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33 U.S.C.A. § 1377

United States Code Annotated [Currentness](#)

Title 33. Navigation and Navigable Waters ([Refs & Annos](#))

☞ [Chapter 26](#). Water Pollution Prevention and Control ([Refs & Annos](#))

☞ [Subchapter V](#). General Provisions

➡ § 1377. Indian tribes

(a) Policy

Nothing in this section shall be construed to affect the application of [section 1251\(g\)](#) of this title, and all of the provisions of this section shall be carried out in accordance with the provisions of such [section 1251\(g\)](#) of this title. Indian tribes shall be treated as States for purposes of such [section 1251\(g\)](#) of this title.

(b) Assessment of sewage treatment needs; report

The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds allotted to States under [section 1285](#) of this title and priority lists under [section 1296](#) of this title, and any obstacles which prevent such needs from being met. Not later than one year after February 4, 1987, the Administrator shall submit a report to Congress on the assessment under this subsection, along with recommendations specifying (1) how the Administrator intends to provide assistance to Indian tribes to develop waste treatment management plans and to construct treatment works under this chapter, and (2) methods by which the participation in and administration of programs under this chapter by Indian tribes can be maximized.

(c) Reservation of funds

The Administrator shall reserve each fiscal year beginning after September 30, 1986, before allotments to the States under [section 1285\(e\)](#) of this title, one-half of one percent of the sums appropriated under [section 1287](#) of this title. Sums reserved under this subsection shall be available only for grants for the development of waste treatment management plans and for the construction of sewage treatment works to serve Indian tribes, as defined in subsection (h) of this section and former Indian reservations in Oklahoma (as determined by the Secretary of the Interior) and Alaska Native Villages as defined in Public Law 92-203 [[43 U.S.C.A. § 1601 et seq.](#)].

(d) Cooperative agreements

In order to ensure the consistent implementation of the requirements of this chapter, an Indian tribe and the State or States in which the lands of such tribe are located may enter into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this chapter.

(e) Treatment as States

The Administrator is authorized to treat an Indian tribe as a State for purposes of subchapter II of this chapter and [sections 1254](#), [1256](#), [1313](#), [1315](#), [1318](#), [1319](#), [1324](#), [1329](#), [1341](#), [1342](#), [1344](#), and [1346](#) of this title to the degree necessary to carry out the objectives of this section, but only if--

(1) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

(2) the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and

(3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this chapter and of all applicable regulations.

Such treatment as a State may include the direct provision of funds reserved under subsection (c) of this section to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator, in cooperation with the Director of the Indian Health Service, is authorized to make grants under subchapter II of this chapter in an amount not to exceed 100 percent of the cost of a project. Not later than 18 months after February 4, 1987, the Administrator shall, in consultation with Indian tribes, promulgate final regulations which specify how Indian tribes shall be treated as States for purposes of this chapter. The Administrator shall, in promulgating such regulations, consult affected States sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes located on common bodies of water. Such mechanism shall provide for explicit consideration of relevant factors including, but not limited to, the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, and present and historical uses and quality of the waters subject to such standards. Such mechanism should provide for the avoidance of such unreasonable consequences in a manner consistent with the objective of this chapter.

(f) Grants for nonpoint source programs

The Administrator shall make grants to an Indian tribe under [section 1329](#) of this title as though such tribe was a State. Not more than one-third of one percent of the amount appropriated for any fiscal year under [section 1329](#) of this title may be used to make grants under this subsection. In addition to the requirements of [section 1329](#) of this title, an Indian tribe shall be required to meet the requirements of paragraphs (1), (2), and (3) of subsection (d) [\[FN1\]](#) of this section in order to receive such a grant.

(g) Alaska Native organizations

No provision of this chapter shall be construed to--

(1) grant, enlarge, or diminish, or in any way affect the scope of the governmental authority, if any, of any Alaska Native organization, including any federally-recognized tribe, traditional Alaska Native council, or Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), over lands or persons in Alaska;

(2) create or validate any assertion by such organization or any form of governmental authority over lands or persons in Alaska; or

(3) in any way affect any assertion that Indian country, as defined in [section 1151 of Title 18](#), exists or does not exist in Alaska.

(h) Definitions

For purposes of this section, the term--

(1) "Federal Indian reservation" means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and

(2) "Indian tribe" means any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

CREDIT(S)

(June 30, 1948, c. 758, Title V, § 518, as added Feb. 4, 1987, [Pub.L. 100-4, Title V, § 506](#), 101 Stat. 76, and amended Nov. 1, 1988, [Pub.L. 100-581, Title II, § 207](#), 102 Stat. 2940; Oct. 10, 2000, [Pub.L. 106-284, § 6, 114 Stat. 876](#).)

[\[FN1\]](#) So in original. Probably should be subsection "(e)".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1987 Acts. Section-by-Section Analysis, see 1987 U.S. Code Cong. and Adm. News, p. 5.

