



FAQs: Treatment In a Similar Manner as a State (TAS) for Clean Water Act Programs

A Fact Sheet for Tribal Wetland Programs

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GEOSPATIAL SERVICES

Q1: Can Tribes Choose to Implement Clean Water Act (CWA) Programs Instead of Federal Agencies?

A: Yes. Clean Water Act section 518(e) authorizes the U.S. Environmental Protection Agency (EPA) to treat eligible federally recognized Indian tribes “in a similar manner as a state” (TAS) for implementing and managing certain environmental programs. Indian tribes that successfully apply to receive TAS may play essentially the same role in Indian country that states do within state lands.

Q2: Generally, How Does a Tribe Receive TAS?

A. A Tribe must apply to receive TAS for a specific CWA program, and requirements for TAS vary somewhat in the details among different programs. However, all CWA programs have the same basic requirements. To apply for TAS, a Tribe must: (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; and (4) be or will be capable of carrying out the functions of the program.

Q3: Which CWA Programs Can be Implemented by a Tribe with TAS?

A. Tribes may receive TAS for the principal CWA regulatory programs and several grant programs. Tribes with TAS may implement the CWA section 303(c) program for water quality standards, the water quality restoration provisions of 303(d), the section 402 “National Pollutant Discharge Elimination System” (NPDES) permit program for pollutant discharges, the section 404 permitting program for discharges of dredged or fill material, the section 401 water quality certification program, and receive grants under sections 106 and 319. A Tribe applies for TAS for a particular program; at present there is no single process for getting TAS for all CWA programs.

Q4: Does TAS Guarantee Federal Funding to Support Tribal Programs?

A. Generally, receipt of TAS for a CWA program does not guarantee receipt of federal funds sufficient to operate the tribal program.

Q5: How Does a Tribe Receive TAS for CWA Section 303(c) Water Quality Standards?

A: Water quality standards provide the regulatory and scientific foundation for protecting water quality under the CWA. EPA can authorize eligible Tribes to set their own water quality standards that, once approved by EPA, define tribal water quality goals and serve as a basis for limits on pollutant discharges into waters on reservation lands. To receive TAS for water quality standards, a Tribe must apply to EPA and show that they meet the basic requirements for TAS as discussed in Question 2 above. Before approving an application, EPA will provide notice to adjacent states, tribes, and local stakeholders and an opportunity for comment on the Tribe’s assertion of authority. Once authorized for TAS under section 303(c), a Tribe can seek federal approval of its water quality standards. This requires that a Tribe comply with EPA’s implementing regulations at 40 CFR part 131 by developing all elements of its water quality standards, holding a public hearing on those standards, adopting final standards under tribal law, and submitting them for EPA review. Upon EPA approval, the tribe’s water quality standards will be effective for CWA purposes. Currently, 84 Tribes have received TAS to administer a water quality standards program, and, of those, 47 Tribes to date have adopted standards and submitted them to EPA for review and approval.

Q6: How does a Tribe Receive TAS for Administering the Impaired Water Quality Restoration Provisions of Section 303(d)?

A. Tribes may seek TAS authority under CWA section 303(d) to assume the primary role in identifying impaired waters on their reservations and establishing Total Maximum Daily Loads (TMDLs), which serve as plans for attaining and maintaining applicable water quality standards. EPA's regulations under section 303(d) provide that Tribes that have previously qualified for TAS under another CWA program need only submit the required information that has not been submitted under a previous application. For example, if a Tribe had previously demonstrated that it is federally recognized and has a government carrying out substantial duties and powers, then such information need not be resubmitted. Some issues, such as a demonstration of capability, might need to be addressed anew because the section 303(d) program's requirements may differ from the previously approved program. Tribes are not required to have applicable water quality standards in place on their reservations prior to applying for TAS eligibility for the 303(d) program, or to have previously obtained EPA approval for TAS under the section 303(c) Water Quality Standards Program. Because lists of impaired waters and TMDLs are based on applicable water quality standards, Tribes interested in TAS for 303(d) most likely have TAS under section 303(c) and applicable standards for reservation waters.

Q7: How Does a Tribe Receive TAS for the CWA Section 402 NPDES Permitting Program?

A: The CWA section 402 NPDES permit program addresses water pollution by regulating discharges of pollutants to waters of the United States from "point sources" such as a pipe or other discrete conveyance. CWA section 402(b) and 40 C.F.R. Part 123 establish a process under which states, tribes, and territories may apply to administer the NPDES program. To apply for TAS under the NPDES program, a Tribe must submit: (1) a letter from the tribal leader requesting review and approval; (2) a Memorandum of Agreement; (3) a program description; (4) a statement of legal authority; and (5) the underlying tribal laws and regulations. The process of authorization by EPA includes a public review, comment period, and a public hearing. If EPA approves the tribal program, the Tribe assumes permitting authority and all new permit applications would go to the tribal agency for NPDES permit issuance. A Tribe may apply for and receive authorization for one or more of the NPDES program components. If EPA disapproves the program, EPA remains the permitting authority for that Tribe. At present, no Tribe has TAS for the section 402 NPDES program.

Q8: How Does a Tribe Receive TAS for the Section 404 Permitting Program for Dredged or Fill Material?

