Final Section 106 Supplemental Grant Guidance to States, Interstate Agencies, and Tribes Fiscal Years 2023 and 2024

This guidance supplements the FY 2023 - 2024 *National Water Program Guidance* and provides additional guidance for state, interstate and eligible tribal recipients of Section 106 grants for Water Pollution Control Programs.

Grant recipients are expected to conduct their programs to help achieve the goals and objectives, priorities, and performance measures specified in the FY 2023 – FY 2024 NWPG and this supplemental guidance.

Section 106 grants fund multiple Clean Water Act water pollution control activities: water quality standards, water quality monitoring, impaired waters listing and total maximum daily loads development, National Pollutant Discharge Elimination System permitting, enforcement and compliance, and Safe Drinking Water Act source water protection.

High priority activities for EPA for FY 2023-2024 from the NWPG

- Support states and Tribes' adoption of sound, scientifically defensible water quality criteria to protect designated uses.
- Coordinate with states and Tribes to implement National Aquatic Resource Surveys (NARS) to assess the quality of the Nation's coastal waters, lakes and reservoirs, rivers and streams, and wetlands using a statistical survey design.
- Support enhancements to monitoring programs addressing additional state and Tribal priorities.
- Support implementation of the Assessment TMDL Tracking and Implementation System (ATTAINS) data flow for submission of Integrated Reporting under CWA Sections 303(d) and 305(b) through technical assistance and Exchange Network Grants;
- Work with states, territories, and tribes on listing of impaired waters and on priority TMDLs, other restoration plans, and protection approaches under the CWA Section 303(d) Program Vision; support tribes interested in adopting and implementing CWA Section 303(d) listing and TMDL program for reservations;
- Incorporate new NPDES regulations, policies and other programmatic changes, continued implementation of significant actions identified during permit and program quality reviews, ensure state and territory NPDES permit application forms are as stringent as current regulations for EPA application forms, continued implementation of the NPDES Electronic Reporting Rule and where appropriate, identify environmental justice and Title VI civil rights factors that could inform the development of effective approaches within the authority of the NPDES program.
- Support states and tribes interested in assuming the Section 404 dredged and fill permit program and provide technical assistance in program development and implementation to ensure programs are consistent with the CWA; and
- Encourage states to, as appropriate, propose monitoring requirements at facilities where PFAS are expected or suspected to be present in wastewater and stormwater discharges, using EPA's recently published analytical method 1633, which addresses 40 unique PFAS.

Water Quality Standards

WQS[1] are the regulatory and scientific foundation of programs to protect water quality under the Clean Water Act. The Act recognizes the primary role of states and authorized tribes in setting the standards. EPA is committed to assisting them in adopting standards that support designated uses and keeping them updated. The EPA encourages recipients of Section 106 grants to prioritize the following water quality standards program activities:

- Continue to enhance the quality and timeliness of the triennial standards reviews required by the Act. To facilitate timely EPA actions on standards submissions and timely triennial reviews, EPA recommends that states and tribes coordinate their priorities, schedules, and actions with EPA at critical points.
- Adopt new or revised water quality criteria where appropriate to reflect the latest sound science, including EPAs recently updated national recommended water quality criteria for protecting human health (94 criteria updated in 2015 alone), for protecting recreational uses (including bacteria criteria, and cyanotoxins criteria where applicable), and for protecting freshwater aquatic life (acrolein, aluminum, ammonia, cadmium, carbaryl, copper, and selenium).
- Adopt numeric water quality criteria for nitrogen and phosphorus where appropriate to help address nutrient pollution affecting human health and aquatic ecosystems, including EPAs recently updated national ambient numeric nutrient water quality criteria recommendations for lakes and reservoirs. Visit EPA's nutrient pollution site[2] for more information.
- Continue to implement actions specified in the 2015 revisions to the Water Quality Standards Regulation. These include:
    - Providing an explanation where a triennial review does not result in adoption of new or revised water quality criteria for pollutants for which EPA has published new or updated Clean Water Act section 304(a) criteria recommendations.
    - Where necessary, update implementation methods for the state or tribe's antidegradation policy and make them available to the public.
    - Follow requirements when removing or revising designated uses, when issuing water quality standards variances, when implementing antidegradation policies, or when authorizing issuance of compliance schedules.
    - Conducting one or more public hearings consistent with 40 CFR 25.5 when conducting a triennial review or adopting any new or revised water quality standards. Consider options in EPA's guidance on modernizing public hearings.[3]
- Engage early with EPA, U.S. Fish and Wildlife Service, and National Marine Fisheries Service when developing new and revised water quality standards to ensure consideration of

