

**United States Environmental Protection Agency**

**Office of Air and Radiation**

**Review of Authorities Available for Tribal Program  
Financial Assistance Awards**



**Amended November 20, 2006**

**This version supersedes the April 2002 edition**

# Review of Authorities Available for Tribal Air Program Financial Assistance Awards

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## Introduction

When EPA proposed its implementing regulations for §301(d) of the Clean Air Act (CAA) in August 1994, it recognized that tribes (to an even greater degree than states) would need financial assistance to support the development and implementation of tribal air programs. In the preamble to its proposal, EPA discussed at length the various mechanisms available to tribes for funding their air programs. Since that proposal was published, much has happened to stimulate interest in air programs in Indian country and many tribes have taken advantage of the authorities under the CAA and other statutes to begin developing programs. This document amends and supersedes the previous version distributed by Beth Craig on April 19, 2002.

This document is intended to reiterate the discussion EPA presented on financial assistance in the proposed rule (40 CFR Parts 9, 35, 49, 50 and 81 Indian Tribes: Air Quality Planning and Management) and provides additional guidance on how these mechanisms might be used to advance the tribes' objectives in air quality management. **However, this document is only a summary of available grant funds for CAA activities. EPA has developed formal procedures governing these activities and tribes should consult the original documents (see list on page 13 of this document) before they make formal application to EPA for a grant.**

## Background

As far back as the 1970's, a limited number of tribes were receiving funding from EPA to support air program development, usually focusing on air monitoring. With the proposal of the Tribal Authority Rule in 1994, the reaffirmation of the Agency's Indian policy, and more aggressive outreach to tribes on the opportunities available to them under the CAA, more tribes became interested in air quality management. However, the statutory requirements for tribes to provide a "match" on federal funding remained a significant barrier to tribes seeking funding. The elimination of the §103 match requirement in 1996 and the promulgation of the Tribal Authority Rule in 1998 (which reduced the match for §105 for eligible tribes from 40% to 5-10%) virtually eliminated the financial barriers to tribes with TAS seeking assistance to implement tribal air programs.

The elimination of these barriers and the aggressive training and outreach to tribes on air quality management has continued to increase the demand for federal resources to implement programs. More than one hundred tribes are already operating under CAA grants; many more have expressed interest in applying for new grants. EPA believes it is appropriate to clarify in a single source document the various authorities for financial assistance available to tribes and factors that tribes might consider in choosing among these authorities. Also included are new guidelines for tribes and Regional Offices to consider when considering shifting to CAA §105

funding.

## **Objectives**

The objectives of this document are to:

- Describe the funding authorities available to provide grants for tribes to use to develop and implement tribal air programs;
- Explain the kinds of activities each of these authorities can fund;
- Promote national consistency on the use of these authorities, while continuing to respond flexibly to tribal needs;
- Suggest strategies to tribes for optimizing the use of these authorities to develop and implement their programs; and
- Provide guidelines for use by Regional Offices when evaluating whether, with limited grant resources, a tribal applicant should be awarded ongoing funding under CAA §105 authority.

## **National Consistency**

Although the Office of Air and Radiation Tribal Program is rooted in the principles of flexibility and decentralized management, it is important to make clear that a number of factors in the program are universally applicable and should be applied nationally.

- Since its first articulation in 1984, EPA's Indian Policy has always been that tribal governments should be viewed as the primary parties in managing their environments and should be consulted on any EPA action that affects the tribe. Tribal consortia are eligible for financial assistance if they meet the requirements outlined in 40 CFR 35.504. Assistance is subject to the approval/concurrence of the consortium's member tribes, and eligibility requirements are different under the authorities for Indian Environmental General Assistance Program (GAP) and CAA §105.
- Financial assistance has been provided to tribes to begin conducting environmental assessments and to develop environmental program management capacity. As tribes develop a better understanding of their air quality problems and begin to consider the long term implications of managing air quality, they could become more interested in moving toward a long term commitment to an air quality management program.

## **Statutory authorities available**

Eligible tribes may seek funding to develop tribal air programs under five separate authorities:

- Indian Environmental General Assistance Program (42 USC §4368b)
- Clean Air Act Project funding (CAA §103(b))
- Clean Air Act Program funding (CAA §105)
- Performance Partnership Grants (PL 104-134 and PL 105-65) (this authority requires prior IGAP or CAA §105 authority in order to be implemented)

- Direct Implementation Tribal Cooperative Agreements (DITCA authority is provided annually in EPA's appropriations act, e.g. Consolidated Appropriations Act, 2004, Pub. L. No. 108-199 (2004))

Each of these authorities offers opportunities and limitations that might affect a tribe's decision on the appropriate authority to use (in addition to the statutory limitations, tribal grants are subject to cost allowability limitations set forth in OMB Circular A-87). These authorities may in some cases be used concurrently. This document will attempt to outline those factors that tribes should consider as they look for financial assistance to develop air programs.