A: CWA section 404 establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Section 404(g) allows states and Tribes an option of assuming implementation of the section 404 program including permitting for certain waters. An assumed dredged/fill program must be consistent with and no less stringent than the requirements of the CWA and associated regulations. The assumed program must include, at a minimum, (1) permitting procedures; (2) administrative and judicial review procedures; (3) regulation of discharges into all assumed waters within the Tribe's jurisdiction; (4) regulation of at least the same scope of activities as the federal section 404 program; (5) public participation; (6) meeting public notice requirements; (7) permit issuance consistent with the environmental review criteria known as the CWA section 404(b)(1) Guidelines; (8) compliance and enforcement authorities as specified in the regulations; and (9) coordination procedures with federal agencies, adjacent states and tribes. Regulations at 40 C.F.R. 233 provide a complete list of program requirements. A Tribe may develop programs under tribal law that reach beyond the jurisdiction of the CWA and regulate activities more broadly than the CWA does. When an approved tribal program has a greater scope than required by the CWA, the additional coverage is not part of the approved program and is not subject to EPA oversight or enforcement. Currently, no Tribe has TAS for section 404. Note that EPA recently proposed amended regulations regarding state and tribal assumption of the section 404 program.

Q9: How Does a Tribe Receive TAS for Section 401 Water Quality Certification?

A. Under CWA section 401, no federal license or permit that may result in a discharge from a point source to waters of the United States may be issued unless a state or authorized Tribe where the discharge would originate certifies the license or permit will be consistent with water quality goals or waives its authority. In addition, section 401 allows neighboring jurisdictions to raise issues about the project and its associated discharges under section 401(a)(2). EPA has modeled its procedures for TAS under section 401 water quality certification after requirements for obtaining TAS for water quality standards under section 303(c) and TAS for impaired waters and Total Maximum Daily Load Program under section 303(d). Therefore, a Tribe seeking TAS status for section 401 certification must demonstrate it meets four criteria. The Tribe must be federally recognized, must have a governing body that carries out “substantial governmental duties and powers” over a defined area, must have appropriate authority to regulate and manage water resources within the borders of the Tribe’s reservation, and the Tribe must be reasonably expected by the EPA Regional Administrator to be capable of administering a section 401 water quality certification program. A Tribe receiving TAS status for section 401 can act as a certifying authority for projects with discharges that would originate on tribal lands, as well act under section 401(a)(2) as a neighboring jurisdiction raising issues about projects outside tribal lands. A Tribe may wish to not act as a certifying authority but want an opportunity to raise issues as a neighboring jurisdiction, and may seek TAS status just for being a neighboring jurisdiction under section 401(a)(2). To date, 83 Tribes have TAS for section 401.

Q10: How Does a Tribe Receive TAS for CWA Section 106 Grants?

A: Section 106 grants provide financial assistance to establish and administer programs for the prevention, reduction, and elimination of water pollution. Federally recognized Tribes are eligible for CWA section 106 funding if they meet the basic requirements for TAS described in Question 2 above and submit an application to EPA. Tribes interested in developing programs to address water pollution using section 106 funds should contact their EPA regional office for information on how to apply for TAS. At present, 285 Tribes have received TAS authorization for section 106 grants.

Q11: How Does a Tribe Receive TAS for CWA Section 319 Nonpoint Source Grants?

A: Section 319 authorizes grants to address water quality problems stemming from diffuse “nonpoint” sources of pollution. Tribes may receive section 319 funding to address nonpoint sources where they meet the basic requirements for TAS described in Question 2 above and have been approved for TAS, and have (1) an approved NPS assessment report in accordance with CWA section 319(a), and (2) an approved nonpoint source management program in accordance with CWA section 319(b). Tribes interested in developing nonpoint source pollution management programs using Section 319 funds should contact their EPA regional office for information on how to apply for TAS. At present, 211 Tribes have received TAS authorization for section 319 grants.

For Additional Information

EPA webpages on TAS: [Tribal Assumption of Federal Laws - Treatment as a State \(TAS\) | US EPA](#) ; [Tribes Approved for Treatment as a State \(TAS\) | US EPA](#)

EPA has provided materials to assist Tribes in the TAS application process, including streamlined templates and other documents. These include, for example:

TAS generally:

- [Revised Interpretation of Clean Water Act Tribal Provision Final Interpretive Rule: Frequently Asked Questions](#)

TAS for water quality standards:

- EPA's website with TAS application template: [Water Quality Standards Tools for Tribes](#)
- [Overview of TAS for the Water Quality Standards program \(pdf\)](#)
- [Frequently Asked Questions about TAS for the Water Quality Standards program \(pdf\)](#)
- [Procedural steps for Water Quality Standards TAS applications \(pdf\)](#)

TAS for section 303(d) impaired waters and TMDLs:

- [Rule on TAS for 303\(d\) of the Clean Water Act](#)
- [Fact Sheet on Final Rule on TAS for Purposes of Section 303\(d\)](#)
- [Frequently Asked Questions on TAS and Section 303\(d\)](#)

TAS for section 402 NPDES permit program:

- EPA's website on states and tribes operating a NPDES program in lieu of the federal program: [NPDES State Program Authorization Information | US EPA](#)

TAS for section 404 permit program:

- EPA's website on state and tribal assumption, including recent proposed rule: [Current Agency Efforts Regarding Assumption under CWA Section 404 | US EPA](#)

TAS for section 401:

- [2023 Section 401 Water Quality Certification Rule](#), with the discussion of TAS starting on page 66651
- Summary of Tribal Consultation on the 2023 Section 401 Water Quality Certification Rule, including on pp 12-13 emerging tribal suggestions and concerns about TAS: [Summary Report of Tribal Consultation and Engagement for CWA Section 401 Rule - 2023](#)

TAS for section 106 grant program:

- [Clean Water Act Section 106 Tribal Guidance | US EPA](#)

TAS for section 319 nonpoint source program:

- EPA's website on Tribes and the section 319 program: [Tribal Nonpoint Source Program | US EPA](#)
- EPA, "Tribal Nonpoint Source Programs: Working to Solve Water Quality Problems": [Tribal Nonpoint Source Programs: Working to solve water quality problems \(EPA 840-R-19-001\)](#)