

Chapter 2: Overview of the Clean Water Act

Read this chapter...

- For an introduction to the CWA and its sections.
- To learn how the CWA Section 106 Program relates to other sections of the CWA.

Chapter highlights:

- History of the CWA.
- Description of each CWA section relevant to tribal water quality programs.

The following chapter provides general information on the structure of the CWA with more specific information on the CWA titles that support the water quality activities discussed in this guidance. For more information on the CWA see EPA's [Summary of the Clean Water Act](#).

The Federal Water Pollution Control Act, commonly known as the “Clean Water Act” (CWA), is the federal law that establishes goals for protection of the chemical, physical, and biological integrity of the nation’s waters and authorizes implementation of programs to achieve those goals. The overarching strategy for water pollution control is set by the federal government and administered by states.² The CWA was amended in 1987 to include Section 518. This section authorized EPA to treat federally recognized Indian Tribes in a similar manner as a state (TAS) for specific sections of the CWA, giving some Tribes the option to apply for grants and request authorization to administer portions of the CWA.

History of the Clean Water Act

1948 – The Federal Water Pollution Control Act (known as the Clean Water Act) was enacted as the first United States law to address water pollution.

1965 – Water Quality Standards (WQS) were added.

1966 – Reporting requirements for water pollution discharges were added.

1972 – Amendments expanded the CWA into what it is today. Many existing requirements for protecting interstate waters were expanded to cover intrastate waters. These amendments:

- Established the structure for regulating pollutant discharge.
- Gave EPA the authority to oversee water pollution control programs.
- Required permits for pollutant discharges.
- Recognized the need to address nonpoint source (NPS) pollution.
- Established the Section 106 Water Pollution Control Grants.

1987 – The Water Quality Act of 1987 added Section 518 to the CWA, giving Tribes the option to request authority to administer portions of, and receive grants under, the CWA.

² The term “state” means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (33 U.S.C. 1362(3)).

Clean Water Act Section 106 Tribal Guidance

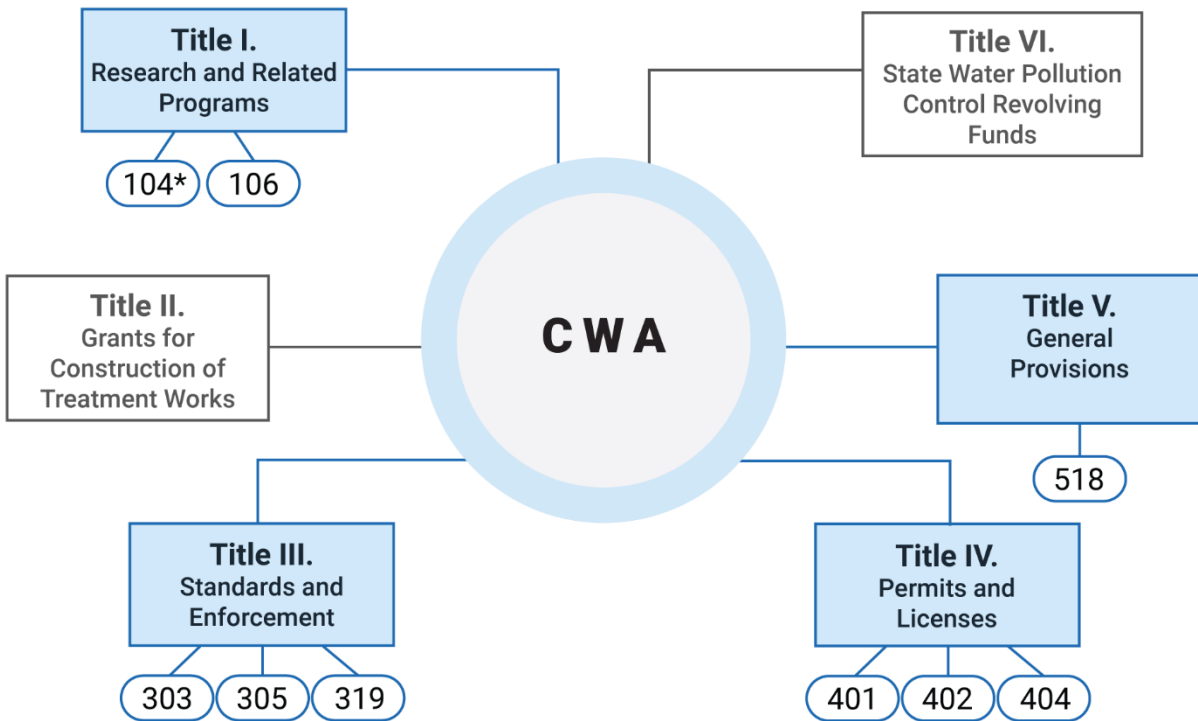
The CWA provides a framework to identify, address, and prevent water quality problems. The CWA also defines the structure for regulating water pollutant discharges to protect water quality in the United States. The CWA also calls for development of programs to control NPS pollution so that water quality goals are met through control of both point source and NPS pollution. EPA has the responsibility for overseeing the CWA and works with Tribes and states to implement and enforce the CWA. Tribes who are interested in applying for grants and requesting program authorization are required to meet CWA requirements for each section they are interested in administering.³