## **Indian Environmental General Assistance Program (GAP)**

### **1. How can GAP be used to undertake the development of an air quality program?**

EPA's GAP funding provides resources to eligible tribes to plan, develop, and establish an environmental protection program. This includes building the administrative, technical, legal, enforcement, communications, and environmental education and outreach infrastructure.

Planning and development of an environmental protection program may include conducting a baseline assessment of environmental degradation for specific media (e.g., air, water, etc.). For instance, in developing an air pollution control program, a tribe could use GAP funds for a baseline assessment of air quality. A tribe could also use GAP funds for other activities in support of building its air quality program such as completing an air pollution emissions inventory or setting up an ambient air quality monitoring network to characterize the air quality of an Indian country area as part of building the capacity to operate and manage an environmental program. It is important to work closely with the GAP project officer to determine if the proposed activities are considered implementation or assessment. While decisions are made on a case-by-case basis, ongoing activities such as implementation of programs and permitting are not authorized under the GAP program.

The GAP grant may include the funds necessary to complete the tasks (staffing, travel, training, etc.) including the purchase of equipment consistent with EPA's regulations at 40 CFR 31 and 35, and OMB Circular A-87. EPA regional offices should work closely with tribal governments as they develop their GAP grant work plans to incorporate media-specific activities as appropriate.

### **2. Are GAP grants competed?**

GAP grants are not formally competed at the regional or national level, although it may be practicable for some regions to use competitive-type techniques in limited circumstances to allot GAP funds to tribes. Given the purposes of the GAP program to build individual tribal capacity, EPA may evaluate proposals based on, among other things, capacity of the applicant, past grant performance, work plan progress and

expected human health and environmental results. 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, or that focus on the skill of the applicant. The Regional Office may require that all grant proposals be submitted within a certain time frame so that the work plans can be reviewed simultaneously.

**3. Why might a tribe choose the GAP authority rather than a CAA authority?**

This funding might be of particular interest to tribes concerned about committing to an air pollution program infrastructure before they have a complete understanding of the air quality conditions. Including a baseline multi-media assessment of Indian country in a GAP grant provides an avenue for a tribe to collect the data needed to make media-specific decisions without taking on the burden of managing a number of media program grants. For example, a tribe may have concerns about its aquatic resources and suspect air deposition as a pollution pathway. It may also be reluctant to take on multiple grants and a large staff just to find out if there is a problem. In this case, it might be appropriate for the tribe to work with EPA to develop a GAP work plan that would enable the tribe to build an environmental protection program that addresses both air and water pollution. A baseline assessment of both water quality and air quality could be conducted if it is in support of planning, developing, or establishing such a program. Regions may want to note that GAP funds are also STAG funds and can be awarded to tribes through CAA §103 or §105. Similarly, OAR Tribal Program STAG funds could conceivably be awarded under GAP authority.

**4. Are there any limitations on a tribe's choosing the GAP authority?**

Tribes should be aware that this authority is not appropriate for solving particular problems at particular places, because such activities are generally not in support of planning, developing or establishing an environmental protection program. For instance, if a tribe has a concern about the transport of air pollution from a specific off-reservation source and wants to gather data on the impact of that source on its ambient air quality, it may be more appropriate to use one of the other available CAA grant authorities to complete the assessment.

**CAA Authority**

EPA awards Clean Air Act (CAA) grants to Indian tribes using either CAA §103 or §105 grant authority. After tribes have gained experience and understanding of their air quality, through such support as CAA §103 funded projects, some will seek funding under CAA §105 for continuing air pollution control programs.

