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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Final WQS Regulation Amendment Concerning Indian Tribes
FROM: Tudor T. Davies, Director *William R Diamond*
Office of Science and Technology
TO: Water Management Division Directors
Regions I - X

The purpose of this memorandum is to alert you to a new requirement that affects how we will be reviewing future requests by Indian Tribes for qualifying as a State for any Clean Water Act program administered by the Office of Water.

This new requirement was announced in the final rule amending the water quality standards regulation pertaining to Indian Tribes published in the Federal Register on December 10, 1991, but the change will be included in all forthcoming OW regulations regarding Indian Tribes. Section 131.8(c)(2) of the final rule requires that the Regional Administrator provide notice and opportunity for comment on Tribal assertions of authority to all appropriate governmental entities.

The preamble to the rule includes the following statement with respect to providing that notice and opportunity for comment:

"EPA recognizes that city and county governments which may be subject to or affected by Tribal standards may also want to comment on the Tribe's assertion of authority. Although EPA believes that the responsibility to coordinate with local governments falls primarily on the State, THE AGENCY WILL MAKE AN EFFORT TO PROVIDE NOTICE TO LOCAL GOVERNMENTS BY PLACING AN ANNOUNCEMENT IN APPROPRIATE NEWSPAPERS. Since the rule limits EPA to considering comments from governmental entities, such newspaper announcements will advise interested parties to direct comments on Tribal authority to appropriate State governments."

This procedure is to be followed for all applications received from Tribes seeking to qualify for treatment as a State for the water quality standards and 401 certification programs. This

holds true even if a Tribe has already been recognized to receive State program grants under Section 106. As mentioned above, since this is a new Office of Water procedure, it is being incorporated into other program regulations now under development affecting Indian Tribes.

CC:

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