

# GAP Guidance Evaluation Phase 1 Tribal Comment Summary

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## Introduction

Under the Indian Environmental General Assistance Program (GAP) Act of 1992, the U.S. Environmental Protection Agency (EPA) provides GAP financial assistance to tribal governments and intertribal consortia to assist tribes in planning, developing, and establishing the capacity to implement federal environmental programs administered by the EPA, and to assist in implementation of tribal solid and hazardous waste programs in accordance with applicable provisions of law. The Office of International and Tribal Affairs (OITA), EPA's national program manager for GAP, released the *Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortia* in May 2013.<sup>1</sup> The Guidance provides a nationally consistent capacity development framework for EPA and GAP recipients to follow. The Guidance connects joint EPA-tribal government strategic plans to development of GAP work plans that are aligned with both the tribe's long-term and intermediate goals and EPA-administered programs.

In the years since OITA issued the 2013 GAP Guidance, some tribes and intertribal consortia have shared concerns with EPA regarding various aspects of the Guidance. At the 2017 National Tribal Operations Committee meeting, OITA committed to work with the National Tribal Caucus and conduct an evaluation of the 2013 GAP Guidance to identify opportunities to improve the Guidance and its implementation. In June 2018, OITA initiated a 90-day tribal consultation, in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes*,<sup>2</sup> to obtain input to inform potential revisions and/or adjustments to how EPA implements the 2013 Guidance. During the 2018 consultation and coordination period, AIEO received over 800 unique comments from tribes, intertribal consortia, and EPA tribal partnership groups on the 2013 GAP Guidance. Comments include written letters and notes of remarks from tribal representatives during meetings, webinars and conference calls EPA conducted as part of the GAP Guidance Evaluation.

This document, the *GAP Guidance Evaluation Phase 1 Tribal Comment Summary*, is a comprehensive summary of more than 800 comments that have been consolidated and organized into eight themes. In preparing the summary, OITA made every effort to maintain the specificity and authenticity of the original comments, while grouping similar comments together for readability and tallying the number of tribes, consortia and partnership groups that support each comment. This document and its companion, the *Summary of Past Feedback from Tribes and Tribal Organizations on the 2013 GAP Guidance*,<sup>3</sup> provide a range of perspectives and ideas for improvements that OITA is considering throughout the ongoing GAP Guidance Evaluation.

For more information about the GAP Guidance Evaluation, please feel free to contact Felicia Wright, Acting Director of the American Indian Environmental Office, at [wright.felicia@epa.gov](mailto:wright.felicia@epa.gov).

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<sup>1</sup> The 2013 GAP Guidance is available at <https://www.epa.gov/tribal/2013-guidance-award-and-management-general-assistanceagreements-tribes-and-intertribal>.

<sup>2</sup> More information on EPA's tribal consultation policy is available at <https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>.

<sup>3</sup> OITA prepared the *Summary of Past Feedback* in May 2018 to support the first phase of the GAP Guidance Evaluation by documenting tribal input on the Guidance that relates to EPA's efforts to identify improvements to the Guidance and its implementation. It is available at <https://www.epa.gov/tribal/summary-past-feedback-2013-gap-guidance>.

## Category: General/Broad

### Theme: Importance of Indian Environmental General Assistance Program (GAP) Funding

- The GAP funding source has been instrumental for tribes in establishing and maintaining a variety of environmental program capacities and in addressing environmental concerns in Indian Country. Furthermore, key tribal environmental staff positions are supported through GAP. When funding from other programs is not sufficient, there should be the ability to use GAP funding to support media-specific activities based on tribal needs. (16 Tribes; 4 Tribal Partnership Groups)

### Theme: Support the 2013 GAP Guidance

- The Tribe is supportive of the structure of the 2013 GAP Guidance. We have been able to work within the confines of the guidance, to continue to build, develop, and increase environmental capacity that fits the needs and pace of the Tribe. (1 Tribe)

### Theme: Rescind the 2013 GAP Guidance

- Rescind the 2013 GAP Guidance and restore the 2006 GAP Guidance. Tribal comments and concerns were not meaningfully considered by EPA in the development of the 2013 Guidance. The Tribal Consultation Policy was not followed for 2013 Guidance; the expectation was that EPA would respond back to each tribe individually on how their comments were or were not being addressed. Over the last seven years, numerous tribal representatives have conveyed concerns regarding AIEO's failure to engage in appropriate tribal consultation prior to and during the development of the 2013 Guidance. (12 Tribes; 4 Tribal Partnership Groups)

### Theme: Incorporate into the GAP Guidance

- Consider moving beyond an annual grant funding cycle and moving towards a multi-year funding-cycle. (2 Tribes)
- EPA should integrate Indian law, and the Federal fiduciary responsibilities, to Indian tribes in the GAP Guidance. This change would enable Indian tribes to determine the region-specific needs they have regarding a broader version of the GAP Guidance. This would ideally include: land management and maintenance capacity building for the purposes of mitigating natural disasters; Emergency Management Services (EMS) capacity building to address human health recovery resulting from natural disasters; and drinking water capacity building to address water quality. (1 Tribe)

### Theme: Legal Weight of GAP Guidance

- EPA should not treat the Guidance as though it establishes requirements. (6 Tribes; 2 Intertribal Consortia; 1 Tribal Partnership Group)
- No specific statute or guidance requires the submission of EPA-Tribal Environmental Plans (ETEPs) and Integrated Waste Management Plans (IWMPs) for formal approval; however, in some regions, certain Regional Tribal Offices have mandated that they “approve” ETEPs in order to be eligible for future GAP funding. These preconditions are contradictory to the principles of the 1984 EPA Indian Policy and are not expressly stated in the law as conditions for being eligible for GAP funding. The GAP Guidance is guidance – not a regulation. (13 Tribes; 4 Tribal Partnership Groups)

