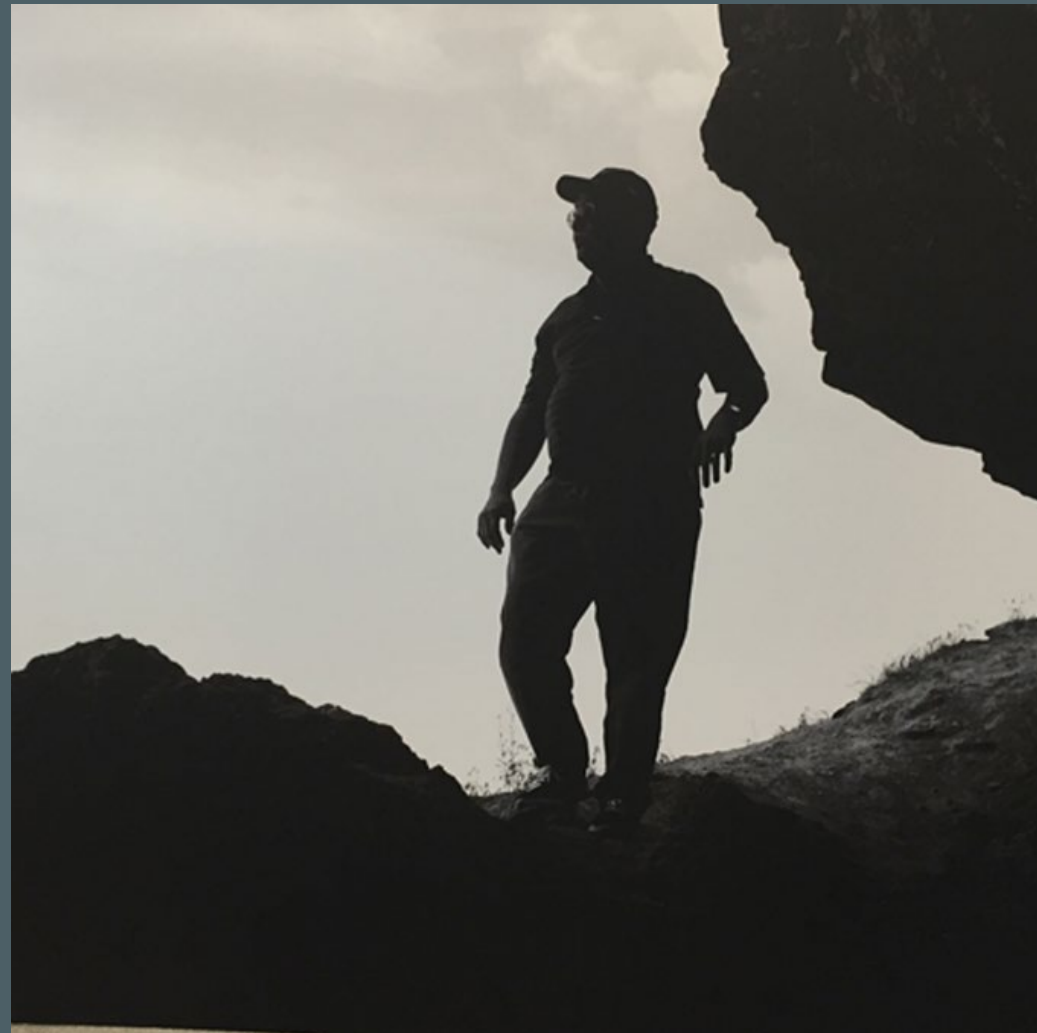


TAS CWA 303 & 401

Presentation on TAS (Treatment in a similar manner as a State) for EPA Clean Water Act Programs 303 & 401





Presentation Overview

- Key Takeaways
- What is TAS ?
- What are CWA sec. 303 and 401 ?
- TAS developments
- TAS Requirements & Application Process
- Why Pursue TAS ?
- Limitations of TAS
- Quiz

An aerial photograph of a river winding through a lush, green forest. The river is dark and turbulent, with white rapids visible in several sections. The surrounding forest is dense with tall evergreen trees, and the banks are covered in thick vegetation. The lighting suggests a bright, sunny day, with shadows cast by the trees onto the river and the forest floor.

