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United States
Environmental Protection
Agency

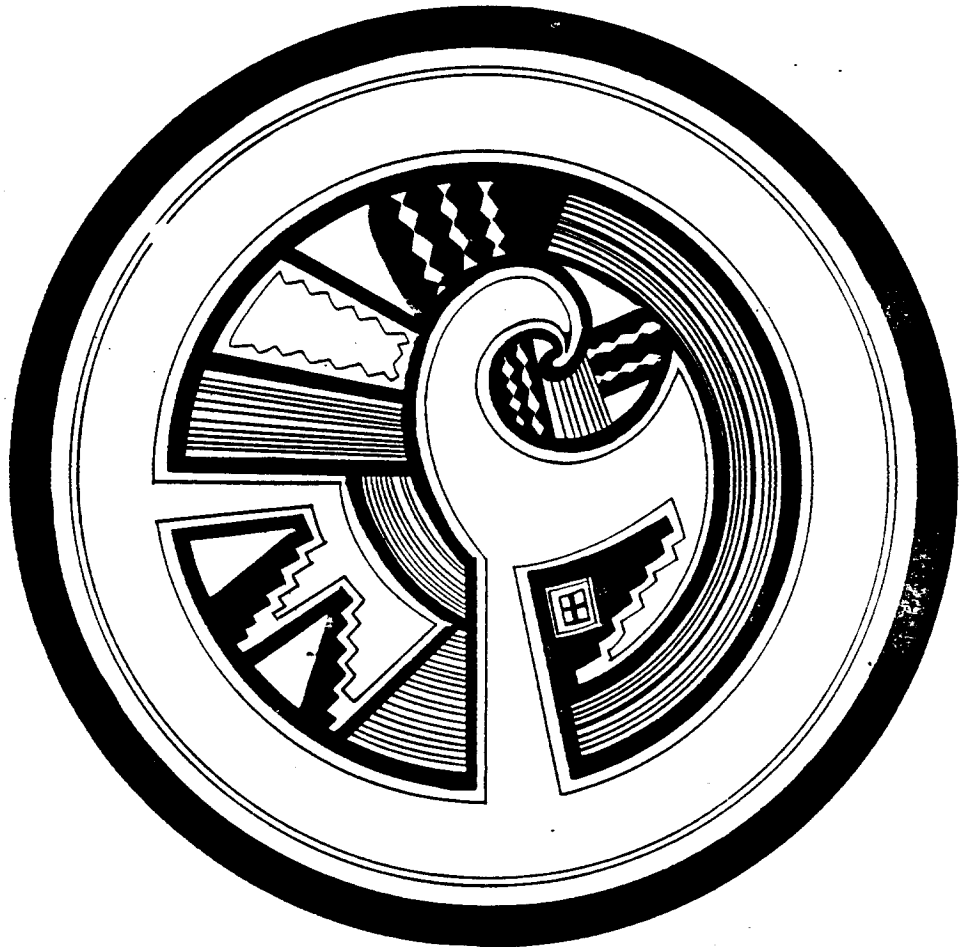
Region 8
Water Management
Division

EPA 908-K-93-001
February 1993



Water Management Solutions

A Guide for Indian Tribes



Four Mile Ruin, Arizona. Ancient Pueblo Group

JUN 22 1994

**U.S. EPA Region 8 Library
Denver, Colorado**



February 1, 1993

Dear Tribal Representative,

In developing this document, *Water Management Solutions: A Guide for Indian Tribes*, we have attempted to provide information that will assist you in protecting the water resources of your reservation. As EPA and the Indian Tribes in Region 8 work side-by-side, we will continue to develop an awareness of our importance to one another.

While EPA can provide the framework for regulatory compliance, program development, and technical assistance, we understand and affirm that tribes are stewards of their land, air, and water. Tribal governments provide a vital role of educating EPA in traditional and valuable stewardship perspectives. We appreciate your leadership in resource management.

As we have worked with many tribes in protecting and enhancing water quality, we have seen a commitment to building technical excellence within your organizations. We hope to share in that continuing effort. We look forward to working with you in the future, restoring and protecting the quality of tribal waters.

Sincerely,

A handwritten signature in black ink, appearing to read "Max H. Dodson", with a horizontal line extending to the right.

Max H. Dodson, Director
Water Management Division

Water Management Solutions

A Guide for Indian Tribes

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Water Management Solutions

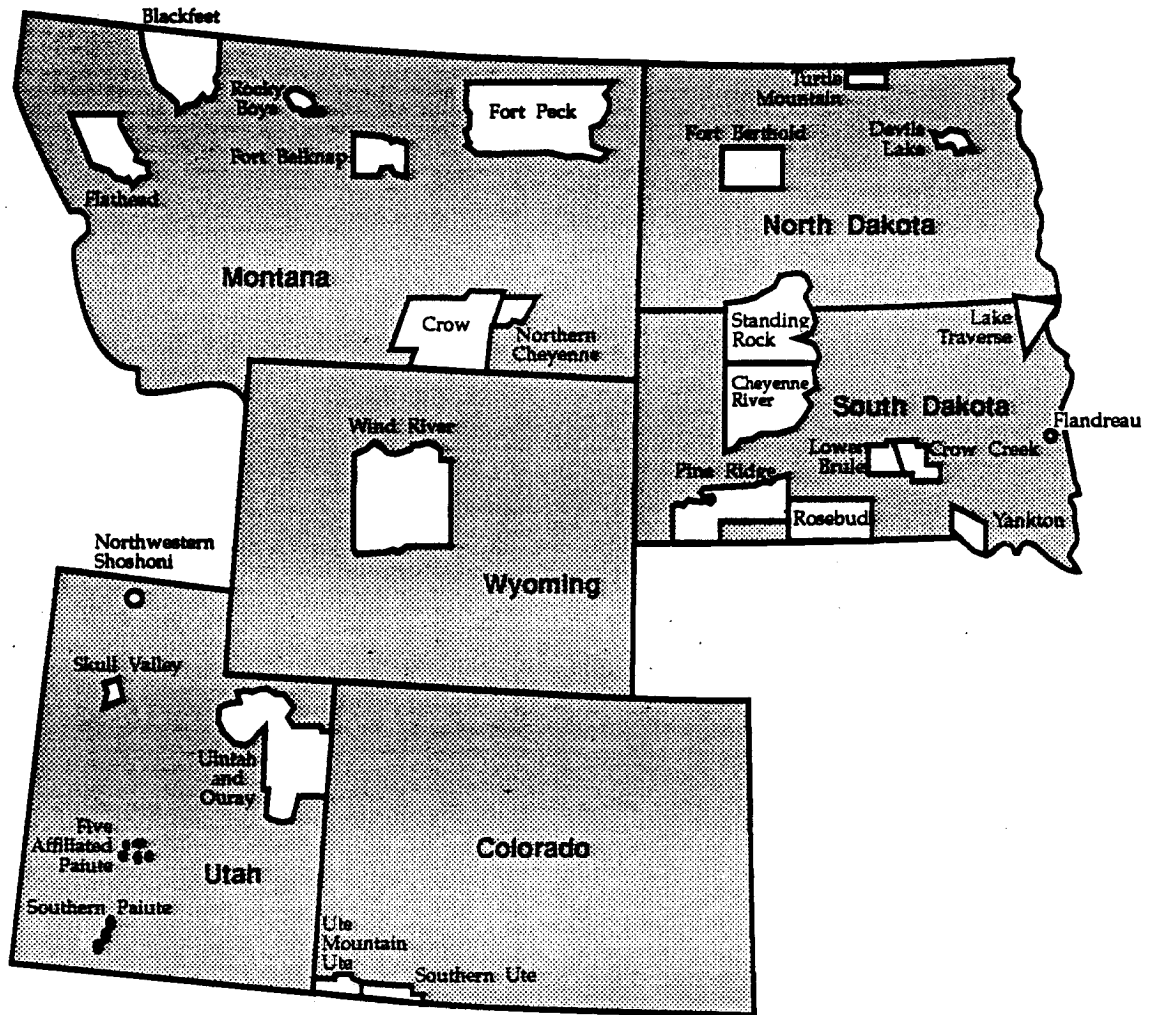
A Guide for Indian Tribes

Produced for the U.S. Environmental Protection Agency © 1993 by TRIUS Corp., Littleton, Colorado.

Author: Carol Martin
Project Officer: Chris Lehnertz
Compiled from: Water Indian Network

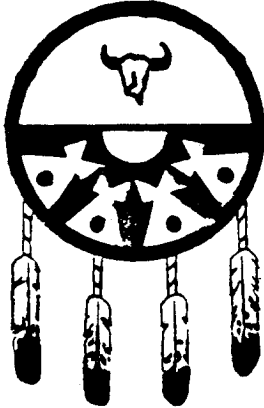
Figure 1.

Map of Indian Reservations in Region 8*



*The Goshute and Navaho Reservations are also located partially within Region 8, but are served by EPA Regions 9 and 6.

