

National Tribal Water Council and EPA Monthly Conference Call
Wednesday, January 10, 2024
2:00 – 3:30 P.M. ET

SUMMARY NOTES

I. Introductions (Elaine Wilson, ITEP)

NTWC: Ken Norton (Chair, R9); Dan Kusnierz (R1); Brian Patterson (R2); Shaun Livermore (At large, R4); Nancy Schuldt (R5); Jaclyn McCasland (R7); Yolanda Barney (Navajo Nation, R9); Mary Verner (R10); Scott Hauser (At large, R10); Eric Morrison (R10, Alaska); Ann Wyatt (R10, Alaska)

EPA: Holly Galavotti, Laura Montoya (OGWDW); Julian Oliver (OGWDW); Aleah Holt (OGWDW); Erin Partlan (OGWDW); Hannah Holsinger (OGWDW); Danielle Anderson (OST); Erica Fleisig (OST); Melissa Dreyfus (OST); Robyn Delehanty (OWM); Matthew Richardson (OWM); Steve Epting (OWOW); Susan Holdsworth (OWOW); Margot Buckelew (OWOW); Abigail Golder (OWM); Katherine Bentley (OWM); Rory Hytrek; Amy Weber; Edmond Dunne; Sara Hisel-McCoy; Manjali Vican (OST)

ITEP: Elaine Wilson; Elaina Doral

II. NTWC Updates (Ken Norton, NTWC)

Chairman Norton provided an overview of the topics discussed during the previous NTWC-only call.

- **Joint Letter from the NTWC and National Tribal Caucus**

A joint letter from the NTWC and National Tribal Caucus was transmitted to EPA in support of finalizing two proposed rulemaking actions: (1) water quality standards to protect tribal reserved rights, and (2) baseline water quality standards for Indian reservation waters. The letter was sent to EPA Administrator Michael Regan on December 14, 2023, and copied various EPA staff for awareness and reference.

- **EPA Revised Policy on Consultation with Indian Tribes**

Chairman Norton will be attending an upcoming webinar on the revised policy scheduled for January 29, 2024. There was discussion regarding tribal inherit rights pre-US government treaties, etc.

- **2024 NTWC/EPA Spring Meeting**

The spring meeting will be scheduled during the week of April 15-18, 2024. The meeting will be held at EPA headquarters in Washington, D.C. Starting in February, the NTWC will schedule planning calls with Holly Galavotti to draft an agenda.

- **NTWC Vice Chair Selection**

NTWC plans to select a vice chair prior to the spring meeting. The nomination process will occur during next month's NTWC-only call.

- **Future Call Topic: Environmental Justice Post Grant Requirements**

NTWC requests a presenter to address certain issues that tribes are encountering regarding the post award requirements of environmental justice grants. Chairman Norton requested an EPA staff to address this issue at an upcoming NTWC/EPA call.

III. Proposed Lead and Copper Rule Improvements (Erin Partlan, Hannah Holsinger, OW/OGWDW)

Hannah Holsinger provided an overview of the EPA's Proposed Lead and Copper Rule Improvements. On November 30, 2023, EPA announced the proposed Lead and Copper Rule Improvements (LCRI).

Key provisions of the proposal include:

- (1) **Achieving 100% Lead Pipe Replacement:** The proposed LCRI would require the vast majority of water systems to replace lead service lines within 10 years.
- (2) **Locating Legacy Lead Pipes:** Water systems are required to provide an initial inventory of their lead service lines by October 16, 2024, per the 2021 Lead and Copper Rule Revisions. The proposed LCRI would require water systems to regularly update their inventories, validate inventories, create a publicly available service line replacement plan, and identify materials of service lines of unknown material.
- (3) **Improving Tap Sampling:** The proposed LCRI would make key changes to the protocol that water systems must use for tap sampling informed by best practices already being deployed at the local and state level, like in Michigan.
- (4) **Lowering the Lead Action Level from 15 µg/L to 10 µg/L:** Water systems would be required to inform the public when the lead sampling results exceed the action level and take action to reduce exposure.
- (5) **Strengthening Protections to Reduce Exposure:** Water systems would be required to communicate more frequently and proactively about lead service lines and the system's plans for replacing these lines.

The Bipartisan Infrastructure Law (BIL) provides for significant investments in safe drinking water infrastructure and drinking water programs. Specific funds to potentially support implementation of the LCRI drinking water regulation include \$11.7 billion in funding to supplement the Drinking Water State Revolving Loan Fund (DWSRF) and \$15 billion in funding for lead service line replacement projects and associate activities directly connected to the identification of and planning for the replacement of lead service lines.

The 60-day public comment period ends on February 5, 2024. The proposed rule Docket ID No. is EPA-HQ-OW-2022-0801 and comments can be submitted at www.regulations.gov. For more information: <https://www.epa.gov/ground-water-and-drinking-water/proposed-lead-and-copper-rule-improvements>

Questions/Comments

Chairman Norton asked how many service lines were removed in Indian Country under the BIL funding. Hannah Holsinger replied that she will reach out to the SRF team to obtain that information. The funding was distributed in different stages.

