
INDIAN ENVIRONMENTAL GENERAL ASSISTANCE PROGRAM

Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortia



May 15, 2013

**U.S. Environmental Protection Agency
Office of International and Tribal Affairs
American Indian Environmental Office**

This Guidance identifies Agency policies and recommended procedures for coordinating activities related to assistance agreements awarded under the Indian Environmental General Assistance Program (GAP). The statutory provisions, EPA regulations, and other legally binding documents described in this Guidance contain legally binding requirements that govern the use and management of GAP resources. This Guidance document does not substitute for other binding requirements and it does not expressly or implicitly create, expand, or limit any legal rights, obligations, responsibilities, expectations, or benefits to any person. In the event of a conflict between the discussion in this Guidance and any legally binding requirement, this Guidance document would not be controlling.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INTERNATIONAL AND TRIBAL AFFAIRS
1200 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20460

REPLY TO THE ATTENTION OF: 2610R

May 15, 2013

SUBJECT: Final Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortia

FROM: Michelle DePass, Assistant Administrator 

TO: Tribal Leaders
Regional Administrators
Assistant Administrators

The U.S. Environmental Protection Agency (EPA) is pleased to release new guidance for the Indian Environmental General Assistance Program (GAP) and to acknowledge the input and collaboration we received from our tribal government partners in the guidance development process. Since the program began in 1993, GAP resources have enabled tribes to achieve significant progress in establishing their environmental programs and have facilitated productive government-to-government partnerships for tribes and EPA. GAP has made it possible for most tribes to establish baseline technical, administrative, and legal capacity for tribal environmental protection programs that respond to environmental issues affecting tribal lands.

GAP resources have allowed tribes to strengthen or increase their involvement in environmental management decisions, design projects and programs that respond to environmental threats, and to access other funding sources. This guidance enhances the successful EPA-tribal partnership by identifying a means for joint strategic planning, documenting mutual responsibilities for program development and implementation, targeting resources to build tribal environmental program capacities that are aligned with the tribe's long-term goals, and measuring environmental program development progress over time. Implementing this guidance will enable EPA and tribes to allocate GAP resources to the most pressing program development priorities and improve our ability to demonstrate progress as we establish and grow successful tribal environmental protection programs with GAP for more than 520 tribal governments.

Historically, EPA has not provided a nationally consistent approach for building tribal environmental protection program capacity under GAP or a mechanism to measure the progress tribes are making toward their defined program development goals. This led EPA's Office of Inspector General (OIG) to conclude that the Agency had "not provided a framework for tribes to follow or adapt as they develop their capacity to implement environmental programs" and that "it is

not clear whether GAP funding will result in tribes being able to operate their own environmental programs.”¹ The OIG recommended that EPA:

- (1) Require the American Indian Environmental Office to develop and implement an overall framework for achieving capacity, including valid performance measures for each type of tribal entity, and provide assistance to the regions for incorporating the framework into the IGAP work plans.
- (2) Require regions to (a) negotiate with tribes to develop environmental plans that reflect intermediate and long-term goals, (b) link those plans to annual IGAP work plans, and (c) measure tribal progress in meeting plans and goals.
- (3) Revise how IGAP funding is distributed to tribes to place more emphasis on tribes’ prior progress, environmental capacity needs, and long-term goals.

EPA concurred with all OIG recommendations and noted in the Agency’s response: “The critical importance of relating GAP funding to long-term and interim goals against which progress can be measured is a shared concern that we plan to address. The negotiation of goals by tribes and EPA, the measurement and assessment of progress against those goals, and EPA’s evaluation of funding requests are all inextricably linked.”² Through this new GAP Guidance, we have established a framework that links these important components of building tribal environmental program capacity.

In the development of this GAP Guidance, EPA first consulted and coordinated with dozens of tribes on the “Guidebook for Building Tribal Environmental Capacity” (Guidebook) between August 1, 2011 and January 30, 2012. In addition to participating in numerous meetings, we received extensive written comments from 52 tribes and 10 tribal organizations. As a result, EPA made significant revisions to the Guidebook, and we conducted a second consultation and coordination process with tribes on the Guidebook, as part of the new GAP Guidance, between November 16, 2012 and February 22, 2013. During this second round, EPA participated in numerous meetings with tribal leaders and received written comments from 23 tribes and 6 tribal organizations.

The robust discussions with tribes substantially improved the new GAP Guidance. Importantly, tribes requested that the guidance contain sufficient flexibility for GAP resources to be tailored to the needs of individual tribes, and to avoid unnecessary additional procedures. We have structured this final Guidance to provide maximum flexibility within a consistent national framework for building tribal capacity that assures continued improvement and efficiencies in the management of GAP resources.

GAP assistance agreements have played a major role in the successful development of tribal environmental protection programs. We look forward to building on that success and working with tribes and tribal organizations to implement this new GAP Guidance. EPA will provide tribes and intertribal consortia with training and technical assistance as we implement the new GAP Guidance. Thank you in advance for your active participation in this important effort as together, we continue to protect human health and the environment through the GAP program.

¹ U.S. EPA Office of Inspector General, “Framework for Developing Tribal Capacity Needed in the Indian General Assistance Program,” Report No. 08-P-0083, 02/19/2008.

² EPA Assistant Administrator Benjamin H. Grumbles to EPA’s Deputy Inspector General Bill A. Roderick, January 15, 2008. Subject: Response to the Office of Inspector General Draft Report “Framework for Developing Tribal Capacity Needed in Indian General Assistance Program” (Assignment No. 2007-539)

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INDIAN ENVIRONMENTAL GENERAL ASSISTANCE PROGRAM

Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortia

1.0 Introduction

This Guidance on the Award and Management of General Assistance Agreements (Guidance) describes how the U.S. Environmental Protection Agency (EPA or Agency) administers the Indian Environmental General Assistance Program (GAP) Act of 1992 (42 U.S.C. §4368b). In conjunction with the information provided in Appendix I, “Guidebook for Building Tribal Environmental Program Capacity,” this Guidance provides a consistent national framework for building tribal environmental program capacity under GAP and is designed to improve the management of GAP resources.

This document provides criteria for the award and administration of GAP grants. It reflects statutory and policy guidelines and contains binding requirements that govern the management and use of GAP funds. This Guidance applies to the work plans and budgets for GAP assistance agreements – as such, EPA regional offices and applicants are expected to follow this Guidance and refer to this document during the development of application materials.

This Guidance supersedes previous guidance issued March 9, 2000 and February 24, 2006.

1.1 Program Background

The GAP was created to assist federally recognized tribes and intertribal consortia to plan, develop, and establish the capacity to implement programs administered by the EPA and to assist in the development and implementation of solid and hazardous waste programs for Indian lands.³ In addition, the GAP was created to provide technical assistance from EPA to tribal governments and intertribal consortia in the development of multimedia programs to address environmental issues.⁴

EPA recognizes tribal governments as the primary parties for setting standards, making environmental policy decisions, and managing programs for reservations, consistent with Agency standards and regulations [“EPA Policy for the Administration of Environmental Programs on Indian Reservations⁵” (Indian Policy)]. As a result, EPA is committed to using

³ The Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b.

⁴ Id.

⁵ U.S. Environmental Protection Agency. 1984. *EPA Policy for the Administration of Environmental Programs on Indian Reservations*. (<http://www.epa.gov/tribalportal/pdf/indian-policy-84.pdf>).

the GAP to build tribal capacity to administer environmental protection programs consistent with the federal laws the EPA is charged with implementing. Through the GAP, the EPA also provides technical assistance to build environmental protection program capacity for tribes that are not implementing federally authorized regulatory programs or that may wish to go beyond federal requirements. GAP helps tribes have opportunities to meaningfully participate in policy making, standard setting, and direct implementation activities potentially affecting tribal environmental protection interests. The program also provides resources for tribal governments to cooperate with and, when appropriate, enter into intergovernmental agreements with federal, state, or local governments in an informed manner.

In keeping with the federal trust responsibility, the Agency works with tribes to ensure that EPA's environmental protection programs are implemented throughout the country. Depending on the particular federal statute, the Agency has a number of options to ensure that regulated entities⁶ are in compliance with federal requirements. For example, the Agency can directly administer a federal program, approve eligible tribes to administer the program, or work cooperatively with tribes on a government-to-government basis to protect human health and the environment. No matter which mechanism EPA employs in carrying out its mission, the Agency strives to work closely with tribal governments, consider tribal interests, and encourage tribal governments' to develop their own environmental protection programs.

1.2 Program Priorities

Funding is provided under GAP for the purposes of planning, developing, and establishing tribal environmental protection programs consistent with programs and authorities administered by the EPA. This Guidance recognizes that there is a broad spectrum among tribes with respect to population, culture, income, geography, economic development, and environmental program management expertise and training. GAP assistance may be tailored to the needs of each tribe, and regions are responsible for working with tribes to establish assistance agreement work plans that are a proper fit.

As further detailed in Appendix I, GAP resources should support:

- Developing and maintaining core environmental program capacities (administrative, financial management, information management, environmental baseline needs assessment, public education/communication, legal, and technical/analytical);
- Engaging with the EPA to negotiate joint EPA-Tribal Environmental Plans (ETEPs, discussed in Section 4) that reflect intermediate and long-term goals for developing, establishing, and implementing environmental protection programs;
- Linking GAP-funded assistance agreement work plans to the ETEPs;
- Developing baseline capacities for media-specific environmental protection programs that are related to the needs of the recipient and to EPA statutory programs (e.g.,

⁶ Throughout this document, "entities" can include sites, facilities, and/or activities subject to federal environmental regulatory compliance requirements.

- ambient and indoor air quality; water quality; managing wastes; managing asbestos, lead-based paint, pesticides, toxics, and pollution prevention programs); and
- Implementing waste management programs (see Appendix I, “Guidebook for Building Tribal Environmental Program Capacity,” Section E).

1.3 EPA Program Roles and Responsibilities

American Indian Environmental Office (AIEO): Among other duties, AIEO is the National Program Manager for the GAP. As the National Program Manager, AIEO is responsible for: establishing guidance to administer the program; periodically evaluating the effectiveness and efficiency of the program; annually distributing funding allocations to regional offices; maintaining a GAP performance reporting system; gathering regional data and reporting results achieved through the GAP; and providing technical assistance to regional offices regarding the administration of GAP resources and the joint EPA-tribal environmental planning activities.

Regional Offices: Regional offices are responsible for: implementing in partnership with tribes a joint EPA-tribal environmental planning framework; negotiating GAP assistance agreement work plans that are linked to the joint EPA-tribal environmental plans; processing GAP applications; making award decisions consistent with this Guidance and applicable grant requirements; collecting data and information from award recipients that demonstrate outputs and outcomes achieved through the GAP; inputting information into GAP performance reporting system(s) (e.g., GAP Online); and conducting post-award management. Regional offices serve as the direct contact for applicants and recipients. Any supplemental guidance, policy, or criteria regional offices propose to apply to GAP grants awarded after the effective date of this Guidance should be provided to the AIEO Director for review and concurrence before being finalized to ensure consistency in how this national Guidance is being interpreted and applied.

Regional office personnel will serve as project officers for GAP assistance agreements and will work with applicants to finalize project work plans and budgets. Each Regional Administrator, or their designee, will review completed GAP applications and either approve, conditionally approve, or disapprove those applications within 60 days of receipt.⁷ Once a GAP application is approved, the regional office will formally notify the applicant.

1.4 Allowable Activities and Restrictions under GAP

The GAP statute, applicable grant regulations, and this Guidance should be consulted where a region is not certain as to whether a proposed activity is eligible for funding under GAP. AIEO is also available to advise regional offices on specific questions of eligibility.

⁷ 40 C.F.R. § 35.510.

This subsection provides some general guidelines regarding eligible and ineligible activities, however it is not practicable to provide an exhaustive list of activities given the diversity of tribes and tribal environmental protection programs being developed across the country. The following list of allowable activities and general restrictions is not comprehensive, but illustrate the most common scenarios that arise under the GAP.

When identifying fundable GAP activities, the program capacity building indicators in Appendix I of this Guidance are a helpful resource because they provide specific examples of milestones that GAP-funded activities, or a combination of activities, could support toward building environmental program capacity, consistent with EPA's environmental protection programs. The indicators offer a non-exclusive menu of choices organized by category of environmental program development; they need not all be selected.

Examples of Allowable Activities

- Activities related to planning, developing and establishing tribal capacities for implementing environmental protection programs administered by the EPA are allowable, including the administrative, technical, legal, communications, outreach, compliance assurance, and enforcement components of a program.
 - As described in Section B.5 of Appendix I, activities to establish baseline environmental conditions are essential to developing a tribal environmental protection program and are allowable under GAP, including assessing environmental conditions for land a tribe is planning to acquire.
 - Establishing an environmental protection program may include performing a “test drive” of the program to determine whether the tribe is ready to move into the program implementation phase. “Test drives” of capacity to implement are for evaluating the effectiveness of a program and may be funded for up to four years under GAP. Work plans containing “test drive” activities should contain activities to collect information about program design and effectiveness and describe how this information will be used to identify options for improving the program, including but not limited to: new or revised environmental protection policies and procedures; more stringent standards and/or requirements; and additional capacity development needs.
- Tribes with limited jurisdiction to implement environmental regulatory programs may use GAP funds to develop program capacities for purposes consistent with the extent of their authorities, such as: evaluating environmental conditions; developing voluntary or partial environmental protection programs; participating in environmental policy making; coordinating with EPA or other federal agencies on the implementation of federal environmental protection programs; and entering into joint environmental protection programs with neighboring tribal, state, or local environmental agencies.
- Activities related to establishing environmental protection programs not administered by EPA, but that are consistent with those provisions of law for which Congress has given EPA authority, are allowable. For example a tribe could use GAP funds to develop a climate change adaptation plan or to establish environmental protection programs that compliment non-environmental protection programs (such as identifying ambient water

and/or air quality parameters that influence exotic plant species threatening the ecosystems or influence the reestablishment of culturally significant native plants).

- Activities related to establishing education, outreach, public participation, compliance assistance, and coordination programs for tribal environmental staff to work effectively with regulated entities are allowable. Examples of these programs include: (1) capacity to provide compliance assistance to ensure that facilities are aware of and complying with federal and/or tribal environmental program requirements; (2) capacity to work jointly with other jurisdictions on certain environmental planning projects such as source water protection plans, solid waste management plans, standard setting initiatives, federal policy making activities, and other issues appropriate for a tribe's participation in intergovernmental agreements; and (3) capacity to provide training to promote best management practices or compliance with federal and/or tribal environmental program requirements.
- The purchase of supplies (items that cost less than \$5,000) necessary to administer tribal environmental protection programs is allowable. Supplies may be repaired, upgraded, and/or replaced as required if included in the approved work plan budget. Examples include: (1) office supplies; (2) computers, printers, and related peripherals; and (3) software.
- Initial purchases of equipment (purchases equal to or greater than \$5,000) necessary to administer tribal environmental protection programs are allowable as direct costs.⁸ Examples include: (1) GIS survey instruments and related equipment; (2) vehicles for environmental program operations; (3) sampling, measurement, analysis, and other related equipment; and (4) source separation, waste minimization, and waste management equipment. For information on what happens to equipment that was paid for with GAP funds following completion of the grant, see 40 C.F.R. §31.32.
- Notwithstanding the general prohibition on the use of GAP funds for construction as described below, certain construction activities necessary for building environmental protection program capacity may be permissible. For example, for a tribe to develop a core tribal environmental protection program it is necessary for the tribe to have a place for staff to conduct their work. If rental space is not available, it may be necessary to construct office space or buy a modular building and move it to an appropriate location. Similarly, as discussed in Appendix I Section E, the construction of facilities that are part of a tribe's source separation project are also allowable. For example, the construction of transfer stations, recycling centers, compost facilities, used oil collection stations, and other similar facilities may be funded under GAP. Any construction activities funded under GAP must meet the requirements of 2 C.F.R. §225, Appendix B(15). For information on what happens to the title of a building that was paid for with GAP funds following completion of the grant, see 40 C.F.R. §31.31.

⁸ 2 C.F.R. §225, Appendix B(15): "Cost Principles for State, Local, and Indian Tribal Governments".

EPA will evaluate proposed construction activities on a case-by-case basis to determine whether the proposed construction activity is necessary to plan, develop, or establish a tribal environmental protection program. Requests from applicants for construction activities will be evaluated by the Regional Office and referred to the AIEO Director with full justification for recommended approval or non-approval of the request, including provisions regarding compliance with the National Environmental Policy Act. AIEO will make the determination on the proposal within 30 days and in consultation with the appropriate EPA program office and the Office of General Counsel.

- Activities related to establishing the capacity indicators contained in Appendix I are allowable.
- Activities to implement solid and hazardous waste programs consistent with Appendix 1, Section E are allowable.

Restrictions

- GAP funds cannot be used to fund activities not closely related to planning, developing, and establishing tribal environmental protection program capacity consistent with programs administered by EPA.⁹ Examples include:
 - Animal husbandry, community gardens, the repatriation of Native American cultural items, and feral animal control.
 - Implementing environmental protection programs once established, except for solid and hazardous waste programs as discussed in Appendix I, Section E.
 - Conducting Natural Resource Damage Assessments are deemed to be part of program implementation under Agency policy and should not be funded under GAP.
 - Planning, developing, or establishing programs that primarily support ongoing litigation, for profit enterprises, or any commercial purposes (e.g., utility company, gas station, gaming enterprise).
 - Planning, developing, or establishing natural resource management programs that are generally not administered by EPA. Examples of these types of unallowable activities include: silviculture projects (e.g., tree farming); beaver dam control programs; programs to manage invasive species; and fishery operations.
 - Repairing, upgrading, and/or replacing facilities and equipment are typically deemed to be implementation costs and are generally unallowable under the GAP, except for source separation facilities and equipment as discussed in Appendix I Section E. Regional offices are to evaluate requests for GAP funds to repair, upgrade, or replace facilities and equipment on a case-by-case basis to determine whether they are restricted costs (implementation) or are allowable because they are necessary to plan, develop, or establish a tribal environmental protection program. These requests must meet the requirements of 2 C.F.R. §225, Appendix B(15).
 - Corrective actions – or other actions responding to an enforcement order – at regulated entities are implementation and are therefore unallowable under the GAP.

⁹ The Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(f).

- Activities that are the inherent responsibility of a state or local government, or that primarily benefit state or local governments or any other entity ineligible to receive GAP resources.
- Salaries and expenses of a tribe’s chief executive, tribal council, or of the judiciary branch of a tribal government are unallowable. However, the portion of salaries and expenses directly attributable to managing and operating federal environmental protection programs by a tribe’s chief executive and his staff are allowable.¹⁰
- General costs of government services normally provided to the general public, such as fire and police, are unallowable.¹¹ Under GAP, this restriction includes trash collection, transportation, backhaul, and disposal services which are generally outside the scope of programs administered by the EPA.¹² Section E of Appendix I describes a number of solid and hazardous waste program implementation activities that are allowable under the GAP.
- Goods or services for personal use are unallowable, regardless of whether the cost is reported as taxable income to the employees.¹³
- Planning, designing, constructing, and operating a specific facility is an implementation activity; therefore, such costs are not eligible for funding under GAP.¹⁴ Examples of construction activities not allowed include, but are not limited to: landfill construction; wastewater treatment facility construction; drinking water system construction; construction related to implementation of best management practices for nonpoint source pollution control; and purchase of construction equipment such as trucks or graders. The feasibility studies and NEPA reviews associated with such facility construction, including environmental impact studies and assessments, are part of the planning phase of facility construction; therefore, they are also implementation activities not eligible for funding under GAP.¹⁵

¹⁰ 2 C.F.R. §225, Appendix B(19): “Cost Principles for State, Local, and Indian Tribal Governments”.

¹¹ *Id.*

¹² “Any general assistance under this section shall be expended for the purpose of planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency and specified in the assistance agreement. Purposes and programs authorized under this section shall include the development and implementation of solid and hazardous waste programs for Indian lands. [...] Such programs and general assistance shall be carried out in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).” Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(f).

¹³ 2 C.F.R. §225, Appendix B(20): “Cost Principles for State, Local, and Indian Tribal Governments”.

¹⁴ Except for solid waste source separation facilities as described in Section E.4(c) of Appendix I.

¹⁵ These activities may be eligible for funding under other EPA programs and programs administered by other federal agencies.

2.0 Award Information

The Catalog of Federal Domestic Assistance number for the Indian Environmental General Assistance Program is 66.926.

2.1 General Information

- Congress provides GAP funding to EPA as part of the annual budget appropriations process, through the State and Tribal Assistance Grants (STAG) Appropriation.¹⁶ OITA allocates GAP funds to regional offices annually and notifies regions via a decision memorandum. If a region is interested in moving STAG funds into or out of their GAP account, modifying the national allocation of STAG funds, regions must follow the process described in OITA's annual decision memorandum. The annual decision memorandum describes the procedures regional offices must follow when initiating a process to reprogram funds affecting the GAP that assures compliance with Congressional guidelines.
- Consistent with the GAP authorizing statute, each initial GAP assistance agreement shall be for at least \$75,000.¹⁷ No single award may exceed ten percent of the total annual funds appropriated for the GAP.¹⁸
- EPA may elect to partially fund proposals by funding discrete portions or phases of proposed projects.
- EPA may elect to set aside a portion of GAP resources to support specific tribal or intertribal consortia projects. These projects should have national or region-wide application, address a national or regional program priority, or seek to demonstrate the applicability of novel program activities to a broader set of eligible recipients.

