

USET Water and Wastewater USEPA Approved Certification Bylaws Update



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Tribal Utility Summit
Keynote Address
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Overview

- History USET Certification Program
- Sovereignty
- 2019 Bylaws Updates
- Call for USET Certification
- USET Certification Stakeholder Meeting



Miccosukee Tribe of Indians of Florida July 2019



Seneca Nation of Indians August 2019



Eastern Band of Cherokee Indians June 2019



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USET Board of Directors: Record of Support

- Resolution 2000:57 – Approval to apply for EPA Grant
 - USET Drinking Water Operator Certification Program
- Resolution 2002:050 – Approval and Adoption
 - USET Certification Board for Water and Wastewater Treatment Plant Operator and Laboratory Analyst Bylaws
- Resolution 2002:080 – Approval of updated Bylaws
- Resolution 2002:081 – Approval of USET Cert Board members
- Resolution 2009:008 – integrate USEPA National Tribal Drinking Water Operator Certification Program Final Guidelines including a training component into the Bylaws

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USET BOD Support - continued

- Resolution 2011:056 – revised bylaws to further meet USEPA Final Guidelines to apply for USEPA Approval of USET Drinking Water Certification Program
- **2012 USEPA Approves USET Certification Program!**
- Resolution 2015:015 – revised bylaws increased experience requirements for operators and laboratory analysts
- 2015 USET becomes member of The Association of Boards of Certification
- Resolution 2018:002 revised bylaws adding Class I – IV Water Distribution and Wastewater Collection system operators amended educational and continuing education requirements

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USET BOD Support - continued

- The USET Certification Board met September 9, 2019
 - Recommended changes for the USET Board of Directors
 - USET Board of Directors Approved
- Resolution 2020:002 – the USET Board of Directors adopted the USET Certification Board Bylaws Update for Water and Wastewater Treatment Plant Operators and Laboratory Analysts

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Tribal Sovereignty

- Certification Board Preamble
 - Emphasized purpose of USET certification and role of operators and lab analysts in asserting Tribal sovereignty
- Purpose of USET Certification
 - Uphold Tribal Sovereignty
- Tribal sovereignty is the inherent authority of Tribal nations to be self-governing.
 - Pre-dating the arrival of Europeans
 - Impacted by European colonial nations
 - Supported by “Doctrine of Discovery,” European powers claimed dominion over the lands and peoples
 - Recognized in U.S. Constitution and Federal Indian law



Mississippi Band Choctaw Indians May 2019



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Tribal Sovereignty continued

- Federal Indian Law and Policy is underpinned by landmark Supreme Court decisions, including the Marshall Trilogy:
- In *Johnson v. McIntosh*, (1823), Chief Justice John Marshall described the effects of European incursion on native tribes, and that “Indians” only have the “right of occupancy” and hold no title to land.
- In *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 8 L. Ed. 25 (1831), Marshall ruled that the Cherokee nation was a “domestic dependent nation” and the Supreme Court did not have jurisdiction to grant an injunction to prevent Georgia from stripping the Cherokee people of their land rights.
- In *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 8 L. Ed. 483 (1832), Marshall ruled that States do not have the right to impose regulation on Native American land. But President Jackson did not enforce the ruling, and instead implemented a removal policy, forcing the Cherokee people to give up their lands and force marched them to Oklahoma on the infamous ‘Trail of Tears’



Seneca Nation of Indians August 2019



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Tribal Sovereignty continued

- The Marshall decisions have had long standing and far reaching effects on Tribal nations. And, still impact the governing powers of Tribal nations today.
- Congress also asserts that it has plenary powers to limit or abolish tribal governments. The general status is that each Tribal nation retains the right to self-government, and that no state may impose its laws on the reservation. This was reiterated in a **1978** U.S. Supreme Court case, *United States v. Wheeler*, 435 U.S. 313, 98 S. Ct. 1079, 55 L. Ed. 2d 303, in which Justice Potter Stewart concluded that "Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status."
- Tribal nations exercise their sovereignty in diverse governance systems, and may assert their authority in various areas, including but not limited to:
 - form tribal governments; to determine tribal citizenship; to regulate individual property; to levy and collect taxes; to maintain law and order; to exclude non-members from tribal territory; to regulate domestic relations; and to regulate commerce and trade.



