

How Tribes Can Use the CWA to Protect
their Water Resources

Overview of CWA Programs

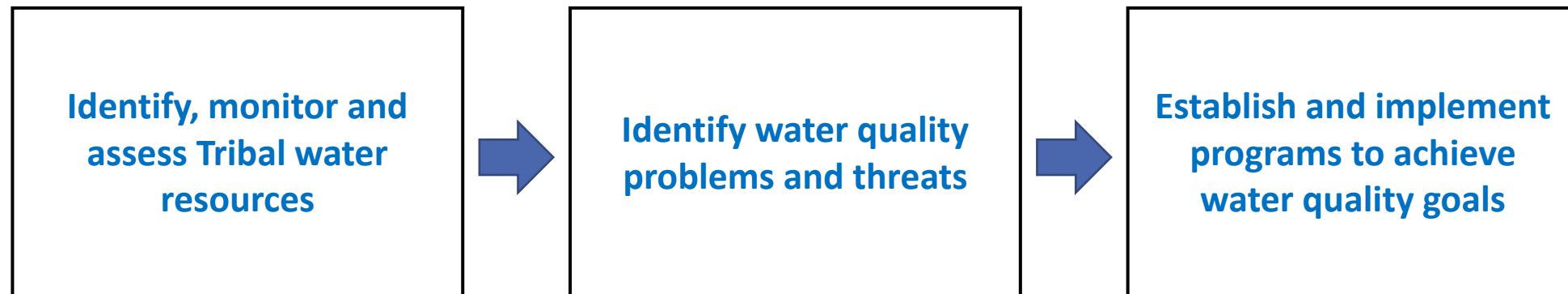
Jim Havard

June 9th, 2021

National CWA 303(d) Training Workshop

Clean Water Act & Tribes

- The Act authorizes EPA to treat eligible federally recognized Indian tribes in a similar manner as a state (TAS) for implementing and managing their own environmental programs.
- EPA provides CWA programmatic assistance and grants to eligible tribes to support their water quality program development and implementation.
- In developing their water quality programs, tribes:



Selected CWA Programs that tribes can use

TAS

TAS – Treatment in a similar manner as States

106

106 – Water Pollution Control Program

303(c)

303(c) – Water Quality Standards

303(d)

303(d) – Impaired Waters and TMDLs

319

319 – NPS pollution management

401

401 Certification

402

402 – Point Source Permitting (NPDES)

404

404 – Wetlands

Treatment in a similar manner as States (TAS)

- Several federal environmental laws authorize EPA to [treat eligible federally recognized Indian tribes as a state \(TAS\)](#) for the purpose of implementing and managing certain environmental programs and functions, and for grant funding.
- The basic requirements for applying for TAS are that the tribe must:
 - be federally recognized by the Secretary of the Interior,
 - have a governing body carrying out substantial governmental duties and powers,
 - have appropriate authority (for the CWA -- waters resources with a reservation), and
 - be capable of carrying out the functions of the program.
- Tribes must apply to EPA and be authorized for each of the applicable Clean Water Act programs they would like to implement.

Treatment in a similar manner as States (TAS)

CWA Program	Number of Authorized Tribes (as of May 2021)
CWA § 106 - Water Pollution Control Grants	281
CWA §§ 303(c) / 401 - Water Quality Standards (WQS) Program	74
CWA § 303(d) – Impaired Waters and TMDLs Program	0
CWA § 319 - Nonpoint Source Management Grants	209
CWA § 402 - NPDES Permits Program	0
CWA § 404 - Wetlands Dredge and Fill Permits Program	0

106

303(c)

303(d)

319

401

402

404

CWA

TAS

106

303(c)

303(d)

319

401

402

404

Water Pollution Control Grants

- Section 106 of the Clean Water Act (CWA) authorizes EPA to provide financial assistance to states, interstate agencies, and eligible tribes to establish and administer programs for the **prevention, reduction, and elimination of water pollution.**
- There are currently 281 tribes eligible to receive Section 106 funds

CWA

TAS

106

303(c)

303(d)

319

401

402

404

How can tribes use their 106 funds?

Dedicated funding source for developing, maintaining, and expanding water quality programs. Eligible activities include, for example:

- Hiring qualified staff, travel and training for staff
- Purchasing water quality equipment and supplies
- Developing monitoring strategy and QAPP for monitoring program
- Developing and implementing Water Quality Standards
- Water quality planning, assessment and development of TMDLs

Section 106 funds cannot be used for construction, operation, or maintenance of waste treatment plants, or for costs financed by other federal grants.