2.2 Types of Assistance

Assistance agreements funded under GAP may be issued in various forms. The project application should state the form of assistance preferred by the applicant.

Grant or Cooperative Agreement – Grants represent direct funding to a recipient to support an identified project with defined environmental results. Unlike a grant, a cooperative agreement anticipates substantial involvement from EPA, in collaboration with the recipient, to achieve project results after the award has been made. If EPA expects to have substantial

¹⁶ The total amount of GAP money Congress provides to EPA can change from year-to-year.

¹⁷ The Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(d)(2).

¹⁸ Id.

involvement, EPA will issue the assistance agreement as a cooperative agreement. If no substantial involvement by EPA is expected, EPA will issue a grant.¹⁹

Performance Partnership Grant (PPG)²⁰ – A PPG is a grant awarded from two or more categorical grant programs. A tribe can combine funds from two or more eligible grant programs into one PPG.²¹ Recipients may then use PPGs to fund activities that are allowable under any of the eligible PPG grant programs. An applicant whose organization has an existing PPG or who is eligible to form a new PPG with EPA may request that GAP funding be included in a PPG. The flexibility of a PPG can allow for improved environmental performance, increased programmatic flexibility, and administrative savings. However, the need for flexibility should be balanced with the Agency’s goals of establishing sustainable tribal environmental program capacities. For more information, please see the, “Best Practices Guide for Performance Partnership Grants with Tribes” (<http://www.epa.gov/ocir/nepps/pdf/ppg-guide-for-tribes.pdf>). Absent a request from the applicant for inclusion in a PPG, EPA will award the funding as a stand-alone assistance agreement.

2.3 Eligibility Information

The following are eligible to receive financial assistance: Indian tribal governments and intertribal consortium or consortia.²²

The term *Indian tribal government (tribe)* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible by the U.S. Department of the Interior (DOI) for the special services provided by the United States to Indians because of their status as Indians.²³

The term *intertribal consortium or consortia* means a partnership between two or more tribes that is authorized by the governing bodies of those tribes to apply for and receive assistance under this program.²⁴

Tribes that form consortia may be able to use their resources more efficiently and address environmental issues more effectively than they could if each tribe individually developed and maintained separate environmental protection programs. Consortia are advised to describe how grant proposals respond to the program development needs of their eligible member tribes as documented by the process described in Section 4 below.

Under EPA’s tribal grant regulations, an intertribal consortium is eligible to receive a GAP award if the consortium demonstrates that: (1) a majority of its members are eligible to

¹⁹ EPA Order 5700.1, *Policy for Distinguishing Between Assistance and Acquisition* (March 22, 1994).

²⁰ More information on the PPG funding authority is at 40 C.F.R. § 35.530-538.

²¹ PPG eligible programs are listed at 40 C.F.R § 35.501.

²² 40 C.F.R. § 35.543.

²³ 40 C.F.R. § 35.502.

²⁴ Id.

receive GAP grants; (2) all members that meet GAP eligibility requirements authorize the consortium to apply for and receive the award²⁵; and (3) adequate accounting controls are in place to ensure that only members that meet the eligibility requirements will benefit directly from the award and the consortium agrees to an award condition to that effect.²⁶ This means that a consortium may receive a GAP grant even if the consortium includes groups that are not federally recognized as tribes so long as the consortium meets the three regulatory requirements specified above. With each GAP grant application, an intertribal consortium must provide EPA with “adequate documentation” of: (1) the existence of the partnership between eligible tribal governments; and (2) the authorization of the consortium by all GAP-eligible member tribes to apply for and receive the grant.²⁷ Typically, tribal authorization by the GAP-eligible tribes is provided by a tribal leader letter or a tribal council resolution from each GAP-eligible member of the consortia. The Office of Regional Counsel for the region receiving the grant application should evaluate applications to determine whether the documents submitted for a particular grant meet the regulatory standard. Where additional documentation is required, EPA will work with the consortia to clarify what additional documentation is needed. Applications that do not contain adequate documentation from GAP-eligible tribes should be deemed incomplete.

2.4 Cost-Sharing or Matching Requirement

No cost-sharing or match is required from applicants.

2.5 Length of the Award

The term of a GAP award may exceed one year, but may not exceed four years.²⁸ The term is determined at the time of the award and documented in the work plan.

2.6 Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, “Intergovernmental Review of Federal Programs.”

²⁵ Note the clear distinction between (1) and (2): an intertribal consortia is eligible to apply for a GAP grant where a **majority** of the consortia members are GAP-eligible; however, 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 grant dollars would otherwise be available to the individual tribes under GAP.

²⁶ 40 C.F.R. § 35.504(b).

²⁷ 40 C.F.R. § 35.504(c) .

²⁸ 42 U.S.C. § 4368b (d)(3).

2.7 Competition Policy Exemption

This assistance agreement program is exempt from competition under EPA Order 5700.5A1, Policy for Competition of Assistance Agreements, Section 6(c)(2).²⁹ In any funding materials distributed, EPA should refrain from using the following terms or others like them that may create the impression that the GAP funds are being awarded “competitively”: request for proposals; solicitations; ranking criteria.

Regions should not use any allocation factors which have the effect of measuring the relative quality or merit of one work plan against the other.

2.8 Environmental Results Supported by Assistance Activities

Pursuant to EPA Order 5700.7, “Environmental Results under EPA Assistance,” EPA must link proposed work plan activities in funded assistance agreements to the Agency’s Strategic Plan. This is a previously established requirement binding the Agency, which governs all assistance agreements EPA awards. While the Order requires a link to the Agency’s Strategic Plan, EPA also acknowledges that work plan activities should also be linked to tribal program priorities, reflecting EPA’s commitment to supporting tribally defined outputs and outcomes that are consistent with the federal laws the EPA is charged with implementing. Under the Order, EPA requires assistance agreement recipients to define environmental outputs and environmental outcomes to be achieved under the award. Outputs and outcomes are defined as follows:

1. Outputs: The term “output” refers to an environmental activity, effort, and/or associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during the project period. Examples of outputs under GAP include: solid waste management plan; air emissions inventory; surface water sampling plan; and lead-based paint public education campaign. For each proposed work plan activity, applicants are expected to identify a measurable output.
2. Outcomes: The term “outcome” refers to the result, or consequence that will occur from carrying out the activities under the award. Outcomes may be environmental, behavioral, health-related, or programmatic; must be quantitative; and may not necessarily be achievable during the project period. Examples of outcomes under GAP include: level of reduction in unauthorized discharges to the air, water, or land; size of population benefiting from a reduction in pollution; changes in knowledge and understanding; and changes in behavior. Applicants are expected to identify an outcome for each program component funded under GAP.

²⁹ The Order reads, in part: “The requirements of this Order do not apply to... programs available by statute, appropriation act, or regulation only to Indian tribes and Intertribal Consortia.”

2.9 Applicable Agency Guidance, Regulations, and OMB Circulars

GAP awards are subject to the following regulations and requirements. Regions should be aware of these requirements when awarding and managing GAP assistance agreements:

- 2 C.F.R. Part 225 “Cost Principles for State, Local, and Indian Tribal Governments”
- 40 C.F.R. Part 31 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”
- 40 C.F.R. Part 35, Subpart B “Environmental Program Grants for Tribes”
- OMB Circular A-133 “Audits of States, Local Governments, and Non-Profit Organizations”
- 2 C.F.R. Part 1536 "Requirements for Drug-Free Workplace (Financial Assistance)"
- 40 C.F.R. Part 33 "Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs" - see specifically 40 C.F.R. § 33.304 ("Must a Native American (either as an individual, organization, Tribe, or Tribal Government) recipient or prime contractor follow the six good faith efforts?")

3.0 Performance Reporting: Indicators of Tribal Environmental Program Capacity

Tribal governments have tribe-specific priorities. Tribes will identify program areas to focus on with respect to building environmental protection program capacity. In addition, each tribal government determines how far down the path of program development it wants to proceed (e.g., all the way to program implementation or in between core program capacity and development of some of the media-specific program capacities). There is not just one pathway to follow for building environmental program capacity, and as such there are many indicators that can be used to assess and measure progress in the capacity building process.

One indicator that is far down the path of program capacity building is when a tribe assumes a lead regulatory or co-regulatory role for implementing federal program requirements (i.e., in lieu of direct implementation by the EPA). Where programmatically available, this is measured by a tribe obtaining treatment in a manner similar to a state (TAS) status to implement a particular regulatory program instead of EPA implementing it. A tribe can also build sufficient programmatic capacities to support EPA implementation activities under a Direct Implementation Tribal Cooperative Agreement (DITCA) or work share Memorandum of Understanding (MOU).

Tribes that are not seeking TAS status may wish to establish other meaningful and important levels of environmental program capacity directly in support of the environmental statutes the

EPA implements, or for tribal environmental protection programs that are consistent with EPA's programs. Seeking TAS status is not a requirement for receiving funding under this program.

The indicators in Appendix I are designed to help identify and measure the status of tribal environmental program capacity. The indicators are tools to help tribes as they plan for program capacity development under the GAP. These indicators provide examples of "road-maps" for building a tribal environmental program and will help tribes and EPA identify both short-term and long-term goals and activities. The indicators in Appendix I offer a non-exclusive menu of choices, organized by category of environmental program development; they need not all be selected. Other indicators of capacity may be identified in GAP assistance agreement work plans and in long-term planning agreements as described in Section 4 of this guidance on a tribe-by-tribe basis, reflecting the unique priorities and program development plans of a particular recipient. There are often many activities that must occur to establish a single indicator and EPA can provide specific program guidance and technical assistance tools and resources to help identify and plan for those specific activities.

As described further in Section A.3 of Appendix I, EPA acknowledges that developing, establishing, and maintaining environmental protection program capacity is a continuing programmatic need. Tribes may need to re-establish capacities due to staff turnover, land acquisition, or other changing circumstances and may need to revise projected program development goals. GAP resources provide a significant foundation for maintaining tribal environmental program capacities over time and tribes can continue to receive GAP funding to expand, enhance, or evolve their capacity in light of specific tribal needs.

Where a tribe is using GAP grant resources to plan, develop, and establish environmental protection program capacities in one of the areas listed in Appendix I, GAP assistance agreement work plans should incorporate indicators from Appendix I, as appropriate based on the activities planned, and link those capacity indicators to long-term program development goals described in the EPA-Tribal Environmental Plan (ETEP) described in Section 4 of this guidance. Where capacities are being developed in areas not described in Appendix I, the work plan must adequately identify and describe the applicable indicators of capacity. Tribes and EPA will rely on the capacity indicators that have been identified in work plans and the long-term goals in ETEPs to assess and report on progress in the development of tribal environmental program capacities under the GAP program.

4.0 Developing EPA-Tribal Environmental Plans (ETEPs)

4.1 Background

EPA has long recognized the value of establishing intergovernmental planning agreements with states and tribes to define mutual roles and responsibilities for program

implementation.³⁰ Tribes have also promoted the idea of a joint EPA-tribal planning process to address tribal environmental priorities and ensure that federal programs are fully implemented. For example, EPA, in partnership with the National Tribal Operations Committee's National Tribal Caucus (NTC), first adopted a cooperative EPA-tribal program planning strategy in 1994. This approach included "the tribes' plans to manage authorized environmental programs and/or their need for federal technical assistance, education and implementation and management of environmental protection."³¹ The approach also ensured that each Regional Administrator had flexibility to "determine, in consultation with tribes, the most appropriate way to develop these workplans."³² The NTC has consistently endorsed the joint EPA-tribal planning process concept.³³

In 2008, the EPA Office of Inspector General (OIG) issued an Audit Report on the GAP program.³⁴ The OIG found that some tribes did not have long-term plans in place for building environmental capacity, and that for those tribes that did have plans with long-term goals (usually in the form of the Tribal Environmental Agreement [TEA]), EPA was not tracking the tribe's GAP work plan progress against those long term goals. Therefore, the OIG concluded, it was unclear just how well GAP was helping tribes be able to operate their own environmental programs. EPA agreed to take several actions in response to the OIG's recommendations resulting from the Audit. Specifically, EPA agreed to standardize a computer-based, online work plan process to improve the Agency's ability to document the good work being done under GAP. That process was fully implemented in 2010 through GAP Online. In addition, EPA agreed to provide a framework for tribes and EPA to follow or adapt as tribes develop their environmental program capacities. That framework is embodied in this Guidance, but most importantly in Appendix I,³⁵ which contains the specific capacity building indicators that can be used as milestones, or measures, along the pathway toward building specific core and programmatic capacities. EPA also agreed to ensure that this framework provided a means for linking the GAP-funded work described in the annual work plans back to the long-term goals for program capacity building. To accomplish this, EPA is committed to working with our tribal partners to ensure the following:

- EPA Regional offices discuss and develop ETEPs with tribes that seek GAP funding, to reflect the intermediate and long-term goals of the tribe for building environmental program capacities;

³⁰ U.S. EPA Memorandum, "Final EPA/Tribal Agreements Template," March 20, 1995; visit <http://www.epa.gov/ocir/nepps/> for information on EPA-state partnerships through the National Environmental Performance Partnership System (NEPPS).

³¹ U.S. EPA Memorandum, "Announcement of Actions for Strengthening EPA's Tribal Operations," July 14, 1994.

³² Id.

³³ July 2012 Addendum to the "National Tribal Caucus Environmental Protection for Indian Country, Environmental Resource Needs & Recommendations," Fiscal Year 2014 Update.

³⁴ "Framework for Developing Tribal Capacity Needed in the Indian General Assistance Program," February 19, 2008, Report No. 08-P-0083.

³⁵ A different version of Appendix I was previously discussed with tribes as a stand-alone "Guidebook for Building Tribal Environmental Program Capacity" through a consultation and coordination process that ran from August 2011 through January 2012. Based on feedback, the Guidebook was modified substantially and incorporated into the GAP Guidance.

- Approved GAP work plans contain capacity indicators that are related to accomplishing the goals identified in the ETEPs; and
- EPA and the tribe are able to measure progress under the GAP work plan and the progress being made toward accomplishing the long-term goals in the ETEPs.

Through the development of these ETEPs, or strategic planning documents, and with improved alignment of the specific activities in the GAP work plans with the long-term goals and priorities identified in those planning documents, EPA and tribes will be better positioned to ensure that GAP is being used effectively to build tribal environmental program capacity.³⁶ EPA recognizes that in some instances the prior use of long-term planning tools, usually in the form of a TEA, did not benefit tribes or the Agency. In addressing some of those weaknesses, EPA has developed this streamlined approach for a long-term planning tool that can be modified as needed. The ETEPs are intended to be living, usable documents for both tribes and EPA as environmental partners to use in planning and guiding our work.

4.2 Purpose and Format for ETEPs

To accomplish the three goals listed above in the context of the GAP program, Regions and tribes are expected to develop an ETEP that contains the following components: (1) identification of tribal environmental program priorities, including capacity building and program implementation goals; (2) identification of EPA program priorities and management requirements; (3) an inventory of regulated entities; and (4) identification of mutual roles and responsibilities. The purpose of the ETEP is to develop the complete picture of the particular environmental issues facing the tribe, establish a shared understanding of the issues the tribe will be working on, and a shared understanding of those issues that EPA will address consistent with its responsibility to protect human health and the environment. By having these elements of a plan in place, EPA should be able to ensure that GAP work plans are developed to support the long-term priorities and goals of the tribe and that funds are directed toward building environmental program capacities. EPA considers this jointly-developed plan an important component of effective GAP resource management.

The specific format and approach to developing ETEPs may vary from tribe to tribe and region to region. Maximum flexibility is provided as to how the ETEPs are developed. For example, a tribe and region may decide to develop a streamlined document that succinctly addresses the four components of an ETEP listed above (described in more detail below). As another example, TEAs may be developed, or modified if necessary, to ensure the four components are addressed. As another example, tribes and regions may update existing documents, to the extent they are useful and still relevant, to ensure they address the four ETEP components, and memorialize in a written memo or through specific correspondence, the shared understanding of how those documents comprise the ETEP (examples of some

³⁶ While ETEPs do not necessarily apply to intertribal consortia, EPA regional offices should refer to the individual ETEPs of a consortium's member tribes when negotiating work plans with a consortium to ensure that the proposal responds to their member tribes' program development needs.

existing documents include Tribal Environmental Plans, Tribal Environmental Agreements (TEAs), Tribal Strategic Environmental Plans, etc.).

In recognition that there is great variation not only in the size of tribal governments, but also in the range of environmental issues and program capacities across the nation, it is expected that the length and level of detail for the ETEPs will also be greatly varied. For example, for a small Alaska Native Village, an ETEP may only need to address one or two program areas and as a result the ETEP itself may only be a few pages long. As another example, for a tribe that has program implementation authority under a federal statute (i.e., TAS approval), and is building capacities in other areas, a more comprehensive ETEP will likely be appropriate.

The remainder of this section describes the four components of an ETEP. It is recommended that these agreements cover no more than a 5 year time-period to achieve specific capacity development milestones. GAP-funded activities, along with other activities prioritized by the tribe and the Agency, should be reflected in the ETEP.

4.3 Components of an ETEP

(1) Tribal Programs and Priorities

Many tribal governments have already developed programs to address human health and environmental threats facing their communities. Other tribes may have yet to develop programs, but have conducted needs assessments or community surveys, or have used a comprehensive planning process (for example, development of a baseline needs assessment, tribal Integrated Resource Management Plan, or other comparable document) to identify and prioritize environmental concerns for their communities. These priorities will be an important factor in how a particular tribe will want to partner with the Agency to meet short- and long-term program development milestones for building capacity. ETEPs may also contain specific technical assistance and training the tribe may need from EPA.

Tribal governments should include environmental program priorities for their community in this section of the ETEP. For each priority, the following detail should be included: (1) short description of the priority; (2) the tribe's long-term environmental program development goals that help to address or support the priority; (3) intermediate program development milestones the tribal government would like to meet during the time period of the ETEP; (4) the tribe's plans to manage authorized environmental programs; and (5) any type of assistance (training, technical assistance, EPA direct implementation actions, financial, etc.) that may be needed. This information should be discussed between the tribe and EPA regional office staff to identify any connections between the tribe's priorities and the implementation of the federal environmental programs, and to identify potential EPA assistance that could be provided to help the tribe accomplish the proposed actions.

(2) EPA Programs and Priorities

As the EPA Indian Policy underscores, until tribal governments assume responsibility for managing programs authorized, approved, or delegated by the Agency, EPA retains

responsibility for human health and environmental protection by managing federal statutory environmental programs. Reviewing federal environmental programs that EPA implements in each tribal area can provide important background information useful for developing an ETEP. This can include, for example, documenting which programs the tribe is implementing with TAS status; documenting which program the tribe is not planning to develop; and identifying programs that are not relevant currently because there are no applicable regulated entities in the tribal area (e.g., no underground storage tanks in the area, no facility requiring an air discharge permit, etc.).

EPA's regional offices should review the implementation of federal environmental statutory programs in each tribal area and document these programs in the ETEP.³⁷ This review could include, as appropriate, ongoing or anticipated program implementation activities such as permitting, compliance assurance and enforcement, developing inventories of regulated entities, issuing identification numbers for regulated entities, issuing certifications, and other activities.

These reviews should be done in coordination with the appropriate tribal governments and with EPA headquarters, as necessary. Because an ETEP should be developed as a joint work-sharing document, it is important that there is mutual understanding of what is required to implement the environmental protection programs; the time frames for this work; the government (federal or tribal) that will conduct which portion of that work; and the expected results.

(3) Inventories of Regulated Entities

In general, the presence of regulated entities determines which federal environmental statutes are applicable. The Agency maintains many program-specific databases of regulated entities and data query tools to help identify regulated entities that may affect tribal interests, including the Facility Registry System (FRS) – a centrally managed database that identifies facilities, sites, or places subject to environmental regulations or of environmental interest. Tribal and state government programs may also contain regulatory program information. As part of an ETEP, the tribe and EPA regional office should have a complete listing of regulated entities of interest. As part of the regular review of the ETEP, the inventory should be updated as appropriate, to reflect operating status changes, new facilities, etc.

(4) Mutual Roles and Responsibilities for Tribal Program Development Milestones and Environmental Program Implementation

The information on program priorities and regulated entities discussed above will provide the basis for discussion between regional EPA staff and tribal staff on joint work planning and

³⁷ Clean Air Act (CAA); Clean Water Act (CWA); Safe Drinking Water Act (SDWA); Resource Recovery and Conservation Act (RCRA); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Emergency Planning and Community Right-to-Know Act (EPCRA); Brownfields; Asbestos Hazard Emergency Response Act (AHERA); Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Toxic Substances Control Act (TSCA), and Pollution Prevention Act.

partnering to ensure environmental protection. The ETEP should define the actual activities that the tribe and EPA anticipates conducting during the time period of the agreement, including activities that tribal staff will perform to support EPA direct implementation of federal environmental programs, activities EPA will perform to support tribal program development and implementation, and activities that tribes will undertake to either apply for program approval/delegation, and/or build capacities to partner with EPA to implement applicable federal programs. ETEPs should indicate which environmental protection program capacity indicators a tribe intends to establish and a general time line for establishing them. GAP work plans should contain these indicators and the activities designed to help the tribe achieve them.

