

Developing a TAS Package for the Water Quality Standards Program

**Treatment in a manner similar to a State
Treatment as a State
TAS
Program Authorization**

**CWA 319/106 National Tribal
Conference
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Overview of Program Authorization

Under the Clean Water Act, States and Tribes can be authorized to establish water quality standards to protect waters under their jurisdiction; CWA Section 518(e) gives Tribes the same rights as States for certain programs



CWA 303 and CWA 401

- **TAS applications for WQS typically include both 303 and 401**
- **CWA 303: Water Quality Standards Program – develop/review/revise wqs – designated uses - antideg**
- **CWA 401: Certification – grant ,deny, condition, or waive federal permit/license based on compliance with your wqs**

Water Quality Standards under the Clean Water Act

Tribes may establish WQS under the CWA by following a 2 step process:

- 1) Seeking and receiving EPA approval for TAS for purposes of implementing the WQS program and;
- 2) Adopting and submitting water quality standards to EPA and receiving EPA approval of those standards.



In This Presentation, We Will Cover:

- **Tribal Role**
- **Application requirements**
- **EPA application review process**



- **Water Quality Standards –
Separate discussion**

Water Quality Protection Options:

- Non-Regulatory Approach – i.e. watershed based planning, NPS assessment.
- Tribal Law Approach – Tribal WQS, ordinances, etc.
- EPA-Approved WQS
 - Phased approach
 - All