Introduction



EPA Water Management Division

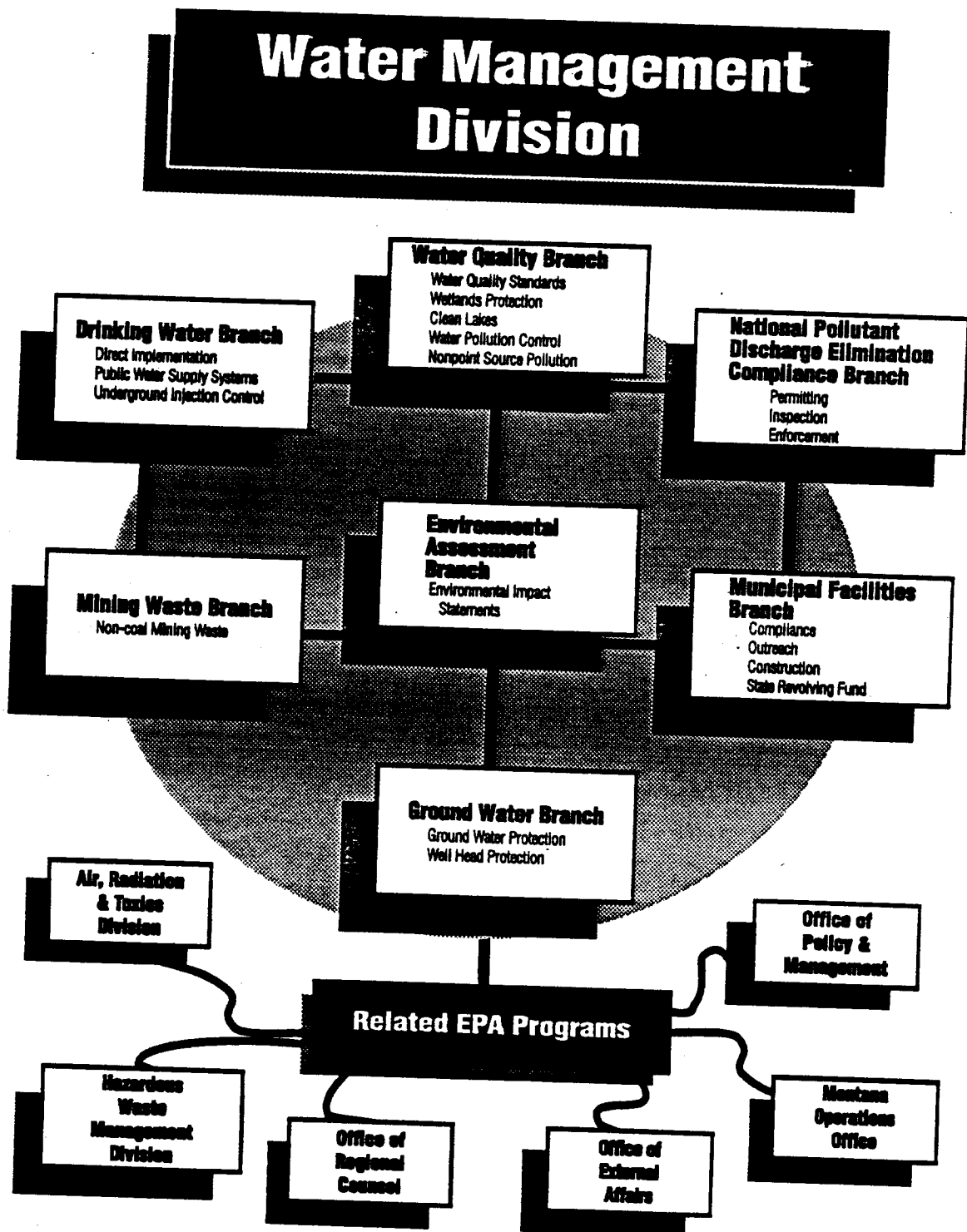
The Region 8 Water Management Division (WMD) and the EPA Montana Operations Office implement the policies and programs of the Clean Water Act, Safe Drinking Water Act and other EPA water quality protection programs. The area of concern includes Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, and Indian reservations within this geographical boundary.

EPA's role includes implementing environmental regulations, awarding grants for programs, and providing technical assistance. Recognizing that Congress only recently has passed legislation allowing Indian tribes to participate in programs under the Clean Water Act and the Safe Drinking Water Act, the Water Management Division has created a work group to provide assistance to tribes. The Water Indian Network (WIN) has developed a unified approach for addressing tribal water issues, including the coordination of funding, training, enforcement, and compliance. Representatives from all of the Water Management Division branches meet regularly to develop policies and procedures that will better serve the tribes in Region 8.

The WMD works closely with the EPA Montana Operations Office, which provides assistance and oversight to tribes in Montana. Additionally, the WMD works with other EPA programs, such as solid waste and pesticides, in areas where water quality may be affected by pollutants.

Figure 2.

Introduction



What EPA Has To Offer Tribes

EPA began implementing an Indian Policy in 1984 and welcomes cooperation among EPA, tribes and states. EPA recognizes tribes as sovereign governments and works together with tribes and states to protect the environmental quality of all lands, as required by Congress. In carrying out this congressional mandate, EPA performs the following functions: outreach, training, technical assistance, environmental surveys, pilot programs, grants, and regulation development. Funding for these programs may be provided through the following regulations:

- Clean Air Act
- Clean Water Act
- Safe Drinking Water Act
- General Assistance Act (Multi-media)
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund)
- Emergency Planning and Community Right-To-Know Act
- Resource Conservation and Recovery Act
- Federal Insecticide, Fungicide and Rodenticide Act
- Toxic Substances Control Act
- Marine Protection, Research and Sanctuaries Act
- Uranium Mill Tailing Radiation Control Act
- Indoor Radon Abatement Act
- Ocean Dumping Ban Act
- Coastal Zone Management Act
- Pollution Prevention Act

This document will focus on programs available through the WMD. It also provides limited information regarding programs in other divisions of EPA Region 8 that relate directly to water quality, such as pesticides and solid wastes.

Development of Tribal Water Management Programs

The WMD provides Indian tribes and states with technical assistance, grant opportunities, and regulatory program assistance. EPA has provided assistance and funds to states for over 20 years and is working now to assist tribes in creating water management programs and regulatory infrastructure. EPA hopes that, by providing these services, it can help tribes address requirements of federal environmental statutes.

Technical Assistance

EPA provides technical assistance to Indian tribes in all water management areas. Not only as part of the federal trust responsibility, but as a significant part of the EPA Indian Policy established in 1984, technical assistance is provided in order to support tribal governments in managing programs to protect human health and the environment on Indian reservations. Please contact EPA at any time for assistance related to water management or water pollution control. Refer to the *EPA Contacts* section, p. 63, for phone numbers.

Grant Opportunities

In order to assist tribes in developing programs that will protect water resources on reservations, EPA makes grant money available through several programs. Funds are available for the development of safe drinking water programs, wetlands protection, point and nonpoint source pollution control, design and construction of waste water treatment facilities, and other programs. Each available program is explained in the following *Program Description* section. Please contact the EPA staff listed under each section for more information.

Regulatory Program Assistance

Because tribes must address requirements of federal environmental statutes, EPA provides regulatory program assistance. For example, tribes may take an active role in the enforcement of public drinking water supply regulations, or development of water quality standards. EPA will work directly with tribes in developing the programs that enable reservations to fulfill regulatory requirements.

As a general rule, EPA will authorize a tribal or state government to manage reservation programs only where that government can demonstrate adequate jurisdiction over pollution sources throughout the reservation. Based on the principles of the administration of environmental programs on Indian reservations, EPA will view reservations as single administrative units for regulatory purposes. Where a tribe cannot demonstrate jurisdiction over one or more reservation sources, EPA may retain primary enforcement responsibility or primacy for those sources.

How To Use This Document

This document has been created for use by tribal personnel as a convenient reference to EPA water quality programs. The sections are cross-referenced and indexed. Scan the *Program Description* section to determine what EPA water quality programs are available and which programs may apply to you. EPA acronyms and terms are defined in the *Glossary* section. Each program has specific requirements and/or application guidelines. Check each program description for details. The programs illustrated in this document follow, in order, these regulations:

Clean Water Act (CWA)

Major Objective To restore and maintain the chemical, physical and biological integrity of the nation's waters, primarily through eliminating or controlling the discharge of pollutants into surface waters.

EPA Programs Available to Tribes

Section 104(b)(3) Special Projects (wetlands, nonpoint source, point source)

Section 104(g)(1) Onsite Assistance for Waste Water Treatment

Section 106 Water Pollution Control

Section 303 Water Quality Standards

Section 314 Clean Lakes

Section 319(h) Nonpoint Source Pollution Control

Section 401 Certification for Point Source Discharge Permits

Section 402 National Pollutant Discharge Elimination System

Section 404 Wetlands Protection

Section 518 Treatment as a State (TAS)

Title II Grants for Construction of Waste Water Treatment Facilities

Title VI State Water Pollution Control Revolving Funds

Other Programs Ground Water
Mining Waste
Environmental Assessment

Safe Drinking Water Act (SDWA)

Major Objective To assure the drinking water supply of the nation is safe for human consumption, by regulating both public water supply systems and ground water supplies.

EPA Programs Available to Tribes

Section 1443(a) Drinking Water Programs—Public Water Supply Supervision (PWSS) Program Development and Implementation

Section 1443(b) Underground Injection Control Program Development and Implementation

Section 1442(b)(3) Special Projects

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

Major Objective To regulate the sale and use of pesticides to ensure the least risk possible to human health and the environment.

EPA Programs Available to Tribes

Section 23(a)(1) Pesticide Enforcement Program including pesticides in ground water

Section 20 Special projects

Resource Conservation and Recovery Act (RCRA)

Major Objective To protect human health and the environment from pollution resulting from the disposal of solid and hazardous waste and the leaking of underground storage tanks.

EPA Programs Available to Tribes

Subtitle D Solid, non-hazardous waste management training.

Requirement New landfill operating requirements are to be implemented by tribes and states by October, 1993.

General Assistance Act (Multi-media)

Major Objective To assist Indian tribes with the development of environmental management programs that are tailored to individual tribal needs. The grants are intended to help tribes develop environmental programs by offering an integrated and streamlined means of receiving federal assistance.

Public Law 102-139 Program grants.

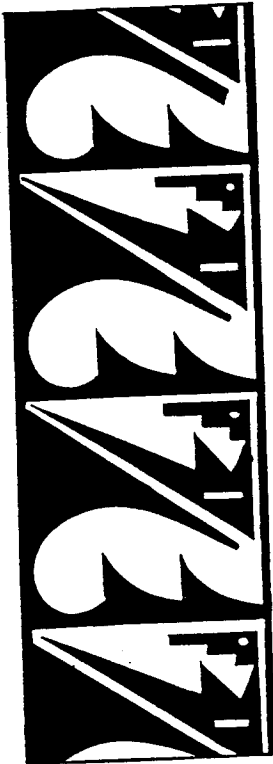
Pollution Prevention Act

Major Objective To reduce or eliminate the generation of any hazardous substance, pollutant or contaminant. The approach to pollution prevention is multimedia, to avoid transferring a pollutant from one medium to another.

Demonstration Projects To promote development of pollution prevention programs.

Table 1. Tribal Water Management Programs as of December 1992 A = active program N = nonpoint source W = wetland P = NPDES	CWA					SDWA	
	Section 106	Section 104(b)(3)	Section 314	Section 319	Section 303/401	Section 1443(a)	Section 1443(b)
Blackfeet Tribe	A		A				
Cheyenne River Sioux Tribe	A						
Chippewa Cree Tribe							
Confederated Salish & Kootenai Tribes	A	W/P			A		
Crow Tribe							
Crow Creek Sioux Tribe							
Devils Lake Sioux Tribe							
Flandreau Santee Sioux Tribe							
Fort Belknap Indian Community	A						
Fort Peck Tribes	A	N/W					A
Lower Brule Sioux Tribe							
Northern Cheyenne Tribe	A						
Northern Ute Tribe							
Oglala Sioux Tribe	A						
Paiute Bands							
Rosebud Sioux Tribe	A						
Sisseton-Wahpeton Sioux							
Skull Valley Tribe							
Southern Ute Indian Tribe	A		A				
Standing Rock Sioux Tribe	A					A	
Three Affiliated Tribes	A	N					
Turtle Mountain Tribe	A		A				
Ute Mountain Ute Tribe	A						
Wind River—Arapaho and Shoshone	A	P	A				
Yankton Sioux Tribe							

Clean Water Act



The objective of the Clean Water Act (CWA) is to restore and maintain the chemical, physical and biological integrity of the nation's waters. Among the goals of the CWA are regulation of the discharge of toxic pollutants and the treatment of waste water; protection of fish, shellfish and wildlife to provide for safe recreation in and on the water; and control nonpoint sources of pollution. In order to achieve the goals of the Act, EPA has developed programs and regulations that apply to Indian tribes and states.