4.4 Development, Use and Management of the ETEP

The ETEP should be a living document that is actively used as a management tool by both EPA and the tribe to ensure work is being done in support of agreed upon priorities and that progress is being made over time. ETEPs do not need to be complex and long to serve their intended purpose; however developing ETEPs involves coordination among EPA's regional and headquarters media offices, and between EPA and tribal governments. The ETEP should have the support of senior officials in both EPA and the tribal government, as they will be used to help prioritize the work that is funded under GAP and the work that EPA is conducting in the tribal area.

EPA acknowledges that various factors may impede a tribe's progress toward establishing environmental protection program capacity indicators. These factors include staff turnover and adjustments in a tribe's priorities based on unanticipated changing conditions, such as potential impacts to human health and the environment from unanticipated resource extraction projects, changes in land uses, proposed development projects with potential pollution sources, etc. Capacity development indicators and completion dates should be revised as appropriate when a tribe's needs and priorities change.

The ETEP should be reviewed jointly by tribes and EPA at least annually, and updated as appropriate.

- ETEPs should contain completion dates for tribal and EPA activities to allow progress to be measured;
- ETEPs should indicate how the tribe and EPA will monitor progress being made toward the goals described in the document;
- As part of the required annual work plan joint evaluation, regions should not only assess the tribe's performance and progress, but also summarize EPA's activities related to that tribe to inform subsequent work and longer-term priorities in the ETEP;
- EPA and tribes should ensure that GAP grant work plans reflect the tribal program priorities and mutual roles and responsibilities identified in the ETEPs.

By September 30, 2013, each region will submit a proposed schedule to AIEO for establishing ETEPs with the tribes in their region that receive GAP funding. Each region will subsequently submit final schedules for establishing ETEPs to AIEO by January 1, 2014.

5.0 Assistance Agreement Work Plan and Reporting

All award recipients must negotiate an assistance agreement work plan with EPA in accordance with 40 C.F.R. § 35.507. In addition, work plans should be linked to the intermediate and long-term program development goals identified in an ETEP. For tribes that have not yet established a plan with EPA that satisfies the four components of an ETEP described in Section 4.3, GAP work plans should contain a component to develop one when it is consistent with the applicable regional schedule to do so (see Appendix III for a sample work plan component).

To improve the Agency's ability to track work plan progress and performance, as well as overall program performance reporting, EPA will use national program management systems to collect and report specific information from work plans (currently, the Agency uses GAP Online as the national program management system).

6.0 Application Submission, Review, and Award Process

6.1 Submission Schedule and Requirements

Regional Offices are responsible for establishing the time frame for application submission, negotiation of work plans and budgets, and award decisions. Regional Offices should provide early notice to each eligible tribe and intertribal consortium of the availability of GAP funds, program requirements, and submission process.

6.2 Application Review

EPA Regional Offices are responsible for reviewing application materials. Proposals should include all information requested in the funding announcement, including: the applicant's portion of an ETEP, or plans to develop ETEPs, as described in Section 4 of this Guidance; adequate description of proposed eligible GAP activities; description of how proposed activities support the priority areas described in Section 1.2 of this Guidance; and a description of how the proposed activities support achieving the applicant's intermediate or long-term program development goals.

Applications will be reviewed to determine:

- 1. The extent to which the proposed activities in the work plan support the purpose of the GAP** (i.e., development of tribal environmental protection program capacities, consistent with EPA statutory programs). Proposed activities should focus on developing

core environmental protection program capacities, environmental planning activities with EPA, and/or developing baseline capacities for media-specific environmental protection programs that either directly builds toward implementing a federal program or developing a tribal program that is consistent with EPA statutory programs. Work plans should include measurable indicators of capacity-building; applicants should consult Appendix I, Guidebook for Building Tribal Environmental Program Capacity, for further information on indicators.

2. **The feasibility and likely effectiveness of the proposed activities.** The work plan should provide detail sufficient to demonstrate that the applicant has a comprehensive, well thought-out plan (identifying proposed activities, responsible persons, milestones, and timelines/due dates for tasks/deliverables) that is reasonably likely to achieve the purpose of the project within the proposed project time and budget. The focus here is on the feasibility and effectiveness of proposed activities rather than adequacy of budget and personnel resources identified for the project.
3. **The extent to which the budget, resources, and requested funds for key personnel are reasonable and sufficient to accomplish the proposed project.** The proposals will be evaluated to determine whether the amount requested is adequate to support the proposed activities, the allocations within object classes are appropriate for the proposed work, and whether the applicant has the personnel and program resources to accomplish the project. The focus here is on budget, personnel, and other resources rather than the feasibility and effectiveness of the proposed activities themselves.
4. **The degree to which the work plan identifies the expected environmental results of the proposed project.** The work plan will be evaluated on the detail provided regarding the likely outcomes and outputs of the proposed project. Outputs and outcomes should be linked to the proposed activities and resulting improvements to environmental and/or human health conditions. These outputs and outcomes should be measurable and achievable.
5. **The degree to which the proposed activities in the work plan support achieving the long-term goals identified in the EPA-Tribal Environmental Plans.** The work plan should indicate how the proposed activities relate to: identified tribal priorities and specific environmental and human health threats/issues within the context of EPA's authorities; developing tribal capacity to request and assume delegable federal authorities; developing tribal environmental protection programs under tribal authority; and/or building tribal environmental program capacity to assist EPA in implementing EPA's statutory programs.
6. **Prior performance.** Generally, work plan components and commitments should not duplicate prior efforts; they should demonstrate clear progress over time toward achieving the longer term goals, or specify new focus areas. Duplicates of prior year work plan activities may be rejected and EPA will take into consideration prior year performance when evaluating new work plans associated with similar previously funded work.

7.0 Award Administration

7.1 Award Notices

A funding award notice, signed by an EPA grant officer, is the official document authorizing work to commence. EPA will provide funding award notification to recipients.

7.2 Reporting Requirements

The applicant and the Regional Office will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan. A description of the evaluation process and reporting schedule must be included in the work plan. Recipients must report at least annually and satisfy the requirements for progress reporting under 40 C.F.R. § 31.40(b).

The evaluation process must provide for:³⁸

- A discussion of accomplishments as measured against work plan commitments;
- A discussion of the cumulative effectiveness of the work performed under all work plan commitments;
- A discussion of existing and potential problem areas; and
- Suggestions for improvement, including, where feasible, schedules for making improvements.

Regions should also work with recipients to evaluate status of tribal capacity as defined by the indicators of tribal capacity found in Appendix I of this Guidance or other clearly defined indicators that may be identified in the work plan.

In addition to performance reports, GAP recipients and their EPA project officer should have frequent contact (no less than quarterly) to keep EPA informed of progress and to resolve any problems that may arise.

7.3 Quality Assurance Documentation

GAP recipients are subject to EPA's quality assurance requirements as found in 40 C.F.R. §31.45. If a recipient's project involves environmentally related measurements or data generation, the recipient shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions. Approved plans must be in place before environmental

³⁸ 40 C.F.R. § 35.515.

data collection, production, or use can occur. More information is available online at: <http://www.epa.gov/ogd/grants/assurance.htm>.

7.4 Disputes

Disputes related to this program will be resolved in accordance with 40 C.F.R. §31.70.

Appendix I

Guidebook for Building Tribal Environmental Program Capacity

May 15, 2013

**U.S. Environmental Protection Agency
Office of International and Tribal Affairs
American Indian Environmental Office**

Guidebook for Building Tribal Environmental Program Capacity

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Guidebook for Building Tribal Environmental Program Capacity

A: Introduction

A.1 Purpose: Enhancing the EPA/Tribal Partnership for Environmental Protection and Measuring Tribal Program Development Progress

The Indian Environmental General Assistance Program (GAP) was created to assist tribes with developing the capacity to manage their own environmental protection programs. Therefore, GAP resources are targeted to those activities designed to build a tribe's capacity to administer environmental protection programs that address tribal priorities supporting the objectives of EPA's programs.

Historically, EPA has not provided a clear pathway under GAP to help tribes and intertribal consortia develop environmental protection program capacities. The indicators contained in this Guidebook provide a pathway for defining and tracking tribal capacity building progress under GAP, including when GAP funds are combined with other Agency resources through Performance Partnership Grants.

The Guidebook begins with a discussion of the core program capacities that each tribal environmental program should consider establishing with GAP funding. The remainder of the document provides additional indicators for developing tribal capacity to administer media-specific environmental protection programs that tribes can pursue using GAP funding. There are often many activities that must occur to support achieving a single indicator. EPA has specific program guidance and technical assistance tools and resources available to help identify and plan for those specific activities; key resources are highlighted in each section.

It is important to note that while this Guidebook outlines key indicators for developing capacities for the major environmental protection programs, it should not be interpreted as a prescription for all tribal environmental protection programs. As noted in the Guidance, where indicators provided here are not appropriate or applicable, the grantee should work with the EPA to identify appropriate capacity building indicators for inclusion in the work plan and EPA-Tribal Environmental Plan (ETEP) and to link funded activities to the program capacity being developed. Each tribe should define the scope and content of its particular environmental program based on its priorities, environmental conditions, jurisdictional situation, or other factors.

Where there are connections between tribal environmental priorities and the federal environmental statutes, this Guidebook provides a menu of applicable capacity building indicators that will assist in planning capacity building activities and measuring progress in development of those capacities. Tribes are not required to pursue each capacity

indicator listed in this Guidebook – only those applicable to the recipients’ specific circumstances and program development goals described in an ETEP (as described in GAP Guidance Section 4.0). For tribal program activities that are outside the scope of EPA authority, and in keeping with the Agency’s 1984 Indian Policy, EPA will encourage cooperation between tribes and other appropriate federal agencies, state and local governments, and non-governmental organizations to resolve environmental problems of mutual concern where appropriate.

A.2 Capacity Development for Tribes with Limited Environmental Program Jurisdiction

Some tribes may not be able to demonstrate exclusive environmental regulatory jurisdiction over facilities, activities, or sites. However, the Agency recognizes that these tribal governments should still be afforded the opportunity to develop environmental protection programs that support their meaningful involvement in the protection of human health and natural resources. Tribes with limited jurisdiction to implement environmental regulatory programs may use GAP funds to develop program capacities for purposes consistent with the extent of their authorities, such as: evaluating environmental conditions; developing voluntary or partial environmental protection programs; participating in environmental policy making; coordinating with EPA or other federal agencies on the implementation of federal environmental protection programs; and entering into joint environmental protection programs with neighboring tribal, state, or local environmental agencies.

A.3 Capacity Development is a Continuing Programmatic Need

Ultimately, establishing core program capacities should result in tribes being able to meaningfully participate in the national system of environmental protection, in accordance with the desired capacity level and authorities of each tribe. Developing, establishing, and maintaining environmental program capacities is an on-going effort requiring capacities to evolve as the tribal environmental program itself expands and undertakes additional challenges. EPA also recognizes that GAP resources provide a significant foundation for maintaining tribal environmental program capacities over time.

Tribes that have successfully developed capacity in a given area can continue to receive GAP funding to expand, enhance, or evolve their capacity. For example, a tribe with a community education program may continue to receive GAP funds to expand the program by adding new features, such as outreach strategies for vulnerable groups (i.e., children, the elderly, people in poor health, and expectant mothers) or identifying new media outlets to reach target audiences. Similarly, a tribe with basic water program capacity may continue to receive GAP funds to expand their water program by adding new baseline data to their existing program, developing additional laboratory analysis quality assurance plans, or adding capacity to share additional water quality data across multiple data platforms.

GAP Guidance establishes a mechanism (ETEPs) for tribes to use with their respective regional offices to document the tribe's program development goals. Tribes should re-evaluate their program capacity development goals on a regular basis to ensure that their systems, procedures, and policies are still appropriate for the current stage of the environmental protection program and to determine if additional capacities are needed to support media-specific environmental programs.

A.4 GAP: A Foundation for Tribal Program Implementation

The 566 federally recognized tribes³⁹ (ranging from the Northern slope of Alaska to the southern tip of Florida) and intertribal consortia face an expansive number of environmental issues, concerns, and priorities. As a result, it is not practicable to list all activities fundable under GAP in this Guidance; general guidelines regarding allowable activities under GAP are provided in Section 1.4 of this Guidance.

This Guidebook presents a nationally consistent approach for defining and measuring a tribe's environmental program capacity development. This approach is optimized to position a tribe to expand into and administer media-specific environmental protection programs consistent with the purposes and requirements of applicable provisions of law. By establishing the capacity milestones identified in this Guidebook, a tribe or intertribal consortia should be well positioned to continue to develop and implement tribal environmental protection programs and address almost any environmental issue. A tribe or intertribal consortia may also be able to continue to develop and implement tribal programs that are only related to EPA's programs, but are not designed to build toward implementing EPA programs. This approach preserves maximum flexibility for tribes to use GAP resources effectively in response to a wide range of tribal priorities while providing EPA with a nationally consistent approach for defining and measuring the development of tribal environmental program capacity under GAP.

Ultimately, for many tribes, environmental protection program capacities are being built so that the tribe may become the lead government agency for implementation of a federal environmental program. EPA has identified three primary types of implementation pathways related to EPA programs that tribal governments could pursue individually or in some combination: (1) participate in EPA's direct implementation activities; (2) implement under tribal authority; (3) implement under an EPA-approved /delegated / authorized program. Appendix V provides a list of potential sources of EPA funding for tribes. Please note that certain funding programs listed in Appendix V are eligible to be combined in a Performance Partnership Grant [Catalog of Federal Domestic Assistance (CFDA) No. 66.605]. Funds available under these programs may vary from year-to-year.

For many other tribes, as noted earlier in this Guidance, program implementation is not a long-term goal. The capacity building activities are just as important and relevant to those tribes as to the tribes on the path to implementation. The specific pathway a tribe pursues

³⁹ As of May, 2013.

will depend on a number of factors; as such, the indicators of tribal capacity presented in this Guidebook cover a wide variety of approaches.

B: Building Core Environmental Protection Program Capacities

B.1 Purpose

Many tribes receiving GAP financial assistance will operate a core multimedia⁴⁰ environmental program to identify tribal environmental priorities and maintain an environmental presence in regulatory activities affecting the tribe. Where active steps are taken to sustain a knowledge-base and support necessary institutional infrastructure, EPA views this environmental presence as essential to effective government-to-government partnerships with tribes seeking to actively and meaningfully participate in environmental protection, including tribes with limited jurisdiction to implement their own environmental regulatory programs.

After receiving GAP grant resources to build core program capacities, tribes may need continued funding to sustain their programs (i.e., ensure adequate program management capacity, processes, and resources are in place for future environmental program staff) while pursuing media specific grant resources. Adjacent jurisdictions may create situations that are outside the control of the tribe, but directly impact the tribal environment. Examples include, a mine opening on adjacent lands, a state implementing a watershed planning process, or other planning processes impacting a tribe. These events, and others like them, happen on a regular basis and tribal environmental staff should be prepared and available to take on new tasks as they arise. Where a tribe is ready and able to pursue assistance agreements under other EPA programs, continued GAP funding may be directed to activities that expand on existing capacity, or a tribe may determine it no longer needs capacity building resources in that specific area under GAP and would transition from GAP to other funding sources.

Indicators of core capacities are included below and EPA project officers should refer to these during GAP work plan negotiations.

The remainder of this section presents the core capacities that should be present for planning, developing, and establishing tribal environmental protection programs.

B.2 Establishing Core Administrative Capacities

Establishing administrative core capacities includes assessing, modifying, or developing policies and guidance that will be used to manage an environmental program and recruiting, hiring, and retaining qualified staff to develop and manage these policies.

⁴⁰ The term “media” used throughout this document refers to the EPA’s individual environmental program areas (air, land, water, waste, etc.). Programs designed to address multiple media areas, or that can apply to multiple programs, are referred to as “multimedia.” For example, the capacity to administer an underground storage tank program is single media while community involvement programs are typically “multimedia” because they tend to address a range of environmental topics.

Indicators of Capacity:

- B.2.1 Organizational system for the environmental program that defines staff roles and responsibilities, describes the relationship of the environmental program to tribal leadership and other departments, and includes supporting personnel management policies/procedures.
- B.2.2 Staff with appropriate skills, knowledge and experience to manage the environmental program.
- B.2.3 Training plan for staff that reflects the capacity-building priorities for the environmental program.
- B.2.4 Program evaluation system for use in determining whether program objectives are met, fiscal resources are appropriately managed, and assistance award requirements satisfied.
- B.2.5 Intergovernmental agreements (tribal, federal, state, local) necessary to implement the environmental program.
- B.2.6 Written procedures similar to the Administrative Procedure Act to ensure meaningful involvement and fair treatment in public participation.
- B.2.7 Organizational filing/records retention system and policies (paper and electronic).
- B.2.8 Policies and procedures to coordinate tribal environmental protection programs with other tribal government initiatives (e.g., transportation, housing, infrastructure, economic development, and natural resource management).

B.3 Establishing Core Financial Management Capacities

Establishing financial management core capacities includes assessing, modifying, or developing financial, procurement, equipment tracking, property management, and grants management procedures to ensure that the tribal systems are in compliance with federal requirements. Procedures should clearly delineate roles and responsibilities, describe recordkeeping activities, and define auditing and other evaluation methods that will be used to ensure fiscal accountability.

Indicators of Capacity:

- B.3.1 A statement by the appropriate tribal financial department demonstrating that the tribe's accounting system, internal controls, and financial reporting procedures adhere to the requirements found in 40 C.F.R. § 31 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; 40 C.F.R. § 35 "Environmental Program Grants for Tribes"; 2 C.F.R., § 225 "Cost Principles for State, Local and Indian Tribal Governments" (formerly OMB Circular A-87); and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- B.3.2 A statement by the appropriate tribal financial department demonstrating that the tribe has a procurement procedure that meets the minimum requirements for purchasing systems as outlined in 40 C.F.R. § 31.

- B.3.3 Written procedure for tracking (including final disposition) equipment and supplies acquired by the environmental program in compliance with 40 C.F.R. § 31.
- B.3.4 Written procedure that describes how the environmental program will coordinate with other tribal departments to satisfy grant terms and conditions and reporting requirements (for example, application development/review/approval, creation and submission of required reports, maintenance of official file, closeout of award).
- B.3.5 Current indirect cost rate agreement.
- B.3.6 Tribe demonstrates proficiency in processing financial payment requests, submits required annual Federal Financial Reports, and performs annual financial audits as required.

B.4 Establishing Core Information Management Capacities

Establishing information management core capacities includes assessing, modifying, or developing systems to maintain administrative records and files, useful reference material for the environmental protection program, and information on environmental and human health conditions that may impact human health or the environment. Information management systems should: clearly identify roles and responsibilities; prescribe a required format for materials and information tracked in the system(s); identify the physical (hard copy) location of materials and information entered into the system; identify any confidentiality issues pertaining to specific materials and information; and note whether materials and information must be legally maintained for a specific time period. Information management is also essential for measuring and tracking program performance over time, including data management on environmental indicators. Data collection, management, and reporting are key features of a core environmental protection program.

Key sources of information management information include:

- Environmental Information Exchange Network & Grant Program:
<http://www.epa.gov/exchangenetwork/grants/index.html>
- EPA Quality Management System: Quality Management Tools - QA Project Plans:
<http://www.epa.gov/quality/qapps.html>
- Doing Business with EPA: Quality Specifications for non-EPA Organizations:
<http://www.epa.gov/quality/exmural.html>

Indicators of Capacity:

- B.4.1 Written procedure for establishing an official file for each assistance award that contains all documentation from application through final closeout and that requires record retention in compliance with 40 C.F.R. Part 31, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.”
- B.4.2 Written inventory of administrative and technical procedures, policies, regulations, or other guidelines developed to implement the environmental program.

- B.4.3 System to store and organize data and information collected or generated by the environmental program for future use in characterizing environmental and human health conditions, responding to information requests, developing environmental projects/initiatives, or other project management data systems.
- B.4.4 Exchanging and/or sharing data through the National Environmental Information Exchange Network.
- B.4.5 Written policies and procedures for protecting sensitive tribal environmental and human health data (e.g., traditional ecological knowledge and cultural resources).
- B.4.6 Environmental mapping (Geographic Information System) capabilities.

B.5 Establishing a Baseline Needs Assessment

A baseline needs assessment is a primary step to determine the environmental resources needing protection and the environmental and human health issues facing a particular tribal community. Such an assessment can help a tribe to identify and prioritize a tribe's approach for undertaking protection and restoration efforts. While there are many approaches for conducting effective baseline needs assessments, including those that are informed by traditional ecological knowledge, information on conducting a baseline needs assessment can be found in Appendix II. Periodically, the baseline needs assessment should be updated in response to factors such as: new sources of pollution, changing environmental conditions, new development in the community, acquisition of lands, and changes to the environmental program. However, GAP funds should not support a baseline or other assessment that is principally for solving particular problems at particular places – such as an environmental assessment associated with a particular facility construction project – because they are considered program implementation (except those related to solid and hazardous waste programs as described in Section E, because solid and hazardous waste program implementation activities are eligible for GAP funding).

