

ADEQ WATER QUALITY DIVISION AZPDES PERMITS TOOLKIT REVIEW TRIBAL INFORMATION WEBINAR SUMMARY

DATE: Sept. 14, 2020

TIME: 1-3 p.m.

ADEQ STAFF

Trevor Baggioire
Randy Mattas
Justin Bern
Len Drago
Erin Jordan
David Lelsz
Chris Montague-Breakwell
Leigh Padgitt

ADDITIONAL ATTENDEES

Theresa Gunn, GCI
Kelly Cairo, GCI

STAKEHOLDER ATTENDEES

Brenda Ball, Ak-Chin Indian Community
Peter Bungart, Hualapai Tribe
Alexandra Corcoran-Shannon, Montgomery & Interpreter, representing Inter-Tribal Association of Arizona
Laurel Lacher, Lacher Hydrological Consulting, tribal consultant
Gina Mason, Salt River Pima-Maricopa Indian Community
Katosha Nakai, Strickland and Strickland, representing Ak-Chin Indian Community
Melinda O'Daniel, Navajo Nation
Edith Thomas, Gila River Indian Community
Cora Tso, Montgomery & Interpreter, representing Inter-Tribal Association of Arizona

WELCOME

ADEQ Water Quality Division Director Trevor Baggioire welcomed attendees and facilitated introductions. He explained since it is not clear which Arizona waters continue to be regulated by the Clean Water Act, ADEQ has worked to create a screening toolkit to understand this distinction. He said it is likely Tribes also are in a similar situation. Trevor noted that the purpose of the meeting was to gather input on ADEQ's screening toolkit.

DOES A FACILITY NEED AN AZPDES PERMIT?

Chris Montague-Breakwell reviewed the presentation, which included understanding the importance of flow regime to the Navigable Water Protection Rule (NWPR), why an NWPR screening toolkit is needed, and how the proposed ADEQ toolkit works. Theresa explained that an audio/video presentation of the slide contents will be recorded separately and provided on the website.

A Traditionally Navigable Water, or TNW, is always a Water of the United States (WOTUS), as are tributaries to these waters. The tributary's flow to the TNW must be unbroken (by an ephemeral water which does not convey water in a typical year) to be considered a WOTUS. A facility discharge to a WOTUS requires an AZPDES permit.

Theresa asked attendees for their reaction to the toolkit and whether respective Tribes might find it useful to use similar tools.

Highlights of comments and questions include:

- (Question): Regarding the flow regime map, in 2018 USGS published a report showing 85% of waters flow through Tribal land. How will you issue permits that are in or flow through Tribal land?
 - (Response): ADEQ expects to consider protections of designated downstream uses and would also reach out to Tribe whether a permit should be required.
 - Trevor said that the CWA does not distinguish between jurisdictional boundaries, and that a TNW on Tribal land is afforded protections at the federal level.
 - He encouraged and welcomed data to update flow regime maps. The toolkit is meant as a screening tool. Additional information from Tribes is welcomed to update the map and potential permit requirements. The screening toolkit is meant to be conservative in order to ensure that waters are protected.
 - ADEQ's consultation policy is expected to be updated by end of year
- (Comment): Dale Turner at The Nature Conservancy has a map of perennial streams in the state.
- (Question): R18-11-123 includes a list of waters which are granted state protection, is this list tied to WOTUS definition? There is a potential discharger upstream.
 - (Response): Trevor said that now that the NWPR is final, we can revisit applicability.
 - Action item: Staff to contact Brenda with follow-up information.
- (Question): If R18-11-123 is no longer enforceable, what is the school of thought using the toolkit? Will new MOUs be needed? The upstream water plant hasn't been operational recently.
 - (Response): Rules tend to be in place until they are removed. If the rule is based on a definition that has changed, then it will need to be revisited.
- (Question): Who decides what is a TNW?
 - (Response): Trevor said there are stand-alone TNWs determined by the US Army Corps of Engineers. This includes two parts of Gila River and two parts of Santa Cruz River. Other determinations are project-specific TNWs, also determined by the Corps on a project-by-project basis. ADEQ understands that the Corps does not currently intend to create a comprehensive TNW list.
- (Question): How did the USGS gather data used in the rain-drop tool?
 - (Response): This tool uses elevation data, with a point-and-click front end.
- There was a comment regarding the tremendous significance of the Gila River and water to the Gila River Indian Community, and the necessity to defend the Gila River's importance. The Tribe was told by another significant organization that the portion of the Gila River is no longer a WOTUS.
 - (Response): Trevor recommended further discussion about whether the water is a WOTUS. He cited risks to the discharger if there was not a permit associated with a WOTUS. Tribes and states each have the authority to set additional requirements on waters not protected by the CWA. Trevor offered to continue this discussion with Edith and/or Tribal leaders.
 - (Comment) If this concern is in relation to 404, could make a special request to the Corps.
- (Question): How does ADEQ handle determinations?
 - (Response): The permittee decides if they need to approach the department about a permit. If there is a discharge and there is evidence there is a connection to a WOTUS, ADEQ can require the discharger to get a permit.

- (Question): When will the flow regime map be available?
 - (Response): The flow regime map is a GIS layer. ADEQ will email stakeholders once the tool is updated with source data and posted on the website.
- (Question): The City of Kingman Hilltop WWTP slide shows an important aquifer basin. Are permits needed?
 - (Response): Wastewater treatment plants are required to get an Aquifer Protection Permit. APPs regulate aquifers as drinking water sources. This is separate from the NWPR and therefore, protections through the CWA. A discharge to a navigable water/WOTUS is protected by the CWA. CWA surface water standards can be more stringent than drinking water standards.
- (Question): How are withdrawals of permits documented?
 - (Response): To date, no permittees have withdrawn their permits. If this occurs, ADEQ will provide a tailored notification to the Tribe in the affected area.

Highlights of additional staff comments included:

- Len asked about EPA input and discussion with Tribe, and how Tribes might be handling similar questions.
- Trevor said that ADEQ has shared the toolkit with EPA. The toolkit is intended to be used until there is additional clarity from EPA and the Corps.
- Len encouraged additional information meetings or formal consultation.
- Trevor requested any additional data on flow regime or classification of water bodies as ephemeral, intermittent or perennial waters.
- David asked Tribal representatives to consider what additional information they need to provide effective feedback to ADEQ. He expects these tools to continue to undergo several iterations. He requested initial input by Sept. 28, noting that feedback at any point will be valuable in a future iteration.

Next steps:

- Raindrop tool is a national tool that is widely available.
- ADEQ will add context to the flow regime map before re-posting it to the website.
- A webinar with permittees and general stakeholders is scheduled for 1-4 p.m. on Sept. 15. Approximately 400 attendees are expected.
- ADEQ will post the slides after Tuesday's meeting. The slides with recorded narration also will be posted at a later date.

Action item:

- ADEQ to review R18-11-123 and follow up with Brenda.

CLOSING

Trevor expressed his appreciation for attendees' participation in the information session and thoughtful questions. He expects additional guidance from EPA and the Corps in the next few months. Trevor also noted that he looks forward to additional consultation with Tribal representatives in the future.