



Tribal Relationship with the Clean Water Act Past, Present & Future

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Sacred Bond to Water

“Water is essential for our bodies’ survival and spiritual well-being. It is essential for the physical survival of all our relations. Our relations and relationships are the center of our spiritual identity, and its foundation is in water. The all-encompassing importance of water imposes on us a sacred duty to protect it.”





Environmental Awakening

1970's – burning of Cuyahoga River, Love Canal sparked national outrage.

- EPA programs: Supporting and developing capacity for state implementation of environmental protection programs.
- State environmental laws/programs don't to Tribal lands unless Congress allows it.
- No EPA programs on Tribal lands





Tribal Resurgent's of Self-Determination & Sovereignty

Tribal governments should play a key role in implementing pollution control programs affecting their reservations





EPA's 1984 Indian Policy

EPA stands ready to work with Tribal governments on a government-to-government relationship.

- Acknowledgement of Tribal inherent governmental sovereignty.
- Discharge of federal trust responsibility for EPA to consider Tribal interest before acting.
- Recognition of Tribal governments as the primary parties for setting standards, making environmental policy decisions and managing programs for their reservations.





¹ 1987 – Congress Amends CWA allowing Treatment “as a state”

Tribes can seek delegation from EPA of many of the same environmental regulatory roles that state governments play.

- Once approved, Tribes can sets standards, monitor & control environmentally harmful activities on Tribal lands.
- TAS for 303(c) water quality standards & 401 water quality certifications.
- Issuance of federal environmental permits, sometime affecting pollution activities originating outside Tribal lands.





Benefits for Receiving Federally Approved WQS

- Tribe can develop WQS more stringent than federal water quality criteria or those of adjacent states.
- Re-forces Tribe sovereign authority to make independent value judgements for their waters.
- Any federal permit issued for a facility within Tribal territory must comply with Tribal WQS.
- EPA requires permit issued by upstream states to comply with stringent WQS of downstream Tribes.
- Indirectly extends the reach of Tribal Sovereignty beyond reservation borders.





CWA Regulatory Revisions

- 2016 - “Reinterpret Rule” relieving Tribes of proving inherent jurisdiction over reservation waters.
- “Navigable Water Protection Rule” & CWA 401 Certification Rule” (environmental rollbacks).
- President Biden Administration counter actions.





Future Outlook of the CWA & Tribes

- CWA provisions offer an agreement between sovereigns, honoring treaty commitments & reserved water rights.
- Tribes themselves determine the level of environmental of protection for their waters – Now & Into the Future!
- EPA can assist Tribes in self-determination decisions.
- That is environmental self-determination and sovereignty.
- Upholds our sacred duty.
- That is how the CWA can help Tribes.





Questions?

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