

Fact Sheet: Proposed Rule on Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act

Summary

In section 518(e) of the Clean Water Act (CWA), Congress authorized EPA to treat eligible federally recognized Indian tribes in a similar manner as states for purposes of administering section 303 and certain other provisions of the CWA, and directed the agency to promulgate regulations effectuating this authorization. In the 1990s, EPA issued regulations establishing a process for federally recognized tribes to obtain treatment in a similar manner as states (TAS) for several provisions of the CWA; 50 tribes, for example, have since obtained TAS authority to issue water quality standards under CWA section 303(c). However, EPA has not yet promulgated regulations expressly establishing a process for such tribes to obtain TAS authority to administer the water quality restoration provisions of CWA section 303(d), including issuing lists of impaired waters and developing total maximum daily loads (TMDLs) under CWA section 303(d). EPA is now proposing to remedy this gap.

The proposal is comparable to similar regulations that EPA issued in the 1990s for the CWA Section 303(c) WQS and CWA Section 402 and 404 Permitting Programs. EPA requests comments on all aspects of the proposed rule before March 21, 2016.

Background

EPA conducted pre-proposal tribal consultation and coordination with intergovernmental associations and member states, and will engage in further consultation and coordination with tribes and states (see “To Provide Comments or Participate in Consultation,” below).

This proposal to establish a TAS process for the 303(d) Program is separate from the Agency’s proposal of a new approach to tribal jurisdiction to administer CWA regulatory programs, “Revised Interpretation of Clean Water Act Tribal Provision,” that was available for public comment August 7 – October 6, 2015 at <http://www.regulations.gov> (docket identification no. EPA-HQ-OW-2014-0462).

Highlights of the Proposal

Subjects addressed within the proposal include:

- The statutory and regulatory history of TAS under the CWA.

- Reasons a tribe might be interested in seeking TAS for the 303(d) Program.
- Program responsibilities tribes would have upon obtaining TAS for the 303(d) Program.
- Proposed regulatory procedures for a tribe to seek TAS for the 303(d) Program.
- Special circumstances that may exist regarding qualification for TAS for the 303(d) Program.
- Regulatory procedure EPA would follow in reviewing a tribe's TAS application.
- An example of a stepwise approach for tribes applying for TAS for CWA programs.
- Availability of EPA financial and technical support to tribes that choose to develop and implement a 303(d) program.

To Provide Comments or Participate in Consultation

Public comments on the proposal are being accepted through March 21, 2016 at <http://www.regulations.gov/> using docket identification no. EPA-HQ-OW-2014-0622.

EPA will host a webinar for the public to explain the proposal and answer questions on February 18, 2016 at 1:00-3:00 p.m. Eastern. See EPA's website at <http://www.epa.gov/tmdl/tribal-consultation-rulemaking-provide-more-opportunities-tribes-engage-clean-water-act> for instructions on how to register and participate.

EPA will provide opportunities for consultation and coordination with tribes and states before the rule is finalized.

For Further Information

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Further information on this proposed rule is also available at <http://www.epa.gov/tmdl/tribal-consultation-rulemaking-provide-more-opportunities-tribes-engage-clean-water-act>.