



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

By Email Only

Trevor Baggiore
Director, Water Quality Division
Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, Arizona 85007

Subject: Arizona 2019 Triennial Review Revised Water Quality Standards - Definitions, Antidegradation Criteria, Mixing Zones and Variances.

Dear Director Baggiore:

I am pleased to approve the subject water quality standards consistent with the requirements of section 303(c) of the Clean Water Act (CWA) and 40 C.F.R. Part 131. Summarized below are the specific approved standards, which take effect immediately for CWA purposes. Incorporated as part of this letter is EPA's detailed analysis of the standards and rationale for approval.

EPA approves the revisions to the definitions, antidegradation, mixing zones, and variance regulations adopted in Arizona's 2019 Triennial Review. The submittal also included formatting revisions and other corrections that are non-substantive and are not new or revised WQS and are therefore not subject to EPA review and approval. EPA will review and act on additional new and revised water quality standards adopted in the 2019 Triennial Review in separate actions.

I look forward to our continued partnership to protect Arizona's water quality and advance human health and wildlife protection. Please call me if you would like to discuss further, or your staff may contact Rochelle Cameron at (415) 972-3323 with specific questions concerning this approval.

Sincerely,

Tomás Torres
Director, Water Division

Enclosures

cc: Erin Jordan, ADEQ Surface Water Quality Improvement Value Stream Manager

Enclosure

EPA Review of Arizona 2019 Triennial Review

EPA Partial Action: Definitions, Antidegradation, Mixing zones, and Variance regulations

Background

Section 303 of the Clean Water Act (CWA or “Act”), 33 U.S.C. §1313, requires states to establish water quality standards (WQS) and to submit any new or revised standards to EPA for review and approval or disapproval. See also 40 C.F.R. Part 131. Arizona’s adoption of new or revised WQS involved the following actions: A Notice of Proposed Rulemaking on February 1, 2019, a public hearing on March 28, 2019, a public comment period from February 1, 2019 to March 28, 2019 and a Notice of Final Rulemaking (NFRM) on July 9, 2019. The NFRM was approved by the Governor’s Regulatory Review Council on September 4, 2019. The Arizona Secretary of State published the state adopted amendments October 4, 2019 in the Arizona Administrative Register. The Attorney General for Arizona certified that the revisions were duly adopted pursuant to Arizona law on November 13, 2019. Arizona transmitted the revisions to EPA by letter dated November 19, 2019 and provided a complete package on November 24, 2019. ADEQ continued to submit supplemental technical information through September 30, 2020. EPA finds the public participation procedures followed by the State in development and adoption of the revisions to the statewide water quality standards (WQS) are consistent with the procedural requirement set forth in 40 C.F.R. §131.20(b).

Arizona withdrew the numeric human health criteria established in its 2019 submittal from EPA action pursuant to CWA 303(c) by letter dated December 21, 2021. Arizona cited that its numeric human health criteria were based on incorrect assumptions and committed to revising these criteria in its next triennial review.

As discussed more fully below, where EPA has determined that Arizona’s rule revisions are new or revised WQS, EPA has reviewed and acted on these adopted WQS pursuant to Section 303(c) of the CWA.¹

Synopsis of Action

Clean Water Act Section 303(c) directs states to adopt WQS for waters that are subject to the CWA. EPA’s implementing regulations at 40 C.F.R. Part 131 require that WQS specify appropriate designated uses of the waters and water quality criteria that protect those uses. EPA reviews the WQS to determine if they are consistent with the factors listed at 40 C.F.R. § 131.5 and contain the minimum requirements listed at 40 C.F.R. § 131.6.

¹ EPA has provided FAQs on “What is a New or Revised Water Quality Standard Under CWA 303(c)(3)?” at <https://www.epa.gov/sites/production/files/2014-11/documents/cwa303faq.pdf>. The link provides detailed information of such analysis.

Relevant to this action, Arizona submitted changes to WQS at Arizona Administrative Code Title 18, Chapter 11:² 101. Definitions, 107.01. Antidegradation Criteria, 114. Mixing Zones, 122. Variances. This document explains EPA’s basis for approval of changes to these portions of Arizona’s 2019 Triennial Review. EPA also acknowledges non-substantive changes in R18-11-115 Site-Specific Standards and Appendix A Numeric Water Quality Standards. These non-substantive revisions are included to ensure public transparency but do not constitute new or revised WQS subject to EPA action under CWA 303(c).