Theme: Block Grants/Performance Partnership Grants

- Providing block grants to tribes in combination with a planning tool would provide for flexibility in activities for tribes and defined outcomes for EPA to track for accountability. (7 Tribes; 1 Tribal Partnership Group)
- Direct Implementation Tribal Cooperative Agreements (DITCAs) and Performance Partnership Grants (PPGs) are a contract/compact similar to 638 process available from other Federal agencies. (1 Tribe; 1 Tribal Partnership Group)

Theme: Performance Partnership Grants (PPGs)

- There needs to be greater consistency in how PPGs are managed, specifically around the flexibility to reprogram funds; remove the silos. Flexibility allows tribes to build capacity in environmental programs and develop/maintain capacity despite turnover. (17 Tribes; 2 Tribal Partnership Groups)
- It is not clear how PPGs will be addressed in the GAP Guidance revision. And it is challenging to talk about GAP in the context of a PPG, because GAP has become an integrated program, not stand-alone. How does a PPG that integrates GAP connect to ETEPs and media-specific National Program Manager (NPM) Guidance? (3 Tribes; 1 Tribal Partnership Group)
- The PPG format assists in the development of an ETEP. (1 Tribe)

Theme: Determining Tribal Priorities

- Tribes have unique needs and interests; therefore, tribes should determine their environmental priorities, goals, and needs. The GAP Guidance and GAP project officers have narrowed what a work plan can encompass, thereby directing what should be the tribes' priorities. (11 Tribes; 2 Tribal Partnership Groups)
- Under the current Guidance, EPA is concerned more about tangible results than helping tribes solve environmental issues. There appears to be more a parental role that EPA is taking. (1 Tribe; 1 Intertribal Consortium)

Theme: Funding

- There is inadequate funding available in GAP to support tribes' environmental program needs, including program implementation. Suggestions include: consider base funding, implementation funds, and/or potential application of self-determination model, divide the GAP funding equally and non-competitively as in EPA Region 5, start a separate program for solid waste removal so there is less pressure on GAP and greater availability of funds for capacity building, and move toward multi-year funding cycle. (9 Tribes; 3 Intertribal Consortia; 1 Tribal Partnership Group)
- GAP appropriations have been roughly level since 2004. Taking inflation into consideration, a GAP dollar awarded today has roughly half the purchasing power of a GAP dollar awarded in 2004. (1 Tribe)

- By building capacity to take on more of the role of environmental protection and regulations, while EPA pulls back, will there be continued support as tribes take over the responsibilities? Tribes want another funding source for developing a program. (1 Tribal Partnership Group)
- Tribes can seek “treatment as a state” for program delegation. They should be funded as a state. (1 Tribe)

#### Theme: Compliance Inspections

- EPA is responsible for carrying out enforcement of environmental laws on the reservation because of its Indian Trust Land status. Typically, EPA sends out inspectors, issues reporting violations, and investigates complaints of off-reservation persons, little of which actually protects the environmental resources of the tribes. Furthermore, there is little or no funding available for the tribes to conduct inspections, issue violations, and/or conduct investigations. (1 Tribe)

#### Theme: Technical Assistance

- Under GAP, there are two purposes in the law. The first being, "provide general assistance grants to Indian tribal governments and intertribal consortia to build capacity to administer environmental regulatory programs that may be delegated by the Environmental Protection Agency on Indian lands." The GAP Guidance document was created to address purpose one. However, there is a second purpose which is, "provide technical assistance from the Environmental Protection Agency to Indian tribal governments and intertribal consortia in the development of multimedia programs to address environmental issues on Indian lands." There is a lack of guidance as to how EPA implements the second purpose of the law. The intent of Congress was that the EPA should have provided technical assistance under purpose two, which would have complimented purpose one. However, the 2013 GAP Guidance lacked a number of pertinent components including: capacity indicators, performance measurements, and evaluation criterion under purpose two. It seems reasonable to expect that if tribes are to be held accountable in a manner that is highly rigid and having to comply with the 2013 GAP Guidance, then it is reasonable to expect that the EPA be held accountable under purpose two. (1 Intertribal Consortium)
- Tribes may use GAP funds for joint programs activities; however, tribes with limited jurisdiction have not seen sufficient efforts to provide for intergovernmental agreements with neighboring jurisdictions, or opportunities for cross sharing of technical knowledge, enforcement, and policy developments. U.S. EPA is uniquely positioned to create connections between the various environmental programs across the nation and give tribes critical information about activities occurring within their respective region. It would be helpful to create a centrally accessible online chat community for government environmental officials to gain access to information about upcoming events, studies, new regulations and policies, and other similar public information to share with their government counterparts in the region. (4 Tribes; 1 Tribal Partnership Group)
- Would like to have tribal training on establishing enforcement and compliance capability. Investigate, as part of our IAG and Indian Health Service for solid waste codes and ordinance,

whether there is opportunity to train on building enforcement capability in the tribe; identify and evaluate enforcement/compliance option for a tribe. (1 Tribe)

Theme: Alaska Tribes

- Consider having a separate guidance for Alaska tribes because their GAP needs are so different from other tribes. (2 Tribes)
- What does "Limited Environmental Program Jurisdiction" mean? It has negative connotations. Just talk about whether they are pursuing treatment as a state (TAS) or not, for whatever reason. Be thoughtful about the way to bring up capacity for the smaller tribes. (1 Tribal Partnership Group)

Theme: Funding for Technical Assistance Organizations

- EPA could consider funding technical assistance organizations for GAP planning similar to how EPA does it for the Brownfields program. (1 Tribe)