[1] Please see http://epa.gov/wqs-tech .
[2] Please see https://www.epa.gov/nutrient-policy-data.
[3] https://www.epa.gov/wqs-tech/options-modernizing-public-hearings-water-quality-standard-decisions-consistent-40-cfr-255

endangered and threatened species when developing water quality standards, per EPA's recommendation.

- Consider using tools, where applicable, that EPA has provided on its website to address issues such as downstream protection, natural conditions, wetlands protection, and water quality standards variances.

Water Quality Monitoring, Assessment, Impairment Identification and Total Maximum Daily Load (TMDL) Development

Water quality monitoring is fundamental to implementation of Clean Water Act Programs and an eligibility requirement for distribution of Section 106 State Grants. The EPA will continue to support efforts to achieve greater integration of federal, regional, state, tribal, and local level monitoring efforts to connect monitoring and assessment activities across geographic scales, in a cost-efficient and effective manner, so that scientifically defensible monitoring data is available to address issues and problems at each of these scales. States, interstate agencies and eligible tribes will continue to conduct monitoring and assessment to develop statistically representative assessments of the nation's waters, identify priorities for protection and restoration, and support sound decision making across Clean Water Act programs.

Building on the experience gained over the past two decades in assessing and reporting on water quality and in developing tens of thousands of TMDLs, the EPA and states are implementing the CWA 303(d) Program Vision[4] that encourages states to identify priority waters and to develop tailored strategies to carry out their CWA 303(d) program responsibilities in the context of their water quality goals. With this Vision, the EPA and states will continue to work with other partners and stakeholders to develop and implement activities and watershed plans to restore identified waters. In 2016, the EPA finalized a rule establishing procedures for tribes to be authorized to implement 303(d) program responsibilities in a manner similar to states.

Historically CWA programs have focused on restoring impaired waters; the healthy watersheds program helps put focus on maintaining and protecting healthy waters. Current activities in support of state and Tribal partners involve assessing watershed health and vulnerability, analyzing effective protection policies and approaches, and promoting protection in high quality watersheds.

EPA will continue to collaborate with states and tribes to:

- Implement National Aquatic Resource Surveys to assess the quality of the nation's coastal waters, lakes and reservoirs, rivers and streams, and wetlands using a statistical survey design.[5]
    - Complete the field sampling for the National Rivers and Streams Assessment in FY23 and FY24.

[4] Read more on the 303(d) Program Vision at: https://www.epa.gov/tmdl/new-vision-implementing-cwa-section-303d-impaired-waters-program-responsibilities

[5] For more information on NARS visit: https://www.epa.gov/national-aquatic-resource-surveys

    - Complete sample processing and deliver data within a year of completing the field season and report results within a year after the data delivery.
- Support the Water Quality Framework (WQF) to better integrate the EPA's data and information systems to more effectively support water quality decision makers and better inform the public.[6]
    - The EPA will support states, tribes and other organizations using WQX and WQX Web to submit data to the Water Quality Portal through technical assistance and Exchange Network grants.
    - The EPA will support state transition to and implementation of the new ATTAINS data flow for submission of Integrated Reporting under CWA Sections 303(d) and 305(b) through technical assistance and Exchange Network Grants.

The EPA encourages recipients of Section 106 grants to prioritize the following monitoring and assessment activities:

- States will maintain monitoring programs with the appropriate devices, methods, systems, and procedures necessary to monitor and to compile and analyze data on the quality of navigable waters in the state, and provision for annually updating the data and including it in the Section 305(b) report.[7]
- States, territories, and interstate commissions should continue to use a combination of Section 106 monitoring funds, base Section 106 funds, and other resources available to implement and enhance their monitoring activities and meet the objectives of the Elements Guidance.[8]
- States, and tribes where applicable, will transmit their water quality data to the Water Quality Portal using the WQX framework to satisfy the general obligation to report water quality data annually.[9]
- States will submit their Integrated Report using the ATTAINS system as the system of record for 303(d) lists of impaired waters needing TMDLs to achieve water quality standards.