EPA Review of New and Revised WQS

I. R18-11-101: Definitions

Arizona added a definition for “variance” as follows:

“Variance” means a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the variance.

EPA finds this revision to be consistent with 40 C.F.R. Part 131 and approves pursuant to Section 303(c) of the Act.

II. R18-11-107.01: Antidegradation Criteria

Tier 3 Antidegradation Protection and Antidegradation Review

In subsection (C)(4), Arizona revised requirements relating to Tier 3 antidegradation protection. The adopted revisions are as follows (underlined text is newly added and strike-out text is removed):

4. A discharge regulated under a § 404 permit that may affect existing water quality of an OAW requires ~~an individual § 401 water quality certification~~ a determination by the Director to ensure that existing water quality is maintained and protected and any water quality impacts are temporary. Temporary water quality impacts are those impacts that occur for a period of six months or less and are not regularly occurring. The form of such a determination shall be as follows:
 - a. For Corps-issued § 404 permits, an individual § 401 water quality certification.
 - b. For Director-issued § 404 permits, a § 404 permit action, wherein the Director shall conduct a water quality evaluation as a part of the state’s requirements for issuing § 404 permits and in accordance with this section.

² Arizona also submitted changes to 109. Numeric Water Quality Standards, 115. Site-Specific Standards, Appendix A. Numeric Water Quality Standards, Appendix B. Surface Waters and Designated Uses, and Appendix C. Site-Specific Standards. EPA is still reviewing water quality standards related to aquatic life protection and Designated Uses. On December 21, 2021, Arizona withdrew its numeric human health criteria from EPA action.

In subsection (D), Arizona updated requirements relating to antidegradation reviews of § 404 permits. The modifications clarify how the form of the antidegradation review differs between a Corps-issued § 404 permit and a Director-issued § 404 permit. The revisions are as follows:

D. Antidegradation review of a § 404 permit: shall be conducted as follows:

1. For a Corps-issued § 404 permit. The Director shall conduct the antidegradation review of any discharge authorized under a nationwide or regional § 404 permit as part of the § 401 water quality certification prior to issuance of the nationwide or regional permit. The Director shall conduct the antidegradation review of an individual § 404 permit if the discharge may degrade existing water quality in an OAW or a water listed on the 303(d) List of impaired waters. For regulated discharges that may degrade water quality in an OAW or a water that is on the 303(d) List of impaired waters, the Director shall conduct the antidegradation review as part of the § 401 water quality certification process.

2. For a Director-issued § 404 permit. The Director shall conduct the antidegradation review of any discharge authorized under a general § 404 permit as a part of its determination whether to issue a general permit in accordance with state requirements for issuing a § 404 general permit and with this section. The Director shall conduct the antidegradation review of an individual § 404 permit as part of the § 404 permit action in accordance with state requirements for issuing a § 404 permit and in accordance with this section.

This provision clarifies determinations of temporary water quality impacts and creates parallel tracks for Corps-issued and Director-issued § 404 permits. EPA notes that Arizona does not have authority to issue permits under CWA § 404 and therefore the clauses related to Director-issued § 404 permits are not applicable. These provisions will only apply if and when Arizona is approved to issue § 404 permits pursuant to CWA § 404(g). These amendments are consistent with CWA Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material. EPA finds these amendments to be consistent with 40 C.F.R. Part 131 and approves this provision pursuant to Section 303(c) of the Act.

III. R18-11-114: Mixing Zones

Arizona revised its mixing zones rule as follows (underlined text is newly added and strike-out text is removed):

- A. The Director may establish a mixing zone for a point source discharge to a surface water as a condition of an individual AZPDES permit on a pollutant-by-pollutant basis. A mixing zone is prohibited in an ephemeral wateror where there is no water for dilution, or as prohibited pursuant to subsection (H) of this section.
- B. The owner or operator of a point source seeking the establishment of a mixing zone shall submit a request to the Director for a mixing zone as part of an application for an AZPDES permit. The request shall include:
 1. An identification of the pollutant for which the mixing zone is requested;
 2. A proposed outfall design;

