

**TREATMENT IN A SIMILAR MANNER AS A STATE
CWA §§319, 303(c), and 401**

SUBMITTED BY:

CITIZEN POTAWATOMI NATION



TO:

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 6

July 29, 2015

**CITIZEN POTAWATOMI NATION
TREATMENT IN A SIMILAR MANNER AS A STATE**

TABLE OF CONTENTS

INTRODUCTION	3
BACKGROUND	3
CRITERIA FOR ELIGIBILITY	4
1. Federal Recognition	4
2. Substantial Governmental Duties and Powers	4
3. Tribal Authority	5
4. Tribal Capability	5
a. Previous and Potential Management	5
b. Fiscal Management	6
c. Accounting and Procurement Systems	6
d. Existing Environmental/Public Health Programs	7
e. Entities Exercising Executive/Legislative/Judicial Functions	10
f. CPN DEP Staff	11
g. Acquiring Expertise	11

EXHIBITS

- Exhibit 1 Tribal Resolutions 15-08-NR (CWA §319) and 15-09-NR (CWA §§303(c)/401)
- Exhibit 2 Environmental Cooperative Agreement (CWA §§303(c)/401)
- Exhibit 3 January 13, 2011 Decision Document, U.S. EPA Region 6 (CWA §§303(c)/401)
- Exhibit 4 March 1, 2011 CPN TAS notification letters to State (CWA §§303(c)/401)
- Exhibit 5 January 12, 2015 CPN TAS follow-up letters to State (CWA §§303(c)/401)
- Exhibit 6 April 14, 2015 State TAS non-renewal notification letter to CPN (CWA §§303(c)/401)
- Exhibit 7 Federal Recognition Notice, 79 Fed. Reg. at 4749 (January 29, 2014); (CWA §319 and §§303(c)/401)
- Exhibit 8 CPN Organizational Chart (CWA §319 and §§303(c)/401)
- Exhibit 9 CPN Trust Lands and Water Resources (CWA §319 and §§303(c)/401)
- Exhibit 10 1873 Survey of CPN Reservation (CWA §319 and §§303(c)/401)
- Exhibit 11 Legal Authority Letter (CWA §319 and §§303(c)/401)
- Exhibit 12 CPN NPS Assessment Report/Management Plan with Affidavit of Publication (CWA §319)

TREATMENT IN A SIMILAR MANNER AS STATE

Introduction

Under section (§) 518(e) of the federal Clean Water Act (CWA), an Indian tribe may assume the same powers as states to administer CWA programs if the U.S. Environmental Protection Agency (EPA) determines eligibility requirements are met. This regulation is known as Treatment in a Similar Manner as a State (TAS).

The Citizen Potawatomi Nation (CPN or Tribe) is seeking TAS for CWA §§319 Nonpoint Source (NPS), 303(c) Water Quality Standards (WQS), and 401 Water Quality Certification and calls on EPA for delegation of these programs. In support, the CPN Legislature approved Tribal Resolutions 15-08-NR and 15-09-NR, *Exhibit 1*. Tribal WQS will be submitted separately in the future.

Background

In 2008 EPA approved CPN's TAS application for CWA §106 Tribal Water Pollution Control (106 TAS Application). Per the streamlining rule in 40 CFR §131.8(b)(6), the Tribe incorporates herein by reference the 106 TAS Application to the extent the previously-submitted information is still relevant. Additional information demonstrating the Tribe's eligibility is provided in the following narrative.

In addition to §319, the Tribe is also seeking §§303(c) and 401 programs under the CWA. In furtherance of this initiative, the Tribe has had to comply with mandates imposed by Public Law 109-59 also known as the Midnight Rider. The Midnight Rider requires Oklahoma tribes to enter into a cooperative agreement with the state of Oklahoma (State) to jointly administer federal environmental programs.

