

The background features a teal-to-blue gradient with several circular patterns, including dashed lines and solid lines with arrows. A scale with numbers from 140 to 260 is visible on the left side.

**A PATH FORWARD:
SUBMITTING TRIBAL DATA OR ASSESSMENTS TO
THE STATE OF OKLAHOMA FOR INCLUSION IN
THE INTEGRATED REPORT**

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TRIBAL WATER QUALITY PROGRAMS IN OKLAHOMA

- There are 38 federally recognized tribes in Oklahoma. Of these, 30 have “treatment as a state” (TAS) authority for Clean Water Act (CWA) §106 and 28 have an active CWA §106 grant.
- Most tribes monitor monthly. Data are submitted to EPA at least annually. In general, these data are not used for assessment or listing decisions.

BACKGROUND

- In 2004, the Pawnee Nation of Oklahoma received TAS to administer a water quality standards program. The Pawnee Nation's water quality standards (WQS) were approved by EPA on November 4, 2004.
- On August 10, 2005, Congress passed Public Law 109-59, the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU).

THE PROBLEM: THE DEVIL'S IN THE DETAILS

- (b) TREATMENT AS STATE.—Notwithstanding any other provision of law, the Administrator may treat an Indian tribe in the State of Oklahoma as a State under a law administered by the Administrator only if—
 - (1) the Indian tribe meets requirements under the law to be treated as a State; and
 - (2) the Indian tribe and the agency of the State of Oklahoma with federally delegated program authority enter into a cooperative agreement, subject to review and approval of the Administrator after notice and opportunity for public hearing, under which the Indian tribe and that State agency agree to treatment of the Indian tribe as a State and to jointly plan [*sic*] administer program requirements.

FULL TEXT OF THE LAW

- <https://www.govinfo.gov/content/pkg/PLAW-109publ59/pdf/PLAW-109publ59.pdf>
- The rider is found in Section 10211: Environmental Programs (page 795).

THE PROBLEM CONTINUES...

The Midnight Rider did not contain a sunset provision. As a result, even though SAFETEA-LU was superseded by *Moving Ahead for Progress in the 21st Century Act (MAP 21)* in 2012, the Midnight Rider remains in effect.

THE BAD NEWS

To my knowledge, only one Oklahoma tribe has attempted to negotiate an agreement with the State of Oklahoma. The attempt was unsuccessful.

THE NOT SO BAD NEWS

In practice, the Part (b)(2) of the of the Midnight Rider has only been applied to regulatory programs.

THE OUTCOME

- Only one tribe in the State of Oklahoma has EPA-approved water quality standards.
- For the time being, it appears that the other 37 federally recognized tribes in Oklahoma are effectively barred from administering a water quality standards program, and possibly any regulatory environmental program.

MAKING THE BEST OF A BAD SITUATION

- Tribes collect lots of quality data. These data need to be used. One way to use these data is to submit data or assessments to the State of Oklahoma for inclusion in the Integrated Report.
- Although submitting data to Oklahoma **in no way** substitutes for having regulatory authority over a tribal WQS program, at least the data can be used for assessment and listing decisions.

THE PURPOSE OF THE WMDS WORKGROUP

The purpose of the WMDS Workgroup was to create a guidance document to walk tribes through submitting data or assessments to the State of Oklahoma for inclusion in the Integrated Report. The intent is to provide Oklahoma tribes with an avenue of access to the 305(b) and 303(d) processes.

HOW DID THE GROUP GET STARTED?

- We got started during an ATTAINS Pilot Group training in Norman, Oklahoma, October 16-18, 2017.
- During the meeting, Laura Shumway brought in representatives from ODEQ, OWRB and OCC to have a roundtable discussion about water quality assessment with Oklahoma tribes.
- A few tribes expressed frustration that tribal data are not used for assessment and listing decisions.
- State personnel expressed a willingness to work with tribes to include tribal data in the State of Oklahoma Integrated Report.
- So....in December of 2017, we started meeting.

WHAT ARE THE POTENTIAL BENEFITS OF SUBMITTING TRIBAL DATA OR ASSESSMENTS FOR INCLUSION IN THE IR?