3. A definition of the boundary of the proposed mixing zone. For purposes of this subsection, the boundary of a mixing zone ~~means the location is~~ where ~~the concentration of wastewater across a transect of the surface water differs by less than five percent~~ complete mixing occurs; and
 4. A complete and detailed description of the existing physical, biological, and chemical conditions of the receiving water and the predicted impact of the proposed mixing zone on those conditions. The description shall also address the factors listed in subsection (D) of this section that the Director must consider when deciding to grant or deny a request and shall address the mixing zone requirements in subsection (H) of this section.
- ~~C.~~ The Director shall review the request for a mixing zone to determine whether the written request is complete. If the request is incomplete, the Director shall provide the applicant with a list of the additional information required.
- ~~D.C.~~ The Director shall consider the following factors when deciding whether to grant or deny a request for a mixing zone:
1. The assimilative capacity of the receiving water;
 2. The likelihood of adverse human health effects;
 3. The location of drinking water plant intakes and public swimming areas;
 4. The predicted exposure of biota and the likelihood that resident biota will be adversely affected;
 5. Bioaccumulation;
 6. Whether there will be acute toxicity in the mixing zone, and, if so, the size of the zone of initial dilution;
 7. The known or predicted safe exposure levels for the pollutant for which the mixing zone is requested;
 8. The size of the mixing zone;
 9. The location of the mixing zone relative to biologically sensitive areas in the surface water;
 10. The concentration gradient of the pollutant within the mixing zone;
 11. Sediment deposition;
 12. The potential for attracting aquatic life to the mixing zone; and
 13. The cumulative impacts of other mixing zones and other discharges to the surface water.
- ~~E.D.~~ Director determination.
1. The Director shall deny a request to establish a mixing zone if a water quality standard will be violated outside the boundaries of the proposed mixing zone. ~~The Director shall notify the owner or operator of the denial in writing and shall state the reason for the denial.~~
 2. If the Director approves the request to establish a mixing zone, the Director shall establish the mixing zone as a condition of an AZPDES permit. The Director shall include any mixing zone condition in the AZPDES permit that is necessary to protect human health and the designated uses of the surface water.

~~F.E.~~ Any person who is adversely affected by the Director's decision to grant or deny a request for a mixing zone may appeal the decision under A.R.S. § 49-321 et seq. and A.R.S. § 41-1092 et seq.

~~G.F.~~ The Director shall reevaluate a mixing zone upon issuance, reissuance, or modification of the AZPDES permit for the point source or a modification of the outfall structure.

~~H.G.~~ Mixing zone requirements.

- ~~1. The length of a mixing zone shall not exceed 500 meters in a stream. A mixing zone shall be as small as practicable in that it shall not extend beyond the point in the waterbody at which complete mixing occurs under the critical flow conditions of the discharge and of the receiving water.~~
2. The total horizontal area allocated to all mixing zones on a lake shall not exceed 10 percent of the surface area of the lake.
3. Adjacent mixing zones in a lake shall not overlap or be located closer together than the greatest horizontal dimension of the largest mixing zone.
- ~~4. A mixing zone shall provide for a zone of passage of not less than 50 percent of the cross-sectional area of a river or stream.~~

~~5.4.~~ The design of any discharge outfall shall maximize initial dilution of the wastewater in a surface water.

~~6.5.~~ The size of the zone of initial dilution in a mixing zone shall prevent lethality to organisms passing through the zone of initial dilution. The mixing zone shall prevent acute toxicity and lethality to organisms passing through the mixing zone.

EPA finds these amendments to be consistent with 40 C.F.R. Part 131 and approves this provision pursuant to Section 303(c) of the Act.

IV. R18-11-122: Variances

Arizona deleted its previous variance rules language in its entirety and added a completely revised variance rule to align with EPA's 2015 Revision to 40 C.F.R. Part 131. Among other updates, EPA's 2015 Rulemaking provides a comprehensive regulatory structure for and explicitly authorizes variances. Arizona's revisions include defining variances as a water quality standard, enabling variances to be discharger-specific or water body or waterbody segment-specific, revising time limitations and requirements for periodic review, and adding required documentation to approve a variance. EPA finds the revisions to be consistent with 40 C.F.R. Part 131 and approves these provisions pursuant to Section 303(c) of the Act. The approved WQS follows:

A. Upon request, the Director may establish, by rule, a discharger-specific or water segment(s)-specific variance from a water quality standard if requirements pursuant to this section are met.

