



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF WATER

January 13, 2021

Re: Notification of Consultation and Coordination on Recommendations for Revising the *Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act*

Dear Honorable Leader,

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with federally recognized Indian tribes to inform potential revisions to the *Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act* (CWA Section 106 Tribal Guidance). EPA has used the CWA Section 106 Tribal Guidance since Fiscal Year 2007 as the primary Guidance for Section 106 tribal grant recipients and internal and external grant project officers. Revising the CWA Section 106 Tribal Guidance is necessary to: (1) update links and out-of-date information, (2) reflect advances in the program over the last 15 years, and (3) allow continued effective support to tribes as they develop, maintain, and expand their water quality programs and increase staff capacity. The goal of these updates is to improve the existing Guidance and ensure it serves as a water quality program development roadmap, clarifies eligible activities, and better integrates current resources and technical recommendations.

This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (<https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>). The consultation period for the revision of the CWA Section 106 Tribal Guidance will remain open for the duration of this effort.

EPA invites you and/or your designated consultation representative(s) to participate in this process. As outlined below, EPA will hold informational webinars and two 60-day comment periods to provide opportunities for seeking tribal input:

1. EPA will hold an informational webinar on two separate dates for tribal leaders and staff on February 2, 2021 from 2:00-3:00 pm (EDT) and on February 11, 2021 from 2:00-3:00 pm (EDT). You can register for the first webinar [here](#) or the second webinar [here](#).
2. EPA is requesting tribal feedback on the topic areas listed in the attached supplement during the first 60-day comment period. Tribal comments are welcome on the topic areas listed in the supplement by March 15, 2021. In addition to submitting comments on the

topic areas, tribes may submit comments on any other aspect of the current Guidance that they believe EPA should consider during the revision.

3. Once EPA evaluates and considers tribal comments from the initial comment period, we plan to share a draft of the revised CWA Section 106 Tribal Guidance for tribal consultation during a second 60-day comment period and hold another informational webinar on two separate dates. We expect to hold the second 60-day comment period and these webinars in mid-late 2021.

Enclosed is a consultation and coordination plan that further describes the CWA Section 106 Tribal Guidance revision and the process that EPA intends to follow, including a timeline for the consultation and coordination period and information on how you can provide input on this action. *This information is also available on EPA's Tribal Consultation Opportunities Tracking System (TCOTS) at <https://tcots.epa.gov>.*

Please contact our official EPA representative for this consultation and coordination process, Jennifer Wintersteen ([Wintersteen.jennifer@epa.gov](mailto:Wintersteen.jennifer@epa.gov)) at (406) 457-5006, if you have any questions or would like to request alternate arrangements to the process outlined in the consultation and coordination plan. We look forward to hearing from you.

Sincerely,

Andrew D. Sawyers, Director  
Office of Wastewater Management

cc: Tribal Environmental Directors  
CWA Section 106 Tribal Coordinators

Enclosure

## **Consultation and Coordination Plan: Potential Revisions to the *Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act***

### ***Background information on the initiative***

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. In 1987, Congress amended Section 518(e) of the CWA to include provisions that allow EPA to treat an Indian tribe in a manner similar to a state (i.e., treatment in a manner similar to a state, or TAS) for the purpose of providing Section 106 funding.

Since 1987, EPA has provided technical assistance and funding under the CWA Section 106 program to assist tribes and intertribal consortia to understand, assess, and preserve water resources on their lands. For tribes, CWA Section 106 grants are a crucial, dedicated source of funds for developing, maintaining, and expanding water quality programs. These programs are designed to control, prevent, and eliminate water pollution as well as to educate tribal members and the general public.

Of the 574 federally recognized tribes, approximately 335 could potentially meet the CWA eligibility requirements for CWA Section 106 funding. To date EPA has determined that 279 tribes are eligible to receive Section 106 grants.<sup>1</sup>

### ***Potential benefits to tribes***

The goals of revising the CWA Section 106 Tribal Guidance include:

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

The revisions to the Guidance will not seek to develop new policy for the Tribal Water Programs. The national allocation formula will not be impacted by the Guidance revision process.

### ***Opportunities for tribes to participate***

The consultation period for allowing tribal input on the revisions being considered for the CWA Section 106 Tribal Guidance will remain open for the duration of this effort and will include two 60-day comment periods as well as informational webinars. EPA is requesting tribal feedback on the topic areas listed in the attached supplement during the first 60-day comment period, which will be held from January 13, 2021 to March 15, 2021. Tribal comments are welcome on the topic areas listed in the supplement by March 15, 2021. In addition to submitting comments on the topic areas, tribes may

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<sup>1</sup> Section 518 of the Clean Water Act grants authority to federally recognized tribes with Indian reservations to receive Section 106 grants if EPA finds that they meet certain specified requirements. Approximately 335 tribes currently appear to have lands that qualify as reservations as defined in the Act, although an applicant tribe must provide documentation to EPA concerning its reservation, government, and capabilities to be found eligible.

submit comments on any other aspect of the current Guidance that they believe EPA should consider during the revision. Once EPA evaluates and considers tribal comments from the initial comment period, EPA plans to share a draft of the revised CWA Section 106 Tribal Guidance for tribal review during a second 60-day comment period we expect to hold in mid-late 2021. We will provide more information at a later date.

