

EPA Regulation – 40 CFR, Part 120
Water Quality Standards

(Colorado River System; Salinity Control
Policy and Standards Procedures)

1974

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCY

[FRL 298-5]

PART 120—WATER QUALITY
STANDARDS

Colorado River System; Salinity Control
Policy and Standards Procedures

The purpose of this notice is to amend 40 CFR Part 120 to set forth a salinity control policy and procedures and requirements for establishing water quality standards for salinity and a plan of implementation for salinity control in the Colorado River System which lies within the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming pursuant to section 303 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1313). A notice proposing such policy and standards procedures was issued on June 10, 1974 (39 FR 20703, 39 FR 24517).

High salinity (total dissolved solids) is recognized as a significant water quality problem causing adverse impacts on water uses. Salinity concentrations are affected by two basic processes: (a) Salt loading—the addition of mineral salts from various natural and man-made sources, and (b) salt concentrating—the loss of water from the system through stream depletion.

Studies to date have demonstrated that the high salinity of stream systems can be alleviated. Although further study may be required to determine the economic and technical feasibility of controlling specific sources, sufficient information is available to develop a salinity control program.

Salinity standards for the Colorado River System would be useful in the formulation of an effective salinity control program. In developing these standards, the seven States must cooperate with one another and the Federal Government to support and implement the conclusions and recommendations adopted April 27, 1972, by the reconvened 7th Session of the Conference in the Matter of Pollution of the Interstate Waters of the Colorado River and Its Tributaries.

Public hearings on the proposed regulation were held in Las Vegas, Nevada, on August 19, 1974, and in Denver, Colorado, on August 21, 1974. Public comments were provided at the hearings and also by letter during the review period. A summary of major comments and Environmental Protection Agency response follows:

(1) The Colorado River Basin Salinity Control Forum stated that it did not object to the proposed regulation, and believed that it satisfied the requirements of section 303(b)(2) of P.L. 92-500 until October 18, 1975. The Forum reported that the seven Colorado River Basin States were actively working on the development of water quality standards and a plan of implementation for salinity control.

(2) The Colorado River Water Conservation District inquired as to whether

the definition of the Colorado River Basin contained in Article II(f) of the Colorado River Compact of 1922 would be followed in the development of salinity standards and the salinity control plan.

The requirement for establishing water quality standards and an implementation plan apply to the Colorado River System as defined in Part 120.5(a) of this regulation. This definition is consistent with the definition of the Colorado River System contained in Article II(a) of the Compact. The regulation states that the salinity problem shall be treated as a basinwide problem. Articles II(f) and II(g) define the Basin to include the System plus areas outside the drainage area which are served by the Colorado River System. The Environmental Protection Agency (EPA) will require that the standards and implementation plan consider the impacts of basinwide uses, e.g., transmountain diversions, on salinity effects in the System, but the establishment of standards and implementation plans pursuant to this regulation will not be required for streams located outside the System.

The District also questioned the feasibility of relying on irrigation improvement programs as a means of alleviating the salinity problem.

EPA believes that adequate information is available to initiate controls for irrigated agriculture, yet at the same time acknowledges that additional work is needed to demonstrate the efficacy of certain control measures. Projects presently being supported by EPA and others should demonstrate the adequacy of various control measures including management and non-structural techniques. These measures will be considered during the development of the implementation plan.

(3) The Environmental Defense Fund (EDF) testified that it believed that EPA was not complying with the requirements of the Federal Water Pollution Control Act, as amended, chiefly because of EPA's late response to the timetable delineated in the Act for establishing standards, and also because numerical standards still have not been set for the Colorado River System. EDF called upon EPA to withdraw the proposed regulation and promptly promulgate numerical limits for salinity.

EPA believes that a move to promulgate numerical standards at this time could cause even further delays in controlling salinity due to the problems involved with obtaining interstate cooperation and public acceptance of such a promulgation.

(4) The Sierra Club raised a number of objections to the proposed regulation, principally because, in its opinion, it permits further development of the waters of the Colorado River without requiring that adequate salinity controls be on line prior to development. Specific suggestions are:

(a) Section 120.5(e)(3). Shorten the deadline for submission of the standards and implementation plan to May 30, 1975.

EPA believes that this would not allow adequate time due to the complexities of the problem, the interstate coordination needed and the time requirements for public hearings. The October 18, 1975, date is consistent with the requirements of the Federal Water Pollution Control Act, as amended, for the three year review and revision of standards. The schedule set forth by the Colorado River Basin Salinity Control Forum calls for development of draft standards and an implementation plan by February 1975 in order to allow time for public participation prior to promulgation.

(b) Section 120.5(c)(2). Delete "as expeditiously as practicable."

The date of July 1, 1983, remains the goal for accomplishment of implementation plans as stated in § 120.5(c)(2)(iii). It is the purpose of this language to accelerate progress by the States toward this goal where possible.

(c) Section 120.5(c)(2)(ii). Delete "while the basin States continue to develop their compact apportioned waters."

In recognition of the provisions of the Colorado River Compact of 1922 and until such time that the relationship between the Compact and the Federal Water Pollution Control Act, as amended, is clarified, EPA believes that development may proceed provided that measures are taken to offset the salinity increases resulting from further development.

(d) Section 120.5(c)(2)(iv). Add language to describe conditions under which temporary increases above the 1972 levels will be allowed.

EPA believes that this matter should be addressed in further detail in the formulation, review and acceptance of the implementation plan, not in the regulation.

(e) Add a new subsection on financing of control measures.