1988 Acts. [Senate Report No. 100-577](#), see 1988 U.S. Code Cong. and Adm. News, p. 3908.

2000 Acts. [House Report No. 106-98](#), see 2000 U.S. Code Cong. and Adm. News, p. 717.

References in Text

Pub.L. 92-203, referred to in subsec. (c), is Pub.L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, popularly known as the "Alaska Native Claims Settlement Act", which is classified generally to chapter 33 (section 1601 et seq.) of Title 43, Public Lands. "Alaska Native Villages", also so referred, are defined in section 1602(c) of Title 43, defining "Native village". For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Act of June 18, 1934, referred to in subsec. (g)(1), is Act June 18, 1934, c. 576, 48 Stat. 984, as amended, popularly known as the Indian Reorganization Act, which enacted sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 461 of Title 25 and Tables.

Codifications

In original enactment, subsec. (f) contained a reference to "paragraphs (1), (2), and (3) of subsection (d)", which reference has been editorially changed to "subsection (e)" as the probable intent of Congress as such subsec. (e) and not subsec. (d) contains pars. (1), (2), and (3).

Amendments

2000 Amendments. Subsec. (e). Pub.L. 106-284, § 6, in the introductory matter, struck out “and 1344 of this title” and inserted “1344, and 1346 of this title”.

1988 Amendments. Subsec. (c). Pub.L. 100-581, § 207, added “, as defined in subsection (h) of this section and former Indian reservations in Oklahoma (as determined by the Secretary of the Interior) and Alaska Native Villages as defined in Public Law 92-203 [[43 U.S.C.A. § 1601 et seq.](#)]” following “serve Indian tribes”.

Prior Provisions

A prior section 518 of Act June 30, 1948, was renumbered as section 519 of Act June 30, 1948, and is set out as a note under section 1251 of this title.

Tribal Assistance Grants

Pub.L. 109-54, Title II, Aug. 2, 2005, 119 Stat. 530, provided in part: “That, notwithstanding this or any other appropriations Act, heretofore and hereafter, after consultation with the House and Senate Committees on Appropriations and for the purpose of making technical corrections, the Administrator is authorized to award grants under this heading to entities and for purposes other than those listed in the joint explanatory statements of the managers accompanying the Agency's appropriations Acts for the construction of drinking water, wastewater and stormwater infrastructure and for water quality protection.”

Grants to Indian Tribes

Pub.L. 109-54, Title II, Aug. 2, 2005, 119 Stat. 530, provided in part that for fiscal year 2006, and notwithstanding section 518(f) of the Act (section 518(f) of the Federal Water Pollution Control Act which is subsec. (f) of this section), the Administrator was authorized to use the amounts appropriated for any fiscal year under section 319 of that Act ([33 U.S.C.A. § 1329](#)) to make grants to Indian tribes pursuant to sections 319(h) ([33 U.S.C.A. § 1329\(h\)](#)) and 518(e) of that Act (subsec. (e) of this section), was from the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, and was repeated in subsequent Appropriations Acts but not set out in the Code.

Similar provisions were contained in the following prior appropriations Acts:

Pub.L. 108-447, Div. I, Title III, Dec. 8, 2004, 118 Stat. 3330.

Pub.L. 108-199, Div. G, Title III, Jan. 23, 2004, 118 Stat. 406.

Pub.L. 108-7, Div. K, Title III, Feb. 20, 2003, 117 Stat. 511.

Pub.L. 107-73, Title III, Nov. 26, 2001, 115 Stat. 685.

Pub.L. 106-377, § 1(a)(1) [Title III], Oct. 27, 2000, 114 Stat. 1441, 1441A-43.

Pub.L. 106-74, Title III, Oct. 20, 1999, 113 Stat. 1083.

LAW REVIEW COMMENTARIES

[Albuquerque v. Browner, Native American tribal authority under the Clean Water Act: Raging like a river out of control. 45 Syracuse L.Rev. 887 \(1994\).](#)

Cooperation between tribes and states in protecting the environment. Kevin Gover & James B. Cooney, [10 Nat.Resources & Env't 35 \(Winter 1996\).](#)

Cooperative agreements: Government-to-[government relations to foster reservation business development](#). Joel H. Mack and Gwyn Goodson Timms, 20 Pepp.L.Rev. 1295 (1993).

EPA and Indian Reservations: Justice Stevens' Factual Approach. Peter W. Sly, 20 Env'tl.L.Rep. 10429 (1990).

Link between water [quality and water rights: Native American control over water quality](#). Mark E. Chandler, 30 Tulsa L.J. 105 (1994).

Protecting [tribal waters: The Clean Water Act takes over where tribal sovereignty leaves off](#). Comment, 15 Tul.Env'tl.L.J. 425 (Summer 2002).

Tribal governmental [regulation of non-Indian polluters of reservation waters](#). James M. Grijalva, 71 N.D.L.Rev. 433 (1995).