KEY TAKEAWAYS

- Federally-recognized Tribes have every right to apply and are encouraged to apply for TAS for 303 and 401
- TAS is an expression of Tribal Sovereignty
- TAS status comes with authorities and responsibilities
- Improvements have made the application process easier, but it can still take a long time
- Tribes can now apply for TAS for 401 and 401 (a)(2) independently of 303.

WHAT IS TAS?

“TREATMENT IN A *SIMILAR MANNER* AS A STATE”

A STATUS OF DELEGATED AUTHORITY TO *ELIGIBLE*
TRIBAL NATIONS



- The Clean Water Act section 518(e) is the authority EPA uses to treat eligible federally recognized Tribes “ in a similar manner as a state”
- TAS approval grants a Tribe with **delegated authority** to assume **regulatory responsibilities** under the CWA section to which they apply.
- TAS does *not* mean that EPA is treating a Tribe like a state in any other way, or drawing a comparison, it simply allows EPA to delegate authority to Tribes explicitly as it does with states.
- TAS is also an example of cooperative Federalism

Many Tribes have their
own water quality
programs with goals,
requirements &
enforcement
independent of CWA.

TAS is a federal term, a federal
delegation of authority, and only applies
to CWA & WOTUS.





CWA PROGRAMS ELIGIBLE FOR TAS

CWA Grant Programs

FAE (Financial Assistance
Eligibility)

CWA 106: Water Pollution Control

CWA 319: Non - Point Source

CWA Regulatory Programs

Sec. 303 (c): Water Quality
Standards

Sec. 303 (d): Listings & TMDLs

Sec. 401 WQ Certifications

401 (a)(2): Neighboring Jurisdictions

Sec. 402: NPDES permits

Sec. 404: Dredge or Fill permits

Section 303(c)

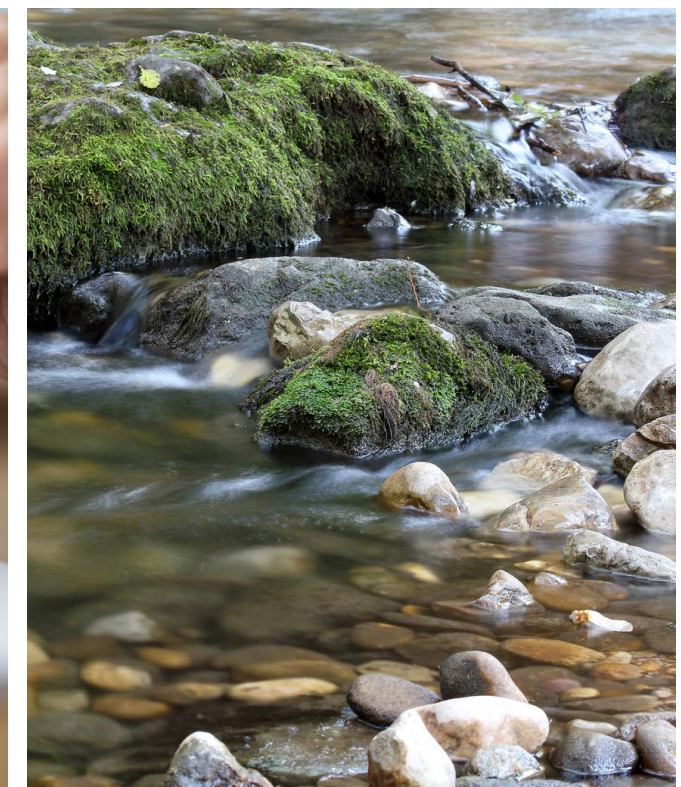
- describe **desired condition of waters**
- develop **WQS** for each water body to protect or achieve that desired condition.

Section 401

- provides an important tool (**grant or deny certifications**) to help protect water quality of WOTUS within their borders

Section 401(a)(2)

- provides opportunity to **evaluate and object to the issuance of a Federal license or permit** off - reservation



2016 Revised Interpretation of the Clean Water Act Tribal Provision



- Concludes that sec. 518 includes an express delegation of authority to tribes to administer regulatory programs over their entire reservations
- Confirms authority to regulate the conduct of nonmembers of the tribe on nonmember fee lands
- Streamlines application process

As of January 10, 2025, the proposed rule published on May 5, 2023, at [88 FR 29496](#) , is withdrawn.

