



Indian Environmental General Assistance Program (GAP)

Proposed New Guidance on the Award and Management of General Assistance Agreements For Tribes and Intertribal Consortia

Consultation Period November 2012 – February 22, 2013

GAP Program Priorities

- Develop core environmental program capacities:
 - administrative
 - information management
 - public education
 - legal, technical and analytical expertise
 - financial
 - baseline needs assessment
- Engage with EPA to develop EPA-tribal environmental planning agreements that reflect intermediate and long-term goals for developing, establishing, and implementing environmental protection programs
- Link GAP work plans to tribes' identified long term goals
- Develop media-specific environmental program capacities
- Implement waste management programs

Building Tribal Environmental Program Capacity

- Goal of program is to use GAP resources to support building environmental program capacity to enable tribal governments to participate in the administration of EPA's congressionally mandated responsibilities
- One indicator for this capacity is obtaining TAS status, but it is by no means the only indicator
- Not all tribes are on a path to obtain TAS status in all the programs EPA manages - those tribes can still use GAP to build a range of environmental program capacities that will enable tribes to partner with EPA and other governments to address mutual environmental goals

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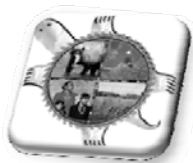
Need for Guidance and Guidebook



In FY 2007, EPA Office of Inspector General conducted an evaluation of the GAP program and issued an Audit Report in February 2008

Objective of the report was to determine if the GAP program has been effective in developing tribal capacity to implement environmental programs

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Findings of EPA Office of Inspector General GAP Audit

- Only 12% of tribes were implementing Federal environmental programs
- Many tribes had not developed long-term plans to build capacity to implement Federal programs
- EPA had not tracked progress against plans and goals
- EPA has not provided a framework for tribes to follow or adapt as tribes develop capacities to implement environmental programs
- GAP funding not based on documented needs or priorities

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OIG Recommendations

- Require EPA to develop and implement overall framework to develop a pathway for tribes to achieve capacity, including performance measures
- Provide assistance to regions for incorporating framework into GAP work plans
- Require regions to negotiate environmental plans with tribes that reflect immediate and long-term goals, link plans to annual GAP work plans, and track/measure progress in achieving milestones and goals established in plans
- Revise how GAP funding is distributed to tribes to place more emphasis on tribes' prior progress, environmental capacity needs, and long-term goals.

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Purpose of New Guidance Document

- To enhance the EPA-tribal partnership supported by GAP program by establishing a framework for joint strategic planning with Agency, identification of mutual responsibilities, and targeting resources to build tribal environmental program capacities.
- To augment Guidance with Guidebook of program development indicators, providing “pathways” for capacity building and ways to measure development of programs over time.
- To update and replace previous GAP Guidance documents issued in March 2000 and February 2006.
- To address program deficiencies as identified by the OIG in the 2008 Audit of the GAP program.

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Activities to Date

- Following OIG audit report, EPA developed an initial Guidebook and underwent tribal consultation and coordination from August 2011 through January 2012
- Nearly 60 sets of written comments from tribes and tribal organizations were received during the consultation and coordination period. EPA attended dozens of meetings and participated in formal consultations on the Guidebook as well.
- The feedback received from consultation and coordination with tribes was incredibly helpful to EPA as we took another look at how to improve the document.
- EPA has just initiated a second round of consultation and coordination on a revised draft GAP Guidance/Guidebook document. The consultation and coordination process will run for 90 days – until Feb 22, 2013.

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Summary of Key Questions and Responses from Initial Tribal Consultation

Question: Will the proposed Guidebook change recipient eligibility criteria?

Answer: *No. Recipient eligibility criteria are established by statute to include all federally recognized tribes and intertribal consortia.*



Summary of Key Questions and Responses (continued)

Question: Does the proposed Guidebook require all tribes to assume the lead role for implementing federal environmental regulatory and enforcement programs?

Answer: *No. Consistent with EPA's 1984 Indian Policy, the proposed Guidebook encourages tribes that wish to develop the capacity to implement federal regulatory and enforcement programs to do so, consistent with their jurisdiction and authorities.*

While the proposed Guidebook provides an overall framework for building this type of capacity, the Guidebook also acknowledges that many tribes are not currently seeking to build the capacity to take the lead role for implementing programs administered by EPA, or have legal obstacles that preclude implementation.



Summary of Key Questions and Responses (continued)

Question: Does the proposed Guidebook require recipients to demonstrate regulatory jurisdiction over facilities, activities, or sites within their territories before receiving GAP assistance?

Answer: *No. Some tribes may not have exclusive environmental regulatory jurisdiction over facilities, activities, or sites within their territories.*

The Agency recognizes that these tribal governments should still be afforded the opportunity to develop an environmental program that will support their meaningful involvement in the protection of tribal member health and natural resources that may be utilized by tribal members.



Summary of Key Questions and Responses (continued)

Question: Does the proposed Guidebook establish a process by which a tribe or intertribal consortia will become ineligible to receive GAP assistance after capacity is successfully developed? Do the 1-2 year and 2-5 year general time lines imply that a recipient would no longer be eligible to receive GAP assistance beyond 5 years?

