

# Clean Water Indian Set-Aside Emerging Contaminants Funding Eligibility Summary

## Overview

The Bipartisan Infrastructure Law (BIL), enacted on November 15, 2021, and the Environmental Protection Agency's (EPA) corresponding May 2022 memorandum, *Implementation of the Tribal Water Infrastructure Appropriations in the Bipartisan Infrastructure Law*,<sup>1</sup> appropriate \$20 million over the next five years specifically to address emerging contaminants (ECs) through the Clean Water Indian Set-Aside (CWISA) funding program. This document serves to provide guidance to EPA CWISA Program Managers.

Summary of Congressional BIL CWISA EC Funding Appropriations:

- Fiscal Year 2022: \$2 million
- Fiscal Years 2023-2026: \$4.5 million each year

This funding demonstrates an unprecedented commitment by Congress to address ECs in Tribal communities, including per- and polyfluoroalkyl substances (PFAS). Note that PFAS are not the only ECs that threaten water supplies and the environment, and projects that address other ECs will also be eligible for funding under this program.

Per Section 518 of the Clean Water Act (CWA), EPA administers the CWISA Program in cooperation with the Indian Health Service (IHS) Sanitation Facilities Construction Program. EPA regions (Regions) use the IHS Sanitation Deficiency System (SDS) database to identify projects for CWISA program funds. CWISA Guidance and the June 2023 *Implementation of the Tribal Water Infrastructure Appropriations in the Bipartisan Infrastructure Law Memo* are available at: <https://www.epa.gov/small-and-rural-wastewater-systems/clean-water-indian-set-aside-program>

Please note that (as per Clean Water Act Section 518) these EC funds apply to the Clean Water Indian Set-Aside program, not the Clean Water State Revolving Fund. This is particularly relevant for monitoring, planning, and design.

EPA recognizes that information about the presence and extent of ECs might be limited for Tribal wastewater utilities and the IHS SDS prioritization system has not previously focused on ECs in wastewater. Therefore, eligible projects for CWISA ECs funding are not required to be identified in the IHS SDS system. Regions are encouraged to identify EC projects and associated planning activities that will lead to viable projects. Below are some ideas to assist EPA Program Managers overseeing this fund in identifying and developing EC projects under the CWISA program.

## What is an EC?

ECs refer to substances and microorganisms, including manufactured or naturally occurring physical, chemical, biological, radiological, or nuclear materials, which are known or anticipated in the environment, that may pose newly identified or re-emerging risks to human health, aquatic life, or the environment. These substances, microorganisms, or materials can include many different types of natural or manufactured chemicals and substances – such as those in some compounds of personal care products, pharmaceuticals, industrial chemicals, pesticides, and microplastics. A description of ECs for the purposes of CWISA financing can be found in Appendix B of EPA's March 2022 Memorandum

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<sup>1</sup> See EPA's memorandum *Implementation of the Tribal Water Infrastructure Appropriations in the Bipartisan Infrastructure Law*: <https://www.epa.gov/system/files/documents/2023-06/fy-2022-final-tribal-set-asides-memo.pdf>

*Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law.*<sup>2</sup>

Contaminants with water quality criteria established by EPA under CWA section 304(a), except for PFAS, **are not** considered ECs. This includes nutrients (e.g., ammonia, nitrogen, and phosphorus), certain organics, and certain metals.<sup>3</sup>

### **CWISA ECs Funding Eligibility**

Only federally recognized Tribes, Alaska Native Villages, and Tribes on former reservations in Oklahoma (as defined by the U.S. Bureau of Indian Affairs) are eligible for CWISA program funds. These entities are referred to as “Tribes” in this document. The CWISA EC program can fund a wide variety of water quality protection efforts that address known ECs, per the BIL appropriation language: “...funds provided under this paragraph in this Act shall be for eligible uses under section 603(c) of the Federal Water Pollution Control Act that address emerging contaminants.” EC funding eligibilities for fiscal years 22 and 23 are anticipated to support the planning and design of projects that will ultimately receive funding through the CWISA program.