On December 22, 2009, the Tribe entered into an Environmental Cooperative Agreement with the State (Cooperative Agreement), *Exhibit 2*. EPA approved the Cooperative Agreement through a January 13, 2011 Decision Document, *Exhibit 3*. In accordance with the Cooperative Agreement, the Tribe notified the State by letters dated March 1, 2011, of its intent to apply for TAS of all eligible federal environmental regulatory programs, *Exhibit 4*. Following up with the State, the Tribe sent letters dated January 12, 2015, regarding the Tribe's TAS application to EPA for CWA §§303(c) and 401 programs, *Exhibit 5*. By letter dated April 14, 2015, the State notified the Tribe of its intent to not renew the Cooperative Agreement, *Exhibit 6*.

The Cooperative Agreement remains in effect per the terms therein at the time of the submission of this TAS application to EPA. The Tribe has complied with the terms of the Cooperative Agreement and looks forward to regulation and enforcement upon TAS approval.

The Tribe provides the following responses to federal TAS eligibility requirements:

Criteria for Eligibility

1. *Federal Recognition*: Citizen Potawatomi Nation is recognized by the Secretary of Interior as a tribal entity eligible to receive services from the Bureau of Indian Affairs. *See* 79 F.R. at 4749 (January 29, 2014), *Exhibit 7*.
2. *Substantial Governmental Duties and Powers*: Citizen Potawatomi Nation has a governing body responsible for carrying out substantial governmental duties and powers set forth in the Tribe's Constitution. The Constitution, created in 1938 and amended in 1985 and 2007, describes the form and types of government functions currently performed. With the latest 2007 amendment three main goals were accomplished: (1) replaced the five-member Business Committee with a 16-member Legislature; (2) extended more input into government decisions from tribal members living outside of Oklahoma; and (3) developed a three-branch form of government (Executive, Legislative, and Judicial) with institutional checks and balances.

The governing body of the Tribe is comprised of a 16-member Legislature. Eight legislative representatives are from Oklahoma and eight others live outside of Oklahoma in their respective legislative districts. Legislators are elected to serve four-year staggered terms. This system ensures continuity, stability, and preservation of institutional knowledge. The Legislature is responsible for authorizing tribal laws and approving tribal budgets. *See* Map of Legislative Districts, 106 TAS Application.

Tribal operations are under the direction of the Executive Branch. The Executive Branch is comprised of the Chairman, Vice-Chairman, and Secretary-Treasurer. *See* CPN Organizational Chart, *Exhibit 8*. The Chairman or his designee is responsible for the general supervision of the affairs of the Citizen Potawatomi Nation Indian Council (Council) and Legislature along with day-to-day operations of the Tribe and its businesses. The Vice Chairman acts in the absence of the Chairman and undertakes duties assigned by the Chairman. The Secretary/Treasurer has specific duties over monies and Council records. He functions as the authenticating signature on legislative and Council actions and issues meeting notices.

The Judicial Branch of the Tribe consists of a Tribal Court with seven Supreme Court Justices, three District Court Judges, and several prosecutors. All judicial powers are empowered in the Judiciary. It is responsible for enforcing tribal laws, providing equal justice to all and protecting tribal sovereignty. Legal matters handled include civil, criminal, Indian Child Welfare, and juvenile proceedings.

In addition to governing authorities set forth in the Tribe's Constitution, the Citizen Potawatomi Nation Department of Environmental Protection (CPN DEP) was established to oversee public health and environmental and natural resource protection on tribal lands. *See* Ordinance No. 06-02, 106 TAS Application. CPN DEP is within Environmental Services under Construction Management in the tribal organizational structure. *See* CPN Organizational Chart, *Exhibit 8*.

3. *Tribal Authority:* EPA’s current interpretation of CWA provisions requires tribes to demonstrate their “inherent regulatory authority” over federal CWA programs for which TAS is sought. However, EPA announced it is considering a reinterpretation of “inherent regulatory authority” as a delegation by Congress¹. In the event EPA’s reinterpretation is not effective at the time of approval of this application, the following is a demonstration of the Tribe’s inherent regulatory authority.