Water Pollution Control Grants

Additional Resources

- [Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act](#)
- EPA is in the process of [updating](#) the Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act.
- Tribes interested in developing pollution prevention programs using Section 106 funds should [contact their EPA regional office for information on how to apply for TAS.](#)

Section 303(c) – Water Quality Standards

- Defines the water quality goals for a waterbody
- Important step and core of water management programs
- Provides regulatory basis for many CWA actions, for example:
 - Reporting on water quality conditions and status
 - Developing water quality-based effluent limits in NPDES permits for point sources
 - Developing lists of impaired waters
 - Setting targets for Total Maximum Daily Loads (TMDLs)

Section 303(c) – Water Quality Standards

Activities and Resources

- Baseline Rule for WQS
- [TAS Application Template for Water Quality Standards and Water Quality Certifications](#)
- [Water Quality Standards Tools for Tribes](#)

Section 303(d) – Impaired Waters and TMDLs

Impaired Waters List: Waters not meeting WQS based on “*all existing and readily available water quality-related information.*”

Total Maximum Daily Load (TMDL): A calculation of the maximum amount of a pollutant that a waterbody can receive and still meet applicable WQS, and an allocation of that amount to the pollutant’s sources. **The TMDL provides the math and the path for waterbody restoration.**

Section 303(d) – Impaired Waters and TMDLs

Authorized Tribes:

- **Identify waters** not meeting WQS based on “*all existing and readily available water quality-related information.*”
- **Establish priorities** for TMDL development.
- **Develop schedule** of TMDLs to be developed within 2 years.
- **Request and respond** to public comments on their draft 303(d) list.
- **Submit** their final 303(d) list to EPA on April 1st of each even year for review and action.

Section 303(d) – Impaired Waters and TMDLs

- With TAS for CWA 303(d), tribes would have the opportunity to take the lead role under the CWA in restoring and protecting their reservation waters.
- Tribes would have the lead in setting program priorities in the context of their overall water program goals.
- Tribes would identify impaired waters under statutory scheme.
- Tribes would identify pollutant load allocations, including for point and non-point dischargers.
 - NPDES permits must be consistent with TMDL waste load allocation (WLA).
- Tribes would have additional tool for “seat at the table” for watershed protection and restoration.

Section 303(d) – Impaired Waters and TMDLs

Current Activities

- EPA continues identifying resources, tools, and training priorities, and offers support to tribes interested in pursuing 303(d) TAS authorization and administration.
- [Working draft 303\(d\) TAS application template](#) now available on EPA's 303(d) website.
- Consultation with tribes on EPA's 303(d) listing and TMDL actions.

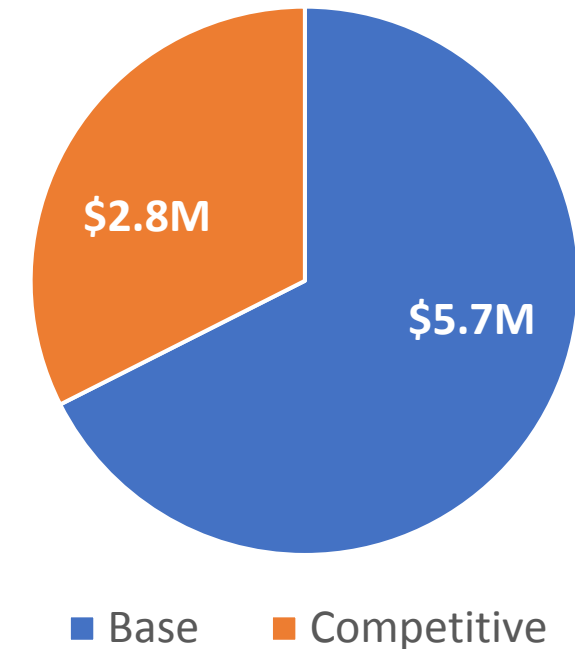
Section 319 – Nonpoint Source Pollution (NPS)

- Provides a framework and federal funding for state/tribal and local NPS efforts.
 - §319(b) - NPS Management Programs
 - §319(h) - Grant Program
 - Federal funds support NPS program work/staff and watershed projects
 - FY21 = \$177M. Tribal set-aside = \$8.9M
- States and Tribes set their NPS program priorities, guided by NPS assessment reports and program plans.
- EPA Regional offices provide grants and programmatic support.

Section 319 – Nonpoint Source Pollution (NPS)

- Each year EPA awards 319 grants to eligible tribes in two parts:
 - **Base grants** (\$30K or \$50K per tribe) – primarily staff-led activities to implement NPS program. E.g., water quality monitoring, watershed coordination, education/outreach.
 - **Competitive grants** (up to \$100K/project) – on-the-ground projects to protect or restore water quality.
- Per the CWA, §319-funded work must be activities that are related to reservation waters.
- EPA administers §319 grants and provides technical and programmatic assistance to tribes (e.g., training workshops, NPS technical guides).