Theme: Goal of GAP

- There is no clear target or goal with GAP compared to other EPA programs (i.e., CWA 106). (2 Tribes; 2 Intertribal Consortia)
- Environmental protection should be the goal, not controlling environmental pollution. (1 Tribe)

## Category: Program Administration

### Theme: Clarity

- The Guidance should be clearly written and user friendly. Recommend efficiency, less narrative, more bulleted lists, and links to funding and/or technical assistance resources. (13 Tribes; 4 Tribal Partnership Groups)
- The GAP Guidance is not easily accessible. It has a lot of information that is captured in numerous long paragraphs. Allowable work or tasks projects would be better served to be outlined in bullets. It is difficult to read because different people reading it will interpret it differently. More specific language is needed to reduce or eliminate contrasting interpretations by either the grantee or the project officer. There needs to be clarification of activity classification; implementation versus capacity building as the current guidance is unclear on when a project falls into either category. In addition, a process is needed to elevate requests regarding deviations from the Guidance based on individual tribal scenarios. One suggestion is to create some example templates, messaging, and clear up misconceptions. (12 Tribes; 1 Intertribal Consortium; 2 Tribal Partnership Groups)

### Theme: Consistency between Tribes and Regions

- The Guidance should promote consistent implementation across all EPA regions. Provide training to all regional GAP coordinators and project officers to promote consistency. (19 Tribes; 4 Intertribal Consortia; 2 Tribal Partnership Groups)
- Application of the Guidance is inconsistent from tribe to tribe, not only within Region 9 but between regions. EPA Regional Offices are currently inconsistent with award decisions. U.S. EPA appears to interpret capacity indicators differently within regional offices and regionally nationwide. But the number and diversity of tribes should be respected and each tribe's situation is unique. (1 Tribe; 1 Tribal Partnership Group Group)
- Develop straight forward criteria on how definitions will be used by the American Indian Environmental Office (AIEO) and GAP project officers. For example, eligible baseline capacity development activities are inconsistent between regional U.S. EPA departments, project officers, and grant managers. (3 Tribes; 1 Intertribal Consortium)

### Theme: Flexibility, Addressing Tribal Priorities

- Tribal communities face unique challenges and issues. The GAP Guidance should provide for the flexibility to implement tribal environmental programs and in determining what is funded through GAP. Flexibility will allow tribal communities to address their specific environmental concerns and priorities while ensuring the achievement of measurable environmental results that will help tribal communities in meeting their environmental goals and assist EPA in tracking and reporting outcomes for program accountability. (29 Tribes; 2 Intertribal Consortium; 6 Tribal Partnership Groups)
- EPA should interpret the GAP Act broadly, allowing maximum flexibility for tribes to use funds to address their own environmental priorities and to supplement media-specific program funding.

This includes broad interpretation of capacity indicators, and the line between capacity building and implementation. (18 Tribes; 3 Intertribal Consortia; 6 Tribal Partnership Groups)

- In general, there needs to be more flexibility, including more administrative flexibility so tribes can focus on their most pressing environmental issues, flexibility for tribes to work with their project officers so the GAP Guidance fits their specific needs, as well as sufficient flexibility in the notification time for tribes to respond to requests for comments. (3 Tribes; 1 Tribal Partnership Group)
- Foremost, the Guidance must allow maximum flexibility and not micro-manage tribal environmental programs. The imposition of restrictions will discourage the flexibility that tribes need in the use of GAP funds. (20 Tribes; 2 Intertribal Consortia; 4 Tribal Partnership Groups)

#### Theme: Administratively Burdensome

- The Guidance should consider the administrative challenges of the tribes (i.e., frequent turnover, limited resources, difficulty with developing short term work plans when most of the work is reactionary) so that less burden is associated with process and requirements that are not statutory, resulting in more focus on environmental work. Reduce duplicative paperwork and have reasonable expectations of the level of complexity for an ETEP based on where the tribe is. Suggestions include a streamlined funding application process and use of templates. (23 Tribes; 3 Intertribal Consortia; 8 Tribal Partnership Groups)
- Having to ask EPA every time the tribe wants to change direction is extremely burdensome. It is not realistic to do this, and tribes lack necessary time and resources to do this. (1 Tribe)
- The amount of FTE that tribes are frequently told is "reasonable" for the grant administration component of our GAP grant is at odds with the amount of time it takes to have lengthy negotiations with project officers around eligibility questions as we develop our work plans and budgets. (1 Tribe)
- A key priority for tribes is to minimize the administrative burdens associated with GAP grants. (13 Tribes; 2 Intertribal Consortia; 3 Tribal Partnership Groups)
- Concern that the GAP Guidance Evaluation (GGE) will result in changes that create new burden for tribes that are accustomed to the 2013 Guidance, such as another form to complete or another category to track. (1 Tribe)

#### Theme: Intertribal Consortia

- EPA should revisit, revise, and clarify requirements for intertribal consortia eligibility to reduce burden (on the consortium and member tribes) and respect tribal government resolutions. Limiting the beneficial use of consortia restricts the purpose of the consortia to provide assistance. Some suggestions include: allow the consortia to apply for regional GAP grants based on their own Board resolutions, clarify in the Guidance that only tribes intended to be served by the grant have to authorize the grant for multi-purpose consortia, and have open-ended or set period years in the authorizations vs. annual requirement. A resolution made by the governing body of a tribe is just as weighty as a Congressional act. For example, the Indian General



Assistance Act was passed in 1992 and remains in effect today. Tribal resolutions, like Congressional Acts, are in effect in perpetuity unless amended, rescinded, or expired by written determination within the resolution itself. (5 Tribes; 7 Intertribal Consortia; 1 Tribal Partnership Group)