Chairman Norton noted that it is a good benchmark and makes a difference in Indian Country. NTWC provided comments in support of the lead and copper rule in the past. NTWC may provide a comment letter on this proposed rule.

Shaun Livermore is currently researching how to use the funding to identify the lead service lines. The notification period creates some challenges for tribal utilities that may need more support. EPA has been good at communicating the changes and helping utilities get prepared.

IV. Upcoming PFAS Requirements in NPDES Permit Applications Proposed Rule (Abigail Golder and Katherine Bentley, OW/OWM)

Abigail Golder provided an overview of the proposed PFAS requirements in NPDES permit applications. EPA is in the process of initiating the proposed rulemaking and anticipates initiating tribal consultation in early 2024.

The proposed rulemaking is supported by the actions called for in the EPA PFAS Strategic Roadmap and EPA NDPEs memo. PFAS in water can bioaccumulate in aquatic animals and cause adverse effects on human health. The proposed rule would add PFAS as a reporting requirement for the following application forms:

- 2A Applicable to New and Existing Publicly Owned Treatment Works
- 2C Applicable to Existing Industrial (Manufacturing, Commercial, Mining, and Silvicultural Operations) Facilities
- 2D Applicable to New Industrial (Manufacturing, Commercial, Mining, and Silvicultural Operations) Facilities
- 2F Applicable to Stormwater Discharges Associated with Industrial Activity

Tribal consultation period will start on January 31, 2024, and end on April 1, 2024. EPA plans to hold an informational webinar, and plans to publish the proposed rulemaking in the Federal Register and request for public comments in fall 2024. For more information, please visit:

<https://www.epa.gov/pfas>

Questions/Comments

Chairman Norton stated that the NTWC needs to do more research on NPDES 2A and 2B and how it may be implemented in Indian Country. Under the baseline water quality standards proposed rule, tribes may negotiate other parameters that may impact their waters through NPDES permitting actions for tribes without water quality standards. Further discussion may be held after reviewing the proposed rulemaking.

Dan Kusnierz discussed that the NTWC is part of the Tribal PFAS Working Group. He is happy to hear that EPA is moving forward to start requiring PFAS in NPDES permits. There are concerns about PFAS impacts on traditional foods. He asked if the proposed rulemaking only requires monitoring. Katherine Bentley replied that the proposed rulemaking is focused on monitoring and reporting requirements in permit applications. EPA plans to gather more information on what is out there and where it is coming from. This rulemaking would not establish effluent limits for permits.

Dan Kusnierz noted that there are some states that require monitoring of facilities. He asked if EPA has access to that data. Katherine Bentley replied that some states do require monitoring in their permits; it depends on the state. EPA is aware of the data being collected. The focus is getting more data with the proposed rulemaking.

Dan Kusnierz asked if category 2C includes paper mills. Katherine Bentley replied that yes, it does. The EPA PFAS Strategic Roadmap identifies industries that are known or suspected sources of PFAS and EPA is targeting those industries.

Dan Kusnierz invited Abigail Golder and Katherine Bentley to present at an upcoming Tribal PFAS Working Group monthly call.

V. Draft WQS Variances Handbook Chapter (Melissa Dreyfus, OW/OST)

Melissa Dreyfus provided an overview of the new draft chapter on WQS Variances for the [EPA's Water Quality Standards Handbook](#). The new chapter will include the most recent EPA's WQS programmatic policy and guidance to implement the new WQS variance regulations. EPA is also in the process of revising Chapter 2 on designated uses and Chapter 4 on antidegradation.

EPA is planning to release the draft chapters for a 60-day public comment period in summer 2024. During that time, EPA plans to hold one to two stakeholder webinars.

The WQS variances chapter includes six topics. Ms. Dreyfus provided additional details on the following chapter topics:

- Background;
- Applicability and scope;
- Requirements;
- Implementation; and
- WQS variances, designated use revisions, and site-specific criteria.

NTWC members were asked to offer any input or thoughts on what they'd like to see covered either in this version or future revisions to the Handbook. The next step is conducting a public comment period in summer 2024 that includes one to two informational webinars.

For more information, please visit: <https://www.epa.gov/wqs-tech/water-quality-standards-handbook>

Questions/Comments

Chairman Norton asked if a docket will be created and see the comments received. Melissa Dreyfus replied that the docket will be available when the public comment period opens in summer 2024.

Nancy Schuldt asked how a variance could be applied to a 401 certification. Melissa Dreyfus replied that there is a brief section on 401 certification and water quality standards variances. 40 CFR 131.14(a)(3) of the WQS variance regulation states that "States and other certifying entities may also use an approved WQS variance when issuing certifications under section 401 of the Act." Manjali Vican added that an example might be where a federal entity is seeking certification under Section 401 for dam removal activities.