CPN is seeking delegation of federal authority to: (1) establish water quality standards and control discharge permitting under CWA §§303(c) and 401, respectively; and (2) administer a CWA §319 Nonpoint Source Pollution Prevention program for water resources on tribal trust lands identified in *Exhibit 9*, CPN Trust Lands and Water Resources. Tribal trust lands are within the boundaries of the Tribe’s former reservation as described in the 1873 survey, *Exhibit 10*.

Citizen Potawatomi Nation has authority to regulate the use of natural resources and protect the environment within its jurisdiction pursuant to the August 25, 2014 legal authority letter of tribal attorney Gregory M. Quinlan, Esq. *See* Legal Authority Letter, *Exhibit 11*.

4. *Tribal Capability:* the Citizen Potawatomi Nation has the capability to fully and adequately administer federal CWA §§303(c) and 401 programs. Tribal WQS will be developed and submitted separately to EPA in the future. Regarding 401 certifications, CPN DEP will conduct technical reviews with recommendations to the Tribal Chairman for final authorization.

Moreover, the Citizen Potawatomi Nation has the capability to fully and adequately administer a federal CWA §319 Nonpoint Source Pollution Prevention program. CPN DEP will administer tribal nonpoint source projects funded through EPA nonpoint source grants.

The following narrative describes the Tribe’s accomplishments and capacity to administer federal environmental programs and grants.

- a. Previous and Potential Management: CPN has the capability to administer the federal environmental programs and grants. The Tribe is the largest employer in Pottawatomie County, Oklahoma, maintaining that status for the last eight years. With over 2.5 times more employees than any other employer in the area, the workforce consists of approximately 2,000 full-time and part-time staff with actual wages and benefits totaling \$64.6 million dollars. These numbers are expected to increase significantly in the near future with the expansion of several tribal enterprises including the newly-constructed Grand Hotel and Resort and soon-to-be constructed Iron Horse Industrial Park.

CPN has positively impacted native and non-native economies. The Tribe’s impact on the local community and state economies has steadily increased from almost \$400 million dollars in 2007 to over \$506 million dollars in 2011. In 2011 the Tribe donated over \$1.9

¹ April 18, 2014 EPA Notification of Consultation and Coordination on Potential Reinterpretation of Clean Water Act TAS Provisions.

million dollars to various community organizations and schools received almost \$142,000 in contributions.

CPN not only provides quality jobs through tribal enterprises, programs and services, it also provides job opportunities through the Citizen Potawatomi Community Development Corporation (CPCDC). CPCDC is a tribally-chartered non-profit corporation founded in 2003. Its primary purpose is to stimulate job creation and economic growth through capital and technical assistance for Native American businesses. Over its nine-year existence, CPCDC has made 253 loans totaling over \$21 million dollars and created/retained 894 jobs.

b. Fiscal Management:

CPN currently administers over 50 federal grants and compacts/contracts totaling \$50 million dollars. The Tribe has agreements with the Federal Highway Administration, Bureau of Indian Affairs, and Indian Health Service for a variety of programs and services including but not limited to tribal roads and bridges, healthcare and medical prescriptions, employment and training, water and sewer services, tribal police, real estate services, tribal rolls, and child day care. Grants received support tribal programs and services a few which include senior support services, Title VI elder nutrition, diabetes treatment and prevention, transit, family violence prevention, children and youth services, cultural and historic preservation, and Indian housing assistance.

The Tribe generated over \$217 million dollars in revenue from tribal enterprises in 2011. Tribal enterprises include two gaming facilities, two discount food stores, three franchise restaurants, 18-hole golf course, radio station, farm operations, FireLake Designs, mini-putt golf course, two gift shops, bowling center, league-sanctioned softball complex, and two convenience stores. CPN is also a 100-percent shareholder of First National Bank & Trust Co., the largest tribally-owned bank chain in the United States with seven locations in six cities.

Revenue is expected to increase over the next few years with the anticipated opening of several new tribal businesses. Future enterprises include a premier 250-space RV resort with outdoor amphitheater, Iron Horse Industrial Park, FireLake Golf Clubhouse, and another discount grocery store.

c. Accounting and Procurement Systems: CPN has institutional financial and procurement systems in place. These systems were established and implemented through *CPN Management System Policies and Procedures* approved by Resolution No. 05-52 on October 27, 2004, and updated in June 2008. These policies and procedures standardize financial and procurement procedures to facilitate and substantiate effective fiscal control. These systems are reviewed annually by an external auditing firm for conformity and consistency.

