



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF WETLANDS, OCEANS AND WATERSHEDS

January 19, 2016

Dear Intergovernmental Association Colleague:

On January 19, 2016, the U.S. Environmental Protection Agency published a proposed rule to establish a process for tribes to apply to EPA for authority to establish lists of impaired waters and establish total maximum daily loads (TMDLs) pursuant to section 303(d) of the Clean Water Act (CWA). See 81 FR 2791. I invite you and your colleagues and members to participate in a webinar on Tuesday, February 16, 2016, from 1:00 – 3:00 p.m. Eastern time to learn more about the proposed rule and to pose questions to EPA about any aspects of the proposal.

In section 518(e) of the 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).

The purpose of the webinar is for EPA to (1) provide background information about the proposal, and (2) answer questions about any aspects of the proposal.

To register for the webinar, please visit

<https://attendee.gotowebinar.com/register/3318020800138231041>.

You will receive an email confirmation after you submit your registration. A day before the webinar and again on the day of the webinar, you will receive reminder emails with information for accessing the webinar.

If you cannot participate on February 16, you will be able to access an archived copy of the presentation slides at <http://www.epa.gov/tmdl/tribal-consultation-rulemaking-provide-more-opportunities-tribes-engage-clean-water-act> within two weeks after the webinar. Another option is to participate in the public information webinar on February 18: see <http://www.epa.gov/tmdl/tribal-consultation-rulemaking-provide-more-opportunities-tribes-engage-clean-water-act> for details.

Submit any comments on the proposal by March 21, 2016 to <http://www.regulations.gov/> using Docket ID No. EPA-HQ-OW-2014-0622 as instructed in the Federal Register notice.

I am sending this letter to the following intergovernmental associations and ask for your assistance in

notifying your members about the webinar: the National Governors Association, the National Conference of State Legislatures, the Council of State Governments, the Western Governors' Association, the Southern Governors' Association, the Midwestern Governors Association, the Coalition of Northeastern Governors, the Environmental Council of the States, the Association of Clean Water Administrators, and the Western States Water Council.

I have enclosed a two-page fact sheet with more information about the proposed rule. If you have any questions, please contact me at wall.tom@epa.gov or (202) 564-4179, or Sarah Furtak at furtak.sarah@epa.gov or (202) 566-1167.

Sincerely,

/s/

Tom Wall, Director
Assessment and Watershed Protection Division

Enclosure: Fact sheet

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

Contact Sarah Furtak by email at Furtak.Sarah@epa.gov, by phone at (202) 566-1167, or write:

Sarah Furtak, Watershed Branch, (mail code 4503T), Assessment and Watershed Protection Division, Office of Water, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460.

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>.