The Clean Water Act is composed of numerous sections, each of which delineates requirements and opportunities for specific water quality protection programs. The Program Description portion of this document provides information on the Clean Water Act sections that apply to tribal water quality management. Some regulations pertaining to protection of water quality in Indian country are still awaiting approval. Tribes will be notified as regulations are completed.

Program
Description

Quality Assurance/Quality Control

For EPA programs that require the collection of environmentally related data (ie. monitoring), a quality assurance program must be developed. Quality assurance requirements are included because EPA is strongly committed to good science and quality assurance practices. The purpose is to assure that all environmental data collected within Region 8 is scientifically valid, is of known and suitable quality, is collected with the best cost-effective available technology, and is legally defensible.

In order to meet the criteria for quality assurance, a tribe must develop a Quality Assurance Project Plan (QAPP), which describes the tribal quality assurance program. The QAPP will address, at a minimum, 14 elements that EPA Region 8 has identified as necessary for tribal data collection programs. The QAPP must be approved by EPA before any monitoring can be performed under an EPA project or grant.

A brief description of the elements that must be addressed by a tribe follows.

Quality Assurance Project Plan

The 14 elements that must be addressed in a tribal QAPP are:

1. Title and Approval Sheet
2. Table of Contents
3. Project/Task Organization
4. Problem Definition Background
5. Project/Task Description
6. Data Quality Objectives for Measurement
7. Sampling Process Design
8. Sampling Methods Requirement
9. Sample Handling and Custody
10. Analytical Methods
11. Quality Control Requirements
12. Data Review, Validation, and Verification Requirements
13. Validation and Verification Methods
14. Reconciliation with Data Quality Objectives

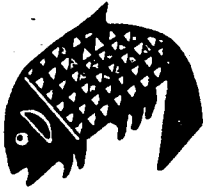
For more detailed descriptions of these elements, see *EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations* EPA QA/R-5, and *Quality Assurance for Water Quality in Indian Country* EPA, 1993.

For more information about a tribal QAPP, contact Christine Lehnertz, 303 293-1656.

Program
Description

Section 106—Water Pollution Control

Description



Section 106 of the Clean Water Act provides financial assistance for the prevention, reduction, and elimination of water pollution. The Section 106 grant can be used as a cornerstone for creating water quality programs. The list of examples below illustrates how a 106 grant can help a tribe establish a base program. The 106 program can fund a wide range of projects for the protection of water quality. For instance, development of a tribal water quality program, ground water protection, wetlands protection, development of water quality standards, or abatement of nonpoint source water pollution. Section 106 funds may not be used to construct water treatment facilities or to monitor the quality of water used solely for drinking.

Examples of Projects Funded With 106 Monies

Blackfeet Tribe evaluated previous work from an EPA funded 208 Water Quality Management Plan in order to develop and refine Best Management Practices (BMPs).

Confederated Salish and Kootenai Tribes developed and implemented a water quality management ordinance and developed water quality standards.

Fort Peck Tribes reviewed a stream classification system, compiled and evaluated existing data, developed a data processing system, and conducted Rapid Bioassessment of streams.

Southern Ute Indian Tribe evaluated pesticide contamination of surface water, conducted a detailed ammonia study, established baseline water quality data, and inventoried areas which contain selenium.

Turtle Mountain Tribe developed an environmental information system and conducted a ground water inventory.

Ute Mountain Ute Tribe developed a water quality classification and assessed management options.

Shoshone and Arapaho Tribes worked with the U.S. Fish and Wildlife Service to perform an extensive assessment of effects of siltation on the Big Wind River.

Funding Formula

Up to three percent of the national section 106 allocation of funds is set aside for Indian tribes.

Matching Funds

No level of effort established.

Program
Description

Section 106—Water Pollution Control (cont.)

Project Period April 1 - March 31

Application Deadline February previous to project period

Award Date March

- Requirements**
1. Treatment as a State designation under Section 106
 2. Ability to abate pollution on an emergency basis.¹
 3. EPA-approved workplan
 4. EPA-approved Quality Assurance Project Plan.

Funding Approval Region 8, Denver, Colorado

Technical Assistance Workshops and training to develop water quality management programs.
Assistance in developing workplans.
Annual water quality training and coordinator meeting.

EPA Regulation Clean Water Act, Section 106
Title 54 of the Code of Federal Regulations

Resource Documents *Clean Water Act Grants for Indian Tribes Section 106 Guidelines*
Indian Tribes: Water Quality Planning & Management, Federal Register, Vol. 54, No. 68, April 11, 1989.

Contacts Christine Lehnertz, Tribal Water Quality Coordinator, 303 293-1656
Lee Roberts, Montana EPA, 406 449-5614

¹ The tribe must have the authority to restrain the discharge of pollutants presenting imminent and substantial endangerment to the health or welfare of persons. A tribe must have adequate contingency plans to implement such authority (See Clean Water Act, Section 504).

Program
Description

Section 303—Water Quality Standards Program



Description

Section 303(c) of the Clean Water Act (33 U.S.C. 1313 (c)) requires Indian tribes that qualify to be treated as states and states to develop, review, and revise water quality standards for all surface waters within their jurisdictional boundaries that meet EPA's regulatory definition of "waters of the United States." EPA's implementing regulation (40 CFR part 131) requires that such water quality standards include designated water uses, in-stream criteria sufficient to protect such uses, and an antidegradation policy. EPA's role in the water quality standards program is to set priorities; provide guidance, training, and technical assistance; and review and approve or disapprove the water quality standards adopted by tribes and states.

Tribes may participate in the water quality standards program following EPA approval of a tribe's application for treatment as a state under Section 303. Unlike some other Clean Water Act programs, there are no additional pre-requisites that must be satisfied, yet neither are funds available under this program to assist tribes or states. Tribes may use Section 106 grants (see p. 11) for funding the development and implementation of standards.

The adoption of administering a water quality standards program is a long-term commitment. Because the Clean Water Act requires that water quality standards be reviewed and revised, as necessary, but at least once every three years, adoption of water quality standards is an ongoing process that must periodically incorporate the latest scientific information (e.g., on pollutant fate and effects). In many ways the water quality standards program is evolving to meet new challenges. For example, in the case of biological criteria, sediment criteria, and ecological criteria, development of standards-setting methodologies has only just begun. In this respect the water quality standards program has great potential to play a pivotal role in improving the level of protection afforded to surface waters.

Options Tribes that qualify to be treated as states for purposes of implementing water quality standards may select one of the following three options for adopting standards:

- Option 1:** negotiate a cooperative agreement with an adjacent state to apply the state standards to the reservation;
- Option 2:** adopt the standards of an adjacent state as the tribe's own, with or without modification; or
- Option 3:** independently develop and adopt tribal water quality standards.

Program Description

Section 303—Water Quality Standards Program (cont.)

Requirements Indian tribes and states face a variety of water quality standards program requirements from Clean Water Act Section 303 and EPA's implementing regulation. It is beyond the scope of this document to address all such requirements. However, a summary of some of the most significant requirements is presented below. For more detailed information, refer to the list of EPA guidance documents and other references presented below or contact the EPA staff member listed.

Designated Uses

Water quality standards must include specific designated uses for each surface waterbody segment. Examples of designated uses include public water supply, propagation of fish and wildlife, recreation, agriculture, or navigation.

Narrative Criteria

Standards must include narrative criteria that apply to all surface waters, regardless of which uses are designated. These criteria specify that at all times surface waters shall be free from substances that settle to form objectionable deposits; float as debris, scum, oil, or other matter; produce objectionable color, odor, taste, or turbidity; are acutely toxic; or which produce undesirable or nuisance aquatic life.

Numeric Criteria

Standards must include chemical-specific numeric criteria to define the level of water quality necessary to maintain and protect designated uses. EPA issues numeric criteria recommendations pursuant to Clean Water Act Section 304(a), tribes may use these recommended criteria to satisfy this program requirement.

Antidegradation Policy

Standards must include an antidegradation policy and identify the procedures that will be followed in implementing such a policy. An antidegradation policy maintains and protects existing waterbody uses, existing water quality where such quality exceeds levels necessary to support fishable/swimmable uses, and Outstanding National Resource Waters.

Technical Assistance

EPA provides ongoing technical assistance and guidance to tribes and states throughout each (triennial) standards development process. This assistance may consist of written correspondence, discussions either in person or over the telephone, and/or participation in public hearings or other meetings. Formal EPA technical guidance documents and program policies are issued periodically by EPA Headquarters and by EPA Region 8.

Section 303—Water Quality Standards Program (cont.)

- Training and Workshops** The water quality standards program holds periodic meetings and workshops on a regional and national level to disseminate information about water quality standards program activities and requirements. The program also recently created the Water Quality Standards Academy, an intensive training course for those who need to become familiar with EPA's water quality standards requirements and guidance. The Standards and Applied Sciences Division at EPA Headquarters also publishes a quarterly newsletter, *Water Quality Criteria and Standards*, that provides information about such meetings and training opportunities.
- Approval** Region 8, Denver, Colo.
- EPA Regulation** Clean Water Act,
Title 40, Part 131 of the Code of Federal Regulations
- Resource Documents** Water Quality Standards Regulation. 40 CFR Part 131. 48 *Federal Register* 51400, November 8, 1983.
- Amendments to the Water Quality Standards Regulation that pertain to Standards on Indian Reservations; Proposed Rule. 54 FR 39098, September 22, 1989.*
- Amendments to the Water Quality Standards Regulation that pertain to Standards on Indian Reservations; Final Rule. 56 FR 64876, December 12, 1991.*
- Water Quality Standards Handbook, U.S. Environmental Protection Agency, 1983.*
- Reference Guide to Water Quality Standards for Indian Tribes, U.S. Environmental Protection Agency, January 1990.*
- Introduction to Water Quality Standards, U.S. Environmental Protection Agency, September 1988.*
- EPA Region 8 Guidance: Water Quality Standards for Indian Tribes, U.S. Environmental Protection Agency, Region 8. January 1993.*
- Quality Criteria for Water (Gold Book), U.S. Environmental Protection Agency, 1986.*
- Contacts** David Moon, Water Quality Standards for Southern Ute, Ute Mountain Ute, Northern Ute, Paiute, Skull Valley, Northwest Shoshoni, Turtle Mountain, Devils Lake, Fort Berthold, and Standing Rock, 303 293-1561
- Robert Erickson, Water Quality Standards for Wind River, Blackfeet, Flathead, Rocky Boys, Ft. Belknap, Ft. Peck, Crow, Northern Cheyenne, Cheyenne River, Lower Brule, Crow Creek, Yankton, Rosebud, Pine Ridge, Sisseton, and Flandreau, 303 293-1566

Section 314—Clean Lakes Program

Description



The Clean Lakes Program offers financial assistance to tribes and states through four funding stages called cooperative agreements. These stages are: 1) Lake Water Quality Assessment, 2) Phase I Diagnostic/Feasibility Study, 3) Phase II Implementation, and 4) Phase III Post-implementation Monitoring. Because of the technical nature of the Clean Lakes Program, a tribe should have a functioning water quality program in place before applying for the 314 program.