Mississippi Band Choctaw Indians May 2019



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Tribal Sovereignty continued

Among their many governmental functions and obligations, Tribal nations provide safe, clean, and adequate water to the residents in their territories.

This may not be fully understood by Tribal water and wastewater utility employees.

Operators and Lab Analysts are focused on the SDWA and CWA, and may not regularly think about Tribal jurisdiction and the legal basis for Tribal nations to fulfill their public trust obligations to provide clean, safe, and adequate water.

Tribal employees may not necessarily receive training about Tribal jurisdiction and the legal basis for Tribal regulatory authority.



Coushatta Tribe of Louisiana December 2019



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Tribal Sovereignty continued

Tribal Nations have two pathways to establish regulatory programs:

- Exercising their inherent authority
- Obtaining delegated federal authority under federal environmental statutes such as the SDWA and CWA



Tribal Utility Finance Forum September 2019

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Tribal Sovereignty continued

- An Operator or Lab Analyst may obtain certification directly from USET or through a state licensing agency
- Choosing a USET certification would serve to uphold the sovereignty of the Tribal nation in which an operator or lab analyst is employed.



Coushatta Tribe of Louisiana December 2019

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Tribal Sovereignty continued

- Certification Board Observation
 - Water and wastewater employees may not understand Tribal sovereignty and obligation to provide drinking water.
 - These utility employees may have perceptions and motivations without regard to their role in upholding Tribal sovereignty.
 - Perceptions may include that a State certification is more transferable, or that a USET certification is not as valuable.
 - However, USET is a member of the Association of Boards of Certification, and has a program certified by the U.S. Environmental Protection Agency.



Coshatta Tribe of Louisiana December 2019



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Tribal Sovereignty continued

- USET Certification Board
 - USET and State certifications are complimentary
 - Encourage All Tribal Nation utility employees to pursue and hold USET Certification
 - To encourage this – fee waiver for anyone that signs up for USET Certification by April 15, 2020



Coshatta Tribe of Louisiana December 2019



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CBylaws Update

- Incorporated Preamble
 - Assist operators and lab analysts understand sovereignty
- Removed grandparenting clause
- Expanded “operator-in-training” definition – assist new employees
 - Apprentice
 - Only requirement pass a basic math class
 - Look for csmlearn.com booth at vendor show
 - USET sponsoring this course – Free!
 - Journeyperson
 - Passed the certification exam
 - Needs plant experience to become certified



Coshatta Tribe of Louisiana December 2019



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Bylaws Update continued

- Certification Board updates
 - All certified operator classes eligible
 - Expanded consultant role to allow for Tribal Nation engineers
 - Created nomination system for Certification Board membership
 - System for Certification Board member removal for lack of participation
 - Authorization to meet via electronic media
 - Triennial rotation of officer positions