WITHDRAWAL OF PROPOSED RULE: FEDERAL BASELINE WATER QUALITY STANDARDS FOR INDIAN RESERVATIONS



The EPA intends to focus the agency's resources on engaging with Tribes to support Tribes' efforts to seek authority to administer their own water quality standards (WQS) program



TAS for the section 401 program



FINAL 2023 RULE

A Tribe may obtain TAS for section 401 **without** obtaining TAS for CWA section 303(c) water quality standards. A Tribe may also obtain TAS solely for section 401(a)(2) to participate as a neighboring jurisdiction.



PRE-FINAL 2023 RULE

Tribes could obtain TAS for section 401 through the TAS process for water quality standards (section 303(c)).



Treatment in a similar manner as a state (TAS)

Upon receiving TAS for section 401, Tribes have two roles:



- 1) Responsible for acting as a **certifying authority** for projects that may result in a discharge into waters of the United States on their Indian reservations

*As certifying authorities, Tribes with TAS may **grant**, **grant with conditions**, **deny**, or **waive** certification based on whether a federally licensed or permitted project will comply with sections 301, 302, 303, 306, and 307 of the CWA and any other appropriate requirements of Tribal law.*



- 2) Accorded the status of “**neighboring jurisdiction**” for purposes of section 401(a)(2):

If EPA makes a “may affect” finding, the notified neighboring jurisdiction may object to the issuance of the Federal license or permit if they determine that a discharge from the project “will violate” any of its water quality requirements and request a public hearing from the Federal licensing or permitting agency

Roles/Responsibilities

TAS for Section 401 Certification

- ✓ Tribe eligible to determine when a federal license or permit applicant must **request a pre-filing meeting** with the tribe on their project?
- ✓ Tribe responsible for **receiving requests for certification** from federal license or permit project applicants?
- ✓ Tribe responsible for **collaborating** with the federal agency **to set the timeframe** to review requests for certification?
- ✓ Tribe responsible for **issuing certification** on federally licensed or permitted projects?
- ✓ Tribe eligible to **receive notice** when EPA determines a discharge **may affect** a neighboring Tribal jurisdiction's water quality?
- ✓ Tribe responsible for **determining whether a discharge** from another jurisdiction **will violate** tribal water quality requirements?

TAS for Section 401(a)(2) Neighboring Jurisdictions Process



TAS: 4 BASIC REQUIREMENTS

- (1) be **federally recognized**
- (2) have a **governing body carrying out substantial governmental duties and powers**
- (3) have **authority to manage and protect water resources within the borders** of an Indian Reservation
- (4) be or ***will be*** capable of carrying out the functions of the program





APPLICATION PROCESS: SIMPLIFIED OVERVIEW



- Tribe submits application
- Public comment period (30 days)
- EPA review
- Final Decision



Tribe submits Application

- EPA and Tribe have pre -application discussions, work together to complete application
- Tribe submits application
- EPA evaluates for completeness
- EPA holds calls to discuss any gaps or issues
- Tribe submits any additional information
- EPA establishes official public Docket



Comment Period

- EPA notifies AGEs (appropriate governmental entities, starting a 30 -day period
- EPA publishes Public Notice of Comment in local newspapers
- Neighboring Tribes are invited to consultation
- Tribe has opportunity to respond to comment
- EPA reviews all comments
- May request additional information from Tribe



Final Review and Decision

- EPA team reviews application, all comments, response to comments and additional information
- EPA team submits for final review within the Agency
- Regional Administrator or Water Division Director makes final decision
- If approved, EPA prepares decision document
- Regional Administrator notifies tribe in writing and transmits appropriate supporting materials



WHY DO TRIBES DECIDE TO PURSUE TAS ?

Every Tribe's motivation is
different!



- Access CWA technical support and funding (106, 319)
- Assert Tribal Sovereignty (303, 401)
- Establish WQS that protect Tribal priorities & values (303)
- Grant or deny certifications for federal permits (401)
- Influence decisions off - reservation that could impact Tribal Waters (401) (a) (2)



What Does TAS NOT do for CWA Regulatory Programs?