Examples of Projects Funded With 314 Grants

Using a Lake Water Quality Assessment grant, the Wind River Environmental Quality Commission examined several lakes in the Wind River Mountain range. Lake water quality was assessed for nutrient enrichment and possible effects from acid precipitation.

Under a Lake Water Quality Assessment grant, the Blackfeet Tribe is examining several lakes located on the reservation. The results of the assessment will be compared with previous studies to determine if changes in water quality have occurred in recent years.

The Turtle Mountain Tribe is assessing water quality in four lakes on its reservation. Results from the investigation will lead to a better understanding of how these lakes function and aid in determining a strategy to rectify any water quality problems.

The Southern Ute Indian Tribe is assessing the water quality in Lake Capote through funding from a Lake Water Quality Assessment grant. Both the lake and watershed are being examined.

Matching Funds

- 50 percent match on Lake Water Quality Assessment
- 30 percent match on Phase I, Diagnostic/Feasibility Study
- 50 percent match on Phase II, Implementation
- 30 percent match on Phase III, Post-implementation Monitoring
- In-kind match is acceptable and tribal match could be lowered to 10 percent with demonstration of need.

Project Period

Two-year grant for each of the four funding phases (above)

Application Deadline

October 1

Award Date

Within 60 days of application

Program

Section 314—Clean Lakes Program (cont.)

- Requirements**
1. Treatment as a State designation under Section 314.
 2. Tribal match contribution.
 3. EPA-approved workplan.
 4. EPA-approved Quality Assurance Project Plan. (See p. 10.)
- Funding Approval** Region 8, Denver, Colorado
- Technical Assistance** Available on request.
- EPA Regulation** Clean Water Act
Title 40; Part 314 of the Code of Federal Regulations
- Resource Documents**
- Monitoring Lake and Reservoir Restoration* EPA 440/4-90-007
- The Lake and Reservoir Restoration Guidance Manual* EPA 440/4-90-006
- Clean Lakes Program* by Terrene Institute
- Clean Lakes Program, 1991 Annual Report*
- Indian Tribes: Water Quality Planning & Management*, Federal Register, Vol. 54, No. 68, April 11, 1989.
- Contact** David Rathke, Clean Lakes Coordinator, 303 293-1703

Section 319 Nonpoint Source Pollution Control

Description



Nonpoint sources of water pollution are multiple, diffuse sources of pollution. For example, rainwater washing over farmlands and carrying top soil and chemical residues into nearby streams is a major nonpoint source of water pollution. Primary nonpoint sources of pollution include runoff from farming, feedlots, mining, and forestry.

The major pollutant from nonpoint sources by volume is sediment. Runoff also may carry oil and gasoline, agricultural chemicals, nutrients, heavy metals, and toxic substances, as well as bacteria, viruses and oxygen-demanding compounds. Nonpoint sources now comprise the largest source of water pollution in the U.S., contributing 65 percent² of the contamination in impaired rivers, 76 percent in impaired lakes and 45 percent in impaired estuaries.

Grants are available under Section 319(h) for abatement projects. Abatement projects include developing and implementing Best Management Practices (BMPs) for controlling nonpoint sources of pollution. This might include developing project workplans or BMPs for grazing or timber harvest. EPA, tribes, and states work closely with the Soil Conservation Service in identifying BMPs.

Examples of Projects Funded With 319 Grants

To date, no tribal projects from Region 8 have been funded from the national tribal set-aside under Section 319.

Funding Formula

Up to one-third of one percent of the national section 319 allocation of funds is set aside for Indian tribes. Tribes may be able to negotiate with the state Nonpoint Source Program to submit local projects in the state competitive pool. Contact the state Nonpoint Source Program director.

Matching Funds

40 percent tribal match; in-kind match is acceptable. Match could be lowered to 10 percent with demonstration of need.

Project Period

Up to four years

Application Deadline

December

Award Date

April

Section 319 Nonpoint Source Pollution Control (cont.)

- Requirements**
1. Treatment as a State designation under Section 319.
 2. EPA-approved nonpoint source assessment.
 3. EPA-approved nonpoint source management plan.
 4. EPA-approved project implementation plan and workplan.
 5. Tribal match contribution.
 6. EPA-approved Quality Assurance Project Plan. (See p. 10.)
- Funding Approval** EPA Headquarters, Washington, D.C. for set-aside funds.
Region 8, Denver Colorado for state competitive pool.
- Technical Assistance** Available upon request
- EPA Regulation** Clean Water Act
Title 40, Part 319 of the Code of Federal Regulations
- Resource Documents** *Indian Tribes: Water Quality Planning & Management*, Federal Register, Vol. 54, No. 68, April 11, 1989.
Guidance on the Award and Management of Nonpoint Source Program Implementation Grants under Section 319(h) of the Clean Water Act. January, 1991.
- Contacts** Carol Russell, Nonpoint Source Coordinator, 303 293-1449
Christine Lehnertz, Tribal Water Quality Coordinator, 303 293-1656

Program Description

Funding for Special Nonpoint Source Pollution Projects



Description

Depending on environmental needs and budget availability, EPA has the means to fund special nonpoint source projects with Section 104(b)(3) grants. For instance, in March, 1992 EPA set aside \$500,000 nationally to fund tribal projects related to nonpoint source pollution control. The objective of this program was to advance tribal knowledge and ability to control nonpoint pollution by providing funds for the development of management plans and assessments.

Examples of Projects Funded With 104(b)(3) Grants

The Fort Peck Tribes are completing treatment as a State documentation and are developing an assessment and a management plan with assistance from the Soil Conservation Service. The Tribes are also cooperating in a demonstration abatement project for cattle grazing BMPs.

The Three Affiliated Tribes are developing an assessment and a management plan, as well as planning for aquifer protection.

Funding Formula

Funds may be available via nationwide tribal competition.

Matching Funds

Percentage of match varies based on demonstration of need.

Project Period

Usually one year

Application Deadline

Variable

Award Date

Variable

Contacts

Carol Russell, Nonpoint Source Coordinator, 303 293-1449

Christine Lehnertz, Tribal Water Quality, 303 293-1656

Program Description

Section 401—Certification



Description

Section 401 of the Clean Water Act provides that tribes or states may grant or deny "certification" for federally permitted or licensed activities that may result in a discharge to the waters of the United States. The decision to grant or deny certification is based on whether the proposed activity will comply with the requirements of certain sections of the Clean Water Act enumerated in Section 401 (a)(1). These sections include those requiring water quality standards and permits for point source discharges. If a certification is denied by an approved tribe, the federal permitting or licensing agency is prohibited from issuing a permit or license. Certifications are subject to objection from a downstream jurisdiction where the downstream jurisdiction believes that the proposed activity would violate its water quality requirements. Certifications are normally issued by the jurisdiction in which the discharge originates, but may be issued by EPA.

Treatment As a State

The revisions to the water quality standards regulation recently published by EPA provide Indian tribes with an opportunity to be treated as states for purposes of Clean Water Act Section 401. Specifically, Section 131.4(c) of the water quality standards regulation now provides that:

Where EPA determines that a tribe qualifies for treatment as a state for purposes of water quality standards, the tribe likewise qualifies for treatment as a state for purposes of certifications conducted under Clean Water Act Section 401.

For purposes of water quality standards, tribal authority to issue Clean Water Act Section 401 certifications will be granted/allowed concurrent with EPA approval of the treatment as a state (TAS) application. Because of this, Indian tribes are encouraged to become fully acquainted with the water quality certification process prior to submitting TAS applications.

Contact Thomas Johnson, Permits, 303 293-1260

Section 402—National Pollutant Discharge Elimination System

Description



Point sources of pollution are discharges of waste water into the waters of the United States through a discrete conveyance, such as a pipe, or a system of conveyances. Under the Clean Water Act, point source discharges are permitted by EPA or a state under the National Pollutant Discharge Elimination System (NPDES). The regulation to authorize tribes to issue permits is pending, and should be approved in 1993. NPDES permits must be renewed at least once every five years. An NPDES permit contains effluent limitations and monitoring and reporting requirements. Effluent limitations are restrictions on the amount of specific pollutants that a facility can discharge into a stream, river, or harbor. Monitoring results are regularly reported to EPA or authorities with a delegated program.

EPA has developed uniform effluent limitations for industrial categories of point sources such as steel mills, textile mills and pesticide manufacturers. Guidance materials for about 28 industrial categories based on the Best Available Technology Economically Achievable (BATEA) and Best Conventional Technology (BCT) guidelines for pollution control are available from EPA Enforcement Section (see below). (Sewage treatment plants operate under technology-based effluent limitations.) Other effluent limits, referred to as water quality-based limits, are derived from stream standards set to protect the cases where effluent limits will be more stringent than technology-based limits. Guidance documents on water quality-based limits are available upon request.

The Region 8 office hopes to increase education and self-monitoring of discharge systems on tribal lands through a more informed method of reporting.

Although Section 402 does not provide funding, Section 106 grants (see p. 11) can be used to monitor, issue permits, and take enforcement actions regarding waste water discharges into waters. Additional grants are detailed under NPDES Special Projects on p. 24.

Technical Assistance Call for information. On-site inspection may be available upon request.

EPA Regulation Clean Water Act
Title 40, Part 122-125 of the Code of Federal Regulations
See also the Clean Water Act, Section 403 Pretreatment and 501/503 Sludge Management.

Section 402—NPDES (cont.)

Resource Documents *A Primer on the Office of Water Enforcement and Permits and Its Programs*

The Permit Writer's Guide to Water Quality-Based Permitting for Toxic Pollutants

Technical Support Document for Water Quality-Based Toxics Control

NPDES Self-Monitoring System, User Guide

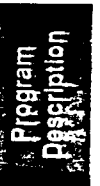
NPDES Compliance Inspection Manual

Contacts Janet LaCombe, 303 293-1593 (overall program)

Donna Inman, 303 293-1836 (inspections)

Linda Jacobson, 303 293-1263 (enforcement)

Thomas Johnson, 303 293-1260 (permit writing)



Funding for Special NPDES Projects

Section 104(b)(3)

Description



Depending on environmental needs and budget availability, EPA can fund NPDES special projects with Section 104(b)(3) grants. In March 1992 EPA set aside \$1 million to fund tribal projects related to point source water pollution control. The objective of this program was to advance tribal knowledge and ability to deal with point source pollution. These projects may include point source pollution or address other related water management concerns.

Following are examples of projects that are eligible for this type of set-aside grant funding:

1. Training on how to establish water quality standards that would be the basis for discharge permits under the National Pollutant Discharge Elimination System (NPDES) program.
2. Technical training on how to set discharge permit conditions, how to perform compliance inspections (including sample collection and analysis), and how to take enforcement action.
3. Identification of stream segments and chemical parameters to put in place after water quality standards are developed, but before a tribal NPDES program is implemented.