National Pollutant Discharge Elimination System (NPDES) Permitting

EPA, in partnership with the states, ensures the quality of the nation's waters is protected from the potential impacts of point source discharges through timely issuance of effective NPDES permits.
The EPA encourages recipients of Section 106 grants to prioritize the following NPDES permitting activities:

[6] Reade more on WQF: https://www.epa.gov/waterdata/water-quality-framework
[7] See 33 US Code Subchapter 26, Section 1256 (also known as Section 106 of the Clean Water Act): http://uscode.house.gov/view.xhtml?path=/prelim@title33/chapter26/subchapter1&edition=prelim
[8] EPA issued the 2003, "Elements of a State Water Monitoring and Assessment Program" (Elements Guidance) as a recommended set of basic components of a state water monitoring program to aid in improving monitoring and assessment programs. Read more at: https://www.epa.gov/water-pollution-control-section-106-grants/elements-state-water-monitoring-and-assessment-program
[9] Read More on STORET and WQX at: https://www.epa.gov/waterdata/water-quality-data-wqx

- States are to either update their NPDES permit application forms to incorporate the changes to EPA's application regulations or transition to the current EPA forms. States with state-specific forms should also evaluate whether the instructions and formatting of the state forms should be modified to increase the clarity of required information.
- States should continue to implement significant actions identified during regional reviews and Permit Quality Reviews to assure effective management of the permit program and to adopt efficiencies to improve environmental results.
- EPA and states should work together to optimally balance competing priorities, schedules for action items based on the significance of the action, and program revisions.
- States are expected to ensure that NPDES permits are reissued on a timely basis and include clear and enforceable requirements to ensure permit quality.
- States should consider incorporating innovative approaches such as integrated planning and green infrastructure to permits to increase infrastructure resiliency.
- States are encouraged to work with municipalities and enforcement authorities to integrate integrated permitting approaches as part of enforcement actions.
- States are encouraged to seek opportunities to incorporate efficiency tools, such as trading and linking development of WQS, TMDLs, and permits.
- States are encouraged to include nutrient monitoring requirements and limits where appropriate.
- States should continue to work closely with their inspection and enforcement programs to ensure effective implementation of NPDES CAFO regulations.
- State NPDES permit writers should have knowledge of the pretreatment program to establish appropriate discharge limits in POTW permits.
- States are expected to ensure data availability by fully populating the Integrated Compliance Information System (ICIS)- NPDES with the data elements in Appendix A to 40 CFR 127 (NPDES Electronic Reporting).
- States should electronically receive reports from regulated entities as specified in 40 CFR 127 (NPDES Electronic Reporting).
- States are encouraged to, as appropriate, propose monitoring requirements at facilities where PFAS are expected or suspected to be present in wastewater and stormwater discharges, using EPA's recently published analytical method 1633, which addresses 40 unique PFAS.

Source Water (Surface Water and Ground Water):

CWA Section 106 grant funds are an essential funding mechanism for source water protection activities. The Agency recommends that states and tribes continue to direct a portion of their CWA Section 106 funding for source water protection and wellhead protection actions that protect both ground water and surface water used for drinking water. EPA regions, states, and tribes that administer EPA-approved WQS programs should ensure that there are protective WQS in place, and being attained, for each waterbody being used as a public water supply. Also, EPA encourages states and tribes to allocate a reasonable share of water quality monitoring resources to assess attainment of the public water supply use and consider using water quality or compliance monitoring data collected by public water systems in

assessing water quality and determining impairment. EPA regions, states, and tribes should consider placing a high priority on:

- waterbodies where state, tribal, or local source water assessments have identified highly threatening sources of contamination that are subject to CWA, and
- the development and implementation of TMDLs to address impairments of the public water supply use.

