



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF WATER

March 28, 2014

### **Re: Consultation on a Rulemaking to Provide More Opportunities for Tribes to Engage in the Clean Water Act Impaired Water Listing and Total Maximum Daily Load Program**

Dear Honorable Leader:

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with federally recognized Indian tribes on a proposed rulemaking to provide more opportunities to fully engage tribes in the Clean Water Act (CWA) Section 303(d) Impaired Water Listing and Total Maximum Daily Load (TMDL) Program. This action will provide such opportunities by clarifying the process for tribes to obtain Treatment in a Similar Manner as a State (TAS) authority for the Program.

Under section 303(d) of the CWA, states, territories, and authorized tribes develop lists of impaired waters. These are waters for which technology-based regulations and other required controls are not stringent enough to meet the water quality standards set by states, territories, and authorized tribes. The law requires that states, territories, and authorized tribes: 1) develop lists of impaired waters; 2) establish priority rankings for waters on the lists; and 3) develop TMDLs for these waters. A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still safely meet water quality standards.

In this rulemaking, EPA will propose a process for Indian tribes to apply to EPA for authority to establish lists of impaired waters and TMDLs pursuant to section 303(d) of the CWA. You may be interested in this rulemaking if your tribe:

- is one of over 60 tribes found eligible for or seeking eligibility for TAS for the purpose of administering water quality standards under the CWA and is interested in submitting an application for TAS for the CWA section 303(d) Impaired Water Listing and TMDL Program,
- is interested in submitting a joint application for Water Quality Standards and Impaired Water Listing and TMDL Programs,
- is interested in developing impaired water lists and TMDLs, or
- has an interest in impaired water listing and TMDLs in other jurisdictions.

This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (<http://www.epa.gov/tribal/consultation/consult-policy.htm>). The EPA invites you and your designated consultation representative(s) to participate in a “tribes only” webinar on Tuesday, April 29, 2014 from 1:00 p.m. to 3:00 p.m. Eastern. You may register for the webinar at <https://www2.gotomeeting.com/register/171746226>. EPA also extends an invitation for tribes to request government-to-government consultation during the consultation and coordination period. The EPA’s consultation and coordination process with tribes for this action is

expected to extend from April 8, 2014 until May 22, 2014, and then continue in late summer 2014 until the public comment period on this proposed rulemaking ends.

Attached is a consultation plan for this action that includes a description of the action under consultation, and the process the EPA intends to follow, including a timeline for the consultation and coordination, and information on how you can provide input on this action. This information is also available on the EPA's Tribal Portal, <http://www.epa.gov/tribal/>.

The official EPA contact person for this consultation and coordination process is Sarah Furtak, Office of Water, (202) 566-1167, [furtak.sarah@epa.gov](mailto:furtak.sarah@epa.gov). Please do not hesitate to contact her should you have any questions or if you would like to request alternate arrangements to the process outlined in the consultation plan.

Whether or not you participate in this consultation process, you will still have the opportunity to provide input on the proposed rulemaking during the public comment period. The proposed rule is expected to be published in the *Federal Register* in summer 2014. The EPA will accept public comments until 60 days after the proposed rule is published in the *Federal Register*.

We look forward to hearing from you on this important matter.

Sincerely,

Tom Wall for /s/

Benita Best-Wong  
Director  
Office of Wetlands, Oceans and Watersheds

cc: Tribal Environmental Directors  
Regional Indian Coordinators  
Section 106 Tribal Coordinators  
Matthew Richardson, Acting OW Tribal Coordinator  
Felicia Wright, OW Tribal Coordinator

Enclosure

**Consultation and Coordination Plan**  
**For the EPA's Rulemaking to Provide More Opportunities to Fully Engage Tribes in the Clean Water Act Section 303(d) Impaired Water Listing and Total Maximum Daily Load (TMDL) Program**  
**March 2014**

***Information on the Rulemaking to Provide More Opportunities to Fully Engage Tribes in Clean Water Act Section 303(d) Impaired Water Listing and TMDL Program***

This proposed rule will provide tribes more opportunities to fully engage in the Clean Water Act (CWA) Section 303(d) Impaired Water Listing and Total Maximum Daily Load (TMDL) Program. According to CWA section 518(e), EPA shall, in consultation with Indian tribes, promulgate final regulations which specify how Indian tribes shall be treated as states for purposes of this Act.

Under section 303(d) of the CWA, states, territories, and authorized tribes develop lists of impaired waters. These are waters for which technology-based regulations and other required controls are not stringent enough to meet the water quality standards set by states, territories, and authorized tribes. The law requires that states, territories, and authorized tribes: 1) develop lists of impaired waters; 2) establish priority rankings for waters on the lists; and 3) develop TMDLs for these waters. A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still safely meet water quality standards.