The CWA has six titles, each with multiple sections (Figure 2).

The water quality sections under Titles I, III, IV, and V are shown in blue in Figure 2 and are described below in more detail. Some sections under these titles also authorize grants. For example, Section 106 authorizes Water Pollution Control Grants under Title I, and Section 319 authorizes grant funding to address NPS pollution under Title III. These titles work in conjunction with Section 106 funding to support water quality activities. Implementation activities for many of these titles are eligible for Section 106 funding. The other two titles of the CWA, Titles II and VI, authorize funding for wastewater treatment plant construction and are not covered in this guidance as they do not work in conjunction with Section 106 or otherwise support Section 106-funded activities.

³ Tribes may submit separate applications for each eligibility/authority, or a Tribe may combine requests such as TAS for Section 106 and 319. Tribes that receive TAS for Section 303(c) are immediately eligible for Section 401 as well. See 40 CFR 131.4(c).

Figure 2. The six titles of the CWA



Titles in shaded blue boxes work in conjunction with Section 106 funding to support water quality activities

Titles in white boxes are not covered in this guidance as they do not work in conjunction with Section 106

* Section 104 does not require treatment in a similar manner as a state (TAS) authorization

Title I. Research and Related Programs

Section 101(a) – Declaration of Goals and Policy

Section 101(a) outlines the major goals for the CWA and for water quality in the United States. The ultimate objective of the CWA is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” (CWA Section 101(a)). The interim, short-term goal is to achieve a level of water quality that provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water. (This is referred to as the **fishable** and **swimmable** goal.) Additional 101(a) goals address elimination of point source and NPS pollution.

Section 104 – Research, Investigations, Training, and Information

Section 104(b)(3) authorizes EPA to provide grants for investigations, experiments, training, demonstrations, surveys, and studies to investigate the causes, effects, extent, prevention, reduction, and elimination of pollution. The Wetland Program uses this authority to fund Wetland Program Development Grants (WPDGs) for Tribes and states. WPDGs assist tribal, state, and local government agencies and intertribal and interstate entities in building programs to protect, manage, and restore wetlands. Tribes do not need authorization to apply for WPDG funds (see Section 518 below).

More information about Section 104(b)(3) and how it supports tribal water quality activities is in Chapter 9: Other Funding Options.

Section 106 – Grants for Water Pollution Control Programs

Section 106 authorizes EPA to award grants that assist authorized Tribes, states, and interstate agencies in administering their water pollution control programs for the prevention, reduction, and elimination of water pollution. EPA allocates Section 106 grants based on the extent of the pollution problem. Tribes and intertribal consortia with TAS for Section 106 may apply for Section 106 funds. Tribes and states use Section 106 funds to conduct a wide range of water quality activities including: conduct water quality monitoring and assessment, report on the condition of their waters, develop WQS, and issue and enforce permits.

This guidance focuses on how Tribes can effectively develop, implement, and expand their water quality programs using Section 106 funds.

Title III. Standards and Enforcement

Section 303 – WQS and Implementation Plans

Section 303(c)

Section 303(c) requires authorized Tribes (those with TAS for Section 303(c)) and states to develop WQS, review them at least every three years, and revise as needed. WQS translate the broad goals of the CWA into waterbody-specific, measurable objectives. WQS also serve as a regulatory basis for establishing water quality-based treatment controls. These controls include Section 401 certification, Section 402 National Pollutant Discharge Elimination System (NPDES) permits, Section 404 dredge and fill permits, and enforcement actions (see below).

More information about Section 303(c) and how WQS support water quality programs is in Chapter 8: Program Expansion – Regulatory Authorities.