Tribes have 3 options for submitting written comments:

1. Email comments to Jennifer Wintersteen ([Wintersteen.jennifer@epa.gov](mailto:Wintersteen.jennifer@epa.gov)).
2. Provide comments electronically by using this [form](#).
3. Send comments by mail to the following address:

CWA Section 106 Tribal Program  
 U.S. EPA  
 1200 Pennsylvania Ave, NW (MC 4201M)  
 Washington, DC 20460

EPA also will hold an informational webinar on two separate dates for tribal leaders and staff on February 2, 2021 from 2:00-3:00 pm (EDT) and on February 11, 2021 from 2:00-3:00 pm (EDT). The webinars will provide tribes and tribal leaders an opportunity to ask questions and learn more about this consultation opportunity and the recommended revisions for the CWA Section 106 Tribal Guidance. You can register for the first webinar [here](#) or the second webinar [here](#).

An additional informational webinar will be held on two separate dates in mid-late 2021 and will be announced at a later date.

Tribes may access this letter and related consultation information in EPA’s Tribal Consultation Opportunities Tracking System (TCOTS) located at <https://tcots.epa.gov>.

The combined goal for all these efforts is to ensure there is sufficient information for tribal leaders and their designated consultation representative(s) to make an informed decision about the desire to continue with government-to-government consultation and to understand how to provide informed input. EPA looks forward to working with federally recognized tribes to better understand their needs and answer questions related to the recommended revisions to the CWA Section 106 Tribal Guidance.

Tribal Consultation and Coordination Process and Timeline

Date/Time	Event	Contact Information
January 13, 2021	<p>Initiation of the tribal consultation period. Consultation notification letters are emailed to tribal leaders.</p> <p>Also initiates first 60-day comment period; share key topic areas being considered for revising the CWA Section 106 Tribal Guidance (see attached supplement)</p>	EPA Contact: Jennifer Wintersteen (406) 457-5006 ( <a href="mailto:Wintersteen.jennifer@epa.gov">Wintersteen.jennifer@epa.gov</a> )

Date/Time	Event	Contact Information
February 2, 2021 2:00-3:00 PM (EDT)	Tribal Leader Informational Webinar #1: Recommendations for Revising the Section 106 Tribal Guidance.	EPA Contact: Jennifer Wintersteen ( <a href="mailto:Wintersteen.jennifer@epa.gov">Wintersteen.jennifer@epa.gov</a> ) Registration link: <a href="https://attendee.gotowebinar.com/register/7089753642674520332">https://attendee.gotowebinar.com/register/7089753642674520332</a> Webinar Call In: +1 (562) 247-8321 Audio Pin: 551-217-641
February 11, 2021 2:00-3:00 PM (EDT)	Tribal Leader Informational Webinar #2: Repeat: Recommendations for Revising the Section 106 Tribal Guidance.	EPA Contact: Jennifer Wintersteen (406) 457-5006 ( <a href="mailto:Wintersteen.jennifer@epa.gov">Wintersteen.jennifer@epa.gov</a> ) Registration link: <a href="https://attendee.gotowebinar.com/register/7236517554261788684">https://attendee.gotowebinar.com/register/7236517554261788684</a> Webinar Call In: +1 (562) 247-8321 Audio Pin: 332-390-125
60 days after consultation initiated	End of the first 60-day comment period. EPA then evaluates and considers comments received.	Comments can be emailed to: Jennifer Wintersteen ( <a href="mailto:Wintersteen.jennifer@epa.gov">Wintersteen.jennifer@epa.gov</a> ) Comments can be submitted electronically using this <a href="#">form</a> . Or mail comments to: <b>CWA Section 106 Tribal Program</b> <b>U.S. EPA</b> <b>1200 Pennsylvania Ave., NW (MC 4201M)</b> <b>Washington, DC 20460</b>
Late Summer/Early Fall 2021 (estimate)	Second 60-day comment period on Draft Revised CWA Section 106 Tribal Guidance.	TBD
Late Summer/Early Fall 2021 (estimate)	Tribal Leader Informational Webinar #3: Draft Revised CWA Section 106 Tribal Guidance.	TBD
Late Summer/Early Fall 2021 (estimate)	Tribal Leader Informational Webinar #4: Repeat: Draft Revised CWA Section 106 Tribal Guidance.	TBD
Fall 2021 (estimate)	Consultation closes and final Guidance will be posted.	Final Guidance will be posted at the following CWA Section 106 weblink: <a href="https://www.epa.gov/water-pollution-control-section-106-grants">https://www.epa.gov/water-pollution-control-section-106-grants</a>