Other programs (e.g., CWA sections 106, 303(c), 319, 402) have Treatment in a Similar Manner as a State (TAS) regulations; however, existing regulations do not explicitly address TAS for CWA Section 303(d).

The proposed rule will provide a process for eligible tribes to assume the CWA section 303(d) and TMDL portion of their water pollution control program and more fully engage in restoring, maintaining, and protecting tribal waters. Tribes that apply and are found eligible for administering section 303(d) would be responsible for analyzing their monitoring data to assess tribal waters to develop impaired waters lists, for developing TMDLs for EPA review, and for overseeing implementation of the EPA-approved TMDL cleanup plans.

***Potential Impact to Tribes***

All tribes, especially those that are interested in more fully engaging in the CWA Section 303(d) Impaired Water Listing and TMDL Program, are invited to participate. We greatly appreciate any and all tribal views on the process EPA will propose for tribes to obtain TAS authority for the CWA Section 303(d) Impaired Water Listing and TMDL Program.

Your tribe may be affected by this rulemaking if your tribe:

- is one of over 60 tribes found eligible or seeking eligibility for TAS for the purpose of administering water quality standards under the CWA and is interested in submitting an application for TAS for the CWA section 303(d) Impaired Water Listing and TMDL Program,

- is interested in submitting a joint application for Water Quality Standards and Impaired Water Listing and Total Maximum Daily Load (TMDL) Programs,
- is interested in developing impaired water lists and TMDLs, or
- has an interest in impaired water listing and TMDLs in other jurisdictions.

EPA would be interested in input from the 48 tribes that have undergone the Water Quality Standards TAS process. EPA can draw on that experience as we work to clarify the TAS process for listing and TMDLs. Another example of valuable input from tribes includes experience that tribes have had in protecting, restoring, and maintaining water quality. EPA is also interested in understanding why a tribe may or may not be interested in seeking TAS authority for the CWA Section 303(d) Impaired Water Listing and TMDL Program at this time.

***Opportunities for Tribes to Participate***

The EPA is seeking consultation and coordination with tribes on the proposed rulemaking. To facilitate the consultation and coordination, the Agency will hold a tribes-only webinar for tribal leaders and staff. The webinar will consist of two parts. The first part will provide tribes an opportunity to ask questions and learn more about the rulemaking. The last part of the webinar will be reserved for consultation comments from tribal leaders or their consultation designees.

Tribes may submit written consultation comments to:

Sarah Furtak  
 1200 Pennsylvania Avenue, NW  
 Mail code: 4503T  
 Washington, DC 20460

***Tribal Consultation and Coordination Process and Time Frame***

The table below lays out the process and timeline for consultation and coordination on this action. Tribes may access related consultation information on the EPA Tribal Portal under Tribal Consultation Opportunities, located at <http://tcots.epa.gov/oita/TConsultation.nsf/TC?OpenView>.

Date	Event	Contact Information
April 8, 2014 – May 22, 2014	Time Frame for Tribal Consultation	EPA Contact: Sarah Furtak 1200 Pennsylvania Avenue, NW Mail code: 4503T Washington, DC 20460  Phone: (202) 566-1167 E-mail: <a href="mailto:furtak.sarah@epa.gov">furtak.sarah@epa.gov</a>

Date	Event	Contact Information
April 22, 2014	National Tribal Water Council Face-to-Face Meeting with EPA	Sarah Furtak 1200 Pennsylvania Avenue, NW Mail code: 4503T Washington, DC 20460  Phone: (202) 566-1167 E-mail: <a href="mailto:furtak.sarah@epa.gov">furtak.sarah@epa.gov</a>
April 29, 2014 from 1:00 p.m. – 3:00 p.m. Eastern	Tribal Information and Consultation Webinar	The webinar will be held using Gotowebinar. To register for the webinar, please visit:  <a href="https://www2.gotomeeting.com/register/171746226">https://www2.gotomeeting.com/register/171746226</a>  You will receive an email confirmation after your registration has been submitted.  Following registration and within one week of the webinar, you will receive an email with information for accessing the webinar on the day of the event.  An archived copy and transcript of the Webinar will be available at <a href="http://epa.gov/owow/tmdl">http://epa.gov/owow/tmdl</a> about 2 weeks after the webinar.
End Date of This Phase of Tribal Consultation: May 22, 2014	Tribes may submit written comments	Sarah Furtak 1200 Pennsylvania Avenue, NW Mail code: 4503T Washington, DC 20460
Summer 2014 (Expected): Tribal Consultation Continues	Tribal Information and Consultation Webinar During the Federal Register Notice Public Comment Process	More information to follow. Sarah Furtak 1200 Pennsylvania Avenue, NW Mail code: 4503T Washington, DC 20460