Chairman Norton stated that within the proposed rulemaking for baseline WQS, there is a consultation process when EPA is the permit writer for NPDES permits. EPA will consult with tribes if there is a variance and discuss its impacts. When the rule is finalized, will the language be included in the handbook? Manjali Vican replied that the chapters would generically note those rules. There would be no specific guidance related to that in this Handbook chapter.

VI. Federal Water & Natural Resources Conservation Guide for Tribal Partners (Steve Epting, OW/OWOW)

Steve Epting provided an update on the Federal Tribal Conservation Resource Guide. The guide was created based on feedback from Tribal CWA 319 grantees during listening sessions in 2022. The guide encompasses federal programs that support tribal efforts to preserve, protect, manage, or restore natural environments.

With coordinating support from other federal agencies, EPA is leading development of the Tribal conservation resource guide that will include the following:

- Introduction to navigating federal assistance programs.
- An inventory of federal financial and technical assistance programs available to help Tribes achieve water quality and other natural resources conservation goals.
- Tribal case studies highlighting approaches for leveraging assistance from multiple federal programs.
- Best practices for coordinating federal assistance to achieve program goals.

There is a request to include tribal case studies in the guide that show leverage of multiple grants, frame projects that made funds more accessible, develop partnerships, and use best practices for identifying funding sources. The guide should be finalized by spring 2024.

Questions/Comments

Chairman Norton asked if the tribal match is no longer applied to the 319 grants per the 2024 guidances for PPG. Steve Epting replied that is correct. If a tribe has a PPG, match requirements are waived. Chairman Norton has 638 with the Bureau of Reclamation and uses the funding for fish habitat. He can reach out to the fisheries department to obtain more information.

Nancy Schuldt shared that the BIA direct tribal program for distributing Great Lakes restoration initiative is a good model and similar to the 638 compact. It provides an effective means of getting funding to tribes that are implementing restoration projects. It offers flexibility and opportunity to develop partnerships. Steve Epting replied that the guidance will provide an introduction to 638 contracts. He would like to follow up with Nancy Schuldt regarding her example.

Dan Kusnierz shared that the Penobscot Indian Nation completed a project that was broken down into pieces, such as bank stabilization work. He provided another project example on aquatic passage where a bridge was developed and associated roadwork was completed. Steve Epting asked to tag the example as a case study.

Brian Patterson asked how the tribal representatives were identified. Steve Epting replied that EPA relied on tribal contacts through the 319 program. There was a request for other federal agencies to identify tribal contacts. It was an informal process and the group is comprised of environmental managers from across the country. Mr. Epting shared that they are open to tribal feedback throughout the process and NTWC members may contact him if they wish to be involved.

Nancy Schuldt shared that Region 5 tribes found out about this initiative last March 2023. It was announced during the Region 5 annual tribal environmental managers meeting. She noted that

there were over 30 tribal representatives during that breakout session. Steve Epting would like to hear feedback on how the agency could be doing a better job at outreach.

Brian Patterson asked if the small group of tribal representatives are from across federal agencies. Steve Epting replied no, and the representatives are tribal environmental managers identified from EPA's programs.

VII. Upcoming Meetings

- NTWC Spring Meeting in DC, April 16-17, 2024
- 2024 Tribal CWA Forum in DC, May 14-16, 2024
 - Developing sessions and identifying tribal speakers/presenters/participants

VIII. Updates and Reminders

- EPA webinar for Tribes regarding the [EPA Policy on Consultation with Indian Tribes](#) and the companion [Guidance for Discussing Tribal Treaty or Similar Rights](#).
Monday, January 29 at 2pm ET. This webinar is for Tribes and will provide an overview of the newly revised Policy and Guidance documents. To register:
<https://events.gcc.teams.microsoft.com/event/817bc9b9-b5dd-4e1f-ac4a-0b4e71e504fd@88b378b3-6748-4867-acf9-76aacbeca6a7>
- **Consultation Opportunity: Proposal of EPA's NPDES Wildfire General Permit**
 - Consultation and coordination period: October 30, 2023 – February 27, 2024.
 - For more information: <https://tcots.epa.gov/ords/tcotspub/f?p=106:5::1856:::>
- **Comment Opportunity: Lead and Copper Rule Improvements Proposed Rulemaking**
 - Comment period deadline: February 5, 2024.
 - Virtual public hearing: 1/16/23. [To register.](#)For more information:
<https://www.epa.gov/ground-water-and-drinking-water/proposed-lead-and-copper-improvements>
- **Comment Opportunity: Proposed 2026 NPDES Pesticide General Permit**
 - Comment period deadline: January 12, 2024.
 - For more information: <https://www.epa.gov/npdes/pesticide-permitting-proposed-2026-ppp>

IX. Closing (Ken Norton, NTWC)

Chairman Norton expressed his appreciation to the presenters and attendees.

X. The NTWC's next monthly call is scheduled for February 14, 2024.