

Supplement to the Consultation Opportunity Letter Clean Water Act Section 106 Tribal Guidance Revision

Purpose of this Supplement

This supplement provides additional information on four main topic areas being considered by EPA for revising the Clean Water Act (CWA) 106 Tribal Guidance. This document also describes the goals and objectives of this effort as well as general content that EPA will update throughout the Guidance. EPA is requesting tribal feedback on these topics during this initial 60-day comment period. These topic areas are general and intended to provide overall direction for revisions. During this initial 60-day comment period, tribes also are welcome to submit comments on other aspects of the current Guidance they believe EPA should consider for revision. EPA will consider the comments from this tribal consultation as we revise the CWA 106 Tribal Guidance. EPA is engaging with tribes to ensure that the revised Guidance addresses tribal needs and effectively supports tribes as they develop, maintain, and expand their water quality programs and increase staff capacity.

Goals and Objectives

The overall goals and objectives for revising the CWA 106 Tribal Guidance include:

1. Develop clear, comprehensive, updated and succinct language that is relevant and applicable to tribes.
2. Describe the CWA Section 106 program and provide context around the CWA generally.
3. Describe the benefits of water quality program development and implementation.
4. Provide practical guidance in program implementation.
5. Provide consistent messaging on national program requirements to help tribes negotiate workplans.

Area of Interest:

- Do these goals and objectives effectively address tribal needs?

Update the Content

The current Guidance includes outdated information. EPA plans to update the existing grant and programmatic information and include scientific and technical content in addendums. The specific updates are listed below:

- Update links and include information that is no longer publicly available.
- Focus on the national level information that does not change from year to year.
- Include general information on all TAS authorities (e.g., 303c and 303d).
- Update grant information and expand information on quality assurance.
- Include scientific technical content that is subject to change in addendums (e.g., assessment methodologies and ATTAINS).

Area of Interest:

- There is no specific area of interest for this recommendation.

Topic Area 1: Structural Change to Establish Foundational Activities and Options to Grow Programs

Background

The current Guidance organizes activities as fundamental, intermediate, or mature (F/I/M). EPA is considering eliminating the F/I/M terminology for the following reasons:

- The F/I/M terminology was developed to support the Program Assessment Rating Tool assessments, which are no longer being conducted.
- Tribal programs do not fit into only one F/I/M activity.
- EPA Regions do not consider the F/I/M activity terminology when negotiating work plans.
- Some tribes were focusing on completing all the F/I/M activities listed rather than identifying activities necessary to support individual program goals.

Potential Change

EPA is planning to establish a more flexible program development approach, which would identify common program activities that make up the foundation for tribal programs. For tribes that have established these common program activities, the Guidance would provide options and examples for how tribes can grow their programs to meet their water quality needs. EPA anticipates that these recommended changes would better support tribal programs in the following ways:

- Tribes would clearly see common activities that make up a program foundation.
- Tribes would continue to have the flexibility to expand their programs to meet their specific water quality needs.
- Tribes would clearly see the program development options and not be tracked against completing all the F/I/M activities listed.

How this Differs from the Existing Guidance

The revised Guidance would eliminate the structural division of activities as F/I/M. Instead, the revised Guidance would identify activities commonly conducted when establishing and implementing a CWA Section 106 Tribal Program and present the other activities as options for growing a tribe's program.

Areas of Interest:

- Does identifying foundational program activities and demonstrating how tribes can grow their programs support your program objectives?
- If so, what should be considered when identifying foundational program activities?

Topic Area 2: Structural Change to Update Guidance to Reflect How Tribes Implement Their Programs

Background

Key sections of the current Guidance are divided into subsections for each of three tribal program approaches: non-regulatory, tribal regulatory, and EPA regulatory. This rigid structure may not reflect how tribal programs are implemented and may impair readability of the Guidance. More specifically:

- Many tribes use a combination of these approaches to implement their programs effectively.
- The current structure leads to repetition across sections of the Guidance.

Potential Change

EPA is considering removing the structural divisions from the Guidance but retaining basic information about the three approaches. The revised Guidance would continue to indicate EPA's support for tribes that use any of the three elements in their programs and would leave tribes flexibility to craft programs that support water quality needs. EPA anticipates that this recommended change would better support tribal programs in the following way.