In recognition of financial reporting excellence, the Government Finance Officers Association of the United States and Canada (GFAO) awarded a Certificate of

Achievement for Excellence in Financial Reporting (Award) to CPN for its FY 2011 comprehensive annual financial report. This is the 24th consecutive year the Tribe has received this prestigious national award.

The Award recognizes conformance with the highest standards for preparation of state and local government financial reports. To receive the award, the tribal government unit must publish an easily readable and efficiently organized comprehensive annual financial report whose contents conform to program standards. The financial report must satisfy both generally-accepted accounting principles and applicable legal requirements.

d. Existing Environmental/Public Health Programs:

Tribal Environmental Office - CPN created the Department of Environmental Protection (CPN DEP) through Ordinance No. 06-02. See 106 TAS Application. Over the years CPN DEP has developed environmental capacity through program planning and development with funds from EPA Indian General Assistance Program (GAP) grants. Various programmatic efforts included baseline characterizations, an EPA-approved Quality Management Plan, media and project-specific EPA-approved Quality Assurance Project Plans, compliance assistance, staff training and technical assistance, and media-specific planning documents such as the *Preliminary Water Resource History, Analysis and Plan* prepared by attorneys L. V. Watkins and Aerico K. Morre'. See 106 TAS Application.

Surface Water – In 2008 the Tribe received TAS for a CWA §106 Tribal Water Pollution Control program. Since then the Tribe has been developing a characterization of baseline surface water quality data to support future tribal water planning efforts. In doing so, it has advanced from a basic to an intermediate tribal water program, each year increasing the number of monitoring sites and parameters. The Tribe also has an EPA-approved Quality Assurance Project Plan for tribal CWA §106 monitoring activities.

Rural Water District No. 3 – The Tribe purchased Rural Water District No. 3 (RWD#3) in 2007. It currently serves drinking water to approximately 870 Native American and non-native customers and plans to expand its distribution system to meet the needs of underserved and un-served rural communities. There are two regulated water treatment plants with locations in Macomb and Dale, Oklahoma. Water treatment capacity for both plants is 450,000 gallons per day and the water distribution system includes about 280 miles of water lines.

RWD#3 has made a positive impact on community neighbors. Since the 2007 purchase, water has been provided to about 300 new customers. Dale Public Schools, who was once without a reliable water source, now has access to about 8,000 to 10,000 gallons of on-demand water per day, allowing for new construction, building renovations, and an insurable fire suppression system.

Various agencies that regulate and interact with RWD#3 include Oklahoma Department of Environmental Quality (ODEQ), Oklahoma Rural Water Association (ORWA), and

Oklahoma Water Resources Board (OWRB). RWD#3 is a member of the ORWA. Recently, ORWA honored RWD#3's water superintendent as "Operator of the Year". RWD#3's territory of service is recognized by the OWRB and the regulating agencies are ODEQ and EPA Region 6.

Wastewater Treatment Systems – There are two tribally-owned and operated no-discharge wastewater treatment facilities. These facilities are operated by licensed operators. One operational system serves the Grand Casino and nearby facilities and the other serves the tribal complex area.

Tribal Comprehensive Water Plan – The Tribe is partnering with certain federal and other agencies to develop a Tribal Comprehensive Water Plan (Plan). The Plan will identify and characterize the quality and quantity of water in surface and groundwater resource areas within and near the former reservation boundaries. The Tribe will use the Plan to make informed scientifically-based decisions on water resource availability and use.

