

Environmental Protection Agency

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§ 142.72 Requirements for Tribal eligibility.

The Administrator is authorized to treat an Indian tribe as eligible to apply for primary enforcement for the Public Water System Program and the authority to waive the mailing requirements of § 141.155(a) if it meets the following criteria:

(a) The Indian Tribe is recognized by the Secretary of the Interior.

(b) The Indian Tribe has a tribal governing body which is currently "carrying out substantial governmental duties and powers" over a defined area, (*i.e.*, is currently performing governmental functions to promote the health, safety, and welfare of the affected population within a defined geographic area).

(c) The Indian Tribe demonstrates that the functions to be performed in regulating the public water systems that the applicant intends to regulate are within the area of the Indian Tribal government's jurisdiction.

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Public Water System program.

[53 FR 37411, Sept. 26, 1988, as amended at 59 FR 64344, Dec. 14, 1994; 63 FR 44535, Aug. 19, 1998]

§ 142.76 Request by an Indian Tribe for a determination of eligibility.

An Indian Tribe may apply to the Administrator for a determination that it meets the criteria of section 1451 of the Act. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 142.72. The application shall consist of the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior.

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. The statement should:

(1) Describe the form of the Tribal government;

(2) Describe the types of governmental functions currently performed by the Tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the sources of the Tribal government's authority to carry out the governmental functions currently being performed.

(c) A map or legal description of the area over which the Indian Tribe asserts jurisdiction; a statement by the Tribal Attorney General (or equivalent official) which describes the basis for the Tribe's jurisdictional assertion (including the nature or subject matter of the asserted jurisdiction); a copy of those documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which the Tribe believes are relevant to its assertions regarding jurisdiction; and a description of the locations of the public water systems the Tribe proposes to regulate.

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective Public Water System program. The narrative statement should include:

(1) A description of the Indian Tribe's previous management experience which may include, the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facilities Construction Activity Act (42 U.S.C. 2004a).

(2) A list of existing environmental or public health programs administered by the Tribal governing body and a copy of related Tribal laws, regulations and policies.

(3) A description of the Indian Tribe's accounting and procurement systems.

(4) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government.

(5) A description of the existing, or proposed, agency of the Indian Tribe

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which will assume primary enforcement responsibility, including a description of the relationship between owners/operators of the public water systems and the agency.

(6) A description of the technical and administrative capabilities of the staff to administer and manage an effective Public Water System Program or a plan which proposes how the Tribe will acquire additional administrative and/or technical expertise. The plan must address how the Tribe will obtain the funds to acquire the additional administrative and technical expertise.

(e) The Administrator may, in his discretion, request further documentation necessary to support a Tribe's eligibility.

(f) If the Administrator has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the Public Water System program (paragraphs (c), (d)(5) and (6) of this section).

[53 FR 37411, Sept. 26, 1988, as amended at 59 FR 64344, Dec. 14, 1994]

§ 142.78 Procedure for processing an Indian Tribe's application.

(a) The Administrator shall process a completed application of an Indian Tribe in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) A tribe that meets the requirements of § 141.72 of this chapter is eligible to apply for development grants and primacy enforcement responsibility for a Public Water System Program and associated funding under section 1443(a) of the Act and for primary enforcement responsibility for public water systems under section 1413 of the Act and for the authority to waive the mailing requirement of § 141.155(a) of this chapter.

[53 FR 37411 Sept. 26, 1988, as amended at 59 FR 64345, Dec. 14, 1994; 63 FR 71376, Dec. 28, 1998]

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Subpart I—Administrator's Review of State Decisions that Implement Criteria Under Which Filtration Is Required

SOURCE: 54 FR 27540, June 29, 1989, unless otherwise noted.

§ 142.80 Review procedures.

(a) The Administrator may initiate a comprehensive review of the decisions made by States with primary enforcement responsibility to determine, in accordance with § 141.71 of this chapter, if public water systems using surface water sources must provide filtration treatment. The Administrator shall complete this review within one year of its initiation and shall schedule subsequent reviews as (s)he deems necessary.

(b) EPA shall publish notice of a proposed review in the FEDERAL REGISTER. Such notice must:

(1) Provide information regarding the location of data and other information pertaining to the review to be conducted and other information including new scientific matter bearing on the application of the criteria for avoiding filtration; and

(2) Advise the public of the opportunity to submit comments.

(c) Upon completion of any such review, the Administrator shall notify each State affected by the results of the review and shall make the results available to the public.

§ 142.81 Notice to the State.

(a) If the Administrator finds through periodic review or other available information that a State (1) has abused its discretion in applying the criteria for avoiding filtration under § 141.71 of this chapter in determining that a system does not have to provide filtration treatment, or (2) has failed to prescribe compliance schedules for those systems which must provide filtration in accordance with section 1412(b)(7)(C)(ii) of the Act, (s)he shall notify the State of these findings. Such notice shall:

(1) Identify each public water system for which the Administrator finds the State has abused its discretion;

(2) Specify the reasons for the finding;