- Tribes would clearly understand and consider which combination of the three tribal program approaches is best to develop their programs to meet their specific water quality needs.

How this Differs from the Existing Guidance

The revised Guidance will retain basic information on activities tribes would undertake when pursuing non-regulatory, tribal regulatory, or EPA regulatory program approaches. Specifically, the revised Guidance will support all three approaches, but the EPA will streamline the tribal law and EPA regulatory information since many of the activities will be the same.

Area of Interest:

- Does presenting the regulatory activities conducted under the tribal law and EPA-approved approaches together support your current water quality program and allow for growth?

Topic Area 3: Retain and Add More Information on Other EPA Programs and Topics

Background

The current Guidance provides information on other EPA programs, describes how funds and activities can be coordinated across programs, and explains their relationship to CWA Section 106 grants (e.g., Section 319, GAP, Wetlands). This information is provided to identify how tribal programs can support and expand beyond Section 106 funded activities.

Potential Change

EPA is planning to add general information about the CWA and how the various sections work together in addition to retaining information on how funds can be coordinated across CWA activities. EPA anticipates that this recommended change would better support tribal programs in the following ways:

- Tribes would have a stronger understanding of the CWA and its sections and the uses of Section 106 funds.
- Tribes would have a single resource to learn how to leverage funds and activities across programs.

How this Differs from the Existing Guidance

The revised Guidance will add an overview of the water quality sections of the CWA and how they work together to support water quality protection and improvement.

Areas of Interest:

- How much do the tribes rely on the CWA Section 106 Guidance to understand other CWA programs?
- Should we consider limiting the Guidance to Section 106-funded activities only?

Topic Area 4: Increase Tribal Flexibility in Meeting Reporting Requirements

Background

The current Guidance provides limited flexibility to meet tribal programmatic reporting requirements. The three basic programmatic reporting requirements – monitoring strategy¹, water quality assessments, data submission (sometimes collectively referred to as the Tribal Assessment Report (TAR)) – are reported annually. In addition, tribes are expected to collect and report on parameter data based on their program maturity level.

The current Guidance outlines reporting requirements for tribes to submit their water quality monitoring data in an electronic format compatible with EPA's previous database, STORET (now called Water Quality Exchange (WQX)). Many tribes have made great progress in submitting their water quality monitoring data to WQX. Since the initial Guidance was developed, EPA has also provided extensive technical support to tribes to assist in providing electronic submissions. In some cases, though, tribes experience reduced capacity due to loss of personnel, poor internet connectivity, or other reasons.

Potential Change

EPA is considering whether to provide more flexibility for some reporting requirements as follows.

- Support tribal programs by working collaboratively to determine which parameters the tribe should sample and assess based on the tribe's program needs.
- Retain the three basic programmatic reporting requirements (monitoring strategy, water quality assessments, data submission) but consider additional flexibility when determining reporting frequency for monitoring strategies and assessment reports.
- Require data submission to WQX but allow temporary waivers from electronic submission on a case-by-case basis (for example, tribes who are building or re-building this capacity). This recognizes the investment many tribes have made in electronic data submission to WQX. Tribes who receive a waiver will still be required to submit data in a WQX-compatible format.

EPA anticipates this recommended change would better support tribal programs in the following ways:

- Tribes would have information to help them decide which parameters support their specific water quality program needs.
- Retaining data electronically will help tribes make informed environmental decisions (e.g., for tracking and improving water quality).
- EPA can better target resources to support tribal data submission.

How this Differs from the Existing Guidance

The revised Guidance will require tribes to publish data to WQX. However, the revised Guidance will contain criteria for the special circumstances that might warrant a temporary waiver from the WQX electronic data submission requirement. In addition, the Guidance will address the three basic programming reporting requirements separately and allow different frequencies of reporting for each requirement.

Area of Interest:

- What criteria should we consider for waiving the WQX electronic data submission requirement?

¹ In Region 9, the monitoring strategy is included as part of the Quality Assurance Project Plan.