Theme: EPA should be timely and responsive and not dictate tribal work plans

- The Guidance should maintain the ability of tribes to determine their priorities and work objectives. There are examples of project officers that seem to be deciding the course and direction of work plans. There are delays in review and processing of GAP applications that creates uncertainty for the tribes and has resulted in loss of funding to the tribe; emails and reports should be read and responded to in a timely manner. (15 Tribes; 3 Intertribal Consortia; 2 Tribal Partnership Groups)

Theme: Nationally Consistent Award Process May Hurt Smaller Tribes

- Smaller tribes, and/or tribes with capacity building issues, may suffer under a nationally consistent and uniform award process. We expect U.S. EPA to follow the GAP Act of 1992 (42 U.S. Code § 4368b), when making award decisions. GAP Guidance administration should be on a tribe-by-tribe basis. (7 Tribes; 1 Intertribal Consortium)

Theme: Other

- The Guidance needs to provide a clear process to elevate requests regarding deviations from the Guidance based on individual tribal scenarios. (1 Tribe)
- Present real time examples of either helpfulness of Guidance or inefficiency of Guidance in developing and submitting applications. (2 Tribes; 1 Intertribal Consortium)
- EPA should facilitate pilot study projects to determine the need for development or expansion of tribal environmental air programs where requested. (4 Tribes; 1 Tribal Partnership Group)
- Need flexibility on work plan budgets. How is salary tracked? Why not a variable of 5 percent? (1 Tribe)
- Tribes may have technical issues associated with using grants.gov, such as trouble submitting applications. There are not adequate support resources available. Some tribes do not have Adobe Acrobat to submit PDFs and lack technical capability. (1 Tribe)
- States do not have to adhere to strict guidance/oversight like tribes do, yet they receive considerably more funding. Will guidance also be implemented for states? (1 Tribe)
- We suggest providing language in the GAP Guidance that mandates EPA to provide certain trainings, and mandates site visits from GAP project officers and other relevant EPA staff, such as the grants management staff or zero waste staff. (1 Intertribal Consortium)

## Category: Allowable Activities

### Theme: Restrictions under GAP

- Add GAP Guidance language that allows for "develop/implement operation and maintenance program for tribal water supply systems, including oversight, design standards, ordinance and establishing utility organizations" as allowable activities. (1 Tribe)
- The GAP Guidance states: "The baseline needs assessment should be updated in response to factors such as: new sources of pollution, changing environmental conditions." In practice, tribes have not received such consideration, as in the case where U.S. EPA denied funding for the changing Salton Sea, which is resulting in additional adverse impacts to air quality. (3 Tribes; 1 Tribal Partnership Group)
- Allow funding for training to maintain technical proficiencies (for example, to go beyond basic GIS classes). (2 Tribes)
- Some of these restrictions are derived from regulatory provisions already in effect or appear to be based on new Agency interpretations of existing regulations. Others are described as representing "established Agency policy," but without any reference to written authority. Some directly contradict existing authorities. Most appear to impose new limitations on tribal use of GAP funding and need to be removed. (13 Tribes; 1 Intertribal Consortia; 3 Tribal Partnership Groups)
- U.S. EPA should allow the tribes to replace equipment bought under GAP if it is necessary for the project or program to continue. Many items used in science that have a life span of 5-10 years cost \$5,000 or greater, thus making them equipment. (1 Tribe)
- Environmental program capacity development work is of interest to tribes. Developing and maintaining the capacity to protect aspects of the environment with traditional cultural significance are not covered by the current GAP Guidance. (6 Tribes; 1 Tribal Partnership Group)
- Tribes must be innovative to get Community Garden Programs started, such as using other Federal funding that has stricter guidelines. (2 Tribes)

### Theme: Indoor Air Quality (IAQ)

- How can GAP be utilized to address indoor air concerns? GAP does not cover Indoor Air Quality pilot studies or assessments over time. The lack of funding for these initial studies leaves tribes with no option but to use less reliable and inexpensive techniques to ascertain the existence of air quality issues and only allowing for such initial testing in tribal administration buildings and other offices, but not in tribal homes. (4 Tribes; 1 Partnership)

### Theme: Implementation/Capacity Building

- The current guidance is unclear on when a project is in the category of implementation versus capacity building. (16 Tribes; 1 Intertribal Consortia; 3 Tribal Partnership)

- Rebuilding lost capacity should be acceptable basis for GAP recipients to repeat activities. (1 Tribe)

Theme: Rules and Requirements

- Can EPA explain the underlying purposes and goals of the GAP Act of 1992 and the GAP rules and requirements that came afterward? For example, “implementation” of so many programs are not explicitly prohibited in the Act, and “capacity building” is a phrase that does not appear in the Act, but the Guidance makes it very clear that implementation and capacity building are fundamental to GAP eligibility determination. (1 Tribe)
- In the GAP Guidance Appendix IV, EPA Water Program Reference Table: Framework for Tribal Water Program Strategic Planning and Development, expand those tasks interpreted as the development/maintenance of capacity and reduce those tasks interpreted as implementation and thus not covered by GAP. (1 Tribal Partnership Group)
- The 2013 Guidance does not contain any provisions related to the deficiencies in EPA's tracking and reporting systems noted by the Office of Inspector General (OIG) or how EPA proposes to address them, but instead focuses exclusively on tribal program requirements. It contains numerous restrictions and prohibitions on tribal uses of GAP funding not previously imposed by EPA, or even required by the OIG, that appear to be based on new interpretations of the GAP Statute itself as well as its implementation regulations, other vaguely referenced EPA policies, and an Office of Management and Budget (OMB) circular. (7 Tribes; 1 Tribal Partnership Group)
- Support ongoing community education and outreach programs. (13 Tribes; 4 Intertribal Consortia; 3 Tribal Partnership)
- For some tribes, ongoing community outreach and education, coupled with the development of regulatory programs (tribal laws and enforcement mechanisms, and perhaps receiving delegated authorities from EPA), will assist the tribes with effective pollution management. (9 Tribes; 1 Intertribal Consortium)
- There are unrealistic deadlines for tribes to establish programs with no consideration of the challenges and obstacles that tribes face in such efforts. (2 Tribes)