Answer: *No. There are no general time lines provided in the proposed new Guidance.*

There is a reasonable expectation that there should be some nationally consistent indicators to measure our progress at building tribal capacity over time.

The proposed Guidebook contains an extensive set of indicators to show the progress a recipient is making in building their environmental management capacity. However, the proposed Guidebook is also clear that capacity development is a continuing programmatic requirement with a need for sustained funding.



Overview of New Proposed GAP Guidance Document

- Includes program background, program priorities, defines capacity, and illustrates allowable activities and program restrictions
- Includes award information: types of assistance, eligibility , cost-sharing and matching, competition, applicable guidance and regulations
- Discusses development of EPA-Tribal Environmental Plans and reporting requirements
- Includes application submission, review and award process and administration
- Discusses performance reporting including indicators of capacity
- Includes Guidebook and other resources in appendices

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Highlights of Significant Substantive Changes Since Initial Tribal Consultation Period

- Integration of the draft Guidance with the Guidebook
 - Guidance serves as principal document outlining program requirements
 - Guidebook included as Appendix I to the Guidance, providing direction and identifying the indicators of program capacity
- Clarification on the development of joint EPA-Tribal Environmental Plans that include long-term goals, adding flexibility to format and process
- Greater detail on programmatic capacity building and demonstration of environmental progress beyond environmental presence

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Significant Changes Proposed for GAP Program Operation

- **Solid Waste Implementation:**
 - Generally, integrated solid waste management program should be developed or under development before GAP funds are used for cleanup activities
- **Environmental Presence:**
 - GAP work plans should show progress toward establishing program capacity over time
- **Grant Work Plans and EPA –Tribal Environmental Plans:**
 - Grant work plans will be linked directly to EPA-Tribal Environmental Plans or other strategic planning document to ensure work plans are supporting the long-term environmental program development goals of the tribe
 - Grant work plans will identify specific indicators of capacity that are being developed for that funding cycle

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Required components of Tribal Environmental Agreements

- (1) Identification of tribal programs and priorities
- (2) Identification of EPA programs and priorities
- (3) Development of an inventory of regulated facilities, sites and activities
- (4) Identification of mutual roles and responsibilities for environmental program implementation and tribal program development milestones

Application Review Process

Key Elements of Review:

- The extent to which the proposed activities in the work plan support the purpose of the GAP
- The feasibility and likely effectiveness of the proposed activities.
- The degree to which the work plan identifies the expected environmental results of the proposed project.
- The extent to which the budget, resources, and requested funds for key personnel are reasonable and sufficient to accomplish the proposed project.
- The degree to which the proposed activities to be funded under GAP support jointly developed EPA-tribal environmental plans.
- Past assistance agreement funding and performance, prior work plan progress.

Performance Reporting Indicators of Tribal Environmental Capacity

- Indicators included in Appendix I provide a “road map” for building an environmental program
- Serve as tool for Tribe and EPA in identifying short- and long-term goals
- Provide consistent core measures for assessing progress

Examples of Indicators of Core Environmental Program Capacities

- **Administrative Capacity**
 - Organizational system, skilled staff, training plan, program evaluation system, written procedures
- **Financial Management Capacity**
 - Adherence to federal requirements, procurement procedure, tracking procedure for equipment and supplies, coordination with other tribal departments
- **Information Management Capacity**
 - Procedure for filing system, inventory of procedures, policies, regulations and guidelines
 - System to store and organize data
 - Exchange and or sharing data
- **Baseline Needs Assessment**
 - Existing or potential threats to human health and environment
 - Evaluation of the potential impact to tribal members
 - Prioritization of activities by program to address threats

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Examples Continued

- **Public Participation, Community Involvement, Education and Communication Capacity**
- **Legal Capacity**
 - Authority to pass and enforce laws and ordinances
 - Dedicated section for codes/ordinances/statutes for environmental program protection activities
- **Technical and Analytical Capacities**
 - Quality Assurance and Management Plans
 - Establishing intergovernmental agreements with other jurisdictions
 - Leveraging funding from other sources
 - Developing environmental monitoring/sampling programs

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Program-Specific Capacity Indicators

Revised Guidance provides many indicators of capacity building indicators under the following areas that are related to EPA's authorities:

- **Protecting Ambient and Indoor Air Quality**
- **Protecting Water Quality**
- **Managing Municipal Solid Wastes, Hazardous Waste, Underground Storage Tank Programs**
- **Remediating Contaminated Sites and Establishing Emergency Response Programs**
- **Chemical Safety and Pollution Prevention Programs**

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Plan for Finalizing Proposed New GAP Guidance

November, 2012:	Consultation Notification Letter sent to tribal leaders (approx. 90 day consultation period); information on TCOTS
February 22, 2013:	Tribal consultation period ends
February 25 – April 30:	Guidance revised, based on consultations
April, 2013:	Final Guidance, including Guidebook is issued
May, 2013:	Guidance and Guidebook takes effect; will be used for the FY 2014 GAP funding cycle for FY 2015 activities

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