

EPA Withdraws Proposed Rule to Implement Federal Water Quality Standards on Tribal Lands



Client Alert

By Bryan C. Shade, Madelyn M. VanDorpe

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On January 10, 2025, the U.S. Environmental Protection Agency (EPA) announced the withdrawal of a proposed rule (the “Proposed Rule”) it had promulgated on May 5, 2023, which would have established federal Clean Water Act water quality standards (WQS) for waters of the United States located on Indian reservations that do not currently maintain such standards.

Section 303(d) of the Clean Water Act (CWA) directs states to implement WQS as a tool to avoid pollution of waters of the United States and define the water quality goals of a water body by designating the use or uses to be made of the water and then setting criteria that protect those designated uses. Tribes that have obtained treatment in the same manner as a state (TAS) status under Section 518(e) of the CWA are authorized to implement their own WQS; however, Tribes without TAS status lack tribal standards for human health and environmental objectives. For this reason, in the Proposed Rule, EPA sought to promulgate baseline WQS until Tribes obtain TAS and adopt their own CWA WQS.

With the withdrawal of the Proposed Rule, EPA explained that it will continue to focus its resources on supporting Tribal efforts to seek the authority to administer their own WQS under the CWA TAS provision. This includes working with Tribes to build their capacity and infrastructure to empower them to administer CWA programs. We note, however, that the Proposed Rule and EPA's subsequent withdrawal occurred under the Biden Administration, and it is not known what, if any, changes in approach the Trump Administration may take with respect to WQS for Tribal lands.

For more information regarding CWA water quality standards, please contact Madelyn VanDorpe at mvandorpe@lippes.com, or another member of our Environment & Energy Practice Team.

For more information regarding water quality standards on Tribal lands or obtaining TAS status, please contact Indian Law Practice Team partner Bryan Shade at bshade@lippes.com, or another member of our Indian Law Practice Team.

Related Team



Bryan C. Shade
Partner



**Madelyn M.
VanDorpe**
Associate



Christina D. Bonanni
Partner



Ian A. Shavitz
Partner | Team
Leader -
Environment &
Energy