Section 303(d)

Section 303(d) requires authorized Tribes (those with TAS for Section 303(d)) and states to list any waters that do not meet, or are expected to not meet, one or more WQS. The 303(d) list includes both threatened waters (those with a water quality trend indicating they will not be meeting WQS within two years) and impaired waters (those not meeting WQS). Authorized Tribes and states submit the list to EPA every two years.

Section 303(d) also requires authorized Tribes and states to prioritize waters on the 303(d) list and develop Total Maximum Daily Loads (TMDLs), which calculate the maximum pollutant loads allowable to meet WQS. Listing threatened and impaired waters, and prioritizing waters for pollutant load reductions through TMDLs, is critical to get waters back on track to meeting WQS.

More information about how Section 303(d) programs support water quality programs is in Chapter 8: Program Expansion – Regulatory Authorities.

Section 305 – Water Quality Inventory

Section 305(b) requires states to develop a report describing their monitoring program, assessment methods, and the extent of waters supporting the goals of the CWA to provide for balanced population of fish, shellfish, and wildlife and for recreational activities. 305(b) reporting identifies water quality conditions (healthy, impaired, or poor) and the key causes of water impairment. In lieu of a 305(b) report, Tribes report on the conditions of their waters through their Section 106 Water Quality Assessment report.

EPA submits a report describing the status of the nation’s water quality and key stressors across the nation using information reported electronically by Tribes and states through participation in the National Aquatic Resource Surveys and the Assessment and TMDL Tracking and Implementation System (ATTAINS).

Section 319 – Nonpoint Source Management Programs

Section 319 establishes a program to address pollution from diffuse sources (such as agricultural lands and urban areas) that runs into waters. NPS pollution is the leading source of U.S. water pollution. Section 319 also authorizes EPA to award grants that assist authorized Tribes (those with TAS for Section 319), states, and territories in administering their NPS programs.

More information about Section 319 and how Section 106 funds can support NPS efforts is in Chapter 8: Program Expansion – Regulatory Authorities.

Title IV. Permits and Licenses

Section 401 – Certification

Section 401 is a powerful tool for authorized Tribes (those with TAS for Section 401), states, and interstate agencies to protect their waters from adverse impacts caused by federally licensed or permitted projects. Under Section 401, a federal agency may not issue a license or permit for an entity to discharge into navigable waters,⁴ unless the authorized Tribe, state, or interstate agency where the discharge originates or will originate either issues a Section 401 water quality certification or waives certification.

More information on Section 401 and how tribal participation in 401 certification can support water quality program goals is in Chapter 8: Program Expansion – Regulatory Authorities.

Section 402 – National Pollutant Discharge Elimination System

Section 402 authorizes Tribes (those with TAS for Section 402 and who have been approved to administer the program), states, and interstate agencies to grant or deny permission for point source pollution discharges into their waters in their jurisdiction. Point source pollution is any single identifiable source of pollution from which pollutants are discharged. NPDES permits set limits on the amounts of various pollutants that a point source can discharge in a given period of time.

More information about Section 402 and how it supports water quality programs is in Chapter 8: Program Expansion – Regulatory Authorities.

Section 404 – Permits for Dredged or Fill Material

Section 404 is a permitting and enforcement program which requires a permit be issued prior to the discharge of dredged or fill material into “waters of the United States.” Section 404(g) provides eligible Tribes (those with TAS for Section 404(g)), states, and interstate agencies the option to assume permitting authority to grant or deny permits for discharges of dredged or fill material into waters within their jurisdiction.

⁴ The term “navigable waters” means the “waters of the United States,” including the territorial seas (33 U.S.C. 1362(7)).

More information about Section 404 and how it supports water quality programs is in Chapter 8: Program Expansion – Regulatory Authorities.

Title V. General Provisions

Section 518 – General Authorization

Section 518(e) sets the criteria for federally recognized Tribes to request TAS to administer and receive grants under CWA Sections 106 and 319. Tribes also need TAS to be authorized to carry out other CWA programs such as Sections 303(c), 303(d), 401, 402, and 404. In the absence of a Tribe assuming authority for a CWA regulatory program, EPA generally directly implements the program in Indian Country.

Section 104 is not referenced in Section 518(e), therefore, Tribes do not need TAS to receive WPDG funds under Section 104.

More information about how Tribes can attain TAS is in Chapter 3: Grant Requirements (for Section 106), Chapter 8: Program Expansion – Regulatory Authorities (for Sections 303(c), 401, 303(d), 402, and 404(g)), and Chapter 9: Other Funding Options (Section 319).