Theme: Emergency Response

- There should be an area in the Guidance that goes over eligible activities specific to emergency response. Some GAP program requests for support for emergency planning are being denied in some regions and there is no strategy for addressing the fact that tribes have limited staff to complete a National Incident Management System compliant Emergency Operations/Management Plan. (3 Tribes; 1 Intertribal Consortium; 1 Tribal Partnership Group)
- Currently the GAP Guidance has a blanket injunction for Natural Resources Damage Assessment work. U.S. EPA needs to loosen this part of the Guidance and help tribes protect the environment that supports treaty protected hunting, fishing, and gathering rights. (1 Tribe)

Theme: Consortia

- Authorization of the consortia to apply for and receive a GAP grant is required from all GAP-eligible member tribes. All eligible members must authorize the grant application, given that those dollars would otherwise be available to the individual tribes under GAP. A consortium is required to do quite a bit of administrative work during the work plan development, and internal approval process. We are asking EPA to fund this distinctive administrative work we need to do to comply with the consortia documentation requirements. (2 Intertribal Consortia)
- Tribes with limited jurisdiction have not seen sufficient efforts to provide for intergovernmental agreements with neighboring jurisdictions, or opportunities for cross sharing of technical knowledge, enforcement, and policy developments. (1 Tribe)

Theme: Other

- Energy is very demanding to reduce reliance on fossil fuels. Tribes and communities need a good starting program to create energy programs. Research, training, and funding can be used to create renewable energy programs across the United States. Funding and/or technical assistance for renewable energy projects require match. EPA-GAP can help. (2 Tribes)
- Would like training on how to conduct environmental reviews when asked for a review by a neighboring county or community for potential tribal impacts. (1 Tribe)

## Category: Solid Waste Implementation

### Theme: Remove Restrictions

- In any new or revised GAP Guidance, EPA should remove all restrictions on use of GAP funding for waste program implementation to comply with the Congressional direction in the GAP Statute and the FY16 and FY18 Consolidated Appropriations Acts. (15 Tribes; 1 Intertribal Consortium; 4 Tribal Partnership Groups)
- If a pollution release falls within the category of solid or hazardous waste, restrictions on the use of GAP funds for waste program implementation will interfere with a tribe's ability to effectively manage the release. (7 Tribes; 1 Tribal Partnership Group)
- The requirement for a tribe to have an EPA approved solid waste management plan to obtain funding for solid and hazardous waste program implementation is not a requirement of the GAP statute or the Solid Waste Disposal Act (42 U.S.C. 6901). An updated GAP Guidance should address this issue and should be in favor of tribes and consortia by supporting activities that clean their lands and strengthen the health and safety of their environments. (1 Tribe; 1 Intertribal Consortium)
- Many tribes that have established waste collection, disposal, and reduction programs using GAP require continued funding to maintain and enhance their programs, and others that plan to establish such programs in the future will similarly rely on GAP funding. Allowing broad flexibility in the use of GAP funds for waste program implementation will not only address this need, but also advance EPA's priority, as described in the Agency-wide plan to provide solid waste management capacity assistance to tribes and in the Agency's strategic plan, "to promote waste program sustainability through the development and implementation of integrated waste management plans." (7 Tribes, 1 Tribal Partnership Group)

### Theme: Delegate Decision-Making from AIEO to Regions

- Authority to approve solid waste implementation activities should be provided to regions. Eliminate the required AIEO director approval for these activities. AIEO should not be involved in solid waste implementation funding decisions when regional offices have a better understanding of their tribes' specific solid waste needs. (14 Tribes, 2 Intertribal Consortia; 2 Partnership Groups)

### Theme: Defer to Tribal Needs and Decisions

- GAP funds for environmental program capacity building and solid waste implementation of each individual tribe should be directed based on the opinion of that tribe not opinion of EPA. (1 Tribe)

### Theme: Rationale for 2013 Guidance on Services

- Do not understand inclusion of certain restrictions in 2013 Guidance, e.g., components of waste collection, disposal and reduction programs are interpreted to constitute basic government services, e.g., fire and police, ineligible for funding. Ignores the reality that most governments do not provide waste management services the same way as fire and law enforcement services, e.g., they contract services to third parties. (7 Tribes, 1 Tribal Partnership Group)

Theme: Implementation Funding Needs

- Both the GAP Statute and its implementing regulations expressly authorize the use of GAP funds for solid and hazardous waste implementation activities. Since uncontrolled disposal of waste continues to be a significant environmental and human health problem in many tribal communities, and EPA provides little or no funding from any other source to address tribal waste-related needs, it is imperative that tribes be allowed to use GAP funds to support implementation activities associated with waste collection, reduction, clean up, and enforcement activities. (8 Tribes, 2 Tribal Partnership Groups)
  
- More funding is needed for operation and maintenance of tribal solid waste and recycling facilities. Concern that the solid waste implementation that is allowable under GAP will eventually overtake the ability of the tribes to continue to use GAP funds for capacity building. U.S. EPA needs to look at the potential for a different vehicle for solid waste implementation funding or increase the available GAP dollars to meet the expectations of tribal solid waste management programs without limiting available funds for capacity building. Not every tribe is rural and needs a transfer station. (1 Tribe; 1 Tribal Partnership Group)

Theme: Environmental and Human Health Impacts

- Solid waste and recycling efforts are vital in keeping rural villages environmentally safe. (8 Tribes, 1 Intertribal Consortium; 2 Tribal Partnership Groups)
  
