

Clean Water Act (CWA) Section 303(d) Treatment in a Similar Manner as States (TAS) Rule:

Increasing Opportunities for Tribes in Water Quality Restoration and Protection

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Why did EPA issue this rule?

- CWA section 518(e) authorizes EPA to treat eligible federally recognized tribes in a similar manner as states (TAS) for administering CWA programs, and requires EPA to promulgate regulations specifying the TAS process for applicant tribes.
 - Regulations had established TAS procedures for water quality standards [303(c)] and 402 and 404 permitting, but not for 303(d).
 - Currently, 54 tribes have TAS authority for water quality standards under CWA 303(c).
- The 303(d) TAS rule addresses this gap and enables eligible tribes to obtain authority to administer the 303(d) program by establishing:
 - Procedures for tribes to apply for 303(d) TAS
 - EPA procedures for reviewing 303(d) TAS applications
- The rule is consistent with EPA's Indian Policy, which includes assisting interested Tribal governments in developing regulatory and management programs for their reservation lands.

How was the rule developed?

- In 2014, EPA initiated pre-proposal consultation with tribes, intergovernmental associations and states.
- On January 19, 2016, EPA issued a proposed rule, followed by additional outreach, webinars, and consultation.
- EPA received over 830 comments received from tribes, states, and local governments:
 - Over 800 mass mailers and individual comments from nine tribes supporting the rule
 - Over 12 comments from states, local governments, regulated entities with mixed views
- On September 26, 2016, EPA issued the final rule, including preamble with summary of response to comments.

What does the 303(d) TAS rule include?

- Key elements in rule and preamble include the following:
 - Regulatory procedures for a tribe to apply for 303(d)TAS
 - Regulatory procedures for EPA to review a TAS application
 - Summary of responsibilities tribes would have under CWA 303(d)
 - Expectations regarding water quality standards (WQS) and WQS TAS for tribes seeking 303(d) TAS
 - Tribes are not required to have TAS for WQS to apply for 303(d) TAS, but would need WQS to implement 303(d)
 - Availability of EPA support for tribes seeking 303(d) TAS
 - Special circumstances regarding ability of tribes to seek TAS for the 303(d) Program

What responsibilities would tribes with 303(d) TAS have under 303(d)?

- Authorized tribes would have the lead responsibility for 1) developing lists of impaired waters and establishing priority rankings for waters on the lists (required to be submitted every two years); and 2) establishing TMDLs for those waters.
- A tribe's first list is due 24 months from the later of 1) the date the tribe's 303(d) TAS application is approved, or 2) the date EPA-approved/promulgated WQS for the tribe's waters are effective.
- Tribes would have the lead in setting program priorities in the context of their overall water program goals, including priorities for TMDLs, alternative restoration plans, and protection approaches.

What are the criteria for a 303(d) TAS application?

- 1 • Tribe federally recognized by DOI
- 2 • Governing body carrying out governmental duties and power
- 3 • Authority to manage & protect water resources within reservation borders
- 4 • Be reasonably capable of administering the 303(d) program

Streamlined application: Where a tribe has previously qualified for TAS for a different EPA program, the tribe need only provide the required information not submitted as part of the prior TAS application.

What procedures will EPA follow in reviewing a tribe's 303(d) TAS application?

Application submitted:

- The Regional Administrator (RA) notifies a tribe of receipt of a completed application.
- The RA provides appropriate governmental entities (AGEs) 30 days to comment on the tribe's assertion of authority.

Timing and Engagement with tribe:

- EPA will process TAS applications in a timely manner.
- Each application will present its own legal and factual issues. Thus, there is no specified timeframe for completing EPA's review of a TAS application.

Qualification for 303(d) TAS:

Where the RA determines that a tribe's application satisfies the requirements in the rule, the RA will notify the tribe that it has qualified for TAS for the 303(d) program.

What were key comments on the proposed rule?

- Tribes
 - Supported the proposed rule
 - Noted importance of funding and technical assistance for tribes
 - Supported streamlined application process
 - Favored not requiring WQS as a pre-requisite to apply for and obtain 303(d) TAS

- States, local governments, and regulated entities
 - Expressed concern in some comments regarding impact on state and local authority
 - The rule does not affect scope of existing state implementation of CWA section 303(d).
 - Questioned impact of Federal or state-specific legislation or agreements that may limit a particular tribes' ability to seek TAS
 - Existing arrangements or special circumstances would be considered in the context of a specific TAS application.

What's the status of TAS applications and assistance for tribes?

- Tribal interest in CWA 303(d) TAS
 - A few tribes have indicated they are considering applying for 303(d) TAS in the next year or two.

- EPA technical assistance and training for tribes
 - Pilot on tribal ATTAINS* reporting and assessment methods
 - Clean Water Act Tribal Forum, Washington DC, October 2017
 - Regional training on CWA programs
 - Draft application template similar to that for 303(c) TAS
 - Office of Water tribal resource page under development
 - Assistance with coordination and collaboration between states and tribes

* Assessment TMDL Tracking and Implementation System

For more information

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For further information on the final CWA 303(d) TAS rule:

<https://www.epa.gov/tmdl/final-rule-treatment-indian-tribes-similar-manner-states-purposes-section-303d-clean-water-act>