Allocation of Tribal §319 funds
(annual avg., 2016-2021)



Section 319 – Nonpoint Source Pollution (NPS)

- EPA is currently working with NRCS on a resource for tribal water staff to identify leveraging opportunities between EPA and USDA.
- Tribes interested in developing NPS pollution management programs using Section 319 funds should [contact their EPA regional office for information on how to apply for TAS](#).
- More information about the Tribal NPS Program can be found in EPA's [Handbook for Developing and Managing Tribal Nonpoint Source Pollution Program \(PDF\)](#)

Section 401 Certification

- Section 401 of the CWA requires that:
 1. any applicant for a federal license or permit
 2. which may result in a discharge into waters of the United States
 3. must obtain a water quality certification from the certifying authority
 4. that the discharge complies with all applicable water quality requirements.
- 401 certification provides states and authorized tribes with a powerful tool to protect the quality of their waters from adverse impacts resulting from federally licensed or permitted projects.

Section 401 Certification

- In May 2021, EPA announced its intention to revise the “Clean Water Act Section 401 Certification Rule” (2020 Rule) and initiate a series of stakeholder engagements on the upcoming rulemaking effort.
 - [Upcoming Outreach on CWA Section 401 Certification](#)
- On June 7, 2021, EPA announced that it has initiated tribal consultation on its notice of intent to revise the 2020 Rule.
 - The consultation period is anticipated to end on September 7.
 - Consultation information and materials are available on EPA’s Tribal Consultation Opportunities Tracking System at: <https://tcots.epa.gov>.

Section 402 – Point Source Permitting (NPDES)

- National Pollutant Discharge Elimination System (NPDES) Individual and General Permits generally specify an acceptable level of a pollutant or pollutant parameter in a discharge
- EPA is responsible for developing and issuing NPDES permits for point sources discharging pollutants into surface waters.
- States and eligible tribes may apply to implement permit programs.
- These permits typically include effluent limitations, facility operational requirements, and monitoring and reporting requirements.
- Effluent limitations include technology based and water quality based.
 - Consistent with applicable WQS and assumptions and requirements of TMDL WLA.

Section 404 Wetlands, Dredge and Fill Permits

- Under CWA Section 404, a permit is required for discharges of dredge or fill material to waters of the United States, including adjacent wetlands.
- The Army Corps of Engineers (Corps) is the federal permitting authority for Section 404.
- EPA, in coordination with the Corps, is responsible for reviewing and providing comments on proposed Section 404 permits with regard to consistency with EPA's Section 404(b)(1) Guidelines (CWA 404 environmental criteria).
- When the Corps is the one issuing a Section 404 permit, a CWA section 401 certification, or waiver, is required.
- States and eligible tribes may apply to assume programs.

Wetland Program Development Grants

- States and tribes can apply for [Wetland Program Development Grants](#) to develop programs and pursue assumption.
- Wetland Program Development Grants provide eligible applicants an opportunity to conduct projects that promote the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys and studies relating to the causes, effects, extent, prevention, reduction and elimination of water pollution.
- Statutory authority is CWA section 104(b)(3).
 - TAS for section 404 is not required.

Additional Provisions Including Funding Opportunities

- Water Quality Management Planning (see 40 CFR 130.6).
- CWA section 518(e) is the overall TAS provision.
- CWA section 518 also contains provisions regarding cooperative agreements with states (section 518(d)) and a dispute resolution (section 518(e)).
- CWA section 518(c) -- The Clean Water Indian Set-Aside Grant [Program](#) provides funding to Indian tribes and Alaska Native Villages for wastewater infrastructure. The CWISA program is administered in cooperation with the Indian Health Service.

Data and Electronic Reporting

- Tribes can share their tribal assessment reports via the **Assessment, Total Maximum Daily Load (TMDL) Tracking and Implementation System (ATTAINS)**, an online system for accessing information about the conditions in the Nation's surface waters.
- ATTAINS Tribal pilots
- As of late 2020, that information will also now show in [How's My Waterway](#).

Other grant programs

- [Indian Environmental General Assistance Program \(GAP\)](#)
 - Capacity development for tribal environmental programs.
- [Multipurpose Grants to States and Tribes \(MPG\)](#)

Summary of certain CWA Funding Programs - Tribes

- Section 106 [Water Pollution Control Grants](#)
- Section 319 [Nonpoint Source Management Grants](#)
- Section 104(b)(3) [Wetland Program Development Grants](#)
- CWA section 518(c) [Indian Set-Aside Grant Program](#) (for wastewater infrastructure)

Additional Resources

303(d) National Program Contacts

- Jim Havard, National 303(d) Program Manager: havard.james@epa.gov
- Dylan Laird, National Tribal 303(d) Coordinator: laird.edward@epa.gov

CWA Program	Website	Regional Contacts (where applicable)
106 – Water Pollution Control Program	Link	Link
303(c) – Water Quality Standards	Link	Link
303(d) – Impaired Waters and TMDLs	Link	
319 – NPS pollution management	Link	Link
401 -- Certification	Link	
402 – Point Source Permitting (NPDES)	Link	
404 – Wetlands	Link	Link