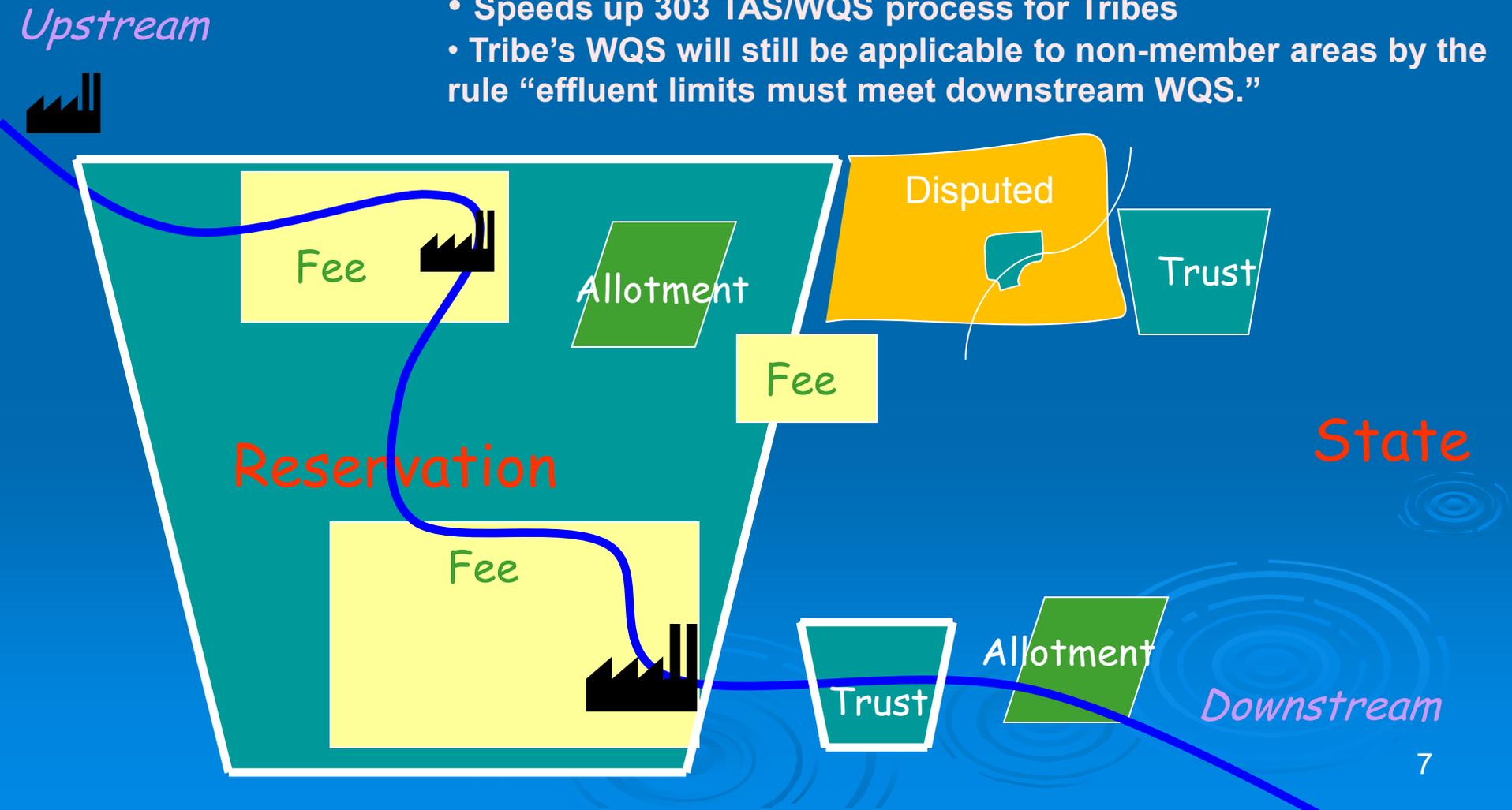


TAS option - Phased Approach

Phase I: Exclude non-member fee lands

Phase II: Add fee lands after WQS experience

- Speeds up 303 TAS/WQS process for Tribes
- Tribe's WQS will still be applicable to non-member areas by the rule "effluent limits must meet downstream WQS."



TRIBAL ROLE



Tribal Role in CWA Implementation

- **CWA provides eligible Tribes the authority to implement certain CWA programs in a manner similar as a state for reservation waters**
- **Federal approval of State WQS typically does not extend to reservation waters**
- **Just as States partner with EPA to assess condition of state waters, most Tribes also partner with EPA to assess conditions of reservation waters.**

Application Requirements



Clean Water Act Section 518(e)

- Authorizes the EPA Administrator to treat Indian Tribes as States for purposes of administering certain CWA programs including the water quality standards (Section 303) and WQS certification (Section 401) programs**
- Describes basic requirements Tribes must meet for TAS eligibility**

Requirements for WQS Program TAS Application (40 CFR §131.8)

- **Tribe federally recognized by Secretary of Department of Interior (DOI)**
- **Governing body carrying out substantial governmental duties and powers**
- **WQS program pertains to the management and protection of reservation water resources**
- **Capability to administer the WQS program**

Governing Body Carrying Out Substantial Governmental Duties And Powers

- **Description of governmental functions being carried out**
- **Description of Tribal government**
- **Sources of Tribal government's authority to carry out functions**



WQS Program Pertains to the Management and Protection of Reservation Water Resources

- Description of area where Tribe asserts authority
- Statement describing basis of Tribe's authority
- Identify surface waters where Tribe asserts authority (rivers, lakes, wetlands, etc.)



Capacity to Administer the WQS Program

Provide description of:

- Previous management experience
- Existing environmental or public health programs
- Agency/department assuming responsibility for WQS
- Staff's technical and administrative capabilities



Jurisdiction over Non-members

The Montana Test

- **As part of application, the Tribe submits:**
 - **Information on uses and importance of reservation waters**
 - **Maps that show reservation boundaries – Show fee lands**
 - **Actual and possible non-member activities**
 - **Document known/potential impacts of activities**
 - **Include all documentation of activities and effects to support your claim**

