

Clean Water Act Workgroup Report

Region 9 Tribal Operations Committee

April 26 – 28, 2011

The following items were reported on by Ken Norton from the National Tribal Water Council:

EPA clarifies water quality standards regulatory revisions.

EPA has held two conference calls with tribes regarding the proposed revisions to the national water quality standard regulations. General response from tribes has focused on whether the proposed revisions could open the door for members of the public to question a tribe's legal authority in administering their water quality standards (WQS) program and questioned whether the two conference calls constitute "consultation" to tribal governments.

As follow up to these questions Mr. Fred Leutner from EPA's Office of Science and Technology assured National Tribal Water Council (NTWC) that nothing in the proposed revisions would require a tribe or EPA to reconsider a tribe's eligibility for treatment in similar manner as a state (TAS) for water quality standards. The Clean Water Act requires Tribes with certified WQS to hold public hearings once every three years (triennial review) for the purpose of reviewing their WQS and as appropriate to modify and adopt standards. During this review process if a tribe receives any comments that question their TAS eligibility, the tribe can respond that the comments are not germane to the triennial review.

In regards to the consultation concern, the NTWC suggested that the two conference calls held with tribes coupled with the letters that were sent to all 564 tribal leaders about the regulatory changes cannot be considered as consultation, but as a mechanism for sharing information with Tribes. Mr. Leutner noted that EPA's consultation plan for WQS regulatory revision will require direct consultation with tribes during the pre-proposal, post-proposal, and final rulemaking stages of the WQS rule. The EPA Office of Water's Tribal Consultation Advisor would be working with other Tribal Consultation Advisors across the Agency and AIEO to ensure that the approach EPA uses is consistent with the national policy and that the Water Quality Standards regulations revision will be a pilot in this effort.

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