- First and foremost, submitting tribal data or assessments to the State of Oklahoma for inclusion in the Integrated Report is **not required** now and will not be required in the future. Many tribes are not interested in sharing data with the State of Oklahoma.
- For tribes that are interested, however, this provides an avenue for 303(d) listings based on tribal data. 303(d) listings trigger TMDLs. In some cases this may be beneficial for tribes. (In other cases, it may not be beneficial.)
- Inclusion in the IR allows other water monitoring agencies access to tribal assessments. This may facilitate cooperation on projects pertaining to shared water resources.

WHAT ARE THE POTENTIAL BENEFITS TO THE STATE OF OKLAHOMA?

- Tribes monitor lots of water resources that the State of Oklahoma does not monitor.
- Tribal data is often more temporally dense than state data. (The state does not typically monitor at one site 10 times per year.)
- The state struggles with bacteriological data because they have trouble meeting the 6-hour holding time. Most tribes collect bacteriological data during the recreational season.
- Sharing assessments opens avenues for collaboration.

WHO PARTICIPATED?

- Representatives from the Kickapoo Tribe, the Iowa Tribe and Citizen Potawatomi Nation
- Representatives from the Oklahoma Conservation Commission (OCC)
- Representatives from the Oklahoma Water Resources Board (OWRB)
- Representatives from the Oklahoma Department of Environmental Quality (ODEQ)
- Representatives from the United States Geological Survey (USGS) Water Science Center

WHAT DOES THE DOCUMENT CONTAIN?

The document contains the information necessary to assess data for the nine basic parameters identified in the *Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act (2006)*. EPA expects mature water monitoring programs to collect data on the following parameters:

1. Dissolved oxygen (DO)
2. pH
3. Water temperature
4. Turbidity
5. Phosphorus
6. Total nitrogen (reported separately as TKN, ammonia and nitrate/nitrite)
7. Macroinvertebrates
8. *E. coli* or enterococci
9. Basic habitat information

THE NINE PARAMETERS PERTAIN TO THE FOLLOWING BENEFICIAL USES:

- Fish and Wildlife Propagation
- Primary Body Contact Recreation
- Secondary Body Contact Recreation
- Public and Private Water Supply
- Aesthetics
- The document also describes how to make a “nutrient-threatened” determination

THE DOCUMENT ALSO CONTAINS:

- E-mail addresses for state, federal and tribal representatives who participated in developing the document
- Pertinent citations in the Oklahoma Administrative Code and the Continuing Planning Process document
- Links to resources, including state agency SOPs

WHAT THE DOCUMENT DOES NOT CONTAIN:

The document does not address the full range of data that tribes collect. Tribes may need to consult with agency personnel regarding the assessment of data types not covered in the document (fish, metals, toxicants, etc.).

INCLUSION OF TRIBAL DATA IN THE IR CAN OCCUR VIA TWO DIFFERENT PATHS:

- Tribes submit data to the State of Oklahoma and the State of Oklahoma completes the assessment.
- Tribes assess their own data according to State of Oklahoma WQS, and submit their assessments for inclusion in the IR.
- It is possible for tribal assessments to differ from State of Oklahoma assessments, but the data included in the IR must be assessed according to State of Oklahoma WQS.

BENEFITS OF ASSESSING YOUR OWN DATA

1. Assessment is complex. Tribes can learn a tremendous amount about their waterbodies and State of Oklahoma WQS if they do their own assessments.
2. Tribes develop the capacity to administer CWA 305(b) and 303(d) programs, if that option ever becomes available to tribes in Oklahoma.
3. Some waterbodies are monitored by tribes and the State of Oklahoma. Separate assessments allow both parties to check their results against those of another agency.

NEXT STEPS

- In the very near future the document will be available on the OWRB website.
- The Inter-Tribal Environmental Council (ITEC) has recently received an Exchange Network Grant to offer ATTAINS training to tribes. The Oklahoma Conservation Commission (OCC) has offered to provide assessment training to tribes as part of the ATTAINS training.

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