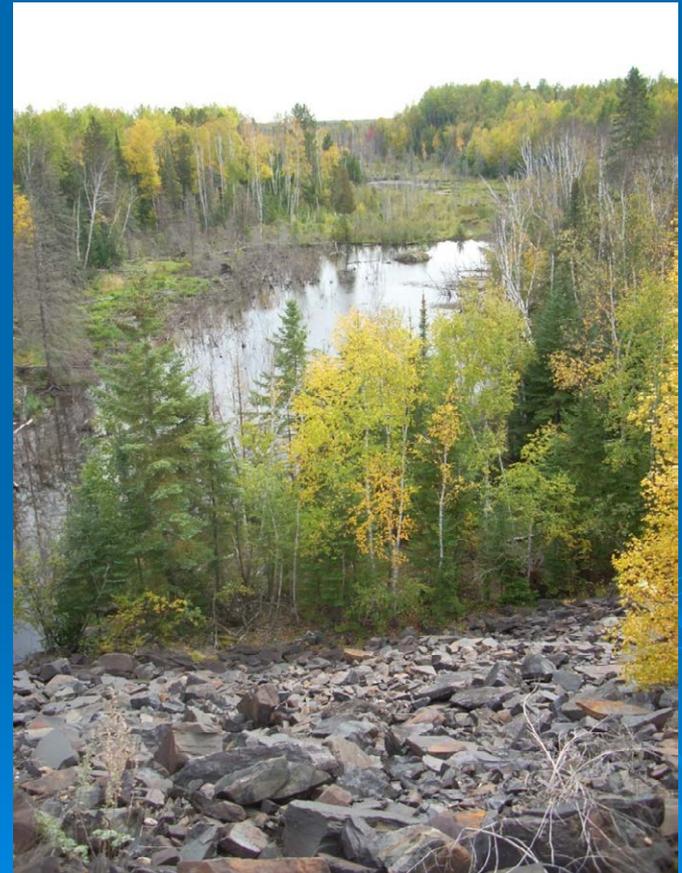
EPA Review



EPA Review of Tribal Applications for TAS for the WQS Program

Five steps:

- 1) Tribe submits application
- 2) Comment Period
- 3) EPA Review
- 4) Proposed Findings of Fact Document
- 5) Final Decision



Step 1: Tribe Submits Application



Tribe submits TAS application for
WQS program to EPA



Step 2: Comment Period on Tribe's Assertion of Authority

- Request comments regarding Tribe's assertion of authority from appropriate Governmental entities;
- Public has the opportunity to provide comments through the State;
- Opportunity for Tribe to respond to comments.

Step 3: EPA Review - Evaluates Application

Team of Regional and HQ EPA staff
review:

- The Application
- The comments received
- EPA may request further information



Step 4: Proposed Findings of Fact

If the Tribe asserts authority over nonmembers for the purposes of WQS, EPA prepares proposed findings of fact (Montana Test):

- Look at location of nonmember-fee lands
- Look at whether non-member activities affect or potentially affect Tribal waters
- Determine whether non-member activities threaten or have the potential to threaten “the political integrity, the economic security, or the health or welfare of the tribe.”

Montana Test

- Tribes generally have inherent authority over members and territories but
- Tribes generally lack inherent jurisdiction over non-members on nonmember-owned fee lands with two exceptions:
 1. Non-members enter into consensual relationships with the Tribe or
 2. Non-member conduct threatens or has some direct effect on the political integrity, economic security, or health or welfare of the Tribe

See Attachment C of the Strategy

Draft Findings of Fact Document

- EPA prepares a draft findings of fact document
- Opportunity for Tribe to review draft proposed findings of fact
- Request for comment by appropriate governmental entities on proposed finding of fact, with notice to the public
- Opportunity for Tribe to respond to comments received; EPA develops response to comments
- EPA finalizes the draft findings of fact document at the time EPA makes a final decision on the tribe's application

Step 5: Final Decision

- EPA issues a decision on the application regarding the program authorization.
- If approved, the Tribe has the authority to prepare WQS which will require a separate approval process.

Tribes Approved to Date

- **Nationally 45 tribes are approved for TAS for the water quality standards program.**
 - 37 have developed their own water quality standards that EPA has approved under the CWA
 - 14 additional tribes have submitted applications that are pending review by EPA
- **5 Tribes in EPA Region 5 have TAS and have approved WQS: Sokaogon Chippewa , Lac du Flambeau, and Bad River in WI and Fond du Lac and Grand Portage in MN.**

More information

- **CWA Section 518(e)**
- **56 Federal Register, 64876, (Dec. 12, 1991)**
- **Montana v. United States, 450 U.S. 544 (1981)**
- **How Water Quality Standards Protect Tribal Waters**
- **Fact Sheet**
- **EPA TAS Strategy**



Websites

➤ **TAS Strategy, found at**

<http://www.epa.gov/tribalportal/laws/tas.htm#wq>

• **HQ on-line**

<http://water.epa.gov/scitech/swguidance/standards/wqslibrary/tribes.cfm>

• **Past WQS Webinars:**

<http://water.epa.gov/learn/training/tribaltraining/webcasts.cfm>

• **Check websites of your Regional EPA Office**

Questions

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