Indicators of Capacity:

- B.5.1 A current baseline needs assessment or comparable planning document, such as a tribal Integrated Resource Management Plan, tribal environmental inventory, natural resource assessment that reflects: (1) environmental resources needing protection; (2) known information about existing/potential threats to human health and the environment within the tribe's area; (3) an evaluation of the potential impact of these threats to tribal members and resources (4) strategic plan with long term program development and implementation goals identified; and (5) prioritization of activities by the environmental program to address identified threats.

B.6 Establishing Core Public Participation, Community Involvement, Education, and Communication Capacities

Establishing public participation, community involvement, education, and communication core capacities includes assessing, modifying, or developing systems to

ensure that the tribal environmental protection program can notify the general public of important events or information, publicize activities related to its projects and programs, engage community members to understand their environmental and public health concerns, educate the public on human health and environmental protection issues important to the tribe, and be responsive to concerns raised. These systems should identify the various routes or methods of disseminating information, and the time frame and particular audience that each method would reach.

Indicators of Capacity:

- B.6.1 Program to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of tribal programs, policies, and activities on minority populations and low-income populations within the tribe's area of program responsibility.
- B.6.2 Outreach methods that will be used to reach and solicit input from potentially affected communities and groups.
- B.6.3 Environmental Education/Outreach plans and (or) curricula.
- B.6.4 Format for public notices, press releases, and other types of communications.
- B.6.5 Methods that will be used to identify public concerns and respond to issues raised.
- B.6.6 Contact lists for other governmental entities and types of information that will be shared.
- B.6.7 Methods to conduct general public education, awareness, community engagement, and information exchange on issues related to human health and the environment.
- B.6.8 Methods for collaborating and sharing information with other tribal, federal, state, and local governments, or with other organizations.
- B.6.9 Tribal consultation policies and procedures.
- B.6.10 Development of tribal community-based advisory groups to assist with planning and implementation of the tribal environmental program.

B.7 Establishing Core Legal Capacities

Establishing legal core capacities includes assessing, modifying, or enacting the tribal laws, codes, and regulations, Interagency Agreements, Memoranda of Understanding, and associated policies and guidance that are necessary to prevent environmental deterioration, abate pollution conditions, and manage or enforce specific regulatory programs. Tribes should determine what legal authorities it may use to regulate facilities and activities that may impact air, land, or water resources within its jurisdiction, including any compliance assurance and enforcement actions that may be appropriate. The tribe should determine and take steps if necessary to ensure that it has the legal authority and ability to establish and implement standards, permitting processes, certification requirements, and civil enforcement procedures.

Tribes may use GAP funds to develop a compliance monitoring program to determine compliance status and inform tribal decisions on when enforcement is necessary. A tribe's compliance monitoring program should include capacities for information gathering, data analysis, facility inspections, review of reports from regulated entities,

and addressing citizen complaints. To ensure effectiveness and consistency, tribes should train and provide appropriate credentials to authorized compliance monitoring personnel, develop and adopt standardized compliance monitoring and inspection procedures and practices, and manage the resulting information in computerized data management systems.

Tribes may use GAP funds to establish programs that require regulated entities to undertake self-monitoring, recordkeeping, and reporting as a means for tribes to monitor compliance. By requiring regulated entities to measure and report their performance, tribes are able to shift some of the burden for compliance monitoring to the regulated community. Through sanctions for false reporting or non-reporting, defined in regulations or permit requirements, a tribe can increase the accuracy of reports from regulated entities.

Tribes may use GAP funds to establish programs for the enforcement of environmental requirements. Enforcement is a fundamental element of any compliance assurance program. In designing enforcement programs under GAP, tribes should consider adopting and implementing a full suite of relevant enforcement mechanisms, including informal approaches (e.g., warnings and notices of violation); formal tribal administrative or judicial actions to compel compliance, assess penalties and/or impose other sanctions (e.g., shut down the facility); and criminal enforcement (e.g., fines and/or imprisonment) consistent with the tribe's authority. In responding to violations, tribes should act in a timely manner to correct noncompliance, deter future noncompliance and where possible redress environmental harm caused by noncompliance. Tribes may also use GAP funds to develop and maintain the capacity to work cooperatively with federal enforcement officials to address environmental violations that give rise to civil or criminal investigations.

Tribes may use GAP funds to establish programs that facilitate citizen access to compliance information, subject to confidentiality and preservation of privileged information. Providing the public with information on the compliance status of regulated entities gives surrounding communities information on possible risks they may be facing as a result of noncompliance and arms citizens with information they can use to put pressure on noncompliant facilities to come into compliance and on regulatory agencies to address noncompliance. Without prematurely revealing information on enforcement cases or compromising confidentiality and privileged information, tribes should strive to provide public access to information on the entities regulated by environmental requirements, their compliance status, and any history of formal and informal enforcement actions taken to address noncompliance. Tribes should establish procedures for citizens to request and receive specific information via all available media within a reasonable timeframe, subject to applicable laws and policies on confidentiality, the preservation of privileged information, and other limitations on sharing information.

Indicators of Legal Capacity:

- B.7.1 A statement by tribal legal counsel demonstrating that the tribe has authority to pass and enforce laws/ordinances to protect human health and the environment.
- B.7.2 A statement by tribal legal counsel demonstrating that tribal government authority provides the tribe with power to enjoin activities determined to be harmful to the health or welfare of persons or the environment.
- B.7.3 A dedicated section of the tribe's laws/codes/ordinances for environmental protection program activities that establish standards, permitting processes, certification requirements, compliance assurance, and enforcement procedures.
- B.7.4 A program to provide compliance assistance to regulated entities to promote an understanding of applicable environmental requirements and assist them in attaining and maintaining compliance.
- B. 7.5 Documentation supporting the tribe's claim of interests to usual and accustomed areas and to cultural resources potentially affected by environmental protection activities.
- B.7.6 Interagency Agreements or Memoranda of Understanding with other tribal, federal, state, or local governments regarding environmental protection.

Compliance Monitoring Program Indicators:

- B.7.7 Procedures and systems for maintaining an inventory of regulated entities or activities.
- B.7.8 Procedures to train and provide credentials to authorized compliance monitoring personnel.
- B.7.9 A program to require regulated entities to keep records, review records, and provide applicable records to the tribe.
- B.7.10 Incentives and voluntary reporting of noncompliance that encourages compliance and environmental stewardship.
- B.7.11 Procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of regulated entities.
- B.7.12 Procedures and resources to assure adequate coverage of regulated entities through compliance monitoring activities. Compliance monitoring activities, including inspections, should be conducted to: (a) determine compliance with applicable program requirements, including but not limited to permit conditions; (b) document noncompliance; (c) verify the accuracy of information required to be reported or maintained by the regulated entity; and (d) verify the adequacy of sampling, monitoring, and other methods used to develop the information submitted.
- B.7.13 A program to enter a site potentially subject to regulation – or in which records relevant to applicable program requirements are kept – in order to copy records, inspect, monitor emissions or take samples, or otherwise investigate compliance.

- B.7.14 Procedures to ensure that compliance monitoring activity is conducted in a manner (e.g., using “chain of custody” procedures for samples taken from a regulated entity) that will produce evidence admissible in enforcement proceedings or court.
- B.7.15 Procedures for encouraging public reporting of violations, including a mechanism for the public to submit such reports, and for ensuring proper consideration of citizen tips and complaints.

Enforcement Program Indicators:

- B.7.16 A program to immediately and effectively enjoin any activity that may present an imminent and substantial endangerment to public health or the environment.
- B.7.17 A program to restrain unauthorized activity, compel compliance with applicable requirements, and impose injunctive relief to remedy noncompliance.
- B.7.18 A program to compel regulated entities to submit reports and provide documents to the tribe for the purpose of assessing compliance with applicable requirements.
- B.7.19 A program to compel regulated entities to conduct monitoring or sampling and provide results to the tribe for the purpose of assessing compliance with applicable requirements.
- B.7.20 A program to assess or sue to recover civil penalties appropriate to the violation.
- B.7.21 A program to assess penalties for violations of applicable requirements, such as fines or imprisonment for environmental crimes.

B.8 Establishing Core Technical and Analytical Capacities

Tribes may use GAP resources to build baseline environmental program capacities that will then be further developed and enhanced through media-specific EPA programs and other funding sources. GAP should be used to provide a foundation of technical and analytical skills, knowledge, and resources that will be valuable to tribes as they make decisions to pursue specific media projects and programs. GAP may support activities that establish the recipient’s capacity to manage projects involving data collection, including the establishment of a quality system conforming to the current edition American National Standard Institute ANSI/ASQ E4, “Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use.” Capacities include the ability to conduct direct measurements or generate data, model environmental conditions, compile data from literature or electronic media, and the ability to manage data supporting the design, construction, and operation of environmental technology. The collection and management of data associated with specific technologies is considered implementation and is not fundable under GAP. More information is available online at: <http://www.epa.gov/ogd/grants/assurance.htm>.

Indicators of Capacities:

- B.8.1 Quality assurance and management plans.
- B.8.2 Intergovernmental agreements with other jurisdictions related to environmental protection.
- B.8.3 Funding from other sources.
- B.8.4 Environmental monitoring/sampling programs.

C: Building Tribal Ambient and Indoor Air Quality Program Capacities

C.1 EPA's Air Quality Programs

Air quality is regulated primarily under the CAA. The CAA was first enacted in 1963 and underwent significant revisions in 1970 and 1990. The CAA focuses on three key areas: (1) reducing outdoor, or ambient, concentrations of air pollutants that cause smog, haze, acid rain, and other problems; (2) reducing emissions of toxic air pollutants that are known to, or are suspected to, cause cancer or other serious health effects; and (3) phasing out production and use of chemicals that destroy stratospheric ozone. For more information on the CAA, visit: <http://www.epa.gov/air/caa/>.

EPA takes on varying roles to ensure the CAA is implemented, including EPA authorization and oversight of state and tribal CAA programs and/or direct implementation by EPA, where applicable. Under the CAA, EPA implementation activities include: (1) designation of non-attainment areas for national ambient air quality standards; (2) development and promulgation of federal implementation plans (FIPs); (3) issuing pre-construction permits and operating permits for sources of air pollution; (4) compliance assurance (including inspections) and enforcement; (5) processing asbestos notifications for demolitions/renovations or regulated structures; and (6) ensuring risk management plans are submitted by regulated entities. The CAA Tribal Authority Rule (TAR) offers tribes the option to seek TAS eligibility to develop air quality management programs, write rules to reduce air pollution, and implement and enforce rules under the CAA that are appropriate for their communities.

The Emissions Inventory System (EIS) contains compliance and permit data for stationary sources of air pollution (such as electric power plants, steel mills, factories, and universities) regulated by EPA, tribes, states, and local air pollution agencies. The information in EIS is used to prepare Federal Implementation Plans or Tribal Implementation Plans (TIPs) and to track the compliance status of point sources under the CAA. EIS can be accessed at <http://www.epa.gov/ttn/chief/eiinformation.html>. Tribal staff may be aware of other facilities that may be subject to regulation under the CAA.

In addition to participating in the federal CAA scheme for managing air quality, tribes may use GAP funds to develop their own air quality management programs consistent with their own priorities and authorities. As a result, tribal program management TAS designations are only one indicator of successful tribal program capacity. This section includes a number of tribal program capacity indicators applicable to a wide range of tribes, including tribes that are not planning to pursue TAS status for program implementation.

Key sources of program guidance include:

- The Tribal Air Grants Framework: A Menu of Options. October 2007.
http://www.epa.gov/oar/tribal/pdfs/Tribal%20Air%20Grants%20Framework%20rev%202011_07.pdf
- Tribal Air Program Resources. <http://www.epa.gov/air/tribal/airprogs.html>

- Radiation Publications: <http://www.epa.gov/radiation/pubs.html>
- Office of Air and Radiation National Program and Grant Guidance. <http://epa.gov/planandbudget/>
- Preparing for Climate Change: A Guidebook for Local, Regional, and State Governments: <http://www.icleiusa.org/action-center/planning/adaptation-guidebook>

C.2 Establishing Tribal Air Quality Programs

This subsection provides a “road map” for tribes and outlines a non-exclusive list of tribal environmental protection program capacity indicators that EPA will use to evaluate progress under the GAP. In general, GAP funding should be used to build baseline environmental program capacities; once capacity is established, tribes may seek funding under EPA’s media-specific programs to support more complex program development and implementation while continuing to use GAP resources for ongoing capacity building activities.

The first stage in developing an air quality management program is to develop the necessary expertise and skills to identify, address, and manage air quality issues. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on air quality issues, collecting and analyzing new air quality data, and using this information to make decisions on further development of an air quality management program.

After building fundamental program capacities related to the CAA and evaluating the type of air quality issues facing the community, tribes may consider undertaking efforts to establish air quality protection programs. Tribes and inter-tribal consortia are encouraged to seek funding support under EPA’s media-specific programs where appropriate.

C.3 Indicators of Air Quality Program Capacity

- C.3.1 Tribe has established a staffing plan (position description and recruitment/retention/promotion plan) for who will serve as tribal air quality/indoor air quality program coordinator(s).
- C.3.2 Staff has completed appropriate training and acquired baseline knowledge and skills related to the CAA (become familiar with the major goals, programs, and requirements of the CAA; the national structure for implementing the CAA; and the EPA regional personnel and organization).
- C.3.3 Staff has completed appropriate indoor air quality training and acquired skills related to indoor air quality (e.g., Healthy Homes training).
- C.3.4 Tribe has established a program to meaningfully participate in air quality management programs administered by other tribal, federal, state, or local governments (including reviewing and commenting on air quality standards and facility permit actions).

- C.3.5 Tribe is receiving funding under the CAA or other related EPA media specific program.
- C.3.6 Tribe has completed an emissions inventory and submitted to the National Emissions Inventory Database.
- C.3.7 Tribe has developed an air monitoring strategy and associated quality assurance project plan.
- C.3.8 Tribe has established a program to collect and upload quality assured ambient air monitoring data into the Air Quality System (AQS) database.
- C.3.9 Tribe has completed a report analyzing air quality and radiation hazard issues impacting the tribe and evaluated air pollution control options (identifies air pollution sources and known levels of emissions, defines potential human health and environmental impacts of current air quality, and provides recommendations for action).
- C.3.10 Tribe has completed an indoor air quality assessment and report.
- C.3.11 Tribe has established a radon program that tests residential and other occupied structures for radon, identifies those above the EPA action level, and conducts outreach and education in the community.
- C.3.12 Tribe has prepared a report recommending actions to improve indoor air quality and reduce levels for radon, mold, moisture, and environmental pollutants.
- C.3.13 Tribe has incorporated indoor air quality improvements or features as part of building renovation programs (e.g., weatherization and rehabilitation) and new construction.
- C.3.14 Tribe has developed a climate change vulnerability/risk assessment.
- C.3.15 Tribe has developed a climate change preparedness/adaptation program (e.g., zoning rules and regulations; tax incentives; building codes/design standards; utility rates/fee setting; public safety rules and regulations; outreach and education; emergency management powers).
- C.3.16 Tribe has established a Diesel Emissions Reduction Program (identified diesel engine use; evaluated short- and long-term priorities for reduction of emissions; selected implementation options such as installing diesel retrofit devices with verified technologies on school buses, maintaining/repairing/rebuilding engines, replacing older vehicles/equipment with more efficient engines or engines that run on cleaner fuel, improve operational strategies).
- C.3.17 Tribe has established energy efficiency policies and program(s) (e.g., building design standards/codes, ENERGY STAR initiatives for government operations and tribal housing).
- C.3.18 Tribe has established an air toxics program (capacity to: monitor for acid and mercury deposition; sample subsistence food sources to measure the accumulation of toxics; partner with other jurisdictions on assessment projects; communicate potential threats to community members; implement actions to reduce sources of air toxics pollution).

- C.3.19 Tribe has established community outreach/education programs, including air quality advisory system (e.g., indoor air quality, radon, diesel emissions reduction, burn barrels, wood smoke, anti-idling, greenhouse gas and ozone-depleting substance reduction, climate change, and radiation hazards).
- C.3.20 Tribe has established intergovernmental partnerships with federal, state, local, and tribal governments to address air quality issues, including climate change, and radiation hazards (e.g., memoranda of understanding, interagency agreements).
- C.3.21 Tribe has established a program to comply with Federal Air Rules for Indian Reservations (FARR) requirements, where applicable.
- C.3.22 Tribe has developed and promulgated air quality standards.
- C.3.23 Tribe has developed a Tribal Implementation Plan (TIP) under CAA Section 301 to identify sources of air pollution and to determine what reductions are necessary to meet air quality standards.
- C.3.24 Tribe has developed/submitted request to redesignate a reservation as a CAA Class I area.
- C.3.25 Tribe has developed/submitted recommendations on designations for new National Ambient Air Quality Standards.
- C.3.26 Tribe has established program to assist EPA with implementing the federal CAA program (e.g., assisting the Agency to develop/update an inventory of regulated entities, compliance assistance activities for regulated entities, obtaining federal inspection credentials to inspect regulated entities, and assisting EPA to draft permits for regulated entities).
- C.3.27 Tribe has submitted application under the Tribal Authority Rule (TAR) requesting approval of specific CAA programs.
- C.3.28 Tribe has developed program to implement a Title V operating permit program for major sources of air pollution.
- C.3.29 Tribe has developed program to implement new source review permitting program for minor sources of air pollution.
- C.3.30 Tribe has enacted ambient air quality and/or radiation hazard laws, codes, and/or regulations with effective compliance assurance and enforcement provisions that are at least as stringent as the federal statutes.
- C 3.31 Tribe has enacted green building codes, guidelines and/or protocols that promote healthier indoor air quality and apply these practices to new and retrofitted buildings.
- C 3.32 Tribe has established a program to conduct indoor air quality outreach, education, and/or training for tribal government personnel and/or community members.
- C.3.33 Tribe has enacted indoor air quality laws, codes, and/or regulations with effective compliance assurance and enforcement provisions.
- C.3.34 Tribe has developed a program to provide compliance assurance (including inspections) and enforcement (e.g., work with regulated community system operators to determine if appropriate training and certification has been obtained, and, if not, assist with acquiring such training and/or certification).

D: Building Tribal Water Quality Program Capacities

D.1 EPA's Clean Water and Safe Drinking Water Programs

The Clean Water Act (CWA) is the primary federal law protecting the quality of surface water. The law was originally passed in 1972, and was amended in 1977 and 1987. The CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating water quality standards for surface waters. In ensuring water quality to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters,” the CWA includes provisions for addressing water pollution from point sources, diffuse sources of surface water runoff (nonpoint), protection of national estuaries and coastal waters, and dredge and fill actions (e.g., of wetlands) into waters of the United States. For more information on the CWA, visit <http://www.epa.gov/lawsregs/laws/cwa.html>.

EPA takes on varying roles to ensure the CWA is implemented, including EPA authorization and oversight of state and tribal CWA programs and/or direct implementation by EPA, where applicable. The primary program implementation activities include: (1) determining protection levels for waters of the United States by establishing Water Quality Standards; (2) assessing water quality to identify impaired waters (water quality monitoring); (3) defining and allocating control responsibilities to meet water quality standards; (4) issuing CWA Section 402 surface water discharge permits; (5) providing assistance to address nonpoint source pollution; (6) providing compliance assurance (including inspections) and enforcement; (7) issuing water quality certifications; and (8) reviewing CWA Section 404 dredge and fill permit applications. In addition, under the CWA, EPA: (9) responds to releases of petroleum products to navigable waters; (10) ensures that regulated entities have spill prevention, control and counter-measures (SPCC) plans, and (11) provides financial and technical assistance for the construction of wastewater facilities.

The Safe Drinking Water Act (SDWA) is the legal framework under which the nation’s public drinking water supplies are regulated and applies to every public water system in the United States. It requires many actions, such as the setting of national drinking water standards or requiring ways to treat the water to remove contaminants to protect drinking water and its sources – rivers, lakes, reservoirs, springs, and ground water wells. The Underground Injection Control program, under the SDWA, is designed to prevent underground injections from endangering drinking water sources. The SDWA was originally passed in 1974, and it was amended in 1986 and 1996. For more information on the SDWA, visit <http://water.epa.gov/lawsregs/rulesregs/sdwa/index.cfm>.

EPA takes on varying roles to ensure the SDWA is implemented, including EPA authorization and oversight of state and tribal primacy programs and/or direct implementation by EPA, where applicable. The primary program implementation activities include: (1) conducting sanitary surveys; (2) providing technical assistance to managers and operators of facilities subject to compliance requirements; (3) permit actions for regulated entities; (4) maintaining a database to hold compliance information

of public water systems; (5) monitoring public water supplies and providing compliance assurance (including inspections); (6) compliance assurance (including inspections) at regulated Underground Injection Control (UIC) wells; and (7) conducting enforcement.

The Permit Compliance System (PCS) provides information on facilities that have been issued permits to discharge to surface water. The Safe Drinking Water Information System (SDWIS) contains information about public water systems that have been reported to EPA by state or tribal environmental agencies. To access PCS or SDWIS information, please visit <http://www.epa.gov/enviro/index.html>.

The Agency is currently developing a national information system for facilities regulated under the UIC Program. In the meantime, the EPA regional offices maintain separate databases of UIC injection well activities.