Project types that are eligible under section 603(c) of the Clean Water Act and addresses emerging contaminants are eligible under this appropriation. The eleven 603(c) eligibilities allow for a variety of project types. Eligible projects exist under all of the following categories. This list is not meant to be exclusive; it is possible that there are other eligible projects.

- Centralized Wastewater Treatment
- Energy Conservation
- Water Conservation
- Stormwater
- Agricultural Best Management Practices
- Decentralized Wastewater Treatment
- Resource Extraction
- Contaminated Sites
- Landfills
- Habitat Protection and Restoration
- Silviculture
- Desalination
- Groundwater Protection and Restoration
- Surface Water Protection and Restoration
- Planning/Assessment

Additional information on 603(c) project types can be found here:

<https://www.epa.gov/cwsrf/overview-clean-water-state-revolving-fund-eligibilities>

EC projects **do not** need to be identified in the IHS SDS database, which is distinctly different from traditional CWISA infrastructure funded projects. Regions may utilize EC funds in combination with traditional Interagency Agreement projects with IHS or through direct grants to Tribes. For optional use in project proposals, see the ‘Template Proposal Form’ document.

To help identify eligible potential projects for the CWISA EC funds, Regions are encouraged to identify projects already in the pipeline that address ECs. Regions are encouraged to work with their Tribal communities and/or IHS Areas to determine if selected projects for CWISA funding should include ECs project elements. Be sure to consider other emerging contaminants beyond PFAS when identifying projects; there may be projects that address contaminants including personal care products,

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<sup>2</sup> See EPA’s memorandum *Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law*: [https://www.epa.gov/system/files/documents/2022-03/combined\\_srf-implementation-memo\\_final\\_03.2022.pdf](https://www.epa.gov/system/files/documents/2022-03/combined_srf-implementation-memo_final_03.2022.pdf).

<sup>3</sup> See EPA’s Water Quality Criteria: <https://www.epa.gov/wqc>.

pharmaceuticals, industrial chemicals, pesticides, microplastics, biological contaminants, and removal of harmful algal blooms (HABs).

### Examples of Potential CWISA ECs Projects

Potential project example concepts are provided below. Project types that are eligible under section 603(c) of the Clean Water Act and address emerging contaminants are eligible under this appropriation.<sup>4</sup> Section 518 of the Clean Water Act, applies to Clean Water Indian Set Aside, not the Clean Water State Revolving Fund, this is particularly relevant for monitoring, planning and design as described in the project examples below.

- **Project assessment monitoring<sup>5</sup>:** Monitoring ECs for the purpose of field testing an innovative or alternative technology is eligible.<sup>6</sup> Monitoring in this capacity can be integral to increase confidence in design criteria and/or performance standards for addressing ECs and their ultimate discharge and point of disposal (e.g., land application of biosolids). Example eligible monitoring activities/costs for the purpose of field testing an innovative or alternative technology could include:
  - Purchasing and installing monitoring equipment, such as auto samplers.
  - Characterizing raw wastewater as a component of a field test or an engineering report to identify and select innovative or alternative technologies to address ECs.
  - Non-routine monitoring the fate of ECs throughout the treatment process (e.g., influent, effluent, sludge) to evaluate innovative or alternative technologies, including complete systems, unit processes, proprietary equipment and devices or modifications, and improvements of existing technologies. This can be done for up to one year.
  - After construction completion, routine monitoring and sampling for up to one year after construction completion are eligible.<sup>7</sup>
- **Planning and design<sup>8</sup>:** Identification of ECs and supporting preliminary engineering activities that may lead to well-scoped and ready-to-fund projects are eligible. Example eligible planning and design projects could include:
  - Preparation of a preliminary engineering report.
  - Development of planning and design documentation including collection of necessary data.
  - Travel costs associated with planning and design, site inspections, and construction administration.