Examples of Projects Funded With 104(b)(3) Grants

The Wind River Environmental Quality Commission is identifying point source discharges on the Wind River Reservation.

The Confederated Salish and Kootenai Tribes are enumerating point sources on the Flathead Reservation and incorporating source sites into a geographic information systems database.

Matching Funds Match not required

Project Period Usually one or two years

Application Deadline Provided in notification letter to the tribal government or as printed in the Federal Register.

Award Date Provided in notification letter or as published in Federal Register.

Requirements Projects must relate to point source pollution control and contribute to tribal capacity building.

Program Description

Funding for Special NPDES Projects (cont.)

Funding Approval EPA Headquarters, Washington, D.C.

Technical Assistance Call 303 293-1593 for training schedule.

EPA Regulation Clean Water Act, Section 104(b)(3)

Contact Janet LaCombe, 303 293-1593



Description



The term "wetland" includes swamps, marshes, bogs and similar areas. Wetlands are a particularly important and sensitive segment of our waters, and therefore merit special attention. They provide critical habitat for many important species of fish and wildlife. Peak flood waters are absorbed by wetlands. Water quality is improved as a result of a number of natural processes that remove pollutants from water flowing through wetlands.

EPA and the U.S. Army Corps of Engineers jointly administer a permit program regulating the discharge of dredged or fill material into waters of the United States, including wetlands. As part of this program, EPA's principal responsibility is to develop the substantive environmental criteria by which permit applications are evaluated. EPA also reviews the permit applications and can veto permits that would result in significant environmental damage. Basically, Section 404 is a permit and enforcement program charged to protect and enhance wetlands. EPA also can delegate permitting authority to states. The regulation to authorize tribes to issue permits is pending and should be approved in 1993.

As joint administrators of the program, the Corps and EPA share responsibility for enforcement. A Section 404 enforcement case frequently begins when EPA receives information from a citizen or local official regarding a potential violator. Violations also are discovered by tribes, states, or others while in the field on routine business. Anyone in violation of Section 404, either by conducting an unauthorized activity or by violating permit conditions, is subject to civil or criminal action or both.

Although Section 404 doesn't provide funding to tribes or states, Section 106 grants (p. 11) could be used to assist a tribe in developing a wetland protection program. Additional grants are detailed under Wetlands Special Projects, on p. 27.

Examples of Violations

Altering a stream channel by artificial means.

Filling or otherwise destroying areas classified as wetlands, and removing or destroying a wetland through construction or development.

Technical Assistance

Because the Section 404 program is complex, and application of regulations and policies to specific cases is often fact-specific, technical assistance is available from the Region 8 office.

EPA Regulation

Clean Water Act, Section 404; Title 40, Part 404 of the CFR

Contact

John Peters, 303 293-1579

Program

Funding for Special Wetlands Projects

Section 104(b)(3)

Description



Depending on environmental needs and budget availability, EPA can fund special wetland projects with Section 104(b)(3) grants. In 1992, EPA funded development by tribes and states of Comprehensive Wetland Conservation Plans, watershed demonstration projects, a study for 404 program assumption, development of water quality standards for wetlands, and wetland inventories.

A national priority of EPA's is to help tribes and states develop Comprehensive Wetland Conservation Plans. The goal of this initiative is to improve the effectiveness and efficiency of wetland protection programs.

Watershed Protection Approach Demonstration projects for wetlands are also an EPA priority. These focus on wetlands but also take into account the surrounding environment. They consider such factors as habitat protection, recreation, flood loss reduction, and water conservation. Other projects that could be funded include developing water quality standards for wetlands, monitoring, and multi-objective river corridor management. Development of water quality standards for wetlands allows for designation of wetland uses and development of narrative and/or numeric criteria. (See Water Quality Standards, p. 13.)

Examples of Projects Funded With 104(b)(3) Grants

The Confederated Salish and Kootenai tribes are undertaking a wetland inventory on the Flathead Reservation using geographic information systems technology.

Fort Peck Tribes are conducting a wetland inventory.

Funding Formula

Regional funds are set aside based on a percentage of the national allocation.

Matching Funds

Percentage of match varies based on demonstration of need.

Project Period

One to two years

Application Deadline

December 15

Award Date

Spring following application

Wetland
Program
Description

Funding for Special Wetlands Projects (cont.)

Funding Approval Region 8, Denver, Colorado

EPA Regulation Clean Water Act, Section 104(b)(3)

Resource Documents *Guidebook for Developing and Implementing State Wetland Conservation Plan*, the World Wildlife Fund/Conservation Foundation. Island Press, 800 999-1780.

Wetlands and 401 Certification: Guidelines for States and Eligible Indian Tribes, EPA. April 1989.

Contact John Peters, 303 293-1579

Lee Roberts, Montana EPA, 404 449-5614

Program
Description

Municipal Facilities—Compliance (cont.)

**Environmental
Training Centers
(cont.)**

Utah Paul Krauth
 Dept. of Environmental Quality
 Division of Water Quality
 801 538-6146

Wyoming William Mixer
 Casper College
 307 268-2670

Contact Pauline Afshar, Small Community Coordinator, 303 294-1169

Program
Description

Municipal Facilities—Outreach

Description EPA helps small communities build and maintain self-sufficient waste water facilities that meet clean water standards. The Small Community Outreach and Education (SCORE) program is EPA's waste water information and technical assistance program for small communities. The SCORE program can provide small communities with workshops, publications, videos, outreach demonstration products, information networks, and technical assistance. The SCORE program may include the development of training materials for tribal officials, tribal operator training, and support for tribal communication activities designed to promote community participation in pollution prevention, and conservation of water and energy.



Examples of Applicable Projects Rosebud Sioux Tribe, through a SCORE Incentive Grant, developed a training field manual on Onsite Sewage Disposal Systems (OSDS).

SCORE Funding Formula National set-aside

SCORE Matching Funds 50 percent match is required, in-kind match is acceptable.

Project Period One year

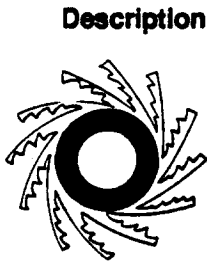
Application Deadline February 15

Award Date May 15

Contacts Pauline Afshar, SCORE Coordinator, 303 294-1169
Elwood Bell, OSDS Training Workshops, 303 294-1177

Program
Description

Municipal Facilities—Construction



Description Through the Clean Water Act Title II Construction Grant Program, EPA makes funds available to tribes and states for the planning, design, and construction of waste water treatment facilities. Funding has dwindled, however, and there is speculation that these funds may be reappropriated under a different structure. Until that time, when planning a new system, tribes should contact the state first and then EPA for funding. Planning grants may be available through states or other agencies.

State Funded Programs Construction Grant Program funds have been used by tribes for design and construction of waste water treatment facilities.

Funding Formula At times, there are national set-asides. Tribes compete for these funds. There is also a national priority list based on need, rating waste water projects.

Matching Funds Depending on the funds available, grants can be up to 75 percent with a 25 percent match.

Technical Assistance EPA staff review facility plans, coordinate construction plans with other agencies (i.e. Army Corp of Engineers, Indian Health Service), conduct inspections, and make recommendations on operations.

Requirements In order for a tribe to receive assistance, it must be able to enter into a contract with a state. The state must be able to enforce the contract through the state legal system. Some tribal corporations may be eligible.

Funding Approval Region 8, Denver, Colorado

EPA Regulation Clean Water Act, Title II
Title 35, Part 2000 of the Code of Federal Regulations,

Resource Documents Copies of model sewer use ordinances, generic facility plans, grant application packages, design manuals and handbooks are available for tribal use.

Contact Terry Griffith, Municipal Facilities Indian Coordinator, 303 294-1172

Municipal Facilities—State Revolving Funds (SRF)

Description The purpose of the State Revolving Fund (SRF) is to help finance construction of waste water treatment facilities or initiate nonpoint source pollution control programs, through the Clean Water Act Title VI SRF program.

Examples of SRF EPA has funded construction of waste water treatment facilities, interceptors, collection systems, sludge disposal facilities, and storm sewers to municipalities, sanitary districts, counties and other legal entities of local governments. Funds also have been used to implement nonpoint source pollution control management programs and construct projects such as sediment control structures or animal waste systems.

Funding Loans can be made available to tribes through states if certain requirements are met.

Requirements In order for a tribe to receive a SRF loan, it must be able to enter into a contract with a state. The state must be able to enforce the contract through the state legal system. Some tribal corporations may be eligible.

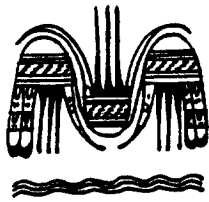
EPA Regulation Clean Water Act, Title VI

Contact Jack Riechky, SRF coordinator, 303 293-1551.

Program
Description

Mining Waste

Description



EPA's Region 8 Mining Waste Branch has developed an issue-oriented program to deal with non-coal mining wastes. This program looks at specific mine sites and examines how they affect the total environment including aquatic organisms and wildlife, land, vegetation, water and air. EPA staff members analyze how a mine site applies to tribal and state EPA programs. Initially, the issue is identified and then the applicable EPA program is applied. For example, if a mine impacts a wetland, a wetlands grant may help fund initial prevention or mitigation steps.

Non-coal mining sites include gold, silver, lead, zinc, copper, tin, mercury, etc. mines. When conducting an environmental analysis of tribal lands, the evaluation should consider the impact, if any, of non-coal mining sites. The Mining Waste Branch can technically assist tribal programs. Although funding is not directly available, Section 106 grants (see p. 11) can be used to assess the impact of mining operations on water quality.

Workshops and Training

Information and technical exchange on topics such as cyanide, metals, and acid generation and control.

Technical Assistance

Mining waste program development.

EPA Regulations

Clean Water Act
 Resource Conservation and Recovery Act
 National Environmental Policy Act
 CERCLA
 Toxic Substances Control Act

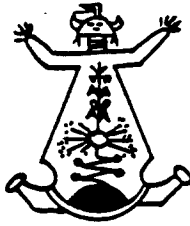
Contact

Rob Walline, Mine Waste Branch, 303 294-7093

Program Description

Ground Water

Description The Ground Water Branch supports both the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). It offers technical and program assistance to tribes to aid in the development and implementation of ground water protection programs.



The Ground Water Branch also administers the Well Head Protection demonstration grant program. Abatement, compliance, and control (AC&C) discretionary funds are available on an annual basis. These funds can be used for specific ground water protection projects.

Example Oglala Sioux Tribe received a Well Head Protection Demonstration grant.

Funding Formula Competitive basis nationally with tribes as well as states.

Matching Funds 5 percent (includes in-kind service) for Well Head Protection Demonstration grant.