RESEARCH REFERENCES

Encyclopedias

[Am. Jur. 2d Pollution Control § 784](#), Application by Indian Tribe.

Treatises and Practice Aids

[Federal Procedure, Lawyers Edition § 32:845](#), Application by Indian Tribe.

NOTES OF DECISIONS


Arbitrary and capricious tribal standards [3](#)


Dispute resolution procedures [4](#)

State regulation or control [2](#)

Treatment as states [1](#)

1. Treatment as states

Lake was "within the borders" of Native American tribe's reservation, for purpose of qualifying for tribe-as-state status under the Clean Water Act, even though legal description of reservation ran only to lake's high water mark, where lake was almost completely surrounded by reservation land. [Wisconsin v. E.P.A., C.A.7 \(Wis.\) 2001, 266 F.3d 741](#). [Environmental Law](#) 162

Environmental Protection Agency (EPA) has authority to require upstream National Pollution Discharge Elimination System (NPDES) dischargers to comply with standards set by downstream Indian tribe that is recognized as state under Clean Water Act (CWA). [City of Albuquerque v. Browner, C.A.10 \(N.M.\) 1996, 97 F.3d 415](#), certiorari denied [118 S.Ct. 410, 522 U.S. 965, 139 L.Ed.2d 314](#). [Environmental Law](#) 209

Narragansett Tribe has concurrent jurisdiction over, and exercises governmental power with respect to, settlement lands which were subject of Rhode Island Claims Settlement Act of 1978 and, therefore, was entitled to invoke Indian Gaming Regulatory Act; under Settlement Act, Tribe retained concurrent jurisdiction over settlement lands which was sufficient to satisfy corresponding precondition to applicability of Gaming Act and Tribe's establishing housing authority, obtaining status as functional equivalent of state for purposes of Clean Water Act, and administering health care programs established that Tribe exercised more than enough governmental power to satisfy second prong of statutory test. [State of R.I. v. Narragansett Indian Tribe, C.A.1 \(R.I.\) 1994, 19 F.3d 685](#),

certiorari denied [115 S.Ct. 298, 513 U.S. 919, 130 L.Ed.2d 211](#). [Indians](#) 🔑334

Finding by Environmental Protection Agency (EPA) that pollution of surface waters traversing or appurtenant to nonmember fee land within Flathead Reservation would have serious and substantial impact on health and welfare of Confederated Salish and Kootenai Tribes and that Tribes therefore possessed inherent authority to set water quality standards within Reservation, entitling them to treatment-as-state (TAS) status under Clean Water Act (CWA), was supported by administrative record, consistent with EPA regulations, and not contrary to law, based on numerous instances of discharge of pollutants on nonmember lands causing serious and substantial impacts of tribes' water resources and EPA policies of avoiding checkerboarding and fractionalizing of reservations into trust and fee lands and supporting lead role for tribal governments in managing reservation environmental programs. [State of Mont. v. U.S. E.P.A., D.Mont.1996, 941 F.Supp. 945](#), affirmed [137 F.3d 1135](#), certiorari denied [119 S.Ct. 275, 525 U.S. 921, 142 L.Ed.2d 227](#). [Environmental Law](#) 🔑188

2. State regulation or control

State's regulations in furtherance of Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) were preempted by federal law in relation to housing construction project in Indian country; tribe was deemed state for purposes of CWA, and underground injection control programs for Indian lands in state were administered by Environmental Protection Agency (EPA). [Narragansett Indian Tribe of Rhode Island v. Narragansett Elec. Co., D.R.I.1995, 878 F.Supp. 349](#), affirmed in part, reversed in part [89 F.3d 908](#). [States](#) 🔑18.31; [Waters And Water Courses](#) 🔑196

3. Arbitrary and capricious tribal standards

Environmental Protection Agency's (EPA) approval of more stringent water quality standards proposed by Indian tribe recognized as state under Clean Water Act (CWA) was not arbitrary and capricious in absence of evidence that EPA failed to consider important aspect of standards. [City of Albuquerque v. Browner, C.A.10 \(N.M.\) 1996, 97 F.3d 415](#), certiorari denied [118 S.Ct. 410, 522 U.S. 965, 139 L.Ed.2d 314](#). [Environmental Law](#) 🔑188

4. Dispute resolution procedures

Mandate of Clean Water Act (CWA) requiring establishment of mechanism for resolving any unreasonable consequences arising when state and Indian tribe imposed different water quality standards on common body of water was met by Environmental Protection Agency (EPA) regulations even though EPA only allowed states and tribes to initiate resolution process; it was reasonable to allow only those two sovereigns authorized to revise or modify disputed standards to initiate resolution process, and third parties could be invited to participate. [City of Albuquerque v. Browner, C.A.10 \(N.M.\) 1996, 97 F.3d 415](#), certiorari denied [118 S.Ct. 410, 522 U.S. 965, 139 L.Ed.2d 314](#). [Environmental Law](#) 🔑188

33 U.S.C.A. § 1377, 33 USCA § 1377

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