Tribal staff may be aware of other facilities that may be subject to regulation under the CWA and SDWA.

Tribes are not required to administer CWA programs, but may apply for TAS eligibility under CWA Section 518(e) to administer certain CWA programs. Tribes must apply for and receive EPA approval to be eligible for TAS for each program in which they are interested.⁴¹ In addition to acquiring eligibility for certain water-related funding programs, tribes may also seek authorization to administer CWA water quality standards, water discharge permit programs, water quality certification programs, and dredge and fill permitting programs.

Similarly, EPA is the primary federal agency responsible for administering the SDWA, and directly implements the drinking water program and underground injection control program, except where states or tribes have primacy, which is the authority to implement SDWA within their jurisdictions. Under Section 1451 of the SDWA, tribes may apply for TAS and seek “primacy” to administer a public water supply supervision program and/or the requirements related to underground injection control wells.

In addition to participating in the federal CWA and SDWA scheme for managing water quality, tribes may use GAP funds to develop their own water quality management programs consistent with their own priorities and authorities. As a result, tribal program management TAS designations are only one indicator of successful tribal program capacity. This section includes a number of tribal program capacity indicators applicable to a wide range of tribes, including tribes that are not planning to pursue TAS status for program implementation.

In addition to pursuing program eligibility for delegation of EPA CWA programs, there are other opportunities for tribal governments to partner with EPA to implement CWA

⁴¹ Limitations in the CWA or other federal legal impediments prevent some tribes from obtaining TAS status. Excluded tribes include tribes that are not federally recognized, and tribes without formal reservations or tribal trust lands, such as most Alaska Native Villages.

provisions. As appropriate, EPA regional offices can utilize Direct Implementation Tribal Cooperative Agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in the implementation of the CWA. Please see Appendix IV, “EPA Water Program Reference Table: Framework for Tribal Water Program Strategic Planning and Development,” for more information on program activities associated with partnering with EPA on water program implementation, developing a tribal water program under tribal authority, and pursuing TAS for certain water programs.

Key sources of program guidance and information for developing programs under these statutes include:

- CWA –Information on activities and developing Water Quality programs:
 - “Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act,” EPA, 2007 (EPA 832-R-06-003).
http://water.epa.gov/grants_funding/cwsrf/upload/2006_10_20_cwfinance_final-tribal-guidance.pdf
 - “Handbook for Developing and Managing Tribal Nonpoint Source Pollution Programs Under Section 319 of the Clean Water Act,” EPA, 2010.
<http://water.epa.gov/polwaste/nps/tribal/index.cfm>
- SDWA – Information on activities and developing the Tribal PWSS Program:
 - Overview of PWSS: <http://www.epa.gov/indian/laws/tas.htm#pwss>
 - Tribal Drinking Water: <http://water.epa.gov/aboutow/ogwdw/tribal.cfm>
 - TAS for PWSS under the SDWA: www.epa.gov/tribal/pdf/tas-strategy-attach-h.pdf; www.epa.gov/tribal/pdf/tas-strategy-attach-i.pdf

D.2 Establishing Tribal Water Quality Programs

This subsection provides a “road map” for tribes and outlines a non-exclusive list of tribal environmental protection program capacity indicators that EPA will use to evaluate progress under the GAP. In general, GAP funding should be used to build baseline environmental program capacities; once capacity is established, tribes may seek funding under EPA’s media-specific programs to support more complex program development and implementation while continuing to use GAP funding for ongoing capacity building activities. When considering water program capacity-building activities, it may be beneficial for a tribe to align their capacity-building activities with EPA water program guidance early on. This can: (1) increase efficiency in a tribe’s use of both GAP and media program funding towards developing a program; (2) facilitate obtaining future EPA tribal water grant funding; and/or (3) facilitate obtaining EPA approval for a tribe to implement federal regulatory roles under the CWA or SDWA. Tribes developing water quality and drinking water protection programs should work directly with EPA water program staff and follow EPA Clean Water Act and Safe Drinking Water Act-related policies and guidance.

The first stage in developing a water quality management program is to develop the necessary expertise and skills to identify, address, and manage water quality issues. Tribal capacity-building activities should focus on: (1) assigning staff; (2) acquiring

initial training; (3) compiling relevant data on which the tribe can make program development decisions; and (4) engaging the tribal community on water quality issues.

After building fundamental program capacities related to the CWA and SDWA and evaluating the type of water quality issues facing the community, tribes may consider undertaking efforts to establish water quality protection programs. Tribes and inter-tribal consortia are encouraged to seek funding support under EPA's media-specific programs where appropriate. Please see Appendix IV to view water program planning and development activities in relation to water program implementation under the CWA and SDWA.

D.3 Indicators of Water Quality Program Capacity

General Tribal Water Program Indicators

- D.3.1 Tribe has established a staffing plan (position description and recruitment/retention/promotion plan) for who will serve as tribal water quality program coordinator.
- D.3.2 Staff has completed training and acquired baseline knowledge and skills related to the CWA and SDWA (e.g., become familiar with the major goals, programs, and requirements of the CWA and SDWA; the national structure for implementing the CWA and SDWA; and the EPA regional personnel and organization).
- D.3.3 Tribe has established a program to meaningfully participate in water quality management programs administered by other tribal, federal, state, or local governments (including reviewing and commenting on technical water documents, water quality standards, and facility permit actions).
- D.3.4 Tribe is receiving funding under the CWA, SDWA, or other related EPA media specific program.
- D.3.5 Tribe has identified its water resources and associated environmental and human health issues (including: inventories of regulated entities; discharge points requiring NPDES permits; facilities requiring Spill Prevention, Control, and Countermeasure (SPCC) plans; sensitive ecosystems).
- D.3.6 Tribe has established community outreach/education programs related to water quality and/or protecting health through safe drinking water (e.g., fish consumption advisory system, water efficiency, nonpoint source pollution best management practices, infrastructure needs for water and wastewater utilities, and wetlands restoration activities).
- D.3.7 Tribe has established water efficiency policies and program(s) (e.g., building design standards/codes, WaterSense initiatives for government operations, water use restrictions).
- D.3.8 Tribe has established intergovernmental partnerships with federal, state, local, and tribal governments to address water quality or drinking water issues (e.g., memoranda of understanding, interagency agreements).

Indicators Related to the Clean Water Act

Water Quality Monitoring Program Indicators

- D.3.9 Tribe has completed a water quality assessment report that analyzes water quality issues impacting the tribe and evaluated water pollution control options (e.g., identifies dischargers and types/amounts of discharge, defines potential human health and environmental impacts of current water quality, provides recommendations for action, identifies water program financial needs, and identifies water quality program goals, objectives, and milestones).
- D.3.10 Tribe has developed a water quality monitoring strategy.
- D.3.11 Tribe has developed quality assurance project plan (QAPP) associated with the water quality monitoring strategy.
- D.3.12 Tribe has established data management functions for its water quality monitoring data, including a program to collect and upload all required quality assured surface monitoring data into WQX/STORET database where applicable.
- D.3.13 Tribe has developed a water quality monitoring program.
- D.3.14 Tribe has submitted complete TAS package for 106 grant eligibility.

Nonpoint Source (NPS) Program Indicators

- D.3.15 Tribe has worked with other stakeholders in the watershed to develop a watershed based plan that identifies nonpoint source pollution problems and options for best management practices.
- D.3.16 Tribe has submitted an eligibility package for CWA Section 319, including a TAS package and a Nonpoint Source Assessment Report and Management Plan.

Wetlands Program Indicators

- D.3.17 Tribe has developed a Wetlands Program Plan.
- D.3.18 Tribe has developed a wetlands protection program pursuing one or more of the core wetland program elements (Monitoring & Assessment, Regulation, Voluntary Restoration & Protection, and Water Quality Standards for Wetlands).

Water Quality Standards Indicators

- D.3.19 Tribe has developed and promulgated tribal water quality standards, including designated uses for tribal waters.

Indicators for Impaired Waters Identification/Listing and Total Maximum Daily Loads (TMDLs) Programs

- D.3.20 Tribe has established a program to provide water quality-related data and information on geographically-relevant waters to EPA.
- D.3.21 Tribe has established a program to review and comment on water quality reports, TMDLs, and other watershed-based planning efforts undertaken by other government agencies (federal, state, local, or tribal).
- D.3.22 Tribe has established a program to assess water quality conditions, including comparing water quality monitoring information and data against applicable water quality standards.

Water Quality Permitting, Compliance, and Enforcement Program Indicators

- D.3.23 Tribe has established a program to assist EPA with implementing the federal CWA programs (e.g., compliance assurance activities for regulated entities, obtaining federal inspection credentials to inspect regulated entities, and assisting EPA to draft permits for regulated entities).
- D.3.24 Tribe has developed the funding structure and legal framework (e.g., laws, codes, and/or regulations with effective enforcement provisions that are at least as stringent as the CWA) to implement a permit program.
- D.3.25 Tribe has established a program to permit facilities discharging to tribal waters.
- D.3.26 Tribe has established a program to provide compliance assurance (including inspections) and enforcement for a tribal permit program.

Indicators to pursue only if seeking EPA-approved CWA TAS authority

- D.3.27 Tribe has developed and submitted a TAS package for EPA-approved WQS program.
- D.3.28 Tribe has developed and submitted a TAS package for EPA-approved NPDES program.
- D.3.29 Tribe has developed and submitted a TAS package for a CWA Section 401 certification program.
- D.3.30 Tribe has developed and submitted a TAS package for a CWA Section 404 dredge and fill permit program.
- D.3.31 Tribe has established a program (including modeling) to develop TMDLs and other water quality based planning efforts.
- D.3.32 EPA-approved Water Quality Standards are in place.
- D.3.33 Tribe has established program to monitor federally-approved surface and/or wetlands water quality standards and perform triennial review.

Indicators Related to the Safe Drinking Water Act

Ground Water and Source Water Protection Program Indicators

- D.3.34 Tribe has delineated source water protection areas.
- D.3.35 Tribe has developed source water assessment and protection plan/wellhead protection plans for community water supplies.

Drinking Water Permitting, Compliance, and Enforcement Program Indicators

- D.3.36 Tribe has established a program to assist EPA with implementing the federal Public Water System Supervision (PWSS) program (e.g., compliance assurance activities, obtaining federal inspection credentials, and assisting EPA to draft permits).
- D.3.37 Tribe has established a program to assist EPA with implementing the federal Underground Injection Control (UIC) program (e.g., compliance assurance activities, obtaining federal inspection credentials, and assisting EPA to draft permits).
- D.3.38 Tribe reports quality assured Underground Injection Control (UIC) inventory information to EPA (especially Class V wells).

Indicators to pursue only if seeking EPA-approved SDWA program delegation authority

- D.3.39 Tribe has developed the funding structure and legal framework (e.g., laws, codes, and/or regulations with effective enforcement provisions that are at least as stringent as the SDWA) to implement the primary drinking water enforcement program (primacy).
- D.3.40 Tribe has primacy for implementing the Public Water Supervision System (PWSS) program (SDWA Section 1451).
- D.3.41 Tribe has developed and submitted a draft authorization package to EPA for approval to enforce federal UIC requirements and manage injection wells on tribal lands.
- D.3.42 Tribe has primacy for implementing Underground Injection Control wells regulatory program.

E: Building Solid Waste, Hazardous Waste, and Underground Storage Tank Capacities

E.1 EPA's Solid Waste, Hazardous Waste, and Underground Storage Tank Programs

GAP funding related to tribal solid and hazardous waste programs is unique in that the GAP statute provides EPA with the authority to fund both the development of program capacity as well as program implementation in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).⁴² Agency priorities for resources applied to tribal solid waste programs will be consistent with both the GAP Guidance and the Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes (Plan). Therefore, each fiscal year regions should review GAP assistance agreement work plans for consistency with the priorities expressed in the Plan. The GAP Guidance and Plan are dynamic documents subject to further refinement as priorities and resources change.

The Resource Conservation and Recovery Act (RCRA) is the primary federal law for managing solid waste, hazardous waste, and Underground Storage Tanks (USTs). The law was originally enacted in 1976, amending the Solid Waste Disposal Act of 1965, and has been subsequently amended. The federal hazardous waste regulations under RCRA Subtitle C apply to all facilities generating and managing hazardous wastes. Under RCRA Subtitle D, EPA has established nationally applicable criteria for non-hazardous waste disposal facilities.⁴³ Under RCRA Subtitle I, EPA has established criteria for the operation and closure of USTs and Leaking USTs (LUSTs). Also pursuant to RCRA, EPA promotes sustainable materials management, including pollution prevention and environmentally-sound recycling. Sustainable materials management uses a “cradle-to-cradle” approach to focus on the full life cycle of materials including how they can be reinvested and reincorporated into manufacturing, thus reducing the use of virgin materials. For more information on RCRA, visit: <http://www.epa.gov/epawaste/index.htm> and <http://www.epa.gov/oust/tribes/index.htm>

Under RCRA, EPA implementation activities include: (1) issuing permits to hazardous waste treatment, storage, and disposal facilities; (2) issuing RCRA identification numbers to facilities that handle (generate, store, treat, transport, etc.) hazardous waste; (3) conducting compliance assurance (including inspections) and enforcement at facilities subject to the hazardous waste or UST requirements; (4) accepting required notifications from regulated UST owner/operators; (5) directing corrective action activities at facilities subject to the hazardous waste or UST requirements; and (6) exercising enforcement options as necessary under RCRA, including: RCRA § 7003⁴⁴ (which allows EPA to

⁴² The Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(f).

⁴³ 40 C.F.R. Parts 257 and 258.

⁴⁴ Guidance on the Use of Section 7003 of RCRA, U.S. EPA Office of Enforcement and Compliance Assurance, October 1997 (<http://www.lb7.uscourts.gov/documents/08-34331.pdf>).

respond to conditions at non-hazardous waste facilities which may present an imminent and substantial endangerment to health or the environment) or § 4005(c)(2).⁴⁵

In 1994, Congress passed the Indian Lands Open Dump Cleanup Act of 1994 (25 U.S.C. § 3901-3908).⁴⁶ The Act authorizes the Indian Health Service (IHS), in cooperation with EPA, to develop and maintain an inventory of open dumps and an assessment of the relative severity of the threat posed by each dump. The IHS uses the Web Sanitation Tracking and Reporting System (w/STARS) database to inventory sanitation infrastructure deficiencies, including open dumps in tribal areas.

EPA's RCRA Information system (RCRAInfo) is a national program management and inventory system that maintains information on hazardous waste generators, transporters, treatment facilities, storage facilities, and disposal facilities. To access RCRAInfo, please visit <http://www.epa.gov/enviro/facts/rcrainfo/index.html>. EPA regional offices maintain UST inventories for each tribal land area.

Tribal governments have opportunities to partner with EPA in its RCRA activities under the Subtitle C (hazardous waste) and I (UST) programs. As appropriate, EPA regional offices can utilize Direct Implementation Tribal Cooperative Agreements (DITCAs), memoranda of agreement, program funding, or other mechanisms to provide for tribal participation in the implementation of the RCRA hazardous waste and UST programs. Examples of activities that tribal staff may be able to engage in with EPA include: (1) assisting the Agency to develop/update an inventory of facilities subject to federal compliance requirements; (2) conducting compliance assistance activities for inventoried facilities; (3) obtaining federal inspection credentials to inspect facilities on behalf of EPA; (4) assisting EPA to draft facility permits; and (5) assisting EPA to provide oversight of corrective actions.

Key sources of tribal-related program guidance include:

- “The Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes” (Date TBD)
<http://www.epa.gov/epawaste/wyl/tribal/capacityassist.htm>
- “OSWER Tribal Strategy: EPA and Tribal Partnership to Preserve and Restore Land in Indian Country,” November 2008.
http://www.epa.gov/oswer/tribal/pdfs/oswer_tribal_strategy.pdf
- “Tribal Decision Makers Guide to Solid Waste Management,” November 2003
<http://www.epa.gov/epawaste/wyl/tribal/tribalguide.htm>
- “The Five Elements of a Tribal Integrated Waste Management Plan,” July 2007
(<http://yosemite.epa.gov/osw/rcra.nsf/6f3756c16d517d7185256f2a007818ee/e7661f353791ad71852573780050876e!OpenDocument>)

⁴⁵ Guidance on Using RCRA Section 4005(c)(2) to Address Uncontrolled Waste Dumps in Indian Country, U.S. EPA Office of Enforcement and Compliance Assurance, March 2007.
(<http://www.epa.gov/compliance/resources/policies/civil/rcra/rcrasection4005c2-guidance.pdf>)

⁴⁶ The Indian Lands Open Dump Cleanup Act of 1994 can be found at:
http://www.gsa.gov/graphics/pbs/INDIAN_LANDS_OPEN_DUMP_CLEANUP_ACT_OF_1994.pdf

- “Building a Tribal Solid Waste Program”
http://www.epa.gov/region10/pdf/tribal/igapfy13/attachment_B_building_a_tribal_solid_waste_program.pdf
- “Sustainable Materials Management”
<http://www.epa.gov/epawaste/conservesmm/index.htm>
- “Report to Congress on Implementing and Enforcing the Underground Storage Tank Program in Indian Country,” August 2007.
http://www.epa.gov/oust/fedlaws/rtc_finalblnkpgs.pdf
- “Strategy for an EPA/Tribal Partnership to Implement Section 1529 of the Energy Policy Act of 2005,” August 2006. <http://www.epa.gov/oust/fedlaws/tribal-strat-080706r.pdf>
- RCRA Compliance Monitoring Policies and Guidance
<http://epa.gov/compliance/resources/policies/monitoring/index.html#rcra>
- “Underground Storage Tank Enforcement Compendium,” May 2009
http://www.epa.gov/oecaerth/resources/policies/federalfacilities/enforcement/civil/ust_compendium.pdf

E.2 Program Capacity Building: Planning, Developing, and Establishing Tribal Waste Management and Underground Storage Tank Program Capacity

Tribal environmental departments develop waste management program capacity through a range of planning and development activities. Section E.3 provides a non-exclusive list of tribal environmental protection program capacity indicators that EPA will use to evaluate progress under the GAP. In general, GAP funding should be used to build the applicable tribal environmental program capacities; once capacity is established, tribes may seek funding to support more complex program development and implementation while continuing to use GAP resources for ongoing capacity building activities.

EPA’s main tribal solid waste priority is the promotion of sustainable tribal waste management programs through the development and implementation of Integrated Waste Management Plans (IWMPs).

EPA will focus GAP funding on this priority. An IWMP outlines a tribe’s overall long-term approach for managing waste and serves as a roadmap for developing an effective waste management program. IWMPs also provide tribes with a way to identify waste management funding needs, investigate potential funding sources, and allocate resources accordingly. By promoting the adoption of effective cradle-to-grave regulatory oversight, IWMPs also help tribes address existing open dumps and prevent new open dumps. GAP funding should first be used to establish tribal waste management program capacities like the ones described in Section E.3; tribes may then transition to program implementation.

In addition to the GAP, Appendix V provides a list of other potential sources of EPA funding related to RCRA activities. More detailed descriptions of Agency funding resources may be found in the Plan.

The first stage in developing an IWMP is to develop the necessary expertise and skills to identify, address, and manage the solid and hazardous waste issues facing the community. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on waste management issues, and using this information to make decisions on further development of a waste management program. The specific capacities described in Section E.3 that a tribe may wish to establish with GAP funding should be based on the presence or absence of certain facilities or activities on tribal land. For example: solid waste landfills; open or unauthorized waste dumps; hazardous waste generators, transporters, or disposal facilities; transfer stations; and USTs. Tribes may use GAP funds for any activity identified in an approved work plan designed to establish an applicable capacity indicator; tribes may not need to develop all the capacities described below.

E.3 Indicators of Tribal Waste Management and UST Program Capacity

- E.3.1 Tribe has established a staffing plan (position description and recruitment/retention/promotion plan) for who will serve as tribal waste management program coordinator(s).
- E.3.2 Staff has completed appropriate training and acquired baseline knowledge and skills related to the relevant areas of RCRA (become familiar with the major goals, programs, and requirements of the RCRA; the national structure for implementing the RCRA; and the EPA regional personnel and organization).
- E.3.3 Tribe has established a program to meaningfully participate in waste management programs administered by other tribal, federal, state, or local governments (including reviewing and commenting on waste disposal facility permits and applicable waste management regulations).
- E.3.4 Tribe is receiving funding under the RCRA or other related EPA media specific program.
- E.3.5 Tribe is conducting community education and outreach activities to assess community knowledge and interest in source reduction, alternatives for managing household hazardous waste, recycling, composting, and the use of green materials in tribal construction and to promote the use of such integrated solid waste management systems.
- E.3.6 Tribe has completed a waste assessment (e.g., a waste stream characterization study of the solid and hazardous waste management practices, facilities, and issues in the community; effectiveness of current waste management system(s); waste collection and disposal options; and associated costs).
- E.3.7 Tribe has a tribally-approved Integrated Waste Management Plan (IWMP).
- E.3.8 Tribe has established a program to provide waste minimization, recycling, household hazardous waste collection, used oil collection, junk vehicle removal, bulk waste/appliance/electronic waste collection, and/or composting.
- E.3.9 Tribe has established co-management roles through an intergovernmental agreement with a municipal government (e.g., Memorandum of Understanding or other mechanism) regarding landfill management where both governments have a stake.