## **Section 103 Authority**

### **1. How can the Clean Air Act §103 authority be used to build tribal air programs?**

CAA §103(a) establishes EPA's authority to "conduct, and promote the coordination and acceleration of, research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution." CAA §103(b)(3) authorizes EPA to "make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for [these] purposes." This broad authority has been used by many tribes to begin air quality related activities. EPA uses §103 to award grants funded under the State and Tribal Assistance Grant (STAG) appropriation to tribes for conducting activities regarded as investigations and assessments, such as: air emissions inventories, deploying air quality monitoring networks, and further developing their understanding of air pollution control. Tribes have used the CAA §103 authority to develop emissions inventories and set up air quality monitoring networks to collect data on ambient air quality. For additional information on typical activities conducted by tribal programs, see the document *The Tribal Air Grants: A Menu of Options*, available on EPA's website at <http://www.epa.gov/oar/tribal/pdfs/menuoptions.pdf>

### **2. Are there any limitations on the tribes' use of the §103 authority?**

CAA §103 grants are project grants, and this funding is generally not used for program implementation. It is EPA's policy that these grants will not be approved for a performance period greater than five years. This limitation should not constrain tribes interested in assessing air quality and undertaking initial developmental activities since this kind of activity should generally not take more than five years to complete. It is also possible for tribes to seek multiple project grants under this authority as long as no single grant activity extends beyond five years in a single grant's cycle, and subsequent grants are for distinctly different purposes.

The authority is not limited to "air pollution control agencies" or "an agency of an Indian tribe," which would narrow the field of eligibility (as with the CAA §105 authority). As a project authority, CAA §103 provides discretion to the Administrator to select those activities for funding that advance knowledge on the "causes, effects [ . . . ], extent, prevention, and control of air pollution." (CAA §103(a)(1)). EPA established criteria for the air program to use when reviewing and assessing tribal grant requests in the January 27, 2005 memorandum from Assistant Administrator Holmstead. Tribal consortia are also eligible to receive CAA §103 funding for appropriate activities and this approach has been used in several instances (and §105 under circumstances described in 40 CFR 35.573 (a) and (b)).

### **3. Must tribes compete for funding under CAA §103?**

No. Grants to tribes using CAA §103 authority are exempt under EPA Order 5700.5A1, Policy for Competition of Assistance Agreements (1/11/05) Section 6.c (6) based on a determination by the Office of Air and Radiation that competition would not be in the public interest. Please note that even if a grant program is exempt from competition, EPA may choose to award funding competitively in particular cases if that is the most effective way to achieve the objectives of the grant program.

## **Section 105 Authority**

### **1. What is the purpose of CAA §105 grants?**

EPA has been providing financial assistance to state pollution control agencies under the CAA §105 authority since the CAA was first authorized in 1970. The authority, however, has always limited the extent to which the federal government will fund a CAA program and required states to provide matching funds. Under the initial authorization, federal funding was limited to 75% of the total program; that requirement was changed by the CAA Amendments of 1990 to limit the federal share of a CAA program to 60%. This authority provides for “implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.” (CAA §105(a)(1)(A)). The CAA further defines implementation as “any activity related to the planning, developing, establishing, carrying-out, improving, or maintaining of such programs.” (CAA §105(a)(1)(A)). The authority is further restricted to state and regional air pollution control agencies as well as agencies of an Indian tribe, which have been eligible to receive funding under this authority in the same manner as states since the Clean Air Act Amendments of 1990.

Eligible tribes have authority, if they choose to take it on, to develop and implement federally enforceable CAA programs. In addition, tribes who seek eligibility to receive a CAA §105 grant under the 40 CFR 35.573(a) are also eligible for a reduced matching requirement (5% to 10%, depending on the situation). It is important to note that without the eligibility determination under 40 CFR 49.6, tribes are required to provide a 40% match and a tribe must expend the same amount of tribal funds for recurrent CAA §105 activities as it expended in the previous year (maintenance of effort requirement CAA §105(c)), with no formal waiver provisions, in order to continue receiving §105 funds each ensuing year.

Tribes are generally eligible to receive §105 funding for operating ongoing air quality programs subject to certain limitations. Proposed programs must satisfy the requirements in 40 CFR 35.511 including:

- Be consistent with 40 CFR 31 (requirements involving grants);
- Be consistent with all applicable federal statutes; regulations; circulars; executive

- orders; and EPA delegations, approvals, or authorizations;
- Be feasible, considering the applicant’s existing circumstances, past performance, program authority, organization, resources, and procedures (40 CFR 35.511(a)(4)).

An intertribal consortium consisting of tribes that have demonstrated eligibility to be treated as states under 40 CFR 49.6 is also eligible for financial assistance. An intertribal consortia consisting of tribes that have not demonstrated eligibility to be treated as states under 40 CFR 49.6 are eligible for financial assistance under Sections 105 and 302(b)(5) of the Clean Air Act (40 CFR 35.573 (a) and (b)).