- B. A person who requests a variance must demonstrate all of the following information:
1. Identification of the specific pollutant and water quality standard for which a variance is sought.
 2. Identification of the receiving surface water segment or segments to which the variance would apply.
 3. A detailed discussion of the need for the variance, including the reasons why compliance with the water quality standard cannot be achieved over the term of the proposed variance, and any other useful information or analysis to evaluate attainability.
 4. A detailed discussion of the discharge control technologies that are available for achieving compliance with the water quality standard for which a variance is sought.
 5. Documentation that more advanced treatment technology than applicable technology-based effluent limitations is necessary to achieve compliance with the water quality standard for which a variance is sought.
 6. A detailed description of proposed interim discharge limitations and pollutant control activities that represent the highest level of treatment achievable by a point source discharger or dischargers during the term of the variance.
 7. Documentation that the proposed term is only as long as necessary to achieve the highest attainable condition.
 8. Documentation that is appropriate to the type of use to which the variance would apply as follows:
 - a. For a water quality standard variance to a use specified in Clean Water Act § 101(a)(2), documentation must include demonstration of at least one of the following factors that preclude attainment of the use during the term of the variance:
 - i. Naturally occurring pollutant concentrations prevent 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. That human-caused conditions or sources of pollution prevent the attainment of the water quality standard for which the variance is sought and either (1) it is not possible to remedy the conditions or sources of pollution or (2) remedying the human-caused conditions 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 restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use;
 - v. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses;
 - vi. That installation and operation of each of the available discharge technologies more advanced than those required to comply with technology-based effluent limitations to achieve compliance with the water quality standard would result in substantial and widespread economic and social impact; or

- vii. Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.
 - b. For a water quality standard variance to a use other than those uses specified in Clean Water Act § 101(a)(2), documentation must justify how consideration and value of the water subject to the use appropriately supports the variance and term. A demonstration consistent with (B)(8)(a) of this section may be used to satisfy this requirement.
- 9. For a waterbody segment(s)-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this section:
 - a. Identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant(s) or water quality parameter(s) and water body or waterbody segment(s) specified in the variance that could be implemented to make progress towards attaining the underlying designated use and criterion; and
 - b. If any variance pursuant to (B)(9)(a) of this section previously applied to the water body or waterbody segment(s), documentation must also demonstrate whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant(s) or water quality parameter(s) subject to the water quality variance and the water quality progress achieved.
- 10. For a discharger-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this section:
 - a. Identification of the permittee subject to the variance;
 - b. For an existing point source discharge, a detailed description of the existing discharge control technologies that are used to achieve compliance with applicable water quality standards. For a new point source discharge, a detailed description of the proposed discharge control technologies that will be used to achieve compliance with applicable water quality standards; and
 - c. Documentation that the existing or proposed discharge control technologies will comply with applicable technology-based effluent limitations.
- C. The Director shall consider the following factors when deciding whether to grant or deny a variance request:
 - 1. Bioaccumulation,
 - 2. The predicted exposure of biota and the likelihood that resident biota will be adversely affected,
 - 3. The known or predicted safe exposure levels for the pollutant for which the variance is requested, and
 - 4. The likelihood of adverse human health effects.
- D. The variance shall represent the highest attainable condition of the water body or water body segment applicable throughout the term of the variance.
- E. A variance shall not result in any lowering of the currently attained ambient water quality, unless the variance is necessary for restoration activities, consistent with (B)(8)(a)(vii) of this section. The Director must specify the highest attainable condition of the water body or waterbody segment as a quantifiable expression of one of the following:

1. The highest attainable interim criterion,
 2. The interim effluent condition that reflects the greatest pollutant reduction achievable;
or
 3. If no additional feasible pollutant control technology can be identified, the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time of the issuance of the variance, and the adoption and implementation of a Pollutant Minimization Program.
- F. A variance shall not modify the underlying designated use and criterion. A variance is only a time limited exception to the underlying standard. For discharge-specific variances, other point source dischargers to the surface water that are not granted a variance shall still meet all applicable water quality standards.
- G. Point source discharges shall meet all other applicable water quality standards for which a variance is not granted.
- H. The Director may not grant a variance for a point source discharge to an OAW listed in R18-11-112(G).
- I. Each variance established by the Director is subject to review and approval by the Regional Administrator.
- J. The term of the water quality variance may only be as long as necessary to achieve the highest attainable condition and must be consistent with the supporting documentation in subsection (E) of this section. The variance term runs from the approval of the variance by the Regional Administrator.
- K. The Director shall reevaluate, in its triennial review, whether each variance continues to represent the highest attainable condition. Comment on the variance shall be considered regarding whether the variance continues to represent the highest attainable condition. If the Director determines that the requirements of the variance do not represent the highest attainable condition, then the Director shall modify or repeal the variance in its triennial review rulemaking.
- L. If the variance is modified by rulemaking, the requirements of the variance shall represent the highest attainable condition at the time of initial adoption of the variance, or the highest attainable condition identified during the current reevaluation, whichever is more stringent.
- M. Upon expiration of a variance, point source dischargers shall comply with the water quality standard.
- N. The following are discharger-specific variances adopted by the Director: 1.[Reserved]
- O. The following are water body and waterbody segment-specific variances adopted by the Director: 1. [Reserved]

EPA Acknowledgement of Non-Substantive Changes

EPA acknowledges the following non-substantive changes to previously approved WQS to ensure public transparency as to which provisions are applicable for purposes of the CWA in accordance with 40 C.F.R § 131.21(c). The non-substantive changes do not revise previously approved WQS and EPA's acknowledgement of the non-substantive changes does not constitute an action under CWA Section 303 (c).

I. R18-11-115: Site-Specific Standards

In subsection (B)(5), Arizona deleted the “natural adaptive” language in its site-specific standards rule that was disapproved by EPA in its action on Arizona’s 2016 Triennial Review. EPA finds this to be a non-substantive change that adds clarity but is not a WQS action under Section 303(c) of the Act.

II. Appendix C: Site-Specific Standards

Arizona removed site-specific standards for copper for Bright Angel Wash and Transept Canyon. These site-specific standards were adopted in the 2016 Arizona Triennial Review but were disapproved by EPA. These standards were removed to be consistent with EPA’s 2016 decision. EPA finds this to be a non-substantive change that adds clarity but is not a WQS action under Section 303(c) of the Act.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA) states that each federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened (listed) species or result in the destruction or adverse modification of critical habitat. ESA consultation requirements do not apply to actions where EPA lacks discretion to protect species, or where an EPA action has no effect on listed species or critical habitat.

Definitions

EPA’s discretion to act on a state submission concerning definitions is limited to determining whether the submission is consistent with 40 C.F.R. Part 131. EPA has no discretion to revise an otherwise approvable definition to benefit listed species. EPA has concluded that it lacks sufficient discretionary federal involvement or control to protect listed species when it approves or disapproves definitions adopted by states as part of their water quality standards. Therefore, ESA consultation requirements do not apply to EPA’s actions to approve Arizona’s new and revised definitions.

Antidegradation

EPA has determined that approval of Arizona’s two revised antidegradation regulations will have no effect on listed species. Arizona’s revised regulations create new procedural requirements related to CWA Section 404 Permits for the discharge of dredged or fill materials that will prevent degradation existing water quality. Preventing degradation will maintain the existing quality of these waters and therefore approval of these regulations will have no effect on threatened or endangered species.

Variances

EPA’s discretion to act on a state variance regulation is limited to determining whether the regulation is consistent with 40 C.F.R. Part 131. Each variance adopted under the regulations is a separate action that will require EPA approval and ESA compliance. EPA has no discretion to revise an otherwise approvable variance regulation to benefit listed species. EPA has concluded

that it lacks sufficient discretionary federal involvement or control to protect listed species when it approves or disapproves variance regulations adopted by states as part of their water quality standards. Therefore, EPA consultation requirements do not apply to EPA's action to approve Arizona's new variance regulation.

Mixing Zones

EPA's discretion to act on a state mixing zone regulation is limited to determining whether the regulation is consistent with 40 C.F.R. Part 131. EPA has no discretion to revise an otherwise approvable mixing zone regulation to benefit listed species. EPA has concluded that it lacks sufficient discretionary federal involvement or control to protect listed species when it approves or disapproves mixing zone regulations adopted by states as part of their water quality standards. Therefore, EPA consultation requirements do not apply to EPA's action to approve Arizona's mixing zone rule amendments.