- There is no question that tribal community waste collection and disposal, as well as reduction programs such as recycling and composting, provide tangible health and environmental benefits. These programs are particularly important given EPA's decision to eliminate the majority of funding previously available for open dump clean up, as well as the Agency's own limited authority to implement or enforce waste-related programs in Indian Country. (8 Tribes, 1 Tribal Partnership Group)

## Category: Performance Management & Capacity Indicators

### Theme: Defining Indicators

- Clearly define capacity indicators and what they are supposed to measure since they are not necessarily reflective of the actual work on the ground. Apply a uniform definition of “implementation,” “capacity building,” and “achieving capacity.” (16 Tribes, 2 Intertribal Consortia; 2 Tribal Partnership Groups)
- Tasks developed for the work plan were based on the tribe’s environmental needs and priorities. Recently, funding for these tasks have been denied because they did not tie to any of the specific EPA-defined indicators listed in the Guidebook. (8 Tribes; 1 Tribal Partnership Group)
- Consider other Agency program guidance as models, e.g., 106 has beginning, intermediate, and mature. (1 Tribal Partnership Group)
- Need feedback of what the tribe needs to do to achieve an indicator. Tribes would like to understand what EPA knows and be on the same page as to what the tribe needs to do to move forward. (1 Tribe)

### Theme: Interpreting Indicators

- Capacity indicators should be interpreted broadly with the focus on tribal needs and specific environmental concerns. The included capacity indicators are rigid, and project officers are often not receptive to tailoring the indicators to reflect tribal needs, existing capacities, or capacity development. The GAP Guidance is inconsistent with EPA’s commitment to Cooperative Federalism by attempting to dictate a one-size-fits-all mandate to the use, review, and approval of funds, including the ETEP process and a pre-determined set of capacity indicators. (19 Tribes, 1 Intertribal Consortium; 4 Tribal Partnership Groups)
- Capacity building is for the entire tribe, not just the environmental department. Capacity indicators help when we start addressing environmental issues our community and elected Tribal Councils prioritize. The guidance needs to be a “steps to success” or a “How to.” It needs to incorporate success stories – from tribal success stories to EPA success stories. Share ideas from other tribes on their decisions and why. Flowcharts, illustrating for EPA what certain tribes need to deal with, should be done before capacity building. (7 Tribes, 2 Intertribal Consortia)
- Would like to see performance measures for more traditional ecological knowledge (TEK) related activities, and other measures that allow tribal environmental personnel to attend meetings with groups conducting projects in their area which can impact that tribe’s environment. More specifically, meetings with mining companies and non-profit environmental groups. (1 Intertribal Consortium)

### Theme: Establishing Indicators

- U.S. EPA should work with tribes to develop mutually acceptable tribal indicators specific to the unique needs of the tribe when the listed indicators are not compatible with capacity building in tribal environmental programs and provide more time to get these parts established. (5 Tribes, 2 Intertribal Consortia; 3 Tribal Partnership Groups)

- It would be preferable that U.S. EPA apply different, customized benchmarks for determining whether various programs and activities under GAP are accomplishing targeted goals. (2 Tribes)
- There seems to be a big disconnect between the tribe and the project officer in trying to communicate where they are in their capacity and what they want to achieve by using capacity indicators (e.g., the way they are worded, the unclear scope of each indicator, the fact that the tribe must interpret EPA's indicators instead of using their own). (3 Tribes)
- ETEPs can be a better indicator of whether a tribe is achieving capacity building than a capacity indicator. (2 Intertribal Consortia)
- Building core capacities are good indicators for effective communications. When comment periods are available it becomes difficult for tribes with high staff turnaround to provide comments on environmental issues. Tribes and EPA need to work together on an annual basis to keep communications free and clear. (2 Tribes)
- Many, if not most, pollution releases occur off-reservation, where tribes end up responding to the actions of others rather than directly regulating pollution sources. In these cases, the development of tribal regulatory programs and receiving delegation of EPA regulatory authorities may not result in the type of pollution management necessary to protect the human health and the environment in Indian country. Address our capacity to review and respond to environmental reviews and proposed permitting of off-reservation facilities that have the potential to impact the reservation environment. There is importance in building the capacity to develop and maintain relationships with Federal, state, and local agencies that have jurisdiction over off-reservation facilities, along with the capacity to review and respond to environmental reviews and proposed permitting of such facilities may be most effective. (8 Tribes; 1 Tribal Partnership Group)

#### Theme: Tracking and Reporting Indicators

- The 2006 GAP Guidance included a workplan template and categories to be used for tracking and reporting purposes. The template and categories appear to be appropriate and were much easier for tribes to work with than the current guidance requirements regarding capacity indicators. How was that information compiled and outcomes tracked and reported, and why did that effort not work? EPA should revert to the 2006 Guidance template and categories, and approve tribally defined indicators within this context. Suggest doing a pilot project using the 2006 Guidance template and categories, coupled with some appropriate software, to track and report. (9 Tribes; 1 Tribal Partnership Group)
- Tribes should be able to self-report progress and benefits instead of using indicator codes (they are time consuming, complicated, and confusing). (2 Intertribal Consortia)
- Tribes followed the previous Guidance but EPA did not do its responsibility to track and report the information tribes provided. How could EPA most effectively measure and report on the important outcomes achieved through GAP funding? Some identify specifically that AIEO should be doing the tracking and reporting. (13 Tribes; 3 Intertribal Consortia; 1 Tribal Partnership Group)



- Is the end of year joint evaluation shared with AIEO? Why isn't EPA using this as a form of identifying success in which it was designed for? (2 Tribal Partnership Groups)
- Consider a template where workplan is modified to include reporting column for outcomes/results. Do not make it annual – do not make it hard. (1 Tribe)