Nonpoint Source Protection – The Tribe is currently developing a CWA §319 Nonpoint Source Management program. Two requisite reports prepared by the Tribe, i.e., a Nonpoint Source Assessment Report and Management Plan have been approved by EPA. See CPN Nonpoint Source Pollution Assessment Report and Management Plan, *Exhibit 12*. Public comments were solicited through a notice of publication in the Shawnee News-Star, a local newspaper, to which none were received. See Affidavit of Publication, *Id.*

Air – The Tribe is developing an air program. It has built air program capacity through multiple EPA Clean Air Act Section 103 project grants. With grant funds, the Tribe has identified possible sources of air pollution, developed an air emissions inventory, and partnered with EPA and the Cherokee Nation to monitor ground-level ozone concentrations near the tribal complex. The Tribe also inventoried and registered potential air pollution sources in compliance with the Tribal Minor New Source Review Rule.

Environmental Response and Assistance – CPN DEP provides assistance to other departments on a variety of matters. A few examples include stormwater runoff controls from construction activities, mold and asbestos assessments and remediation, stocking tribal fish ponds, algae control for golf course waterways and geothermal ponds, open dump cleanups, and water use and reuse strategies.

The Tribe is proactive in ensuring its underground storage tanks (UST) comply with federal UST regulations. CPN DEP provides compliance assistance to convenience store staff and assesses proper operation and maintenance of tribal UST systems through monthly inspections. They also provide on-demand assistance as requested. Each year CPN DEP staff participates in UST owner/operator training. Over the past three years, the Tribe has received no findings on annual EPA UST inspections. In 2008 EPA Region 6 recognized the Tribe with the EPA UST Excellence Award "in recognition of

noteworthy contribution beyond the call of duty to the R6 Tribal Environmental Program.”

Solid Waste (Recycling) – The Tribe recently started a basic recycling program. CPN DEP works with partners from tribal facilities to recycle paper, cardboard, aluminum, plastic products, and electronic waste. Recycling efforts will continue to expand as new enterprises become operational and needs are identified.

Environmental GIS/GPS – The Tribe has an EPA-approved Quality Assurance Project Plan for environmental GIS/GPS-related activities.

Office of Environmental Health – Since 1998 the Tribe has received funds through a compact with the U.S. Department of Health and Human Services, Indian Health Service (IHS) to operate the Office of Environmental Health (OEH). The OEH Department provides safe drinking water and sanitary sewage systems to eligible Native Americans living in Pottawatomie, Lincoln, Cleveland, Oklahoma, and Logan counties. Each year the OEH Department serves approximately 150 new and existing Native American homes.

Tribal Environmental Leadership - The Tribe has been at the forefront of protecting tribal environmental resources and interests by participating in leadership roles on various tribal environmental committees and councils. It is an elected member of the EPA Region 6 Tribal Caucus and Regional Tribal Operations Committee (RTOC) serving multiple terms as RTOC Secretary and Vice Chair. It has served on various RTOC subcommittees providing insight and input on strategic planning and budget needs and priorities for tribal programs in EPA Region 6.

The Tribe was recently elected by EPA Region 6 Tribes to serve on the National Tribal Caucus (NTC) and National Tribal Operations Committee (NTOC). The NTC and NTOC meet with and advise EPA senior leadership on tribal environmental issues and matters.

The Tribe is also an active member of the Tribal Environmental Coalition of Oklahoma (TECO) and a board member of the Inter-Tribal Environmental Council (ITEC). Recently the Tribe was elected by its peers as a board member of the prestigious National Tribal Air Association’s Executive Committee. It has also served as an elected member of the National Tribal Capacity Steering Committee representing tribes in EPA Region 6.

Environmental Stewardship/Energy Conservation - Citizen Potawatomi Nation seeks to develop long-term strategies to maximize available renewable energy resources and energy efficiency options. With a grant from the U.S. Department of Energy (DOE), the Tribe completed a study identifying the most prevalent renewable energy resource which could be used as an alternative energy source to reduce energy consumption costs. As a result, the Tribe created the CPN Geothermal Department, committing a major financial investment in capital equipment and jobs.

Since then the Tribe has been successful in implementing geothermal technology into its business structure. Generating about 2,500 tons of HVAC capacity has resulted in reduced energy consumption and cost savings of up to 50%. Taking note of accomplishments in developing energy use and conservation strategies, federal agencies have asked the Tribe on several occasions to present at various tribal forums on knowledge gained and lessons learned.