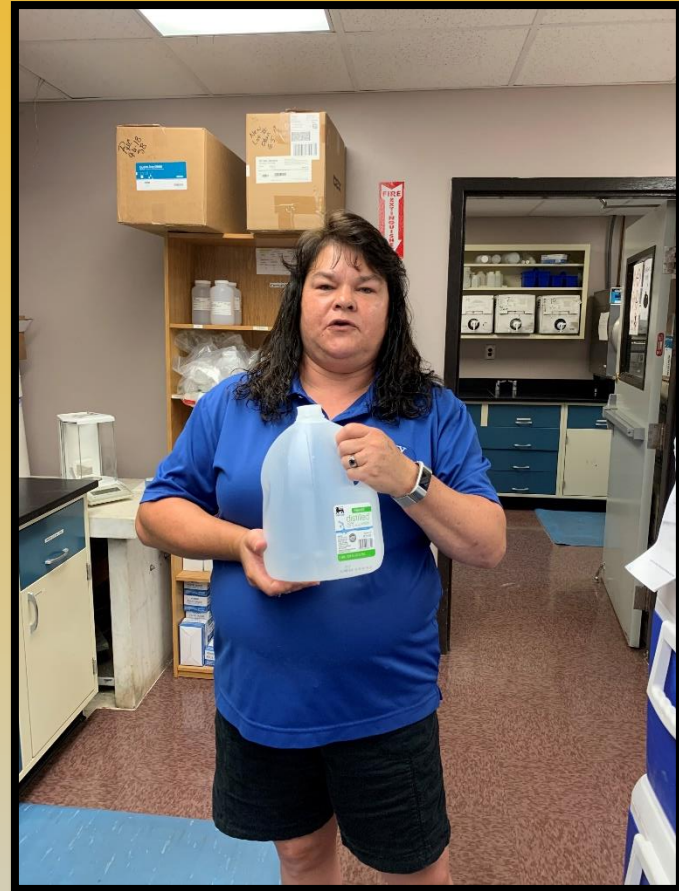
Catawba Indian Nation June 2019



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Bylaws Update continued

- Added requirements for certification
 - Qualifying experience form endorsed by licensed operator
 - Letter of endorsement from Tribal Nation
- Clarification of Lab Analyst
- Continuing education requirements required at renewal



Eastern Band of Cherokee Indians June 2019



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USET BOD Resolution

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 - Recommended these changes for the USET Board of Directors
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Closing Remarks

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Preamble – transition to USET Certification Stakeholder Meeting

United South and Eastern Tribes, Inc. (USET) member Tribal Nations have adopted this certification program to further Tribal Nation sovereignty by obtaining Utility certification outside of State governments. Discussing sovereignty is difficult and the difficulty is in two areas: operators and lab analysts do not typically think of Tribal jurisdiction; and, operators and lab analysts at Tribal Utilities are often non-Tribal people. Another issue is that operators and lab analysts at Tribal Utilities, and most Tribal employees, do not typically get training that a Tribal Nation, like other sovereigns such as states, have public trust obligations to provide drinking water and wastewater treatment to their citizens. Or, that Tribal Nations still possess and assert inherent rights, from which governmental functions are carried out. Instead, operators and lab analysts may be familiar with the Safe Drinking Water Act or the Clean Water Act, and that Tribal Nations like states may carry out delegated federal environmental programs. Clearly, Tribal Nations have two paths to choose from to establish regulatory programs for drinking water and wastewater. The Tribal Nation can assert their own authority over their certification program and all environmental programs or continue to operate under delegated federal authority. When an operator or a laboratory analyst chooses to seek a USET certification, he or she chooses to recognize and uphold the sovereignty of a Tribal Nation. While there are unique situations among the jurisdictional patterns of member Tribal Nations within the USET region, generally state governments do not have jurisdiction within Tribal territories. The reciprocity element of the USET certification program was included to allow for recognition of professional licenses obtained by operators or laboratory analysts through state certification programs. While it may be that Tribal or non-Tribal employees may not understand or care about the jurisdictional aspects of drinking water or wastewater utilities, many non-Tribal employees may not be as likely to invest in a career at a Tribal Utility. USET has seen many utility workers launch their careers from a Tribal Nation, and then transfer to an opportunity for higher pay and advancement outside of Tribal employment. A state certification may be perceived as more transferable, and a USET certification may not seem as valuable. The USET Certification Board contends that a USET and a State certification are complimentary and would encourage all Tribal Utility employees to pursue and hold USET certification. USET is affiliated with the Association of Boards of Certification and have USEPA approved certification programs.

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