EPA regions and states should consider the hydrologic relationship between point source dischargers and drinking water intakes in setting permit requirements and inspection and enforcement priorities. EPA also encourages state programs to leverage the tools and resources of the National Source Water Collaborative[10.] to connect with other source water protection organizations and collaboratives, find webinars and toolkits on source water protection planning, and to share success stories on a national platform. EPA also encourages states and tribes to integrate source water into updates of watershed assessments and plans, including incorporating ground water and the ground water / surface water interchange, and in the course of doing so consider the effects of extreme weather on fresh water resources. For source water protection resources, please visit EPA's source water protection website, and specifically for funding, consider the use of the Funding Integration Tool for Source Water tool (FITS), a one-stop-shop tool that explains how users can integrate various federal funding sources to support activities that protect sources of drinking water. See Section II.B. for additional discussion on the Source Water and Ground Water. Tribes should refer to the *Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act*, Understanding Source Water Protection and Conducting a Source Water Assessment sections.

Non-point Source: States, interstate agencies, and tribes may use CWA Section 106 funds to develop watershed-based plans and to conduct monitoring on a watershed basis. States' and where appropriate, tribes' integrated monitoring designs should use a combination of statistical surveys and targeted monitoring to cost-effectively evaluate the health of watersheds and the effectiveness of protection and restoration actions, such as nonpoint source implementation projects. In addition, EPA encourages broader efforts to protect and maintain healthy watersheds, so that costly implementation measures are not required to restore water quality and aquatic habitat.

Protecting Wetlands: Some states and tribes have utilized CWA Section 106 funds for wetland program activities such as wetlands identification and monitoring. Section 106 funds may be used to develop Section 404 dredge and fill permitting programs and implement the programs once they are assumed by the state or tribe.

Other Guidance: Guidance for the Tribal Program, the Monitoring Initiative, and Enforcement is provided separately and can be found at:

- Tribal water pollution control programs. See https://www.epa.gov/water-pollution-control-section-106-grants/final-guidance-awards-grants-indian-tribes-under-section.

[10] : http://www.sourcewatercollaborative.org/

- State and interstate use of Monitoring Initiative funds. See https://www.epa.gov/water-pollution-control-section-106-grants/monitoring-initiative-grants-under-section-106-clean.
- Associated Program Support (APS) Costs. APS authority is used to provide support for the common goals of the requesting state(s) and tribe(s) and/or promote administrative efficiency and cost savings to the recipients. See https://www.epa.gov/water-pollution-control-section-106-grants/final-guidance-use-associated-program-support-costs.

National Water Program Measures: CWA Section 106 funding supports many of the Office of Water National Water Program Measures listed in the *National Water Program Guidance*. These measures include:

Subject Area	Measure Language
NPDES[11]	Number of existing EPA-issued NPDES individual permits in backlog
NPDES[12]	Number of applications for new EPA-issued NPDES individual permits in backlog
NPDES[13]	Number of facilities covered by EPA-issued NPDES general permits in backlog
NPDES	Percent of existing state issued NPDES individual permits in backlog
NPDES	Percent of facilities covered by state issued NPDES general permits in backlog
TMDLs	Square miles of priority areas covered by TMDLs, other restoration plans, or protection approaches
TMDLs	Backlog of EPA action on TMDLs
Impaired Waters	Annual increase in square miles of watersheds with surface water meeting standards
Impaired Waters	Square miles of watersheds previously impaired due to nutrients that now meet standards
Impaired Waters	Backlog of EPA action on 303(d) Lists
Impaired Waters	Outstanding State submission of 303(d) lists
Impaired Waters	Report on the quality of the nation's waters - percent of samples processed

[11] For NPDES permit backlog metrics, existing permits (both individual and general) are considered backlogged when they have been administratively continued for 180 days or more.
[12] For this NPDES permit backlog metric, applications for new permits are considered backlogged 365 days after a complete application has been received.
[13] For all NPDES general permit backlog metrics, construction stormwater permits are excluded due to the unique nature and ever-changing, large universe for those permits.

Water Quality Standards	Percent of water quality standards actions taken within the 60 or 90 day statutory deadlines
Water Quality Standards	Number of tribes with EPA approved water quality standards
Water Quality Standards	Number of tribes with TAS for water quality standards

Note: These measures may be updated for FY24.