing impairment?

How does one coordinate wetland water quality standards for wetlands and 402 regulations? 401 certifications? state wetland regulations? state coastal zone regulations? State floodplain and other regulations?

- Joint permit processing?
- Joint permit application forms?
- Other?

How are IBI’s to be applied in wetland/water quality programs? How are reference wetlands to be defined? What does it mean if a wetland is poor quality or impaired? Is it therefore to be written off? Is it to receive special protection?

What role can general permits, BMPs play in state wetland and water quality programs?

- Activities which may be subject to general permit? BMPs?
- Standards for permits?

- What sort of buffer requirements (if any) should be included? Many states already require buffers 50-100 feet.
- Should riparian zones be addressed? If so, how? This is a really big issue in the west.
- Should we say anything about TMDL's. If so, what?
- Should we say anything about “use attainability analyses”. If so, what?
- What should we say about watershed planning and watershed approaches?
- Should we say anything in greater detail about rare and endangered species, special resource waters? If so, what?

Thanks

- Jeanne Christie
- 207-892-3399
- jeanne.christie@aswm.org

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- 518-872-1804
- jon.kusler@aswm.org

What Could EPA Do To Further Help The States And Tribes Adopt And Implement Water Quality Standards For Wetlands?

Revise and update wetland and water quality program guidance (1989, 2004).

Prepare and distribute a state and tribal guidance manual concerning the use of IBI's in state wetland/water quality regulatory programs.

Include sessions in wetland workshops and conferences (e.g. SWS, ASWM) concerning wetland water quality standards for wetlands.

Explore with the states and tribes the use of the 2011 National Wetland Assessment data in state wetland programs.

Document use of wetland TMDL's, provide guidance concerning the use of TMDL's.

Hold a workshop concerning the use of Special Natural Resource Wetland designations as a wetland/water quality protection tool.