



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

March 15, 2021

President Matthew B. Pagels
Seneca Nation of Indians
12837 Route 438
Cattaraugus Territory
Via Irving, NY 14081

Dear President Pagels:

I hope all is well with you, with your family, and that everyone at the Seneca Nation is safe and well.

The purpose for this letter is to provide the Seneca Nation of Indians (SNI) with the final determination of the U.S. Environmental Protection Agency (EPA) regarding the SNI's March 28, 2018 Application for Determination of Eligibility for CWA 106 Grant Program and for Authorization to Implement Water Quality Standards and Certification Programs Pursuant to Sections 303 and 401 of the Federal Clean Water Act (CWA). On August 14, 2018, EPA found that the SNI met the requirements of 40 C.F.R. Section 131.6(d) and was deemed eligible to be "treated in the same manner as a state" (TAS) for the CWA Section 106 grant program. This letter provides our final determination on the regulatory portion of that original submittal.

I extend my personal apologies to the SNI for the very long time it has taken our Agency to issue a decision on your TAS application, and for the much-appreciated patience demonstrated by your leadership and your environmental staff. As we shared on March 10 in a teleconference with Mr. Ian Shavitz, your outside legal counsel, in 2019 the prior administration changed our agency's TAS approval procedure to require additional criteria to be satisfied before final decisions could be made. The 2019 additional criteria affected not only the decision being rendered for the SNI application, but also several other tribal/Indian Nation TAS applications throughout the country. Further extenuating circumstances because of the COVID-19 pandemic also contributed to these delays. On March 1, 2021, the 2019 requirement of these additional criteria was rescinded by JoAnn K. Chase, the newly appointed Director of EPA's American Indian Environmental Office (AIEO), who also reinstated the TAS review procedures and protocols previously used by EPA since 2008.

Based upon EPA's review of the information in the SNI's Application, and consistent with EPA's prior approval of the SNI's eligibility application for the purposes of receiving CWA Section 106 grants, EPA has determined that the SNI has demonstrated that it has the capability to administer the CWA §§ 303(c) and 401 water quality standards and certification programs and has met the requirements of 40 C.F.R. §§ 131.8(a)(4) and (b)(4). By virtue of these decisions, the SNI will also be an "affected state" within the meaning of CWA Section 402(b)(3) and (5) and its implementing regulations at 40 C.F.R. § 122.4(d).

I commend you and your staff for your exceptional efforts in achieving this authority and look forward to successful years of protection and restoration of your waters through the implementation of these important environmental programs at the SNI for its future generations.

Should you have any questions please call me at (212) 637-5000, or have your staff contact Dr. Javier Laureano, Director of the Water Division, at (212) 637-4125. I welcome the opportunity to celebrate this achievement with you and look forward to continuing to work together.

Sincerely,

Walter Mugdan

Walter Mugdan
Acting Regional Administrator

Enclosures

cc: See Enclosed List of Addresses

**List of Addressees to Receive Copies of the U.S. Environmental Protection Agency's
Authorization to the
Seneca Nation of Indians
to Implement Water Quality Standards and Certification Programs Pursuant to
Sections 303 and 401 of the Clean Water Act (CWA)**

The Honorable Andrew Cuomo
Governor
State of New York
State Capitol Building
Albany, New York 12224

Mr. Mark Klotz
Director, Division of Water
Department of Environmental Conservation
State of New York
625 Broadway
Albany, NY 12233-3508

The Honorable Tom Wolf
Governor
State of Pennsylvania
225 Capitol Building
Harrisburg, Pennsylvania 17120

Mr. Gary Walters
Chief, Water Quality Division
Department of Environmental Protection
State of Pennsylvania
400 Market Street
Harrisburg, PA 17105

Clifford Redeye, III
Acting Director, Environmental Protection Department
Seneca Nation of Indians
12837 Route 438
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Lisa Maybee
Tribal Councillor
Seneca Nation of Indians
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