- E.3.10 Tribe has completed a solid waste facility plan/feasibility study.
- E.3.11 Tribe has completed an open dump inventory and submitted to EPA and IHS for inclusion in the w/STARS database (including: GPS location; estimated size/volume; contents/type of waste; estimated distance to nearest homes, surface water and groundwater; estimated project costs; and site name).
- E.3.12 Sites included in the open dump inventory have a health hazard ranking score.
- E.3.13 Tribe has coordinated with EPA to ensure accuracy of EPA's regulated hazardous waste facility inventory and operating status.
- E.3.14 Tribe has coordinated with EPA to ensure accuracy of EPA's regulated UST & LUST facility inventory and operating status.
- E.3.15 Tribe has established capacity to provide information to EPA that may be used to conduct compliance monitoring inspections or in a RCRA § 3008, § 7003, § 4005(c)(2), or § 9006 enforcement action.
- E.3.16 Tribe has established a program to assist EPA with implementing the federal RCRA program(s) (e.g., assisting the Agency to conduct compliance assistance activities for regulated entities, obtaining federal inspection credentials to inspect regulated entities, and assisting EPA to draft permits for regulated entities).
- E.3.17 Tribe has enacted waste management and/or UST laws, codes, and/or regulations with effective compliance assurance and enforcement mechanisms (including anti-littering provisions and protocols to address small-scale dumping/burning activities; siting/operating requirements for USTs that are at least as stringent as the federal program).
- E.3.18 Tribe has established a compliance monitoring and enforcement strategy for the tribe's solid and hazardous waste management laws, codes, and/or regulations.
- E.3.19 Tribe has established mechanisms to assure a financially sustainable waste management program, including financing for trash collection services (e.g., fee for service, tribal government funding of trash collection services, or other cost recovery systems).
- E.3.20 Tribal staff is leading circuit rider, train the trainer, and peer-match programs.

E.4 Program Implementation: Tribal Waste Management and UST Program Implementation

Once a tribe has established a waste management program that is generally consistent with the applicable indicators described above, GAP funds may be used for the following implementation activities in order of priority: (a) program administration; (b) compliance and enforcement; (c) solid waste management, resource recovery, and resource conservation support; and (d) cleanup and closure.

(a) Tribal Waste Management Program Administration. Program administration generally includes all administrative oversight functions to ensure proper program implementation (e.g., financial management, human resources management, program performance evaluation, scheduling). Program administration and oversight do not generally include the costs of facility operation and maintenance or general

government services normally provided to the general public, such as fire and police.⁴⁷ Under GAP, this restriction on government services includes trash collection, transportation, backhaul, and disposal services which are generally outside the scope of programs administered by the EPA.⁴⁸ In limited circumstances, EPA may exercise discretion and grant an exception to this restriction on government services by approving the use of GAP funds for waste management services for up to two years for a grant recipient that has established a waste management program consistent with Sections E.2 and E.3 above. An applicant seeking approval to use GAP funds for waste management services under this exception must demonstrate that no other resources for such services are currently available and document the actions they will take during the approved grant period to establish sustainable funding for collection, transportation, backhaul and/or disposal services. Regional offices will evaluate requests to use GAP resources for solid waste services and will submit the request to the AIEO Director and their justification for a recommended approval or non-approval of the request. AIEO will make the determination on the recommendation within 30 days and in consultation with Office of Solid Waste and Emergency Response (OSWER).

(b) Tribal Compliance and Enforcement Programs. Tribes are not eligible for authorization to administer a RCRA Subtitle C hazardous waste or Subtitle I UST program, nor may tribal programs be approved by EPA under RCRA Subtitle D. However, under EPA policy and consistent with EPA's role as a regulatory agency, GAP may fund implementation activities associated with tribal waste management laws, codes, and/or regulations, such as compliance assurance (including inspections) and enforcement consistent with the extent of their authorities. In addition, GAP may fund tribes to support compliance with federal requirements, including: (1) compliance assurance (including inspections) under tribal authority at non-hazardous waste disposal facilities to help verify that such facilities are in compliance with 40 C.F.R. Part 257 and/or Part 258; (2) compliance assistance and inspections to help verify that hazardous waste generators are in compliance with 40 C.F.R. Parts 261 and/or 262; or (3) compliance assurance (including inspections) to help verify that hazardous waste transporters are in compliance with 49 C.F.R. Parts 172, 173, 178, and 179. In accordance with a tribally approved IWMP, tribes may also use GAP funds to conduct community outreach and education programs on solid waste, hazardous waste, source reduction and diversion, and USTs.

(c) Activities to Support Solid Waste Management, Resource Recovery, and Resource Conservation. Consistent with RCRA § 4008, activities funded under

⁴⁷ 2 C.F.R. § 225, Appendix B(19)(a)(5): "Cost Principles for State, Local, and Indian Tribal Governments."

⁴⁸ "Any general assistance under this section shall be expended for the purpose of planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency and specified in the assistance agreement. Purposes and programs authorized under this section shall include the development and implementation of solid and hazardous waste programs for Indian lands. [...] Such programs and general assistance shall be carried out in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)." Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(f).

GAP may include: facility planning and feasibility studies; expert consultation; surveys and analysis of market needs; marketing of recovered resources; technology assessments; legal expenses; construction feasibility studies; source separation projects; and fiscal or economic investigations or studies but shall not include any other element of construction, or any acquisition of land or interest in land, or any subsidy for the price of recovered resources.⁴⁹ Activities that are part of a sustainable waste management program designed to increase waste source reduction, recycling, composting, and sustainable materials management are also allowable under GAP. Under EPA policy, the operation and maintenance of solid waste facilities and trash collection services are not deemed to be eligible for GAP funding; however, program administration and oversight as described in paragraph (a) above may be eligible. Further, the purchase, repair, upgrade, and replacement of resource recovery, resource conservation, and source separation supplies and equipment (e.g., vehicles, scales, containers, crushers, shredders, sheds, fencing, and signage) may be eligible for GAP funding. Similarly, the construction, repair, upgrade, and replacement of source separation facilities (e.g., transfer stations, recycling centers, compost facilities, household hazardous waste collection facilities, bulk waste/appliance/electronic waste collection facilities; construction and demolition debris facilities, used oil collection stations, and other similar facilities) may also be funded under GAP.

(d) Cleanup and Closure Activities. Unauthorized dumping of solid waste is typically a symptom of inadequate access to, or citizen participation in, integrated and sustainable waste minimization, recycling, collection, and disposal programs. As a result, funding cleanup activities prior to establishing and implementing an effective program seldom results in lasting changes to a community's waste disposal practices. While GAP funds may be used to implement solid and hazardous waste programs consistent with the GAP statute,⁵⁰ including cleanup activities, GAP will remain focused on supporting tribal government efforts to develop a sustainable program designed to address and prevent new, or recurring, unauthorized dumping on tribal lands. IHS is the primary federal agency responsible for identifying, assessing and funding open dump cleanups and closures.⁵¹

Regional offices will evaluate requests to use GAP resources for cleanup activities described below in Section E.4(d)(i-iii) and will submit the request to the AIEO Director with supporting documentation, including assurance that the tribe has adequate administrative controls to oversee the cleanup, and their justification for a recommended approval or non-approval of the request. AIEO will make the determination on the recommendation within 30 days and in consultation with the appropriate EPA program office(s) (e.g., the Office of Solid Waste and Emergency Response, the Office of Enforcement and Compliance Assurance, and the Office of General Counsel).

⁴⁹ 42 U.S.C. § 6948(a)(2)(A).

⁵⁰ The Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(f).

⁵¹ Consistent with the Indian Lands Open Dump Cleanup Act of 1994, EPA works cooperatively with the IHS to develop the inventory and evaluate open dumps, as requested. 25 U.S.C. §3904.

(i) Cleanup and Closure Activities for Established Tribal Programs

Cleanup or closure activities may be eligible for funding under GAP after the tribe has established a program and demonstrated the following program capacity indicators: E.3.5, E.3.6, E.3.7, E.3.8, E.3.17, and E.3.18.⁵² EPA decisions on funding cleanup and closure activities should be consistent with the tribal waste program priorities as defined in the Plan. If funded, cleanup and closure work should include documentation on the amount of waste removed/recycled, the types of wastes removed, and the disposition of the waste.

(ii) Cleanup and Closure Activities for Tribal Programs under Development

Cleanup or closure activities may be eligible for funding under GAP when the tribe has demonstrated that they are substantially pursuing tangible elements of the following actions towards building a sustainable waste management program:

- Conducting a characterization study of the waste streams a tribe generates and an assessment of current waste management practices.
- Conducting solid waste facility planning and feasibility studies.
- Developing an IWMP for approval by the tribe's governing body.
- Developing waste management laws, codes, ordinances, or regulations within the scope of their authority.
- Developing and implementing a compliance monitoring and enforcement program and/or other mechanisms to identify and respond to illegal dumping activity.
- Conducting community outreach and/or environmental education on waste management programs.

(iii) Cleanup and Closure Activities Where No Tribal Program is being Developed

Where a tribe does not have an established program as described above, or is not substantially pursuing tangible elements of the above actions, EPA will not prioritize providing financial assistance, including GAP funds, for the cleanup or closure activities *unless* the open or unauthorized dump presents an imminent and substantial endangerment to human health or the environment.⁵³ Where this standard is met, AIEO will as part of their approval process, consult with OSWER and OECA. This is consistent with the coordinated approach described in the Plan and will ensure proper EPA involvement and oversight of cleanups where there is an imminent and substantial endangerment to human health and the environment.

⁵² To help protect human health and the environment, EPA may consider approving GAP funding for cleanup activities for tribes with limited jurisdiction that have not developed E.3.17 and E.3.18, on a case-by-case basis.

⁵³ This standard is consistent with RCRA §7003 (42 U.S.C. § 6973) and is applied here as a matter of policy to guide the use of GAP resources for open dump cleanup and closure actions.

F: Building Tribal Contaminated Site Remediation and Emergency Response Program Capacities

F.1 EPA's Comprehensive Environmental Response, Compensation and Liability Act; Emergency Planning, Community Right-to-Know Act; and Small Business Liability Relief and Brownfields Revitalization Act Programs

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, is the primary federal law that ensures responses to releases or threatened releases of hazardous substances that may endanger public health or the environment. The law was originally passed in 1980 and amended in 1986 by the Superfund Amendments and Reauthorization Act. CERCLA authorizes responses to address releases requiring prompt response and actions to address dangers associated with releases or threats of releases to the environment that are not immediately life-threatening. EPA can fund remedial actions under CERCLA only at sites listed on the National Priorities List, which is a list of national priorities among the known releases or threatened releases from uncontrolled or abandoned hazardous waste sites. The CERCLA provides EPA with authority to ensure cleanup and payment for cleanup. If a responsible party does not agree to do the cleanup, EPA can issue an order to do certain work, or work with the Department of Justice to pursue the party through the federal court system. If a party is out of compliance with an order or settlement, the Superfund enforcement program takes action to bring them into compliance. For more information on CERCLA, visit: <http://www.epa.gov/superfund>.

The Emergency Planning and Community Right-to-Know Act (EPCRA) establishes hazardous chemical emergency planning and reporting requirements for federal, state and local governments, Indian tribes, and industry. The right-to-know provisions are designed to increase the public's knowledge and access to information on hazardous substances at specific facilities, their uses, and releases into the environment. Government entities use this information to prepare for and respond to emergencies involving hazardous substances. For more information, visit: <http://www.epa.gov/ceppo/web/content/epcra/>.

The Small Business Liability Relief and Brownfields Revitalization Act, commonly referred to as the Brownfields law, provides CERCLA liability relief for certain property owners and small businesses, and limits CERCLA enforcement authority at sites remediated under state or tribal voluntary cleanup programs. The Act also significantly expands federal grant authority to increase Brownfields redevelopment. Noncompetitive CERCLA § 128(a) State and Tribal Response Program grants fund tribes to establish and enhance a response program which can include addressing contaminated lands. The competitive brownfields grants such as the Assessment, Revolving Loan Fund, and Cleanup, and Environmental Workforce and Job Training Grants are open to all tribes except those in Alaska. For more information on Brownfields, visit: <http://epa.gov/Brownfields/laws/2869sum.htm>.

EPA implementation activities include: (1) maintaining and updating the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)

database to reflect newly identified sites where contaminants are suspected to have been released or new actions at existing sites; (2) response actions to address clean-up of hazardous substances; (3) response and post-clean up monitoring at sites on the National Priorities List (NPL); and (4) compliance assistance and enforcement actions to ensure that required EPCRA reports are submitted to formal EPCRA organizations.

CERCLIS contains information on hazardous waste sites, potentially hazardous waste sites, emergency response or removal sites, and remedial activities across the nation, including NPL sites or sites that are being considered for the NPL. The information is updated by the EPA regional offices. The data describes what has happened at Superfund sites, identifies involved parties (other federal agencies, states, and tribes), and includes information on human exposure, ground water migration, and construction status.

While there is no national database of Brownfield sites, an important component of the Brownfields Program is the development of site inventories. Tribal Response Program grants can be used to survey and develop brownfield inventories, many of which can be accessed online. Tribal staff may be aware of other facilities that may be subject to regulation under CERCLA or EPCRA.

In addition to participating in the federal CERCLA and EPCRA schemes for remediating contaminated sites and providing emergency response, tribes may use GAP funds to develop their own programs consistent with their own priorities and authorities.

Tribes may request delegation of federal authority under CERCLA and EPCRA and can form agreements with EPA to become involved in decision-making concerning CERCLA sites, including assuming the lead role for site assessment or long-term cleanup of sites. In addition, tribes concerned about contaminated federal facilities can partner with other federal agencies, such as the Department of Defense and Department of Energy, through advisory boards and committees to help make site decisions.

Under EPCRA, tribal governments have the lead role in ensuring an EPCRA-compliant emergency preparedness/response organization covers the tribe. Tribes can establish Tribal Emergency Response Commissions (TERCs), join existing Local Emergency Planning Committees (LEPCs), or coordinate with State Emergency Response Commissions (SERCs) to draft and implement an Emergency Response Plan.

Under Brownfields, tribes are co-regulators for many of the program aspects that address contaminated lands. In many instances tribes can serve as the lead for assessment or cleanup of brownfield sites. State and Tribal Response program funding can be used to establish and enhance programs to address contaminated sites, development of necessary codes and regulations, brownfields assessment and cleanup (including open dumps that meet the definition of a brownfields site), development of emergency response programs, and/or receive technical assistance such as job training. Brownfields grants are also available to assess and clean up brownfields sites.

Key sources of program guidance include:

- “OSWER Tribal Strategy: EPA and Tribal Partnership to Preserve and Restore Land in Indian Country,” November 2008.
http://www.epa.gov/oswer/tribal/pdfs/oswer_tribal_strategy.pdf
- Funding Guidance for State and Tribal Response Programs Fiscal Year 2013
http://www.epa.gov/swerosps/bf/state_tribal/fund_guide.htm
- “Tribal Brownfields and Response Programs: Respecting Our Land, Revitalizing Our Communities,” 2011. http://www.epa.gov/swerosps/bf/state_tribal/pubs.htm
- “Plan to Enhance the Role of States and Tribes in the Superfund Program,” Chapter 4: Tribal Recommendations, March 1998.
<http://www.epa.gov/superfund/partners/osrti/pdfs/chapt4.pdf>
- Emergency Planning and Community Right-to-Know Act (EPCRA) Local Emergency Planning Requirements. http://www.epa.gov/osweroe1/content/epcra/epcra_plan.htm
- “Guidance for Preparing Tribal Emergency Response Plans,” September 2004.
http://www.epa.gov/oswer/tribal/pdfs/guidance_for_preparing_tribal_erps.pdf

F.2 Establishing Tribal Programs Related to CERCLA, EPCRA, and Brownfields

This subsection provides a “road map” for tribes and outlines a non-exclusive list of tribal environmental protection program capacity indicators that EPA will use to evaluate progress under the GAP. The subsection describes in general terms the types of indicators that tribes and/or inter-tribal consortia could undertake with GAP funding to address issues related to CERCLA, EPCRA, or Brownfields. In general, GAP funding should be used to build baseline environmental program capacities; once capacity is established, tribes may seek funding under EPA’s media-specific programs to support more complex program development and implementation while continuing to use GAP resources for ongoing capacity building activities.

The first stage in developing a tribal site response program is to develop the necessary expertise and skills in order to establish an appropriate response planning committee, evaluate the threats from contaminated sites, evaluate the options for tribal programs, and develop partnerships with appropriate federal agencies to address contamination. Tribal capacity-building activities should focus on: (1) assigning staff; (2) acquiring initial training; (3) compiling relevant data on which the tribe can make program development decisions; (4) engaging the tribal community on contaminated land issues; and (5) using this information to make decisions on further development of a tribal site response program.

After building fundamental program capacities related to CERCLA, EPCRA, and Brownfields Tribal Response Program, and evaluating the type of related issues that may be facing the community, tribes may consider undertaking efforts to establish programs to address these issues. Tribes and inter-tribal consortia are encouraged to seek funding support under EPA’s media-specific programs where appropriate.

F.3 Indicators of Tribal Emergency Response and Remediation Program Capacity

- F.3.1 Tribe has established a staffing plan (position description and recruitment/retention/promotion plan) for who will serve as tribal program coordinator(s).
- F.3.2 Staff has completed appropriate training and acquired baseline knowledge and skills related to CERCLA, EPCRA, and Brownfields (e.g., become familiar with the major goals, programs, and requirements in CERCLA, EPCRA, and Brownfields Tribal Response Program; the national structure for implementing these programs; and the EPA regional personnel and organization).
- F.3.3 Tribal response staff has completed and developed proficiency in OSHA-required HAZWOPER baseline and annual refresher training to qualify them to safely respond to spills and emergency incidents, and other appropriate training (e.g., acquire certification in an Incident Command System (ICS) course).
- F.3.4 Tribal staff has completed and developed proficiency in All Appropriate Inquiries (EPA 40 C.F.R. § 312), Phase 1 ESA (ASTM E 1527-05), and ECM 10-2 (Department of Interior).
- F.3.5 Tribe has established mechanisms to provide meaningful opportunities for public participation / community involvement to identify contamination concerns and/or solicit input on site cleanup decisions.
- F.3.6 Tribe is meaningfully participating in programs administered by other tribal, federal, state, or local governments (including reviewing and commenting on cleanup and response standards/plans).
- F.3.7 Tribe has completed a site inventory of properties of environmental concern and identified potential EPA program(s) associated with the sites.
- F.3.8 Tribe has established an EPCRA compliant tribal emergency planning organization (TERC, LEPC members, or SERC coordination).
- F.3.9 Tribe has established program to conduct emergency response training and exercises for community members (e.g., orientation seminars to review the contents of the emergency response plan; table tops drills to verify understanding of notification procedures and response actions; and field exercises to ensure that response personnel are familiar with equipment and responsibilities).
- F.3.10 Tribe has established a program to receive and manage material safety data sheets under EPCRA's Hazardous Chemical Storage Reporting Requirements.
- F.3.11 Tribal lands and resources covered by an EPCRA-compliant emergency response plan.
- F.3.12 Tribe has established program to coordinate with state and federal agencies on specific spill response trainings (hands on response to oil and chemical hazards).
- F.3.13 Tribe is conducting, alone or in collaboration with other governmental entities, annual hazmat or oil spill incident exercises (tabletop, functional or full-scale).
- F.3.14 Tribe is receiving funding under CERCLA, EPCRA, or Brownfields.

- F.3.15 Tribe has enacted laws, codes, and/or regulations establishing oversight and enforcement authority to address contaminated sites, including emergency response authority.
- F.3.16 Tribe has promulgated cleanup standards for soil, surface water, and groundwater to guide response and remediation decisions on contaminated sites (e.g., tribal “Applicable or Relevant and Appropriate Requirements” (ARARs).
- F.3.17 Tribe has established capacity to conduct Phase I and Phase II site assessments.
- F.3.18 Tribe has established program to participate in Department of Defense and Department of Energy advisory boards (Federal Facilities Restoration and Reuse) that involve stakeholders in cleanup decisions.
- F.3.19 Tribe has established support agency cooperative agreements with EPA to provide for tribal input in cleanup decisions at CERCLA sites.
- F.3.20 Tribe has developed MOA/MOU with EPA on implementation of appropriate CERCLA programs.

G: Building Tribal Chemical Safety and Pollution Prevention Program Capacities

G.1 EPA's Asbestos Hazard Emergency Response Act; Federal Insecticide, Fungicide and Rodenticide Act; and Toxic Substances Control Act Programs

The Asbestos Hazard Emergency Response Act (AHERA) is a provision of the Toxic Substances Control Act (TSCA) that was enacted in 1986. The EPA implemented AHERA through the Asbestos-Containing Materials in School rule (40 C.F.R. Part 763(E)). This rule requires local education agencies to inspect public and non-profit private K-12 schools for asbestos-containing building material and prepare management plans to prevent or reduce asbestos hazards. Specific requirements include: performing an original inspection and re-inspection every three years of asbestos-containing material; developing, maintaining, and updating an asbestos management plan and keeping a copy at the school; providing yearly notification to parent, teacher, and employee organizations regarding the availability of the school's asbestos management plan and any asbestos abatement actions taken or planned in the school; designating and training a contact person to ensure the responsibilities of the local education agency are properly implemented; performing periodic surveillance of known or suspected asbestos-containing building material; ensuring that properly accredited professionals perform inspections and response actions and prepare management plans; and providing custodial staff with asbestos-awareness training. To implement AHERA, the Agency provides outreach and compliance assistance, and conducts compliance inspections. For more information on AHERA, visit:

http://www.epa.gov/asbestos/pubs/asbestos_in_schools.html.