No match for AC&C funds

Project Period Two years for Well Head Protection demonstration grant

Variable for AC&C projects

Application Deadline Variable

Funding Approval EPA Region 8, Denver, Colorado

Technical Assistance and Workshops Ground water protection and management, basic hydrology, etc.

4-5 day ground water science and well head protection workshop to be held in Montana in 1993.

EPA Regulations Clean Water Act
Safe Water Drinking Act

Resource Documents Numerous well head protection and technical ground water science documents are available for tribal use.

Contact Mike Wireman, 303 294-1163

Safe Drinking Water Act

Drinking Water—Public Water System Supervision

Description



The Safe Drinking Water Act was passed to ensure that the drinking water supplied by a tribe or state is safe. EPA helps accomplish this goal by setting national drinking water standards, which must be met by all water supplied to the public. The Act was amended most recently in 1986. The amendments require development of additional drinking water standards.

The federal drinking water program was designed to be delegated, which means that approved government agencies (usually tribes or states) carry out the on-site program on a day-to-day basis. Section 1451 of the Safe Drinking Water Act delegates to a tribe primary enforcement responsibility (primacy) for public water systems. Primacy simply means that the tribe assumes the principal enforcement responsibility of federal drinking water supply regulations in areas within the tribe's jurisdiction. EPA provides guidance, technical assistance, and some financing to primacy agencies. For tribes and states that do not have primacy, EPA implements the drinking water supply regulation.

How a Tribe Attains Primacy

There are three steps to primacy. First, a tribe needs to achieve "Treatment as a State" (TAS) designation. (See p. 53). Then the tribe will spend up to three or four years developing its public water system program. Finally, a tribe will apply for primacy when its program is developed. When a tribe demonstrates that it has the ability to protect the public health by regulating public water supplies and/or ground water, EPA may assign enforcement authority to that tribe. When this occurs, the tribe is granted primacy.

Primacy brings regulatory control closer to home in the sense that a tribe is closer than EPA to the systems being regulated. At the same time, however, the tribe is still required to adopt and enforce tribal safe drinking water regulations and codes that are at least as strict as EPA regulations. The tribe's regulatory actions will still be closely monitored by EPA via semiannual and annual program reviews.

Example Standing Rock Sioux Tribe is in the third year of a development grant working to establish tribal primacy. Standing Rock was granted Treatment as a State in March 1989. At the end of the three-year development grant, a primacy application packet will be submitted for review and comment. If the

Drinking Water —Public Water System Supervision (cont.)

primacy application is approved, Standing Rock Sioux could be granted primacy for the drinking water program.

- Development Grants** If a tribe decides to seek primacy, financial assistance is available through development grants. Development grant funds may be used for expenses directly related to developing a primacy program. Grant assistance programs are not available under this program to tribes that do not intend to seek primacy.
- Primacy Process**
1. Treatment as a State (TAS) designation under Section 1451 of SDWA.
 2. Develop direct implementation public water supply and ground water program (3-4 years).
 3. Application for primacy.
 4. Primacy or enforcement authority granted by EPA.
 5. Semiannual or annual program reviews.
- Matching Funds** 25 percent match, in-kind match is acceptable.
- Project Period** Yearly
- Application Deadline** September 30
- Award Date** January
- Funding Scenario** Development grants are awarded after TAS is approved. These grants are available for three years.
- Funding Approval** Region 8, Denver, Colorado
- EPA Regulation** Safe Drinking Water Act (SDWA)
Title 40, Part 141-148 of the Code of Federal Regulations
- Resource Documents** *Drinking Water Primacy*, a newsletter that answers questions about primacy.
- Indian Primacy Procedures Handbook*, a handbook that will help determine if primacy is in the best interest of the tribe.

Drinking Water —Public Water System Supervision (cont.)

EPA Implementation For tribes not requesting primacy, EPA will continue to regulate public water systems on reservations. To date, most tribes have decided not to seek primacy, allowing drinking water systems to be regulated by EPA. Through technical assistance and training, the Drinking Water Branch is working with tribes to help build tribal capacity and expertise.

Currently, EPA works closely with tribal water utilities and individual water systems to ensure compliance with SDWA requirements. EPA also coordinates with the Indian Health Services (IHS) on plant modifications and to provide training. EPA Region 8 has a full-time contractor, a circuit rider, available to tribes for on-site, technical assistance including certification training.

Technical Assistance and Workshops Utility manager training (annually), operator training, regulatory workshops, site visits and tribal capacity development.

Drinking Water Hotline, 800 426-4791, for additional technical assistance.

Contact Cindy Cody, Direct Implementation Coordinator, 303 293-1541.

Patricia Henry Denham, Primacy Coordinator, 303 293-1420.

Program
Description

Underground Injection Control

Description



The Safe Drinking Water Act (SDWA) requires that all placement of fluids underground via wells is regulated in order to prevent contamination of ground water. This program is known as the Underground Injection Control Program. This federal program established minimum requirements for construction, operation, monitoring, and enforcement programs related to injection wells.

EPA has established five different classifications of injection wells to define types of underground water contamination. Class I wells are used to inject industrial, municipal or hazardous wastes below the lowest underground source of drinking water (USDW). Class II wells are used to inject fluids associated with oil and natural gas production. Class III wells are used to inject fluids for extraction of minerals such as salt or uranium. Class IV wells are used to inject hazardous or radioactive wastes into or above a USDW, and are prohibited. Class V wells include all other well types including agricultural drainage wells, septic systems, and waste water treatment facility effluent disposal wells. Currently, only Class II and Class V wells are operating on tribal lands.

Like the Public Water System Supervision program (p. 36), the UIC program delegates primary regulatory authority (primacy) to tribes and states that have demonstrated an ability to implement UIC programs under Section 1422 or 1425 of the Safe Drinking Water Act. Primacy simply means that the tribe assumes the principal responsibility for implementing and enforcing underground injection control regulations in areas within the tribe's jurisdiction. Tribes without primacy are referred to as Direct Implementation tribes and EPA is the responsible regulatory agency. To date, most tribes have decided not to seek primacy. Therefore, EPA is responsible for implementing and enforcing UIC regulations.

Example Fort Peck Tribes are working with EPA to gain primacy for implementing and enforcing UIC regulations.

Technical Assistance and Workshops Guidance available as needed; workshops are scheduled based on interest.

Development Grants If a tribe decides to seek primacy, financial assistance is available through development grants. Development grant funds may be used for expenses directly related to developing a primacy program. Grant assistance programs are not available under this program to tribes that do not intend to seek primacy.

Program
Description

Underground Injection Control (cont.)

- Primacy Process**
1. Treatment as a State designation under Section 1451 of SWDA.
 2. Develop capacity to implement underground injection control program (3-4 years).
 3. Application for primacy. Primacy or enforcement authority granted by EPA.
 4. Semiannual or annual program reviews conducted by EPA.

Matching Funds 25 percent match, in-kind match is acceptable; 10 percent match may be allowed upon demonstration of need.

Project Period Development grants are funded based on a four-year plan

Application Deadline Variable

Award Date Variable

Funding Approval Region 8, Denver, Colorado

EPA Regulation Safe Drinking Water Act (SDWA)
Title 40, Part 145 of the Code of Federal Regulations

Resource Documents *Injection Wells, An Introduction To Their Use, Operation and EPA Regulations*

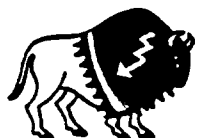
Program Overview: Underground Injection Control, Region VIII, (Second Edition)

Final Guidance on Implementing the Indian Primacy Rule for the PWSS and UIC Programs (explains the regulations pertaining to tribal assumption of primacy).

Contact Barbara Conklin, Environmental Scientist, 303 293-1596

Federal Insecticide, Fungicide, and Rodenticide Act

Pesticide Enforcement and Ground Water Protection



Description

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) was passed by Congress to regulate the registration, sale, handling, use, storage and disposal of pesticides. Under this program, tribes can receive EPA funds to set up and enforce a Tribal Pesticide Code. This program is administered by the Air, Radiation, and Toxics Division of EPA Region 8. Tribal Pesticide Codes already have been adopted on four reservations in Region 8, with a fifth tribe currently writing a code. Tribal programs conduct enforcement by hiring a Pesticide Enforcement Officer. This officer, usually a member of the tribe, receives training from EPA and other agencies.

Once a tribe has established a Pesticide Enforcement Program, they may apply for additional funding to protect ground water on the reservation from pesticide contamination. A Ground Water Protection Program provides sufficient funds to the tribe to gather information on pesticide use, ground water vulnerability and possible existing pesticide contamination of ground water within the reservation. A Pesticides in Ground Water Management Plan is then created. This plan restricts or prohibits the use of certain pesticides in vulnerable areas that are known to, or have the potential to, contaminate ground water.

Example Tribal pesticide programs currently receiving ground water protection funding include those of the the Oglala Sioux, Cheyenne River Sioux and Rosebud Sioux Tribes.

Workshops and Training EPA offers an annual Tribal Pesticides Program workshop that explains how to apply for and begin a program, and how to improve existing programs. There are also numerous state pesticide inspection trainings offered throughout the year, in which tribes may participate.

Funding Formula 15 percent tribal match for both the pesticide enforcement and ground water protection programs.

Project Period October 1 to September 30.

Application Deadline No deadline for new programs; August 15 is the deadline for continuing programs.

Program
Description

Pesticide Enforcement and Ground Water Protection (cont.)

EPA Regulation Federal Insecticide, Fungicide and Rodenticide Act

Contacts Dallas Miller, 303 293-1891

Ron Schiller, 303 293-1743

Environmental Legislation

NEPA and Environmental Assessment



Description

The National Environmental Policy Act (NEPA), which created EPA, requires all federal agencies to incorporate environmental consideration into agency planning and decision making. Specifically, NEPA requires every federal agency to prepare detailed statements assessing the environmental impacts of, and alternatives to proposed major federal actions that may significantly affect the environment. These statements are called Environmental Impact Statements (EISs) and are also required for proposed projects that would be federally funded. An EIS would describe the likely impacts of the proposed project on floodplains, wetlands and endangered species in the project area, for example. When questions arise during the EIS process, an Environmental Assessment (EA) is written to answer questions of significant impact.

It is EPA's responsibility to review the environmental impact developing concise, well-reasoned decision documents which identify project impacts, a range of project alternatives and mitigation measures that will avoid or minimize adverse effects on the environment. The burden of proof is on the federal agency who will oversee or regulate the proposed project.

The Region 8 office provides technical assistance by reviewing the lead agency's Environmental Impact Statement for tribes. Example of lead agencies include: Army Corps of Engineers, Bureau of Reclamation or Bureau of Indian Affairs.