- It does **not** expand Tribe's existing jurisdiction
- In particular, it does **not** grant a Tribe any additional enforcement authority.
- It does **not** deal with groundwater, water rights or fishing rights
- It does **not** make an actual determination that any particular body of water is a "water of the United States"

Tribes with TAS CWA in R9

Program	R9	2024	2025
TAS CWA 106: Water Pollution Control Program(Grants)	116	1	
TAS CWA 3 19: Nonpoint Source Pollution(Grants)	107		
TAS CWA 303(c): Water Quality Standards Program (Regulatory)	31		1
Approved Water Quality Standards under CWA (Regulatory)	11	1	
TAS CWA 401: Water Quality Certification (Regulatory)	30		
TAS CWA 401 (a) (2) Only	0		

THANK YOU

Questions?

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Resources & Links

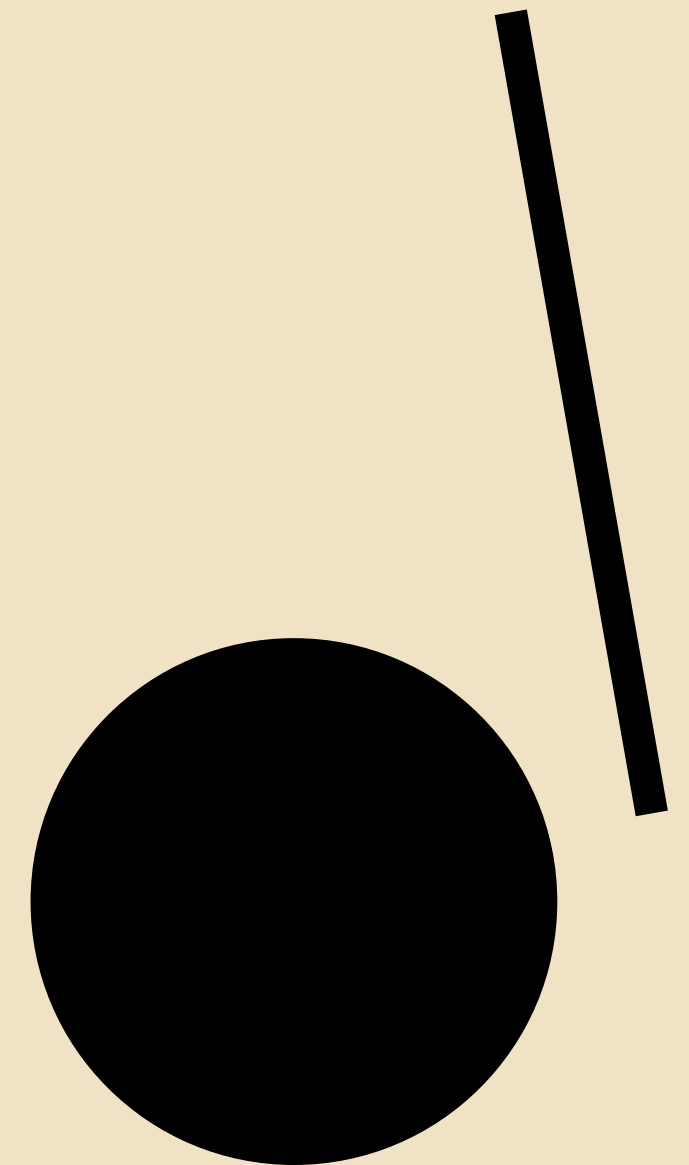
[TAS application for 303 and 401](#)

[2016 Revised Interpretation of the Clean Water Act Tribal Provision](#)

[Tribal Assumption of Federal Laws - Treatment as a State \(TAS\)](#)

[Application Template for TAS for CWA Sec. 401](#)

[Water Quality Standards Tools for Tribes](#)



QUIZ !



SCAN the QR Code to participate

[Results](#)

Treatment as a State (TAS) for CWA Questionnaire

TAS applies to all waters within a Tribe's reservation

☐ True

☐ False

The 2016 Reinterpretation of the CWA Tribal Provision confirms that Tribes have the authority to regulate non-members

☐ True

☐ False

You can use CWA 106 funds to apply for TAS for 303 and 401

☐ True

☐ False

TAS expands a Tribe's jurisdiction

☐ True

☐ False

Federally-recognized Tribes can apply for TAS for 401(a)(2) on its own

☐ True

☐ False

Treatment as a State (TAS) for CWA Questionnaire

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