In addition to AHERA requirements, the Asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP) under the CAA specifies practices to be followed for renovations or demolition of buildings containing asbestos (40 C.F.R. Part 61(M)).

The Federal Insecticide, Fungicide, and Rodenticide (FIFRA) provides for federal regulation of pesticide distribution, sale, and use. All pesticides distributed or sold in the United States must be registered by EPA. Pesticide use is regulated through the registration program, label requirements, and a compliance assurance and enforcement program. The labeling requirements include directions for use, precautionary statements, environmental hazards, detailed explanations regarding acceptable use sites, and requirements related to pesticide handlers and field workers. It is a violation of FIFRA to use a pesticide in a manner contrary to its labeling. This provision applies to all label requirements, including but not limited to mixing, loading, applying, storage and disposal. Through FIFRA, EPA also addresses the certification and training of restricted use pesticide applicators, and establishes requirements for restricted use pesticide record-keeping. The law was originally passed in 1947, substantially revised in 1972, and amended in 1988, 1996, and 2003. Under FIFRA, the Agency provides compliance assurance (including inspections), takes enforcement actions against violators, provides technical assistance, and conducts education and outreach. For more information on FIFRA, visit: <http://www.epa.gov/lawsregs/laws/fifra.html>.

The TSCA provides EPA with the authority to regulate the importation, manufacture, and use of chemical substances and/or mixtures. It does this through reporting, recordkeeping, and testing requirements, as well as restrictions and bans. TSCA addresses the production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, radon and lead-based paint. TSCA was originally enacted in 1976, and significantly amended in 1986, 1988, and 1992. To implement TSCA, EPA provides outreach and compliance assistance and conducts compliance inspections. For more information on TSCA, visit: <http://www.epa.gov/lawsregs/laws/tsca.html>.

The Residential Lead-Based Paint Hazard Reduction Act's Real Estate Notification and Disclosure Rule requires landlords, property management companies, real estate agencies, and sellers to inform potential lessees and purchasers of the presence of lead-based paint and lead-based paint hazards in pre-1978 housing. This ensures that potential tenants and home buyers are receiving the information necessary to protect themselves and their families from lead-based paint hazards. The Lead-based Paint Activities Training and Certification Rule holds that no individuals or firms can perform lead-based paint activities without certification from EPA. The Renovation, Repair and Painting Rule addresses common renovation activities like sanding, cutting, and demolition that can create hazardous lead dust and chips by disturbing lead-based paint. Under the rule, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified by EPA-approved training providers and must follow specific work practices to prevent lead contamination.

EPA generally is the primary enforcement authority for pesticide use violations in Indian country. Tribes may restrict or prohibit the sale or use of a federally registered pesticide, but may not allow the sale or use of an unregistered product. EPA works cooperatively with tribes to enforce FIFRA, as it does with states and territories. For example, under FIFRA Section 23, EPA may enter into cooperative agreements with tribes. These agreements may include provisions for tribes to assist EPA in ensuring compliance with FIFRA by obtaining federal inspector credentials, conducting inspections, and recommending enforcement actions to EPA.

Under FIFRA and TSCA, EPA regional offices can utilize, as appropriate, Direct Implementation Tribal Cooperative Agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in the implementation of the federal program. Examples of activities that tribal staff may engage in with EPA include: (1) conducting compliance assistance activities for regulated entities; (2) providing technical and compliance assistance, education, and outreach; and (3) obtaining federal inspection credentials to inspect regulated activities.

For many of the activities regulated under TSCA (including AHERA and lead programs) and FIFRA, the Agency does not maintain a national inventory of regulated entities. EPA

regional offices will work closely with tribal staff to identify facilities potentially affecting each tribe that may be subject to the requirements in these federal statutes. While tribal governments cannot operate the federal AHERA program, tribes may seek EPA approval of and subsequently implement certain lead-based paint programs under TSCA and pesticide programs under FIFRA in a manner similar to states. For example, EPA may approve tribal training and certification programs for applicators of restricted-use pesticides.

In addition to participating in the federal AHERA, FIFRA, and TSCA schemes, tribes may use GAP funds to develop their own chemical safety and pollution prevention programs consistent with their own priorities and authorities.

Key sources of program guidance include:

- “Guidance for Funding Development and Administration of Tribal Pesticide Field Program and Enforcement Cooperative Agreements,” January 3, 2011.
<http://www.epa.gov/nscep/index.html>.
- “The National Pesticide Tribal Program: Achieving Public Health and Environmental Protection in Indian Country and Alaska Native Villages.” October 2009.
<http://www.epa.gov/oppfead1/Publications/tribal-brochure.pdf>.
- "Guidance on Basic Elements of an EPA-Funded Tribal Pesticide Program," March 11, 2002.
<http://www.epa.gov/oppfead1/tribes/guidance.htm>.

G.2 Activities Eligible for Funding Under EPA Programs that Support Tribal Capacity Development and/or Implementation of Chemical Safety and Pollution Prevention

This subsection provides a “road map” for tribes and outlines a non-exclusive list of tribal environmental protection program capacity indicators that EPA will use to evaluate progress under the GAP. The subsection describes in general terms the types of indicators that tribes and/or inter-tribal consortia could establish with GAP funding to address issues related to TSCA (including AHERA and lead programs) and FIFRA. In general, GAP funding should be used to build baseline environmental program capacities; once capacity is established, tribes may seek funding under EPA’s media-specific programs to support more complex program development and implementation while continuing to use GAP resources for ongoing capacity building activities.

The first stage in developing programs related to asbestos, lead-based paint, pesticides, and toxics is to develop the necessary expertise and skills to identify, address, and manage any of those issues that may be facing the community. Tribal capacity-building activities should focus on: (1) assigning staff; (2) acquiring initial training; (3) compiling relevant data on which the tribe can make program development decisions; (4) engaging the tribal community on chemical safety and pollution prevention issues; and (5) using this information to make decisions on further development of chemical safety and pollution prevention programs. Based on the presence or absence of certain facilities or activities (for example, pesticide use, residences or child-occupied buildings with lead-based paint), it will not be necessary for all tribes to develop all the capacities below.

After building fundamental program capacities related to the federal asbestos, pesticides, lead-based paint, and toxics programs and evaluating the type of related issues that may be facing the community, tribes may consider undertaking efforts to establish programs to address these issues. Tribes and inter-tribal consortia are encouraged to seek funding support under EPA's media-specific programs where appropriate.

G.3 Indicators of Chemical Safety and Pollution Prevention Program Capacity

- G.3.1 Staff has established a staffing plan (position description and recruitment/retention/promotion plan) for who will serve as tribal program coordinator(s).
- G.3.2 Staff has completed appropriate training and acquired baseline knowledge and skills related to TSCA (including AHERA and lead paint programs), FIFRA, and pollution prevention (e.g., become familiar with: the major goals, programs, and requirements related to TSCA and FIFRA; the national structure for implementing these programs; and the EPA regional personnel and organization).
- G.3.3 Tribe is receiving funding under FIFRA, TSCA, Pollution Prevention Act, or other similar program to support projects or programs related to managing chemical safety and pollution prevention.
- G.3.4 Tribe has completed an asbestos, pesticides, lead-based paint, and pesticides needs assessment that: collects and evaluates existing data on pesticide use and other relevant factors; assesses the need to develop related projects and/or programs; and evaluates short-term and long-term options to address those identified needs.
- G.3.5 Tribal staff has acquired necessary training/accreditation/certification to conduct lead-based paint hazard evaluations at pre-1978 tribal housing/pre-1978 child occupied facilities.
- G.3.6 Tribe has developed Quality Assurance Plan (QAP) to cover sampling and analysis activities and secured EPA approval for QAP before conducting physical sampling, blood testing, or other investigations.
- G.3.7 Tribe has established community outreach/education programs.
- G.3.8 Tribe has established mechanisms to provide meaningful opportunities for public participation / community involvement to identify concerns related to chemical safety and pollution prevention and/or solicit input on decisions.
- G.3.9 Tribe has completed inventory of all pre-1978 target housing and child-occupied buildings and gathered information on the presence of lead-based paint and/or lead-based paint hazards in or around these buildings.
- G.3.10 Tribe has completed an inventory of asbestos (in accordance with the AHERA), pesticides, and toxics in K-12 schools.
- G.3.11 Tribe has adopted a pollution prevention strategy and/or policy (e.g., integrate pollution prevention practices through government services, policies, and initiatives; establish environmentally preferable purchasing standards, green building codes/standards, greenhouse gas emission reduction targets; reduction targets for the use of hazardous materials; establish an integrated

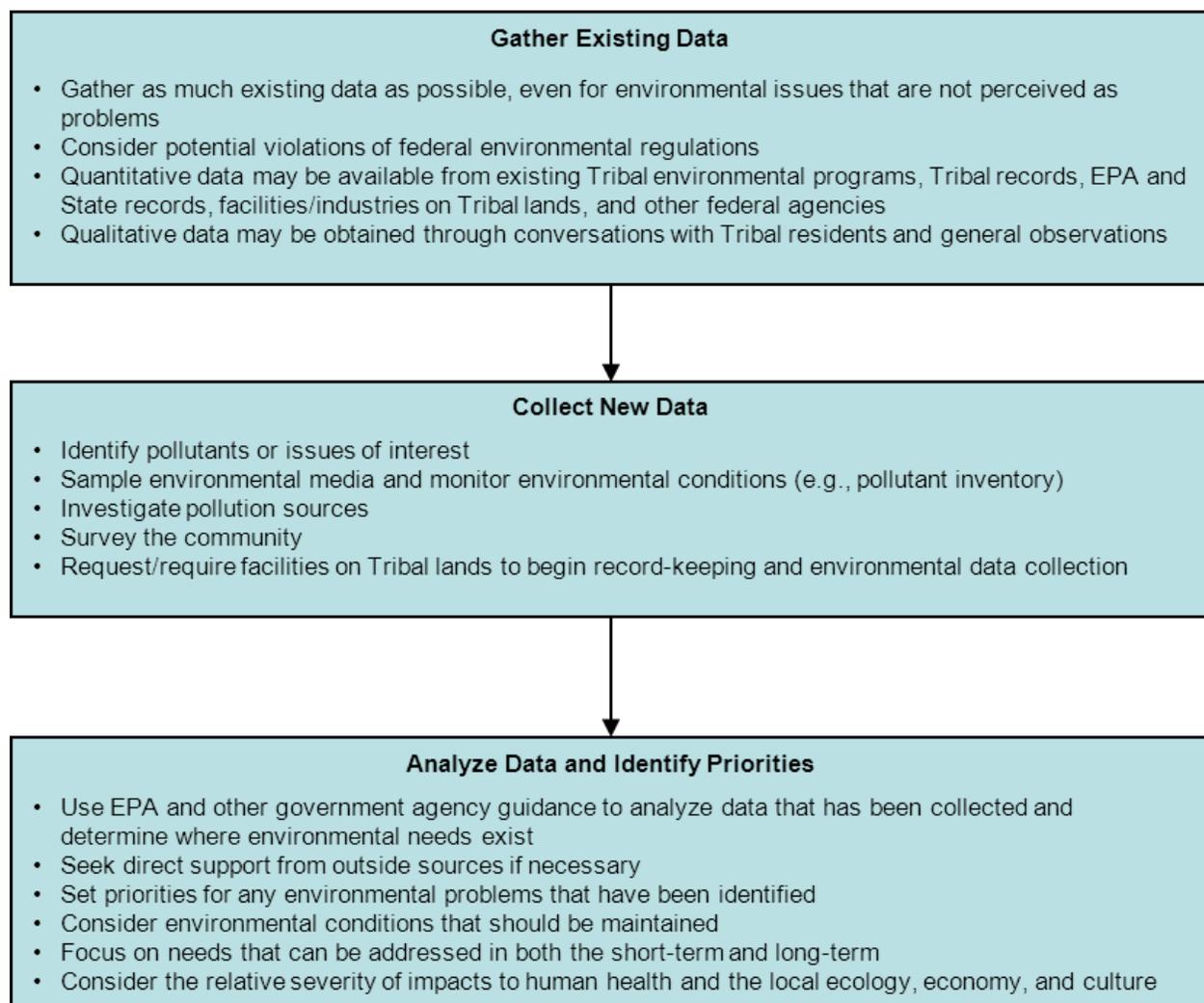
- pest management program; and adopt natural resources protection policies/procedures).
- G.3.12 Tribe is meaningfully participating in programs administered by other tribal, federal, state, or local governments.
- G.3.13 Tribe has established an EPA-tribal MOA/MOU or interagency agreement concerning joint implementation of FIFRA, TSCA, or other authorities.
- G.3.14 Tribe has established a program to implement lead abatement and Renovation, Repair and Painting (RRP) program.
- G.3.15 Tribe has established certification and training plan for restricted use pesticide applicators (commercial and private) to educate applicators and control restricted use pesticides in Indian country.
- G.3.16 Tribe has established a training/accreditation/certification program similar to TSCA Section 402 for individuals and firms engaged in lead-paint activities and for asbestos related accredited training under AHERA requirements (i.e., a model accreditation plan).
- G.3.17 Tribe has established a Pesticides Field Program, including identification of possible pesticide inspection targets and pesticide-specific issues to determine the kind of approach needed to address concerns related to the use and sale of pesticides.
- G.3.18 Tribe has established a pesticides compliance assurance and enforcement program under which a tribal inspector completes all required training and, upon EPA approval, obtains federal credentials to conduct inspections of the regulated community (e.g., pesticide applicators, marketplaces that sell pesticides, etc.) to determine compliance with FIFRA or tribal pesticide regulations.
- G.3.19 Tribe has established a compliance assurance and enforcement program similar to TSCA Section 406(b) that requires distribution of information on lead-based paint hazards.
- G.3.20 Tribe has established a compliance assurance and enforcement program for tribal laws and regulations to manage asbestos, pesticides, toxics, or other chemical risks that are at least as stringent as the applicable federal statutes.
- G.3.21 Tribal staff has capacity to lead circuit rider, train the trainer, and peer-match programs.
- G.3.22 Tribe has enacted tribal laws, codes, and regulations with effective compliance assurance and enforcement provisions to manage asbestos, pesticides, toxics, or other chemical risks that are at least as stringent as the applicable federal statutes.

Appendix II

Baseline Needs Assessment

The diagram below illustrates the types of steps that tribes can take to identify and prioritize the environmental issues they want to address. Such an assessment can help inform a tribe's approach for undertaking protection and restoration efforts. As a tribe develops a more sophisticated environmental program, it may undertake extensive sampling and monitoring efforts. The baseline needs assessment is not meant to be such an extensive data collection effort, but rather a primary step to prioritize general environmental issues.

Conducting a Baseline Needs Assessment



Appendix III

Sample GAP Work Plan: Developing or Updating a Joint EPA-Tribal Environmental Plan

Work Plan Details

Tribe	<i>Recipient Name</i>
Work Plan Period	
Reporting Frequency	
Fiscal Year of Funding Status	
Author(s)	<i>Author Name</i>
Description	

Component #1: Joint EPA-Tribal Environmental Plan

Description	Developing (or Updating) a joint environmental protection plan that identifies long-range environmental capacity development and program implementation goals that are consistent with the GAP capacity indicators and EPA program authorities.
Long-Term Outcome	Increased knowledge of EPA programs, resources, and technical assistance that are aligned with tribal priorities and tribal environmental protection program development goals.
Measures	
Intermediate Outcomes	Identify EPA statutes and regulations applicable to regulated entities in the community. Identify appropriate role for tribe in helping to implement EPA programs. Identify current and needed tribal laws/codes/ordinances/regulations. Identify the long term program development goals and capacity indicators that the tribe will establish.
Estimated Component Cost	
Estimated Work Year (FTE)	
EPA Program Coding	

Commitment #1.1

Description	Work with EPA project officers and programs to identify which EPA statutes and regulations apply to facilities, sites, and activities that may affect the tribe or that are located in close proximity to tribal boundaries
Estimated Cost	

End Date	
Positions	Program Director/Assistant Director
Outputs and Deliverables	List of applicable statutes and regulations

Commitment #1.2

Description	Review, and update with tribal information, EPA’s baseline inventory of regulated entities, sites, or activities that may affect the tribe or that are located in close proximity to tribal boundaries
Estimated Cost	
End Date	
Positions	Environmental Specialist, Program Director/Assistant Director
Outputs and Deliverables	Complete accurate inventory

Commitment #1.3

Description	Identify existing tribal priorities and associated capacity indicators the tribe intends to establish
Estimated Cost	
End Date	
Positions	Program Director/Assistant Director
Outputs and Deliverables	Tribe sends Environmental Priorities document to EPA

Commitment #1.4

Description	Develop (or Update) a joint EPA-Tribal Environmental Plan that includes the following for each of the programs identified under this Commitment: 1) identification of tribal environmental program priorities, including capacity building and program implementation goals; (2) identification of EPA program priorities and management requirements; (3) inventory of regulated entities; and (4) identification of mutual roles and responsibilities.
Estimated Cost	
End Date	
Positions	Administrative Assistant, Program Director/Assistant Director
Outputs and Deliverables	Joint Planning Agreement approved by both the legally authorized tribal leadership and the EPA Regional Administrator

Appendix IV

EPA Water Program Reference Table: Framework for Tribal Water Program Strategic Planning and Development

This reference table is for tribes that intend to establish water programs that are consistent with authorities under the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) and that may pursue, or are already receiving, EPA funding under the CWA or the SDWA in tandem with GAP funds. With careful planning, tribes may initiate activities to establish water programs using GAP funds and continue to enhance their water programs using CWA or SDWA grant funds, provided the activities are consistent with and eligible under CWA or SDWA funding authorities.

The table provides examples of basic activities that are consistent with program guidance under the CWA and SDWA and therefore are generally viewed as eligible for funding under EPA grant programs supporting tribal water programs. The activities are subdivided into CWA and SDWA program areas, and are separated into two columns to distinguish between activities that are typically considered *planning and development* and activities typically considered to be *implementation*.

The table may be useful to:

- Provide a summary view of CWA and SDWA program milestones that tribes can use to plan their water program goals, including short, intermediate, and long-term (i.e., implementation) goals for water programs that are consistent with the CWA and SDWA.
- Provide examples of indicators for building capacity to meet those long-term goals.
- Provide examples of indicators for inclusion in the GAP work plan, which contains the short-term goals, so that the indicators are clearly linked to the longer-term goals.
- Enable the tribe and EPA to have a shared understanding of the path that will be followed to successfully develop tribal environmental program capacity.
- Clarify examples of activities a tribe could pursue based on whether a tribe wants to develop a program under (1) their own tribal authority, (2) a Direct Implementation Tribal Cooperative Agreement (DITCA) with EPA, and/or (3) EPA-approved treatment in a manner similar to a state (TAS) authorization or delegation of primacy.
- Distinguish between program development and program implementation activities for a particular water program area.
- Identify capacity building activities that are generally eligible for funding by EPA.

In general, the planning and development activities in the left hand column are capacity building and therefore may be eligible for GAP funding. In many cases, planning and development activities can also be funded by specific EPA program grants (such as SDWA Section 1451, and CWA Sections 106 and 319).

In general, the ongoing operation and implementation activities in the right hand column are eligible for funding through water program grants.

Tribes should consult with the GAP and water programs to determine the best program planning and funding approach for their specific situation when developing their work plans.

Note: The baseline environmental program capacities listed in the left hand column of the table are consistent with the “capacity indicators” in Appendix 1 of this Guidance, and may be used in GAP work plans.

This table is a non-exclusive list of possible water program planning, development and implementation activities. Tribes should consult with the GAP and water programs, as well as review applicable EPA water program guidance, as appropriate, in determining the types of capacity activities for which to pursue using GAP funding. In addition, please note that: (1) this information is intended as a summary, and despite mandatory language, does not itself contain requirements for the programs described independent of the statutory and regulatory authorities; (2) statutes and regulations control if there is any ambiguity between this information and the requirements contained in statute or regulation; (3) there is no guarantee all eligible entities will be eligible for, or will receive, funding under any specific grant competition or funding announcement.

Tribes may prefer to use other indicators of water program capacity in GAP assistance agreement work plans (i.e., indicators that are not directly related to CWA and SDWA programs), and can work with regions on a tribe-by-tribe basis, reflecting the unique priorities and program development plans of a particular recipient. EPA will rely on the capacity indicators that have been identified in work plans and ETEPs to assess and report on progress in the development of tribal environmental program capacities under the GAP program.