Consultation with Indian Tribes

EPA upholds its trust responsibility to federally recognized tribal governments consistent with the "2011 EPA Policy on Consultation and Coordination with Indian Tribes" (<https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>). Meaningful communication and coordination with appropriate tribal leadership on a government-to-government basis prior to EPA taking actions or making decisions that may affect tribal interests is a fundamental principal of this Policy. On August 20, 2019 EPA sent written invitations to consult to 24 tribes whose interests may be affected by this action. Four tribes requested Consultation: White Mountain Apache Tribe, Hopi Tribe, Ak-Chin Indian Community, and Colorado River Indian Tribes.

White Mountain Apache Tribe (WMAT)

A Consultation teleconference between EPA Region 9 Water Division Director and WMAT Chairperson Gwendena Lee-Gatewood was held on (January 29, 2020). WMAT also submitted written comments to EPA by letter (February 6, 2020) expressing concern that Arizona standards may be less protective than downstream tribal standards. The Tribe also identified inaccuracies in Arizona's submission on location coordinates of tribal boundaries. EPA determined Arizona's WQS in this action are protective of the downstream WMAT WQS beneficial uses as required by 40 C.F.R. §131.10 (b). EPA provided the tribe's comments regarding tribal boundaries to Arizona DEQ.

Hopi Tribe

The Hopi Tribe submitted written comments to EPA by letter (July 21, 2020). The tribe indicated no objections to the proposed changes in water quality standards. The tribe stressed its concerns about general water quality effects from development near traditional cultural properties off reservation. EPA acknowledged the tribe's concerns and notes that its action under CWA 303(c) does not approve or disapprove future development.

Ak-Chin Indian Community

The Ak-Chin Indian Community submitted written comments to EPA by letter (January 9, 2020). The primary concern identified by the tribe relates to the impact of the ambiguity of the

definition and jurisdictional application of “Waters of the United States” for Arizona Water Quality Standards. The Navigable Waters Protection Rule was vacated by the courts on August 31, 2021. On November 18, 2021, the U.S. Environmental Protection Agency and the Department of the Army signed a proposed rule to revise the definition of WOTUS. EPA has shared the tribe’s comments to inform this rulemaking.

The tribe also mentioned the possibility that its future tribal water quality standards may be more stringent than upstream Arizona standards. 40 C.F.R. §131.10 (b) requires that WQS must be protective of downstream WQS and is included in EPA’s review. The tribe’s letter concluded that they “do not believe formal tribal consultation on the narrative or numeric value of Arizona’s proposed standards is necessary” but requested that EPA clarify in our decision how the standards will apply, considering the changes to the definition of navigable waters. EPA clarifies that the approved WQS in this decision document will apply to Waters of the United States.

Colorado River Indian Tribes (CRIT)

The Colorado River Indian Tribes (CRIT) submitted written comments (January 10, 2020) to facilitate scoping its concerns to be discussed during consultation. EPA attempted to arrange consultation by phone and email (September 2020 voicemail T. Yin to W. Nabahe; 9/14/21 T. Yin email to CRIT (D. Guthrie, R. Loudbear and A. Flora); 11/1/21 T. Yin email to CRIT (D. Guthrie, A. Flores, A. Flora, J. Rivera, T. Harper, R. Loudbear). After receiving no responses to repeated outreach EPA closed this Consultation.

EPA considered the four main areas of concern raised in the tribe’s letter:

1. Arizona’s revised WQS are less protective without adequate justification. Arizona withdrew its revised numeric human health criteria from EPA action on December 21, 2021.
2. Arizona’s revised e-coli criteria is less protective of recreation use. Arizona withdrew this criterion from EPA action on December 21, 2021.
3. Arizona’s revised Mixing Zones removes numeric standards. Arizona’s revised mixing zone policy describes how Arizona will evaluate and establish mixing zones to ensure protection of water quality. Through requirements that mixing zones be no larger than necessary, Arizona will ensure that the previous numeric maximum does not become the default mixing zone size. It also clarifies that, while the WQS authorize the permitting authority to grant dilution in permits, the WQS preference the minimization of granted dilution. Further, by requiring that mixing zones not exceed the point where complete mixing occurs would clarify that mixing zones may only be applied in zones where physical mixing is occurring and is predictable.
4. Enforcement penalties for non-permitted dischargers are inadequate: EPA notes that enforcement policies are not subject to EPA’s review under CWA Section 303(c). EPA has shared this comment with EPA Region 9’s Enforcement and Compliance Assurance Division.