



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF WETLANDS, OCEANS AND WATERSHEDS

September 19, 2014

Dear Intergovernmental Association Colleague:

The U.S. Environmental Protection Agency is considering a rulemaking to provide more opportunities for tribes to fully engage in the Clean Water Act (CWA) Section 303(d) Impaired Water Listing and Total Maximum Daily Load (TMDL) Program. This action would provide such opportunities by establishing the process for tribes to obtain Treatment in a Similar Manner as a State (TAS) authority for the Program. The purpose of this letter is to seek your input on this action at this early stage, prior to a formal proposal.

The CWA provides for states, territories, and authorized tribes to: 1) develop lists of impaired waters; 2) establish priority rankings for waters on the lists; and 3) develop TMDLs for these waters. Impaired waters are waters for which technology-based regulations and other required controls are not stringent enough to meet CWA water quality standards. A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards with a margin of safety.

I would like to invite you to a meeting to be held on Wednesday, October 1, 2014 at 2:00-3:00 p.m. in room 1117A of the William Jefferson Clinton East Building (formerly "EPA East" Building). You may enter the building at 1201 Constitution Avenue, N.W. Please be sure to arrive at least 15 minutes in advance of the meeting time, and to bring a photo ID for entry. The purpose of this meeting is for EPA to provide background information and outline its plans for the action, solicit initial feedback from association representatives, and discuss approaches for conducting further outreach to and obtaining input from your associations' state members. If you or staff members of your association are not able to attend in person, participation is available by audio conference by dialing 1-866-299-3188, and entering code 202-566-1167# at the prompt.

This planned proposed rulemaking to establish a TAS process for Listing and TMDLs is separate from the EPA Office of Water's potential reinterpretation of the Agency's approach to tribal jurisdiction to administer CWA regulatory programs, a subject about which many state associations have recently been briefed. EPA is planning to proceed with the proposed rulemaking to establish a TAS process for listing and TMDLs irrespective of the reinterpretation.

I am enclosing a two-page description of this planned proposed action to provide more opportunities for tribes to fully engage in the CWA Section 303(d) Impaired Water Listing and TMDL Program, which we will discuss in more detail at the meeting on October 1. We are very interested to hear your views during the meeting, and points of contact will be provided to facilitate your comments and input after the meeting.

We are inviting the following intergovernmental associations to participate in this meeting: 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.

Please let us know if you will be able to participate in this meeting by contacting Andrew Hanson in the EPA's Office of Congressional and Intergovernmental Relations at hanson.andrew@epa.gov or (202) 564-3664.

If you have any questions regarding the planned proposed rulemaking, you may contact me at wall.tom@epa.gov or (202) 564-4179, or Sarah Furtak at furtak.sarah@epa.gov or (202) 566-1167.

Sincerely,



Tom Wall, Director
Assessment and Watershed Protection Division

Enclosure

Planned Proposed Rulemaking to Provide More Opportunities for Tribes to Fully Engage in the Clean Water Act Section 303(d) Impaired Water Listing and TMDL Program

Prepared by EPA Office of Wetlands, Oceans and Watersheds
September 2014

Issue

- There is tribal interest in obtaining Treatment in a Similar Manner as a State (TAS) for the Clean Water Act (CWA) Section 303(d) Impaired Water Listing and Total Maximum Daily Load (TMDL) Program.
- CWA section 518 provides that eligible tribes may seek TAS for CWA section 303; however existing regulations do not explicitly address how tribes obtain TAS for the 303(d) Program. Regulations are already in place expressly establishing a TAS process for each of the other relevant CWA programs available to Tribes (*e.g.*, Water Quality Standards (WQS), National Pollutant Discharge Elimination System (NPDES), section 404 permitting for the discharge of dredged or fill material).

Action and Purpose

- EPA is developing a proposed rulemaking to provide more opportunities for tribes to fully engage in the Impaired Water Listing and TMDL Program.
- In this rulemaking, EPA would propose a process for tribes to apply to EPA for authority to establish lists of impaired waters and TMDLs pursuant to section 303(d) of the CWA.

Background

- EPA conducted tribal consultation and coordination on the planned proposed rulemaking from April 8, 2014 to June 6, 2014.
- About 40 tribes, including tribal representatives participating on the National Tribal Water Council and the inter-tribal consortium United South and Eastern Tribes, provided comments.
- Comments were supportive of EPA's work on the proposed rulemaking.
- EPA is conducting pre-proposal consultation and coordination with intergovernmental associations and plans to further coordinate with the Association of Clean Water Administrators (ACWA) concurrently with the public comment period should we proceed with a proposed rule. EPA also plans to conduct additional tribal consultation during the public comment period should we proceed with a proposed rule.
- This planned proposed rulemaking to establish a TAS process for Listing and TMDLs is separate from the EPA Office of Water's potential reinterpretation of the Agency's approach to tribal jurisdiction to administer CWA regulatory programs, a subject about which many state associations have recently been briefed. EPA is planning to proceed with the proposed rulemaking to establish a TAS process for listing and TMDLs irrespective of the reinterpretation.

Working Time Frame and Next Steps

- April 8-June 6, 2014: Tribal consultation (Completed).
- Mid to Late 2014: EPA begins to draft preamble, rule and supporting documents; Intergovernmental association consultation.
- Late 2014: Publish proposed rule in Federal Register for 60-day public comment; Concurrent tribal consultation and coordination with ACWA.
- Late 2014 to mid-2015: Review / respond to comments; Draft preamble / any rule revisions.
- Late 2015: Publish final rule; Outreach / coordination with tribes.

For Further Information

- Further information on this planned proposed rulemaking is available at <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/policy.cfm>.
- To ask questions or provide comments, please email Sarah Furtak at furtak.sarah@epa.gov 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.