Table 1: Framework of Activities Generally Consistent with EPA CWA and SDWA Authorities and Funding Sources that Support Tribal Water Program Capacity Planning, Development and/or Implementation

Tribal Activities for Water Program Planning and Development	Tribal Activities for Water Program Implementation
Clean Water Act	
<p><u>Water Quality Monitoring Activities</u></p> <ul style="list-style-type: none"> - Identify basic water resources. - Identify water quality and financial needs. - Identify water quality program objectives, goals and milestones. - Begin developing a water quality monitoring strategy. - Begin developing a Quality Assurance Project Plan (QAPP) associated with their water quality monitoring strategy. - Begin developing a database management function for its water quality monitoring data. - Begin conducting water quality outreach and education activities. - Developing TAS Package for 106 grant eligibility. 	<p><u>Water Quality Monitoring Activities</u></p> <ul style="list-style-type: none"> - Implementing and updating a water quality monitoring strategy. - Collecting surface water quality data. - Collecting surface water quality data for the 7 parameters (106 Guidance). - Collecting groundwater quality data. - Provide quality assured surface water monitoring data in a format accessible for storage into EPA's database. - Routinely provide quality assured surface water monitoring data in a format accessible for storage into EPA's STORET database. - Analyze water quality data and determine the status of water quality in tribal waters.

Tribal Activities for Water Program Planning and Development	Tribal Activities for Water Program Implementation
Clean Water Act	
	<ul style="list-style-type: none"> - Complete an annual water quality assessment report.
<p><u>Non Point Source (NPS) Activities</u></p> <ul style="list-style-type: none"> - Determine areas with water quality problems. - Determined watershed-based goals. - Begin developed a Watershed-Based Plan. - Conduct nonpoint source (NPS) outreach and education activities. - Develop TAS Package for 319 grant eligibility. 	<p><u>Non Point Source (NPS) Activities</u></p> <ul style="list-style-type: none"> - Implement Watershed-Based Plan that has been reviewed by EPA Regional staff. - Work with other stakeholders to develop watershed management plan. - Develop/implement voluntary programs and/or specific projects to prevent or mitigate nonpoint source pollution. - Implementing water quality protection and restoration activities. - Applying for 319 competitive funding.
<p><u>Wetlands Activities</u></p> <ul style="list-style-type: none"> - Developing a wetland protection program pursuing one of more of the core wetland program elements. - Developing a Wetlands Program Plan. 	<p><u>Wetlands Activities</u></p> <ul style="list-style-type: none"> - Applying for wetland program grants. - Implementing a tribal wetlands protection program. - Implementing voluntary surface water and/or wetlands protection and restoration activities. - Implementing a wetland permitting program. - Developing WQS that cover designated uses for wetlands.
	<p><i>Activities following EPA-approved WQS and TAS authority only</i></p> <ul style="list-style-type: none"> - Implementing the Section 404 CWA program to regulate the discharge of dredged or fill material into waters of the US, including wetlands.
<p><u>Water Quality Standards Activities</u></p> <p><i>Activities to pursue using either tribal authority and/or EPA authority_a</i></p> <ul style="list-style-type: none"> - Developing draft water quality standards. - Obtaining tribal council adoption of initial water quality standards. - Conducting a survey to determine fish consumption rates for the purpose of setting or revising water quality criteria for human health effects from bioaccumulative pollutants. 	<p><u>Water Quality Standards Activities</u></p> <p><i>Activities to pursue using either tribal authority and/or EPA authority_a</i></p> <ul style="list-style-type: none"> - Implementing water quality standards. - Revising and/or submitting any necessary new or revised standards, such as updating numeric criteria.
<p><i>Activities to pursue only if seeking EPA-approved TAS authority</i></p> <ul style="list-style-type: none"> - Developing TAS package for EPA-approved WQS. - Submitting draft standards to EPA for review. 	<p><i>Activities to pursue following EPA-approved TAS authority only</i></p> <ul style="list-style-type: none"> - Developing and implementing a CWA Section 401 certification program. - Conducting at least one triennial review. - Carrying out implementation method for antidegradation policy, including conducting any necessary review of activities that may lower water quality in high quality waters.

Tribal Activities for Water Program Planning and Development	Tribal Activities for Water Program Implementation
Clean Water Act	
<p><i>Impaired Waters Identification/Listing and Total Maximum Daily Loads (TMDLs) Activities</i></p> <ul style="list-style-type: none"> - Providing available water quality-related data and information on geographically-relevant waters - Reviewing and commenting on water quality reports, TMDLs, and other watershed-based planning efforts - Developing capacity to assess water quality conditions, including comparing water quality monitoring information and data against applicable water quality standards - Develop capacity (including modeling) to develop TMDLs and other water quality-based planning efforts 	<p><i>Impaired Waters Identification/Listing and Total Maximum Daily Loads (TMDLs) Activities</i></p> <ul style="list-style-type: none"> - Developing reports/lists of impaired and threatened waters - Developing TMDLs for impaired and threatened waters
<p><u>Permit Activities</u></p> <p><i>Activities to pursue using either tribal authority and/or EPA authority_a</i></p> <ul style="list-style-type: none"> - Developing the legal framework to implement the permit program, e.g., promulgation of regulations - Developing the funding structure necessary to implement the permit program 	<p><u>Permit Activities</u></p> <p><i>Activities to pursue using either Tribal authority and/or EPA authority_a</i></p> <ul style="list-style-type: none"> - Issuing permits - Renewing permits in a timely manner - Conducting inspections - Providing compliance assistance - Revising regulations, as needed
<p><i>Activities to pursue only if seeking EPA TAS authority</i></p> <ul style="list-style-type: none"> - Develop TAS Package for NPDES - Develop a draft authorization package for EPA review and comment 	<p><i>Activities to pursue following EPA-approved TAS authority only</i></p> <ul style="list-style-type: none"> - Providing data to EPA's ICIS database - Assisting the Region in enforcement and compliance activities.
<p><u>Wastewater Infrastructure – CWA</u></p> <ul style="list-style-type: none"> - Tribe becomes knowledgeable of the processes to procure Federal funds for the construction of tribal wastewater treatment systems (funding sources may include: EPA Tribal Set Aside, USDA-RD, IHS, HUD & DOI). 	<p><u>Wastewater Infrastructure – CWA</u></p> <ul style="list-style-type: none"> - Apply for federal funds for the construction of tribal wastewater treatment systems (EPA Tribal Set Aside, USDA-RD, IHS, HUD & DOI). - Manage grants, agreements, and contracts through project completion.

Tribal Activities for Water Program Planning and Development	Tribal Activities for Water Program Implementation
Safe Drinking Water Act	
<p><u>Ground Water and Source Water Protection Activities</u></p> <ul style="list-style-type: none"> - Delineate source water protection areas - Begin developing a Source Water Assessment. 	<p><u>Ground Water and Source Water Protection Activities</u></p> <ul style="list-style-type: none"> - Complete and implement source water protection plan/wellhead protection plan for public water supplies - Institute land use planning to protect susceptible

Tribal Activities for Water Program Planning and Development	Tribal Activities for Water Program Implementation
Safe Drinking Water Act	
	source water areas.
<p>Drinking Water Infrastructure – SDWA</p> <ul style="list-style-type: none"> - Tribe becomes knowledgeable of the processes to procure Federal funds for the construction of tribal public drinking water systems (funding sources may include: EPA Indian Set Aside, USDA-RD, IHS, HUD, and DOI). 	<p>Drinking Water Infrastructure – SDWA</p> <ul style="list-style-type: none"> - Apply for federal funds for the construction of tribal public drinking water systems (EPA Tribal Set Aside, USDA-RD, IHS, HUD, and DOI). - Manage grants, agreements, and contracts through project completion.
<p>Oversight, Enforcement and Permitting Activities under SDWA</p> <p>Activities to pursue using either tribal authority and/or EPA authority^a</p> <ul style="list-style-type: none"> - Tribe requests a DITCA with their EPA Region that assists EPA with direct implementation activities of the Public Water System Supervision (PWSS) program - Tribe requests a DITCA with their EPA Region that assists EPA with direct implementation activities of the Underground Injection Control (UIC) program - Tribe Reports UIC inventory (esp. Class V wells) information to EPA. 	<p>Oversight, Enforcement and Permitting Activities under SDWA</p> <p>Activities to pursue using either tribal authority and/or EPA authority^a</p> <ul style="list-style-type: none"> - Enact UIC laws and regulations to administer and implement a UIC program - Issue individual permits and rule authorized injection - Renew permits in a timely manner - Conduct inspections - Provide compliance assistance - Revise regulations, as needed
<p>Activities to pursue only if seeking EPA-approved program delegation authority</p> <ul style="list-style-type: none"> - Developing the legal framework to implement the primary enforcement program (primacy), e.g., promulgation of regulations, enforcement capabilities - Developing a draft authorization package for EPA review and comment for primary enforcement responsibility under Section 1451 of SDWA (“primacy”) - Developing a draft authorization package for EPA review and comment for primacy to enforce federal UIC requirements and manage injection wells on tribal lands. 	<p>Activities to pursue only following EPA-approved program delegation via TAS or the primacy agency</p> <ul style="list-style-type: none"> - Oversee and enforce the National Primary Drinking Water Regulations for the PWSS program at public water systems under tribal jurisdiction - Maintain compliance data systems on public water systems - Receive and analyze compliance monitoring data - Conduct sanitary surveys of public water systems - Certify laboratories that can perform analysis of drinking water, which will be used to determine compliance with the regulations - Provide technical assistance to managers and operators of public water systems; - Use UIC grant funds to implement the minimum Federal UIC requirements - Implement and enforcement the Federal UIC regulations on tribal lands.

a – Means that a tribe could pursue these activities under (1) their own tribal authority, (2) a Direct Implementation Tribal Cooperative Agreement (DITCA) or Memorandum of Understanding (MOU) with EPA, and/or (3) EPA-approved treatment in a manner similar to a state (TAS) authorization or delegation of primacy.

Appendix V

EPA Funding Programs that Support Tribal Environmental Program Capacity Development and/or Implementation Activities

Indian Environmental General Assistance Program [CFDA No. 66.926]: Assistance to build tribal capacity to administer environmental regulatory programs on Indian lands, and technical assistance in the development of multimedia programs. Supports planning, developing, and establishing the capability to implement programs administered by EPA and includes the development and implementation of solid and hazardous waste programs for Indian lands in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act.

Direct Implementation Tribal Cooperative Agreements [CFDA No. 66.473]: Assistance authority to support tribes to work with EPA to directly implement federal environmental programs required or authorized by law in the absence of an acceptable Tribal program.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of CAA

Training, Investigations, and Special Purpose Activities of Federally-Recognized Indian Tribes Consistent with the Clean Air Act, Tribal Sovereignty and the Protection and Management of Air Quality CAA Section 103 (Tribal CAA 103 Project Grants) [CFDA No. 66.038]: Assistance to support tribal efforts to understand, assess and characterize air quality; design methods and plans to protect and improve air quality on tribal lands through surveys, studies, research, training, investigations, and special purpose activities.

Air Pollution Control Support Program (CAA Section 105) [CFDA No. 66.01]: Assistance for planning, developing, establishing, improving, and maintaining adequate programs for the continuing prevention and control of air pollution and/or in the implementation of national primary and secondary air quality standards.

National Clean Diesel Emissions Reduction Program [CFDA No. 66.039]: Assistance through grants and low-cost revolving loans to eligible entities to fund the costs of a retrofit technology that significantly reduces emissions for buses (including school buses), medium heavy-duty or heavy heavy-duty diesel trucks, marine engines, locomotives, or nonroad engines or diesel vehicles or equipment used in construction, handling of cargo (including at port or airport), agriculture, mining, or energy production. In addition, eligible entities may also use funds awarded for programs or projects to reduce long-duration idling using verified technology involving a vehicle or equipment described above, or the creation of low-cost revolving loan programs to finance diesel emissions reduction projects.

Chemical and Emergency Preparedness and Prevention Technical Assistance Grants [CFDA No. 66.810]: Assistance for chemical accident prevention activities that relate to

the Risk Management Program under the Clean Air Act Section 112(r), chemical emergency planning, and community right-to-know programs which are established to prevent or eliminate unreasonable risk to the health and environment of the community.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of CWA and SDWA

SDWA Capitalization Grants for Drinking Water State Revolving Funds (Drinking Water Infrastructure Grants: Tribal Set-Aside Program) [CFDA No. 66.468]: Assistance to finance infrastructure improvements for public drinking water systems.

Construction Grants for Wastewater Treatment Works & Capitalization Grants for Clean Water State Revolving Funds (Indian Set Aside Program) [CFDA No. 66.418, 66.458]: Assistance for planning, design and construction of wastewater treatment facilities; low-cost financing to eligible entities within tribal lands for water quality projects including all types of nonpoint source, watershed protection or restoration, and estuary management projects, as well as more traditional municipal wastewater treatment projects.

Assessment and Watershed Protection Program Grants (CWA Section 104(b)(3)) [CFDA No. 66.480]: Assistance to support a watershed approach to water quality problems and building capacity to develop and implement programs for watershed protection, restoration, and management.

Surveys, Studies, Investigations, Demonstrations, and Training Grants and Cooperative Agreements – Section 104(b)(3) of the Clean Water Act [CFDA No. 66.436]: Assistance to support the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, reduction, and elimination of water pollution.

Regional Wetland Program Development Grants (CWA Section 104(b)(3)) [CFDA No. 66.461]: Assistance for building programs which protect, manage, and restore wetlands.

Water Pollution Control State, Interstate, and Tribal Program Support (CWA Section 106) [CFDA No. 66.419]: Assistance to establish and maintain adequate measures for prevention and control of surface and ground water pollution from both point and nonpoint sources.

Nonpoint Source Implementation Grants (CWA Section 319) [CFDA No. 66.460]: Assistance for implementing EPA-approved nonpoint source management programs.

Beach Program Monitoring and Notification Implementation Grants [CFDA No. 66.472]: Assistance for eligible coastal and Great Lakes Tribes to develop and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public.

Surveys, Studies, Investigations, Demonstrations, and Training Grants – Section 1442 of the Safe Drinking Water Act [CFDA No. 66.424]: Assistance for source water protection program support, operator certification program support, tribal capacity development program support, and administration of drinking water system infrastructure.

State Public Water System Supervision [CFDA No. 66.432]: Assistance for eligible tribes (those that have Primary Enforcement Responsibility for the Public Water System Supervision Program, or are developing such a program) for implementation of Public Water Systems Supervision Program.

State Underground Water Source Protection [CFDA No. 66.433]: Assistance for states and Indian tribes that have been delegated primary underground injection control enforcement authority pursuant to the Safe Drinking Water Act (SDWA)..

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of RCRA

Tribal Solid Waste Management Assistance Projects [CFDA No. 66.808]: Assistance to characterize/assess open dumps; develop IWM plans and tribal codes and regulations; develop and implement alternative solid waste management activities/facilities (including equipment acquisition); and develop and implement cleanup, closure, and post-closure programs for open dumps in Indian Country. Note that starting in Fiscal Year 2012, funding from all federal agencies for this Project was zero, “reflecting the challenging fiscal constraints facing the federal government.”⁵⁴

Headquarters and Regional Underground Storage Tank Program [CFDA 66.816]: Assistance to support activities that promote the prevention, compliance, and identification of USTs and to support activities that promote corrective action, enforcement and management of releases from UST systems.

Underground Storage Tank Prevention, Detection, and Compliance Program [CFDA No. 66.804]: Assistance for the development and implementation of UST programs and for leak prevention, compliance and other activities.

Leaking Underground Storage Tank Trust Fund Corrective Action Program [CFDA No. 66.805]: Assistance for the oversight and corrective action associated with petroleum releases from federally-regulated USTs, as well as for enforcement activities related to such corrective action.

⁵⁴ “The Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes, Draft for Tribal Review,” Month, 2012, at page 16.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of CERCLA, EPCRA, and Brownfields

Superfund State, Political Subdivision, and Indian Tribe Site-Specific Cooperative Agreements [CFDA No. 66.802]: Assistance to conduct site characterization activities at potential or confirmed hazardous waste sites; undertake response planning and implementation actions at sites on the NPL to clean up the hazardous waste sites that are found to pose hazards to human health; and effectively implement the statutory requirements of CERCLA 121(f), as appropriate, which mandates substantial and meaningful involvement, and CERCLA 126(a).

Superfund State and Indian Tribe Core Program Cooperative Agreements [CFDA No. 66.809]: Assistance to conduct CERCLA activities which are not assignable to specific sites, but support a recipient's site-specific response program, such as developing procedures for emergency response actions and remediation of environmental and health risks; establishing legal authorities and enforcement support; hiring and training staff; and activities that support EPA/recipient interaction.

Chemical and Emergency Preparedness and Prevention Technical Assistance Grants [CFDA No. 66.810]: Assistance for chemical accident prevention activities that relate to the Risk Management Program under the Clean Air Act Section 112(r), chemical emergency planning, and community right-to-know programs which are established to prevent or eliminate unreasonable risk to the health and environment of the community.

State and Tribal Response Program Grants [CFDA No. 66.817]: Non competitive assistance through annual grant program to develop and enhance response programs, including establishing and maintaining a public record of sites at which response actions have been completed or are planned, inventorying brownfields sites, establishing legal authorities for environmental programs, and addressing contaminated brownfields sites through assessment and clean up; hiring and training staff; creating procedures for meaningful community involvement and for site-specific work; and activities to reduce and revitalize the number of contaminated sites. Funding can also be used to provide program capacity for inventorying UST and ABT sites, developing an integrated solid waste management plan, developing and implementing oversight and enforcement of the tribe's environmental programs. Federally recognized tribes/native villages in Alaska are eligible to request funding.

Brownfield Environmental Workforce Development and Job Training Grants [CFDA No. 66.808, 66.813, & 66.815]: Assistance to recruit, train, and place unemployed and under-employed predominantly low-income and minority persons, providing them with the skills needed to secure full-time, sustainable employment in the environmental field and in the assessment and cleanup work taking place in or near their communities. Federally recognized tribes are eligible to apply with the exception of those in Alaska.

Brownfields Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements [CFDA No.66.818]: Assistance to: inventory, characterize, assess, and conduct planning

and community involvement related to Brownfield sites; capitalize a revolving loan fund (RLF) and provide sub-grants to carry out cleanup activities at brownfield sites; and carry out cleanup activities at Brownfield sites that are owned by the grant recipient. Federally recognized tribes are eligible to apply with the exception of those in Alaska.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of TSCA (including AHERA and lead program) and FIFRA

Community Action for a Renewed Environmental Program [CFDA No. 66.035]:

Assistance to support analyses, studies, evaluations, surveys, investigations, conferences, demonstrations and special purpose projects which empower communities to reduce risks from exposures to toxic pollutants in the air, in the water, and on the land through collaborative action at the local level.

Consolidated Pesticides Enforcement Cooperative Agreements [CFDA No. 66.700]:

Assistance for developing and maintaining comprehensive pesticide programs that address all aspects of pesticide enforcement, and special pesticide initiatives; sponsor cooperative surveillance, monitoring and analytical procedures; and encourage regulatory activities to support and strengthen pesticide compliance programs, including pesticide compliance monitoring, inspection and enforcement activities.

Pesticide Environmental Stewardship Regional Grants [CFDA No. 66.714]: Assistance to

support integrated pest management approaches that reduce the risks associated with pesticide use in agricultural and non-agricultural settings, including: pesticide risk reduction, pesticide pollution prevention, Integrated Pest Management (IPM) implementation, and children's health issues related to pesticides.

Tribal Education Outreach on Lead Poisoning and Baseline Assessment of Tribal Children's Existing and Potential Exposure and Risks Associated with Lead [CFDA: No. 66.715]: Assistance to support tribal outreach and baseline assessment activities on lead-based paint to identify children's risk to lead hazards and lead poisoning.

Research, Development, Monitoring, Public Education, Training, Demonstrations, and Studies [CFDA No. 66.716]: Assistance support Research, Development, Monitoring, Public Education, Training, Demonstrations, and Studies assistance relating to the protection of public health and the environment from pesticides and potential risk from toxic substances. Projects for safer use of pesticides, including worker protection, certification and training of pesticide applicators, protection of endangered species, tribal pesticide programs, integrated pest management; environmental stewardship.

Pollution Prevention Grants Program [CFDA No. 66.708]: Assistance to implement pollution prevention technical Assistance services for businesses, and promote training in pollution prevention/source reduction techniques.

State Indoor Radon Grants [CFDA No. 66.032]: Assistance to develop and implement programs to assess and mitigate radon-related lung cancer risk.

Surveys, Studies, Investigations, Training Demonstrations, and Educational Outreach Related to Environmental Information and the Release of Toxic Chemicals [CFDA No. 66.612]: Assistance to educate the public on the how to obtain access to and effectively use environmental information, including information about toxic chemical releases and other waste management activities.

Toxic Substances Compliance Monitoring Cooperative Agreements [CFDA No. 66.701]: Assistance to develop and maintain compliance monitoring programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances or mixtures, specifically asbestos, PCB, and lead-based paint; encourage establishment of regulatory activities for lead-based paint and asbestos; and support enforcement activities for asbestos and lead-based paint programs.

TSCA Title IV State Lead Grants Certification of Lead-Based Paint Professionals [CFDA No. 66.707]: Assistance to develop and implement authorized programs that: certify contractors engaged in lead-based paint activities and accredit lead-based paint activities training programs; certify contractors engaged in renovation, repair and painting activities that disturb painted surfaces in most target housing; and/or require distribution of lead-hazard information prior to renovation (pre-renovation education program).