

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.

- 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.

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.

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.

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.

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