EPA believes that this, too, is an issue that should be handled as part of the implementation plan.

(f) Add a new subsection delineating requirements for evaluating control plans and restricting consideration of controls for the Blue Spring on the Little Colorado River.

EPA believes these issues should also be addressed as part of the implementation plan. It should be noted that nothing in this regulation removes the requirement for assessing environmental impacts and preparing environmental impact statements for control measures.

(g) Add a new section requiring public hearings.

EPA's public participation regulations appear at 40 CFR 105 and apply to all actions to be taken by the States and Federal Government pursuant to the Act. States have provided for public participation throughout the initial water quality standards review process. We expect the States to do so in this situation and see no need to set forth additional requirements.

(h) Add a new section stating that the implementation plan will be published in the FEDERAL REGISTER.

EPA expects there will be substantial public participation at the State and local level prior to adoption of the plan. The salinity standards are expected to be published in the FEDERAL REGISTER, but the size and complexity of the plan may militate against its publication. At the very least, the plan will be available for review at appropriate EPA and State offices. Notice of its availability will be published in the FEDERAL REGISTER, and 60 days will be allowed for public review and comment.

(i) Add a new subsection stating that EPA will promulgate standards if the States fail to do so as prescribed in this regulation.

Section 303 of the Federal Water Pollution Control Act provides for promulgation by EPA where the States fail to adopt standards requested by the Administrator, or where the Administrator determines Federal promulgation is necessary to carry out the purposes of the Act. EPA's responsibility to promulgate standards if the States fail to do so is thus expressed in the statute itself; the Agency does not believe that recitation of the statutory duty in this particular rulemaking is necessary.

(5) The American Farm Bureau Federation, California Farm Bureau Federation, Nevada Farm Bureau Federation, and the New Mexico Farm and Livestock Bureau believe that standards should not be set until further evaluation of the problems and opportunities for control are completed.

EPA believes that adequate information is available for setting standards and formulating controls, and while it recognizes that additional work is needed on specific aspects of solutions, it believes that further delay without any action is not appropriate.

Records of the hearings and comments received by letter during the review period are available for public inspection at the regional offices of the Environmental Protection Agency at 1860 Lincoln Street in Denver, Colorado, at 100 California Street in San Francisco, California, at 1600 Patterson Street in Dallas, Texas, and at the Environmental Protection Agency Freedom of Information Center at 401 M Street SW in Washington, D.C.

This regulation sets forth a policy of maintaining salinity concentrations in the lower main stem of the Colorado River at or below 1972 average levels and requires the Colorado River System States to promulgate water quality standards and a plan for meeting the standards. The first step will be the establishment of procedures within 30 days of the effective date of these regulations which will lead to adoption on or before October 18, 1975, of water quality standards for salinity including numeric criteria and an implementation plan for salinity control.

Except as provided in this regulation, the interstate and intrastate standards previously adopted by the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming and approved by the Environmental Protection

Agency are the effective water quality standards under section 303 of the Act for interstate and intrastate waters within those States. Where the regulations set forth below are inconsistent with the referenced state standards, these regulations will supersede such standards to the extent of the inconsistency.

In consideration of the foregoing, 40 CFR Part 120 is amended as follows:

1. Section 120.5 is added to read as set forth below:

§ 120.5 Colorado River System Salinity Standards and Implementation Plan.

(a) "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) It shall be the policy that the flow weighted average annual salinity in the lower main stem of the Colorado River System be maintained at or below the average value found during 1972. To carry out this policy, water quality standards for salinity and a plan of implementation for salinity control shall be developed and implemented in accordance with the principles of paragraph (c) below.

(c) The States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming are required to adopt and submit for approval to the Environmental Protection Agency on or before October 18, 1975:

(1) Adopted water quality standards for salinity including numeric criteria consistent with the policy stated above for appropriate points in the Colorado River System; and,

(2) A plan to achieve compliance with these standards as expeditiously as practicable providing that:

(i) The plan shall identify State and Federal regulatory authorities and programs necessary to achieve compliance with the plan.

(ii) The salinity problem shall be treated as a basinwide problem that needs to be solved in order to maintain lower main stem salinity at or below 1972 levels while the basin States continue to develop their compact apportioned waters.

(iii) The goal of the plan shall be to achieve compliance with the adopted standards by July 1, 1983. The date of compliance with the adopted standards shall take into account the necessity for Federal salinity control actions set forth in the plan. Abatement measures within the control of the States shall be implemented as soon as practicable.

(iv) Salinity levels in the lower main stem may temporarily increase above the 1972 levels if control measures to offset the increases are included in the control plan. However, compliance with 1972 levels shall be a primary consideration.

(v) The feasibility of establishing an interstate institution for salinity management shall be evaluated.

(d) The States are required to submit to the respective Environmental Protection Agency Regional Administrator established procedures for achieving (c)

(1) and (c) (2) above within 30 days of the effective date of these regulations and to submit progress reports quarterly thereafter. EPA will on a quarterly basis determine the progress being made in the development of salinity standards and the implementation plan.

§ 120.10 [Amended]

§ 120.10 is amended by adding to the paragraphs entitled "Arizona", "California", "Colorado", "Nevada", "New Mexico", "Utah", and "Wyoming" a salinity control policy and procedures and requirements for establishing water quality standards for salinity control in the Colorado River System.

(Sec. 303, Pub. L. 92-500, 86 Stat. 818 (33 U.S.C. 1313))

Effective date: December 18, 1974.

Dated: December 11, 1974.