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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

APR 20 1992

MEMORANDUM

SUBJECT: OST Expectations for Water Quality Standards for
Indian Reservations for Tribes Treated As States

FROM: Tudor T. Davies, Director
Office of Science and Technology (WH-551)

TO: Regional Water Management Division Directors
Regions I, II, IV-X

Purpose

The purpose of this memorandum is to express OST's view of the target that the Regions should aim for in the initial adoption of water quality standards for Indian reservation waters.

Background/Assumptions

At the recent meeting in March 1992 of the Regional water quality standards coordinators held in Denver, CO, there was discussion on what would be appropriate for the initial water quality standards regulation developed by Tribes qualifying for treatment as a State. There were differing views espoused by the Regions which ranged from very simple standards, up to standards comparable to sophisticated standards in place in many States.

This guidance recognizes that Tribes have varying abilities to develop water quality standards. Some Tribes have more technical capability and experience in drafting implementable regulations than other Tribes and may be capable of adopting more complex standards. However, most Tribes may not have access to sufficient resources, either in personnel or in contractor funds, to pursue this course. Moreover, EPA does not have the resources to provide substantial technical assistance to individual Tribes to develop other than basic water quality standards.

OST's Expectations for Tribal Water Quality Standards

Tribal water quality standards, initially at least, should focus on basic contents and reflect existing uses and existing water quality. The standards must be established for an inventory of "Waters of the U.S." including wetlands. The Tribes should focus on the basic structure of a water quality standards system: designated uses for identified water segments, appropriate narrative and numeric criteria, an antidegradation policy, and other general implementation policies. How complex or sophisticated these elements need to be depends upon the abilities of the Tribe and the environmental concerns affected by Tribal standards.

We have consistently recommended to Tribes that they use directly or with slight modification the standards of the adjacent States as a beginning for Tribal standards. Tribal water quality standards should be developed considering the quality and designated uses of waters entering and leaving reservations. It is important that the Tribes recognize what the surrounding State (or another Indian reservation) water quality standards are even though there is no requirement to match those standards, although the water quality standards regulation does require consideration of downstream water quality standards. See 40 CFR 131.10(b).

At a minimum, Tribal water quality standards should be established upstream and downstream from point sources where NPDES permits are applicable. It is desirable that water quality standards be applied to waters where significant nonpoint sources enter also so that the effectiveness of best management practices on the reservation's waters can be evaluated.

Water quality criteria should be carefully selected recognizing that making criteria more stringent in subsequent water quality standards reviews is more feasible than attempting relaxation of stringent criteria. While there is no mandatory list of criteria, the following should be considered the minimum:

- ♦ narrative "free froms"
- ♦ dissolved oxygen
- ♦ pH
- ♦ temperature
- ♦ bacteriological (for recreational & ceremonial uses)
- ♦ toxics (including non-conventionals, e.g., ammonia and chlorine) [Use of option 1 of our December 1988 guidance is recommended.]

Optional Policies

The Tribes must also specify which optional policies they wish to use pursuant to 40 CFR 131.13. These include the following:

- ♦ mixing zones for point sources
- ♦ variances for point sources
- ♦ design low flow specification for the application of numeric criteria (e.g., 7 Q 10 for conventional pollutants, 1 Q 10, 7 Q 10 and harmonic mean flow, etc. for toxics)
- ♦ schedules of compliance for criteria in NPDES permits

Guidance for applying these policies are generally available in either the Water Quality Standards Handbook (1983) or in the Technical Support Document for Water Quality-based Toxics Control (1991).

Tribal Submission and EPA Review

The initial submission of the Tribal water quality standards must contain the items listed in 40 CFR 131.6 plus use attainability analyses for all waters not classified "fishable-swimmable". See 40 CFR 131.10(j). In addition, it should contain identification of endangered or threatened aquatic species or wildlife subject to protection by water quality standards. There should also be included a record containing information on the regulatory and public participation aspects of the water quality standards, public comments made and the Tribe's responses to those comments and other relevant material required by 40 CFR 131.20.

Regional Reviews

The Regions should carefully coordinate the reviews within the Water Management Divisions to assure:

- ♦ that the required items in §131.6 are included;
- ♦ that all waters with NPDES permits have water quality standards; and
- ♦ that the Tribal rulemaking meets the requirements of 40 CFR 131.20.

In commenting on Tribal water quality standards, the Regions should identify situations where the dispute resolution mechanism in 40 CFR 131.7 may ultimately be called into play and attempt to de-fuse such situations as early as possible in the standards

adoption process. One possibility is to encourage Tribes and States to establish review procedures before any specific problem develops as suggested in Section 131.7(e) of the regulation.

Where NPDES permits exist, the downstream jurisdiction and the Region should determine if total maximum daily loads or waste load allocations will be needed. Where this burden falls on the Tribe, EPA may need to assist the Tribe in these assessments or perform the necessary modeling for the Tribe. The Region should also assess the scope of any §401 procedures needed in future NPDES permit renewals. The interstate nature of Tribal water quality standards may become important to EPA because of the recent Arkansas v. Oklahoma U.S. Supreme Court case especially when EPA is the permit writing authority.

Conclusion

As a new program there undoubtedly will be unanticipated problems. OST will function as a clearinghouse for the Regions and Headquarters. We believe that we can address the technical and policy questions to maintain consistency in incorporating Indian water quality standards into our national water quality standards program.

cc: Regional Branch Chiefs
Water Quality Standards Coordinators