#### Theme: Measuring Indicators

- Add weights to tribes' GAP success stories to help measure them. Sometimes it helps to track and measure what is not working, as this could help find common areas where tribes are failing, and what they did to get back up. Why did tribes not achieve deliverables? Go into detail on what caused the failure and suggest an improvement plan. (1 Tribe)
- It is difficult to quantify with GAP since a lot of GAP is administrative not implementation. One would need to categorize what can be easily quantified and what cannot to provide EPA with numbers and metrics. (1 Tribe)
- Measuring outcomes should be done simply by determining whether work plan goals are met and if funding was used appropriately for goals defined in the work plan. (1 Tribe)

#### Theme: Data Management

- Some tribes rely heavily on data management; systems used are often difficult to operate, not very user friendly, and may be further complicated by internet access issues. Sharing data helps tribes “get on the map” with policy makers. (6 Tribes, 1 Tribal Partnership Group)

#### Theme: Tribal Challenges

- Tribes often lack sufficient staff resources able to plan, develop, and establish environmental programs. Many tribes' homelands are located in remote, rural areas of the country where it is difficult to attract technical staff for employment. Tribal members are gaining educational degrees in such areas, but they may be hired off the reservation or their credentials are not quite in the area of needed expertise. Given these challenges that tribes face with limited staff resources and technical capabilities, it would be preferable that U.S. EPA apply different, customized benchmarks for determining whether various programs and activities under GAP are accomplishing targeted goals. (3 Tribes)

#### Theme: Regional Inconsistencies

- The capacity indicators do not fully capture regional needs or priorities and there is inconsistency across regions in interpretation of indicators. Some regions utilize these measures to disqualify tribes from funding, such as concluding that a tribal environmental outreach plan is insufficient to justify further funding. (3 Tribes, 1 Intertribal Consortium, 2 Tribal Partnership Groups)
- At least one EPA region has been suggesting tri-annual review for ETEP evaluation activities, despite the GAP Guidance stating that ETEPs are living documents and should be reviewed annually and updated as appropriate. (1 Tribe)

#### Theme: Performance Management for Consortia Activities

- Consortia results can be measured by: (1) number of tribes helped with capacity development and (2) nature/type of help or support provided. Other assistance provided can be captured as well. (3 Intertribal Consortia)
- We are a consortium of just four tribes. Our member tribes do not necessarily have capacity to engage with EPA on the national level and at a level of technical detail needed. It appears that the capacity indicators cover this type of effort. The capacity indicators allow us to capture that type of work. (1 Intertribal Consortium)
- The easiest way of measuring results may be for the consortium to send out a tool to each tribe's environmental staff to use and submit its "grading" of the consortium's work to the consortium so that it can determine how to better serve its tribes. This "grading" would be shared with EPA so they could also help the consortium better service its tribes. (2 Tribes; 1 Intertribal Consortium)
- One intertribal consortium submitted, along with their comment letter, a draft "Tribal-EPA Capacity Matrix" as a first effort at measuring both EPA and any given tribe's capacity to implement tribal environmental programs. This matrix would offer a score of achievement with the understanding that sustaining GAP funding is also a success towards measuring capacity. (2 Tribes; 1 Intertribal Consortium)
- The GAP Guidance can better support tribal capacity in terms of helping get training, capacity building, and the creation of other response programs for the consortium. It is important to show how the consortia is working directly with the tribe. (2 Tribes, 3 Intertribal Consortia)

#### Theme: Working with EPA

- Tribes and EPA should work together on success stories and challenges and to develop a shared vision of success (i.e., measure benefit to tribes and environment vs. progress). Suggest EPA (at all levels) have meetings with tribes to better understand how important the program is to tribal communities. (1 Tribe; 2 Intertribal Consortia; 1 Tribal Partnership Group)
- It would be helpful to create a centrally accessible online chat community for government environmental officials to gain access to information about upcoming events, studies, new regulations and policies, and other similar public information to share with their government counterparts in the region. (1 Tribe)

#### Theme: Clarity and Consistency

- It is not clear how the Guidance helps EPA report tribal capacity development; clarification is needed on what to measure and how to track. Reporting requirements are inconsistent and poorly defined. (3 Tribes; 1 Intertribal Consortium)

#### Theme: Ineffectiveness of Capacity Indicators

- Capacity indicators should be removed from the GAP Guidance. (1 Tribal Partnership Group)
- Capacity indicators are an administrative burden for our tribes and they have not improved EPA reporting. EPA does not use them for any tracking or reporting, so in context of the 2008 OIG

report, the GAP Guidance has failed to establish a mechanism to report tribal capacity building performance. (8 Tribes; 1 Intertribal Consortium; 1 Tribal Partnership Group)

- Following a sequential path for capacity building is not always practical or realistic. If a tribe has an advanced program it should not need to focus its energy on completing a basic program activity in order to check a box so it can do the advanced activities it is already engaged in. (7 Tribes; 1 Intertribal Consortium; 2 Tribal Partnership Groups)
- GAP Guidance indicators do not align with tribal communities. New performance measures need to be created in the improved GAP Guidance, replacing the capacity indicators in the 2013 GAP Guidance. These new performance measures should be both quantitative and qualitative. They should be created by working with tribal leaders and tribal environmental representatives. (2 Intertribal Consortia)
- Maintaining technical capacity is another area that U.S. EPA identifies as one-and-done courses and suggests utilizing media-specific program funding for maintaining capacity. (1 Tribe)

## Category: EPA-Tribal Environmental Plans (ETEPs)

### Theme: Positive

- ETEPs are helpful in that they create a regulated facilities inventory as well as look at a tribe's long-term goals, and by updating plans to be consistent with the actual tribal operations and strategic planning, they remain relevant and help ensure that funding is used effectively and efficiently to address tribal priorities. (5 Tribes; 4 Intertribal Consortia)