Examples of the EIS Process

It is the exception for a tribe to have to do an EIS. The project would be one of major federal action. To illustrate this point, here are some recent examples of tribal involvement in the NEPA process:

Rosebud Landfill EIS Process

In 1990, the Rosebud Sioux Tribe proposed to approve a very large scale solid waste landfill. Based upon initial approval by the Rosebud Sioux Tribal Council, the tribe entered into a cooperative agreement with a South Dakota firm to prepare an EIS to analyze the proposed construction of a 1500 acre landfill for interstate shipping of municipal solid waste from U.S. east coast cities. The EIS process was begun by the Bureau of Indian Affairs, but later the Tribal Council dropped the project from further consideration.

Glen Canyon Dam Reoperation EIS

The Bureau of Reclamation is preparing an EIS for the proposed expansion of electrical generating capacity at Glen Canyon Dam,

Program
Description

Arizona. Four tribes—the Navajo, the Hopi, the Hualapai, and the Havasupai—have received funding from the Bureau of Reclamation to participate as cooperating agencies for this EIS process. This funding enables the tribes to conduct wildlife habitat and cultural resource studies to determine the environmental impact of the dam's proposed change in operations.

Central Utah Completion Act, Uintah Basin Project EIS

The Uintah and Ouray Tribal Council will participate as a cooperating agency with the Central Utah Conservancy District for EIS preparation for the newly authorized \$970 million completion of the Central Utah Project. The Central Utah Completion Act (CUPCA) was signed by President Bush in November, 1992. In addition, the Uintah and Ouray Tribe, along with the BIA, may also prepare their own EIS for the extension of the CUP project on the reservation including additional fishery and recreation projects with the \$120 million authorized for the tribe in CUPCA.

Contact Wes Wilson, 303 293-1439

Pollution Prevention Act

Pollution Prevention



Description

In accordance with national policy, Region 8 has established pollution prevention as a major priority. This program is administered by the Policy and Management Division of EPA Region 8. Its goal is to advocate the integration of pollution prevention into and across all regional programs. Prevention is key to avoiding the problems that all EPA media programs face. Prevention is a fundamental philosophy that needs to be incorporated as an integral component of environmental protection. The concept can be incorporated throughout all EPA programs. The approach to pollution prevention is multi-media, to avoid transferring pollutants from one medium to another.

Pollution prevention is defined in terms of *source reduction*, which basically means reducing or eliminating the generation of any hazardous substance, pollutant, or contaminant. The term refers to: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control. It also includes conservation techniques and changes in management practices to prevent harm to sensitive ecosystems.

Pollution prevention approaches can be applied to all pollution-generating activities, including those found in energy, agriculture, federal, consumer, and industrial sectors.

Workshops and Training

Orientation training is being developed. Industry-specific guidelines are available. Videos are available that address sustainable agriculture, energy, and transportation. Training is offered by specific programs such as Hazardous Waste, Solid Waste, and Municipal Facilities. National projects such as *Greenlights* and *33/50* are coordinated by the Air Program, another EPA branch. An international clearinghouse and database for pollution prevention are available to tribes at no charge.

Grants

EPA funds a matching tribal/state grant to promote development of pollution prevention programs, information exchange, technical assistance and training. Demonstration projects are coordinated with the media programs.



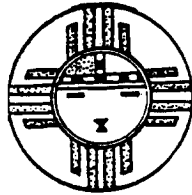
Pollution Prevention (cont.)

EPA Regulation The Pollution Prevention Act of 1990

Contact Sharon Childs, Program Analyst, Policy Office, 303 293-1471

Resource Conservation and Recovery Act

Solid Waste Regulations



Description

In September 1979, EPA issued criteria through the Resource Conservation and Recovery Act (RCRA) providing general environmental performance standards that apply to all solid waste disposal facilities with certain limited exceptions. In the 1984 Hazardous and Solid Waste Amendments (HSWA), Congress mandated revisions to these criteria.

In August 1988, EPA proposed revised criteria for new and existing municipal solid waste landfills (including those that receive sewage sludge and combustion ash). On October 9, 1991, the criteria were promulgated, and on October 9, 1993, most of the regulations will become effective. These programs are administered by the Hazardous Waste Management Division of EPA Region 8.

Location Restrictions

The proposed regulations contained specific restrictions on locating landfills at, on, or near: airports, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas.

Operating Criteria

Landfill operating requirements were proposed in each of the following areas: procedures for excluding hazardous waste, daily cover, disease vector control, explosion gauges, air criteria, access control, run-on and run-off control, surface water requirements, liquids management, and recordkeeping.

Design Criteria

The proposed criteria established a risk-based performance standard based on lifetime cancer risks. New units would be required to be designed with liners, leachate collection systems, and final cover systems as necessary to meet this standard, while existing units would be required to use final covers. Retrofitting of existing units with liners and leachate collection systems would not be required. The proposed point of compliance would be at the waste management unit boundary or an established alternative boundary.

Ground Water Monitoring

The proposed municipal solid waste landfill regulations require ground water monitoring to detect releases at landfills and determine if corrective action is needed. New landfills would be required to comply with the ground water monitoring regulations prior to accepting wastes. Existing landfill units would need to follow an established schedule or a federal fall-back schedule to achieve compliance.

Solid Waste Regulations (cont.)

The proposed rule specifies that the ground water monitoring system must: be approved by the tribe, be installed at unit boundary or alternative boundary, yield representative samples of the uppermost aquifer, have well casing, and perform throughout the life of the monitoring program.

The ground water monitoring program would be performed in two phases under the proposed rule:

- Phase I:** Detect changes in ground water chemistry (performed semiannually on a limited number of parameters); and
- Phase II:** Identify hazardous constituents released and monitor hazardous constituents detected (tribe establishes monitoring frequency).

Corrective Action Program

The proposed rule establishes specific corrective action plans, including assessment of corrective measures, remedy selection, and corrective action program implementation.

Closure and Post-closure Care

The proposed rule required that closure must occur in a manner that:

- minimizes post-closure release of leachate and explosive gases;
- minimizes the need for further maintenance and
- ensures protection of human health and the environment.

The proposed requirements also include the following post-closure care:

- maintenance of the final cover and containment system;
- leachate collection (when a leachate system exists);
- ground water monitoring; and
- gas monitoring.

Post-closure care must continue for a minimum of 30 years. Additional time periods may be added by the tribe or state as necessary to protect human health and the environment.

Workshops and Training

RCRA Subtitle D compliance training and Solid Waste Association of North America (SWANA) Manager of Landfill Operations training sessions are available.

Solid Waste Regulations (cont.)

Resources *Decision-Makers Guide to Solid Waste Management, EPA/530-SW-89-072.*

EPA Regulation Resource Conservation and Recovery Act (RCRA)
Hazardous and Solid Waste Amendments (HSWA)

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Program
Description

Multi-media

Multi-media Assistance Agreements

Description



EPA receives funding requests from tribes that want to establish comprehensive environmental programs. Currently EPA deals with 11 environmental media including water quality, drinking water, air, pesticides, and solid wastes. In an effort to develop tribal capability to manage environmental programs, EPA initiated the multi-media grant program in 1991. Multi-media assistance agreements are flexible in helping tribes to build infrastructure that encompasses all areas of environmental protection. Grants available under most other EPA regulations are specific to one medium (i.e., water). Multi-media grants allow a tribe to address the priority areas of environmental concern on a reservation without having to solicit funding under a specific regulatory program.

Because multi-media program funding is quite limited, tribes have used these grants to develop environmental program infrastructure, and relied on CWA and SDWA program grants to address water management issues directly.

Examples of Multimedia Assistance Agreements

Currently, eight tribes in Region 8 have received multi-media grants including:

Yankton Sioux Tribe developed a multi-media environmental program established an environmental administrative commission to assess environmental quality, developed standards and guidelines, drafted codes to coordinate environmental programs with tribal elected officials and staff, and provided public environmental education.

Cheyenne River Sioux Tribe developed a multi-media environmental program to establish a data system, develop legal requirements and tribal infrastructure for administration and management, and provide public environmental education.

Funding Formula

Regional funds are set aside based on a percentage of the national allocation.

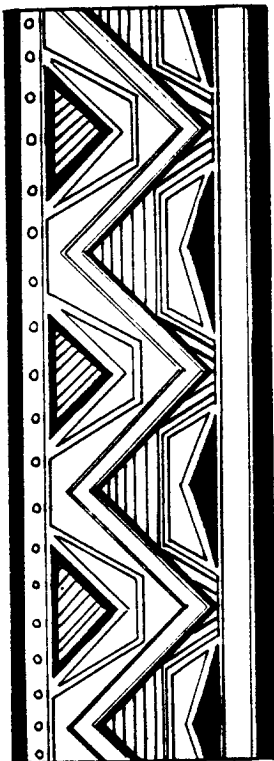
Matching Funds

5 percent, match can be waived based on demonstration of need

Multimedia Assistance Agreements (cont.)

Project Period	Yearly grant
Application Deadline	Variable
Award Date	After workplan approval
Funding Approval	Region 8, Denver, Colorado
Technical Assistance	Grant administration, program development and media information.
Workshops and Training	Comparative risk, multi-media grants administration
EPA Regulation	Public Law 102-139
Resource Documents	<i>Environmental Progress and Challenges: EPA's Update</i> <i>Securing Our Legacy: An EPA Progress Report 1989-1991</i>
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Appendix A



Treatment as a State

Treatment as a State is a prerequisite for many of the Water Management Division programs that are outlined in this document. This appendix will provide a brief explanation of Treatment as a State, and the criteria that a tribe must meet to receive Treatment as a State. For more detailed information, contact the project officers listed under the appropriate program descriptions.

Section 518 of the Clean Water Act and Section 1451 of the Safe Drinking Water Act authorize EPA to treat federally recognized Indian tribes as states in certain cases. A tribe must apply separately for Treatment as a State for each program. A tribe must demonstrate its capability to carry out particular program responsibilities to be accepted for TAS. Demonstrating such capability under one program may not provide sufficient information to permit the Agency to assess the Tribe's capability under some other program.

This means that a tribe must apply for Treatment as a State for each program within the Clean Water Act (section 106, 303, 314, 319, or 401) and within the Safe Drinking Water Act (PWSS, UIC). However, after a tribe receives Treatment as a State for one program, subsequent applications will ordinarily need to provide only that information that is unique to the specific additional program for which the tribe is applying. This generally includes any changes in tribal jurisdiction or technical/administrative capability.

A tribe must meet four eligibility criteria in order to be treated as a state:

1. The tribe is recognized by the Secretary of the Interior;
The tribe must submit a statement that it is included on the Department of Interior list of federally recognized Tribes, or other appropriate documentation of federal recognition.
2. The Tribe has a governing body carrying out substantial governmental duties and powers;
The Tribe must submit a statement describing the form of tribal government, the types of essential governmental functions currently performed, and the sources of authorities to perform these functions (eg. tribal constitution, codes, etc.).
3. The functions to be exercised by the tribe pertain to the management and protection of water resources that are held by an Indian tribe; held by the United States in trust for an Indian tribe; held by a member of an Indian tribe, if such property interest is subject to a trust restriction on alienation, or is otherwise within the border of an Indian Reservation; and

(Assertion of Authority) The tribe must submit a statement signed by the tribal attorney general or equivalent official, explaining the legal basis for the tribe's regulatory authority over its water resources. The statement should include a map or description of the area and copies of documents that support the tribal assertion.

