



STATE OF OKLAHOMA

October 6, 2015

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Docket ID No. EPA-HQ-OW-2014-0461
Revised Interpretation of Clean Water Act Tribal Provision

Dear Administrator McCarthy:

Thank you for the opportunity to comment on the Environmental Protection Agency's (EPA) Revised Interpretation of Clean Water Act (CWA) Tribal Provision. The stated effect of this proposal is to relieve tribes of the need to demonstrate their inherent authority when they apply for treatment as a state (TAS) to administer CWA regulatory programs. We thank EPA for recognizing many of the concerns we raised in discussions leading up to your release of the Revised Interpretation and understand EPA's desire to simplify the application process; however, the process for integrating certain Oklahoma-specific TAS requirements remains unclear within the proposal.

In 2005, Congress enacted the *Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005* ("SAFETEA"), Public Law 109-59, 119 Stat. 1144. Section 10211(b) of SAFETEA contains the following provision:

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 administer program requirements.

We appreciate that EPA recognizes this provision in the notice for the Revised Interpretation. However, merely stating in Section V(E) of the notice (see below) that it is necessary to address the SAFETEA provision within the Revised Interpretation does not elucidate the process or sequence of events that will be used to ensure the provision is satisfied.

This requirement of SAFETEA exists apart from, and in addition to, existing TAS criteria, including the TAS criteria set forth in section 518 of the CWA. EPA's proposal relates solely to the interpretation of an existing CWA TAS requirement; it would thus have no effect on the separate TAS requirement of section 10211(b) of SAFETEA.

While the SAFETEA provision does not exist within the CWA, it is nonetheless an integral part of the TAS application from a tribe in Oklahoma. This provision applies to every tribe in Oklahoma seeking TAS approval and should be evaluated as a threshold matter at the beginning of the process when EPA determines whether a tribe has sufficient regulatory authority to enact a CWA program. Given the unique situation in Oklahoma and the need to reconcile unique Federal law on this subject, we implore you to spell out the process EPA intends to use to ensure satisfaction of the SAFETEA provision within the context of this Revised Interpretation, including a thorough description of our ability as State environmental agencies to participate in the review process.

I appreciate your consideration of these concerns and look forward to a continued partnership with EPA to protect water quality within the state of Oklahoma.

Sincerely,



J.D. Strong
Executive Director
Oklahoma Water Resources Board



Scott Thompson
Executive Director
Oklahoma Department of Environmental Quality