### Theme: Administrative Burden and Flexibility

- ETEPs often create redundant, administrative burdens on tribes, and should have the ability to be flexible, broad, and/or tribal friendly, as tribes might plan differently, or have longer term planning than states, as well as are all in different stages of capacity development. (16 Tribes; 3 Tribal Partnership Groups)

### Theme: Not Helpful

- The ETEP is generally not used as a tool to communicate priorities and goal setting, as both are done through the work plan, and they seem to be more helpful to EPA than to tribes. (9 Tribes; 1 Tribal Partnership Group)

### Theme: Consistency

- EPA project officers need to be consistent on ETEP implementation and understand all elements of the GAP Guidance. (4 Tribes; 1 Tribal Partnership Group)

### Theme: Incentives/Funding

- Tribes should be allowed to use GAP funds to update and help with goals in the ETEPs and EPA should provide incentives, and allow funding, for tribal members to participate. (8 Tribes; 1 Intertribal Consortium; 1 Tribal Partnership Group)

### Theme: Consortia

- EPA should clarify the responsibilities of the consortia with respect to ETEPs in the GAP Guidance, as consortia do not do the work in the ETEPs, but support tribes in their own work. (3 Tribes; 4 Intertribal Consortia)

### Theme: Legal

- Questioning the legal basis for requiring ETEPs, as these plans are not a requirement of the original GAP Statute, but rather are recommendations from the 2008 OIG report. (16 Tribes; 1 Intertribal Consortium; 3 Partnership Groups)

### Theme: Timeliness Concerns and Purpose/Benefit Confusion

- There is confusion regarding the purpose and benefits of the ETEPs and what EPA wants to see in ETEPs, as well as concerns regarding the requirements for ETEPs not being conveyed to the tribes in a timely matter (especially considering that they need to go through tribal councils). (5 Tribes; 1 Intertribal Consortium)

Theme: More EPA Help/Involvement

- EPA could be more helpful to tribes in finding and providing technical assistance regarding other sources of funds to achieve their environmental goals, as well as should respond with options for use and maximization of EPA, and other Federal, programs necessary for an efficient and effective department. (9 Tribes; 1 Intertribal Consortia; 1 Tribal Partnership Group)

Theme: Research and Review

- EPA should review notes from the previous few years of RTOC meetings for comments about ETEPs, as well as should establish a cycle for revisiting and reviewing new ETEP standards, including recommending that tribes review their ETEPs annually, as the GAP Guidance states that ETEPs are living documents and should be reviewed annually and updated as appropriate. (1 Tribe)

Theme: ETEPs and Performance Partnership Grants (PPGs)

- Combining the ETEP with a PPG workplan reduces the administrative burden somewhat and assists in the development of an ETEP. One tribe is concerned that EPA will require additional paperwork for ETEPs combined with PPG work plans. One tribe noted that the PPG format assists in the development of an ETEP. (2 Tribes)

## **Category: GAP Online**

### Theme: Challenges

- GAP Online is time consuming and could have better functionality, including how work is saved (i.e., if your work is not at “proper time” saved then you lose the information entered), having the ability to see other sections as you enter your data (e.g., deliverables or outcomes), and providing for work plan or budget amendments. (10 Tribes; 1 Tribal Partnership Group)

### Theme: All-inclusive Program

- GAP Online needs to be an all-inclusive and streamlined program, including the ability for tribes to submit draft work plans, narratives, and budgets for project officers to make recommendations, as well as to tabulate current tribal successes in building capacity. (3 Tribes)

### Theme: Tracking/Reporting

- Invest in GAP Online to meet the tracking and reporting needs; suggest a pilot to see upgrades needed using 2006 Guidance. (8 Tribes; 2 Tribal Partnership Groups)

## Category: Evaluation Process

### Theme: Collaborate

- EPA needs to work with tribes on the revised GAP Guidance and not develop it in isolation and then ask what they think, including recommendations for more RTOC involvement and regular updates on the process from the RTOC, as well as EPA making a better effort to meet with the tribes that request consultation and synthesizing information given during these consultations into digestible pieces. (16 Tribes; 4 Intertribal Consortia; 4 Tribal Partnership Groups)

### Theme: Transparency

- Would like to know more information regarding discussions that take place among EPA and the National Tribal Caucus. (1 Tribe)
- During this process it would be helpful to see the rules and responsibilities that EPA will use to guide the creation of the new GAP Guidance. (1 Intertribal Consortium)
- Once it is finalized, there is a request to see a crosswalk of changes between the 2013 GAP Guidance and the new GAP Guidance. (1 Intertribal Consortium; 1 Tribal Partnership Group)

### Theme: Consultation

- Webinars, consultation calls, presentations at conferences, and letters do not represent a government-to-government consultation. (2 Tribes)

### Theme: Consortia-Related

- Allow consortia to provide first-hand experiences to EPA and serve as a conduit for information that tribes are uncomfortable sharing directly. (2 Tribes; 1 Intertribal Consortium)
- Typically, consortia staff work closely with tribal staff and as such are a perfect conduit for tribes to use in forwarding concerns and complaints to EPA. For example, many member tribes have shared details of their experiences with project officers with consortia staff because they feel uncomfortable with providing feedback directly to EPA. Consortia can provide both first-hand experiences to EPA as well as act as a conduit of information tribes themselves are uncomfortable with sharing. There should be greater use of consortia as intermediators between EPA and tribes. (2 Tribes; 2 Intertribal Consortia)
- Ensure that tribal comments are primary over the comments from consortia. (1 Intertribal Consortium)