4. The tribe is reasonably expected to be capable of carrying out the functions of the specific program.

The tribe must submit a statement that includes a description of its previous general managerial experience; existing environmental or public health programs administered by the tribe; existing or proposed staff resources and continuity of staff; tribal accounting and procurement systems; and mechanisms for carrying out the executive, legislative, and judicial functions of the tribal government. If lacking this experience, the tribe may show that it has a viable plan to acquire the necessary technical and administrative expertise.

Applications must address the four criteria and be submitted to the regional administrator. Once EPA has received an application, the agency will review it for completeness, notify the tribe of receipt and any missing or incomplete items, and then provide 15-30 days for appropriate governmental entities to comment on the tribe's assertion of authority. Once comments are received, EPA will make a determination and promptly provide written notification to the tribe.

Note EPA recently determined that changes are necessary to the overall process through which tribes may qualify for various CWA, SDWA, and Clean Air Act programs. The Agency is currently reviewing the existing process. the phrase "treatment as a state" will no longer be used, and other more substantive changes will b made to the qualification process. Tribes will be notified when changes have been made to the regulations.

Table 2. Status of Tribal Applications for TAS as of December 1992 A = approved P = application pending	CWA					SDWA	
	Section 106	Section 303	Section 314	Section 319	Section 401	Section 1443(a)	Section 1443(b)
Blackfeet Tribe	A		A				
Cheyenne River Sioux Tribe	A						
Chippewa Cree Tribe							
Confederated Salish & Kootenai Tribes	A	P			P		
Crow Tribe							
Crow Creek Sioux Tribe							
Devil's Lake Sioux Tribe							
Flandreau Santee Sioux Tribe							
Fort Belknap Indian Community	A					A	
Fort Peck Tribes	A						A
Lower Brule Sioux Tribe							
Northern Cheyenne Tribe	A						
Northern Ute Tribe							
Oglala Sioux Tribe	A						
Paiute Indian Tribe							
Rosebud Sioux Tribe	A						
Sisseton-Wahpeton Sioux							
Skull Valley Tribe							
Southern Ute Tribe	A		A				
Standing Rock Sioux Tribe	A					A	
Three Affiliated Tribes	A						
Turtle Mountain Tribe	A		A				
Ute Mountain Ute Tribe	A		P				
Wind River—Arapaho and Shoshone	A		A				
Yankton Sioux Tribe	P						

Appendix

Appendix B



Water Management Division Video List

The following videos are recommended to tribes that wish to increase their knowledge of and familiarity with water management terms and procedures.

America's Wetlands

Antidegradation Policy: A Means to Maintain and Protect Existing Uses and Water Quality

The Blue River Mitigation Project—Rebuilding Our Nation's Wetlands

Boulder Creek Enhancement

Carol's Fixit Ideas

Development of Water Quality Criteria and its Relationship to Water Quality Standards

Do Your Part—A Wetlands Discovery Adventure

Economic Considerations in Water Quality Standards—1992

Enumeration Methods for E. Coli and Enterococci

Ground Water: New Mexico's Buried Treasure

Horse Waste and Land Management

Introduction to Water Quality Standards

Livestock Grazing and Riparian Management

Our Urban Wetlands

Private Rural Well Protection

The Value of Riparian Areas, Wyoming Game and Fish and Others—1992

Water Quality Standards and 401 Certification

Water Quality-Based Approach to Pollution Control

Water Quality Standards on Indian Lands

The Wealth in Wetlands

Well Head Protection: The Power to Protect

Glossary and Acronyms

Assertion of Authority As detailed in the Clean Water Act, Section 504, a tribe must have the authority to restrain the discharge of pollutants presenting imminent and substantial endangerment to human health or welfare. A tribe must have adequate contingency plans to implement such authority.

BATEA Best Available Technology Economically Achievable.

BCT Best Conventional Technology.

BMP Best Management Practice.

Budget period The period defined by the day funding first becomes available and the day funding expires.

CERCLA Comprehensive Environmental Response, Compensation and Liability Act (Superfund programs). A federal law that outlines the requirements, responsibilities, and financial liabilities associated with cleaning up abandoned or inactive hazardous waste sites.

CFR Code of Federal Regulations.

Carryover funds Carryover funds are funds that are not obligated by the end of a fiscal year or budget period and may be obligated in the next fiscal year. The source of carryover funds is either no-year appropriations or from the first year of a two-year appropriation.

Class I wells Municipal and industrial disposal wells. These include wells used by generators of hazardous waste and owners of hazardous waste management facilities that inject fluids below the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

Class II wells Wells that are associated with oil and gas production or liquid hydrocarbon storage. These wells inject fluids which are brought to the surface for the enhanced recovery of oil and natural gas and for the storage of hydrocarbons.

Class III wells Wells used to inject fluids for the extraction of minerals and solution mining of minerals.

Class IV wells Wells used by generators of hazardous and radioactive wastes. These wells inject into or above a formation which contains an underground source of drinking water within one quarter of a mile of the well. Class IV wells are prohibited.

Class V wells Wells that do not meet the criteria listed for classes I through IV are Class V. Generally, wells covered under this classification inject non-hazardous fluids into or above formations that contain underground sources of drinking water.

Clean Water Act (CWA) An act passed by the U.S. Congress to control water pollution. The Federal Water Pollution Control Act was the first law enacted to protect water (Public Law [PL] 92-500). It was amended in 1977 as the Clean Water Act (PL 95-217) and again in 1987 as the Water Quality Act (PL100-4).

Delegation A tribe is delegated authority to administer regulatory programs on tribal lands by EPA. For example, under the Safe Drinking Water Act, a tribe could be delegated authority to administer Public Water System Supervision (PWSS) or Underground Injection Control (UIC) programs.

EPA Environmental Protection Agency. Part of the executive branch of the U.S. government. Charged with developing and enforcing federal regulations to protect human health and the environment from pollution.

FIFRA Federal Insecticide, Fungicide, and Rodenticide Act.

Fiscal year October 1 to September 30

Ground water Water below the land surface that feeds wells and springs.

Guidance Documents issued primarily to elaborate and provide direction on the implementation of regulations. Guidance is published by the program administrator and contains specific program guidelines, priorities and measures as defined by statutes or regulations.

Indian tribe A federally recognized Indian governing body carrying out substantial governing duties and powers over a defined area.

- In-kind match** Also known as "soft" match. Includes non-cash match contributions such as salary, utilities and office rent.
- Leachate** Liquid that has percolated through solid waste or another medium and has extracted, dissolved, or suspended materials from the waste, these may include potentially harmful materials. Leachate collection and treatment is of primary concern at municipal waste landfills.
- Match** The portion of allowable project costs that a recipient or third party contributes toward completing the project, i.e., non-Federal share plus matching share equals total project cost. Federal grant dollars cannot be matched with other federal dollars, unless they originate from the Bureau of Indian Affairs.
- Media** EPA's major program areas are defined by 11 media: air, water quality, drinking water, pesticides, hazardous waste, radiation, superfund, energy, interdisciplinary, toxic substances, and management and support.
- NPDES** National Pollutant Discharge Elimination System.
- NPDWR** National Primary Drinking Water Regulation.
- OSHA** Occupational Safety and Health Administration.
- POTW** Publicly Owned Treatment Works.
- PWSS** Public Water System Supervision. A program that allows tribes or states to supervise and regulate public water supplies and ensure that safe drinking water is provided to residents.
- Pretreatment** Use of proven pollution control technologies to remove pollutants from waste waters before they are discharged into sewage treatment plants.
- Primacy** A status which tribes and states may seek from EPA for the purpose of gaining primary enforcement responsibility for drinking water programs.
- Project period** The period between the project initiation and completion.

- Public water system** Twenty-five or more persons or 15 or more service connections on a public drinking water system.
- RCRA** Resource Conservation and Recovery Act. Outlines requirements for safe transport, storage and disposal of hazardous waste.
- SCS** Soil Conservation Service.
- SARA** Superfund Amendments and Reauthorization Act. Modifies CERCLA. Enacted October 17, 1986. See CERCLA.
- Safe Drinking Water Act (SDWA)** An act passed by the U.S. Congress in 1974 establishing a cooperative program among local, state and federal agencies to ensure safe drinking water for consumers. The Act has been amended by Congress in 1977, 1979, 1980, and 1986. The 1986 amendments require EPA to develop regulations to enable Indian tribes to administer the Public Water System Supervision and Underground Injection Control programs
- SMCRA** Surface Mining Control and Reclamation Act.
- SERC** State Emergency Response Commission, established under SARA.
- Source reduction** Reduction in or elimination of the generation of any hazardous substance, pollutant, contaminant, or waste.
- State** Within the context of Public Water Systems Supervision and Underground Water Source Protection grants or of financial assistance programs under the Clean Water Act, a state is one of the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territories of the Pacific Islands or an Indian tribe treated as a state.
- Surface water** Water that is open to the atmosphere and subject to surface runoff, e.g., rivers, lakes, estuaries, impoundments, seas, reservoirs, etc.
- Tribal lands** Tribal lands are Indian lands or country.
- Treatment as a state** A status granted by EPA to Indian tribes that have established minimum levels of legal, political, and financial structure that enable the tribe to promote and protect the health, safety, and welfare of its citizens. Indian tribes that meet specific criteria can be treated as states

for certain purposes under the Clean Water Act and the Safe Drinking Water Act.

- Underground Injection Control (UIC) program** A program that allows tribes or states to regulate the injection of liquids into the ground. The goal of the program is to prevent contamination of underground sources of drinking water (USDW) from injection-well activities. The injection of brine wastes from oil recovery processes is an example of such activities.
- USFS** United States Forest Service.
- USFWS** United State Fish and Wildlife Service.
- WHP** Well Head Protection. Protection of the area surrounding a well.
- WHPA** Well Head Protection Area. The surface and subsurface area surrounding a well or wellfield that supplies a public water system through which contaminants are likely to pass and eventually reach the water well or wellfield.
- Water table** Level below the earth's surface at which the ground becomes saturated with water.
- Wetland** Area that is regularly wet or flooded and has a water table that stands at or above the land surface for at least part of the year. Coastal wetlands extend back from estuaries and include salt marshes, tidal basins, marshes, and mangrove swamps. Inland freshwater wetlands consist of swamps, marshes, and bogs.

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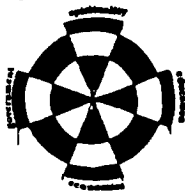


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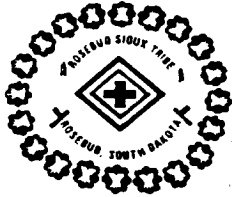
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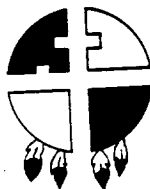


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