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<sup>4</sup> See EPA's *Overview of Clean Water State Revolving Fund Eligibilities*: [https://www.epa.gov/sites/default/files/2016-07/documents/overview\\_of\\_cwsrf\\_eligibilities\\_may\\_2016.pdf](https://www.epa.gov/sites/default/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf)

<sup>5</sup> Per the 2022 and 2023 fiscal year appropriations: "[F]or fiscal year [2022 and 2023] notwithstanding the provisions of such subsections (g)(1), (h), and (1) of section 201 and section 518(c) of the Federal Water Pollution Control Act, funds reserved by the Administrator [for the CWISA program] may also be used to provide assistance: *solely for facility plans, design activities, or plans, specifications, and estimates for any proposed project for the construction of treatment works*" (emphasis added).

<sup>6</sup> See 40 CFR Appendix A to Subpart I of Part 35(b)A.1.k.

<sup>7</sup> See CWISA Program Guidance, Oct. 2015, Section IV.B: <https://www.epa.gov/small-and-rural-wastewater-systems/clean-water-indian-set-aside-program-guidance>.

<sup>8</sup> Per the 2022 and 2023 fiscal year appropriations: "[F]or fiscal year [2022 and 2023] notwithstanding the provisions of such subsections (g)(1), (h), and (1) of section 201 and section 518(c) of the Federal Water Pollution Control Act, funds reserved by the Administrator [for the CWISA program] may also be used to provide assistance: *solely for facility plans, design activities, or plans, specifications, and estimates for any proposed project for the construction of treatment works*" (emphasis added).

- **Potable and non-potable water reuse:** Water reuse/reclamation projects that might use advanced treatment (e.g., reverse osmosis, granulated activated carbon, or ion exchange) to remove PFAS or other ECs.
- **Wastewater treatment facilities:** Pilot/demonstration project to evaluate the efficacy of a particular wastewater treatment technology for ECs.
- **Biosolids:** Sampling of biosolids with ECs to assess type of treatment needed. Also eligible are design and construction of facilities for biosolids handling and disposal, such as equipment to support sludge drying, transportation, pelletization and/or land application.<sup>9</sup>
- **Stormwater:** Example eligible stormwater projects could include:
  - Publicly- or privately-owned EC projects that implement nonpoint source management programs established under Section 319 of the CWA.
  - Construction of structures at industrial facilities to cover PFAS-containing materials that would otherwise be exposed to and transported in stormwater.
  - Development of a stormwater plan to identify capital projects that address ECs.
  - Purchase and installation of EC sampling equipment for industrial and municipal stormwater.
  - Purchase and installation of mesh screens and containment systems designed to capture and remove microplastics from industrial and municipal stormwater.
  - Installation of stormwater controls designed to filter and remove microplastics from stormwater.
  - Purchase of a vacuum or vacuum-type system to pick up microplastics to prevent flushing into stormwater.
  - Installation of stormwater controls designed to collect and capture emerging contaminants like 6PPD-quinone in stormwater discharges or PFAS in airport runoff.
- **Other:** Example eligible surface water protection and landfill projects could include:
  - Equipment for the physical or chemical removal of HABs, for example, strategically placed aeration blowers to remove and control algal blooms or flocculant-based methods to facilitate algae removal.
  - Projects that can skim surface water to remove microplastics along with other plastic pollutants.
  - Landfill closure (e.g., capping) or landfill runoff and leachate collection and treatment that will reduce runoff contaminated with PFAS or other emerging contaminants.
  - The modification/expansion of existing or construction of new publicly owned landfills (local and regional) primarily designed and permitted (per state and federal regulations) to accept POTW biosolids with emerging contaminants.

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<sup>9</sup> See CWISA Program Guidance, Oct. 2015, Section IV.B: <https://www.epa.gov/small-and-rural-wastewater-systems/clean-water-indian-set-aside-program-guidance>.