Natural Resource Conservation (Eagle Aviary) – Bald and Golden Eagles are important in Potawatomi and other Native American cultures. Their feathers are used in tribal ceremonies and rituals symbolizing honor and respect. Understanding the importance of their preservation, the Tribe built an aviary for non-releasable Golden and Bald Eagles. The facility is permitted by the U.S. Department of Interior, Fish and Wildlife Service and operated by two certified eagle caretakers one of which is a tribal member. The eagle aviary currently houses 14 eagles.

Floodplain Management – The Tribe has been a member of the National Flood Insurance Program since 2000, governing through a seven-member floodplain board. Each member of the board serves a four-year staggered term. Development permits are issued under floodplain ordinances approved by the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA). The Tribe also has on staff a FEMA-accredited floodplain administrator and a certified floodplain manager to assist in floodplain management activities.

NEPA – The Tribe has the capacity to evaluate impacts of proposed actions on environmental resources under the National Environmental Policy Act of 1969, as amended (NEPA). CPN DEP has worked with several federal agencies including the U.S. Housing and Urban Development, U.S. Department of Commerce, U.S. Department of Agriculture, Federal Communications Commission, U.S. Department of Energy, and the U.S. Department of Interior, Bureau of Indian Affairs (BIA) to complete numerous NEPA reviews for various projects. The Tribe recently signed an agreement with the U.S. Department of Transportation, Federal Highway Administration (FHWA) for direct implementation of the tribal transportation program and will coordinate with FHWA environmental staff to complete NEPA assessments for future road construction projects. The Tribe also has a Tribal Historic Preservation Officer recognized by the U.S. Department of Interior, National Park Service.

All Appropriate Inquiry (AAI) – The Tribe has the capacity to conduct AAIs under the Comprehensive Environmental Response, Compensation and Liability Act. AAIs are conducted to evaluate a property's environmental condition to determine the likelihood of contamination in assessing potential liability. CPN DEP works with consultants and BIA environmental staff to complete AAIs for properties which the Tribe has requested the BIA to acquire and take into trust. To date the Tribe has completed about 35 Phase I Environmental Site Assessments.

- e. Entities Exercising Executive/Legislative/Judicial Functions – See paragraph 2 under Criteria for Eligibility.

- f. CPN DEP Staff: CPN DEP staff will be responsible for administering the federally-delegated programs. Staff includes the Environmental Director, Assistant Environmental Director, and Water Quality Specialist.

The Environmental Director (Director) is the senior manager in charge of all programs with the department and reports directly to the Tribal Chairman. The Director is informed of all department activities through updates from the Assistant Environmental Director (Assistant). Updates are conducted in a timely fashion to ensure necessary tasks and deliverables are completed by established deadlines. If delays are reported, the Director will instruct the Assistant on a course of action to remedy the delays. If revisions in the timeline for the deliverables are necessary then the Director will instruct the Assistant to revise and implement accordingly.

The Assistant reports to the Director and is responsible for planning and directing department activities to meet program deadlines and deliverables. The Assistant is responsible for assigning and directing staff duties and schedules in addition to managing consultants and contractors. Status updates will be given to the Director with revisions to project timelines and assigned work if necessary.

The Water Quality Specialist is responsible for surface water and groundwater projects and watershed management programs. Activities focus on baseline surface water quality assessments and water quality standards development. Other duties include developing Best Management Practices for watershed projects and quality assurance compliance.

- g. Acquiring Expertise – The Tribe will seek technical assistance from various local, state, and federal partners in areas of environmental expertise not yet attained. A few state agencies include but are not limited to the Oklahoma Department of Environmental Quality, Oklahoma Water Resources Board, Oklahoma Corporation Commission, and Oklahoma Conservation Commission. Federal agencies include but are not limited to the U.S. Environmental Protection Agency, U.S. Department of Interior’s, Bureau of Land Management, U.S. Corps of Engineers and U.S. Geological Survey, and U.S. Department of Agriculture. The Tribe may also retain professional services from experienced and qualified consultants.