A tribe seeking funding under CAA §105 would have to work with the Regional Office to ensure that these requirements are fulfilled. These requirements are not intended to act as obstacles, but provide assurance that funding is being used as intended.

## **2. How is need and eligibility for CAA §105 funding assessed?**

Although need and eligibility is most commonly assessed based on a successfully completed project funded by a §103 grant, there are other means by which a tribe may fund such initial air quality investigation and program need evaluation, such as through a General Assistance Program (GAP) grant, a Direct Implementation Tribal Cooperative Agreement (DITCA), tribal funds, or other funding support. The §103 project would typically assess the tribes’ air quality and demarcate the areas of the CAA for which the tribe intends to seek eligibility.

In order to be determined eligible for the TAR’s lower §105 match requirement, tribal governments must go through the TAR’s eligibility process, often referred to as “Treatment in the same manner as a State” (TAS). The TAR describes the four criteria a tribe must meet, in order to receive a TAR eligibility determination. In cases where tribes are not ready to do so, it may be more appropriate to fund a tribe to assist EPA’s implementation through a DITCA, which would also help the tribe build capacity and ensure tribal participation in EPA’s programs.

## **3. What are the factors to guide CAA §105 awards for continuing Tribal Air Programs?**

Once a CAA §105 grant is awarded, an expectation of continued funding at some level is created (see also FAQ #3 below). Due to this qualified assurance of continued funding, prudent resource management and equity warrants national consistency, particularly as the decision to fund each tribal CAA §105 grant will affect future funding options. Regional Offices may need to ensure that adequate funding remains available for those tribes who wish to and have not done an initial air quality assessment: thus, it may not be prudent to award all tribal air STAG funds to continuing tribal air programs under CAA §105.



Regions have the following guidelines to use when reviewing a tribal request for funding under Section 105 authority for an ongoing air program. These guidelines would be applied when making funding decisions in a non-arbitrary manner, using a uniform set of criteria applied to all grants the Region is awarding:

Tribes demonstrating continuing need for an air program

- An assessment has documented an air quality issue likely to require ongoing management or monitoring.
- On-reservation sources impacting air quality necessitating regulatory response
- Significant, localized off-reservation sources affecting on-reservation air quality

Tribes with long-term commitment to air program

- Adoption of air code regulations by tribal government
- Experienced air quality personnel employed by tribal government
- Tribes operating established air monitoring stations and entering their data into EPA databases and/or current, comprehensive emissions inventories submitted in the NEI database
- Accepted delegation agreement for a Federal Implementation Plan or other federal air program
- Participation in national, regional and local policy development activities and organizations

Tribes demonstrating capability to administer an ongoing air program

- Successful performance under prior grants with air-related components, including grant management
- Demonstration of environmental achievements and strategy for addressing known air quality issues

#### **4. Must a tribe address additional requirements to receive the reduced match?**

A tribe seeking eligibility to receive CAA §105 program grants with reduced match must apply for eligibility under 40 CFR 49.6 and EPA must determine that a tribe meets the following criteria:

- (1) The applicant is an Indian tribe recognized by the Secretary of the Interior;
- (2) The Indian Tribe has a governing body carrying out substantial governmental duties and functions;
- (3) The functions to be exercised by the Indian Tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and
- (4) The Indian Tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a

manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations.

The regulatory provisions at 40 CFR 49.7 specify the information a tribe should submit to EPA to show that it meets the above criteria. If a tribe has already been determined “eligible” under another CAA program or under any other EPA-administered program, the applicant need only identify the prior authorization and provide the required information which has not been submitted in the previous application (40 CFR 49.7(a)(8)).

**5. May a tribe seek a waiver for the CAA §105 match requirement?**

Even with the reduced match, EPA recognizes that the economic circumstances of some tribes may preclude them from providing this match. The Agency’s regulation at 40 CFR 35.575(a) provides discretion to the Regional Administrator to “increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing that the fiscal circumstances within the Tribe or within the member Tribes of the Intertribal Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship.” This applies only to tribes found eligible under 40 CFR 49.6.

**6. What are the advantages of §105 funding to tribal governments?**

As indicated above, tribes have access to CAA §105 authority in two ways: through the statute itself as an “air pollution control agency” (which is defined to include an agency of a tribe) or through the TAS eligibility determination process. With respect to the latter, the CAA provides that “no application by a State for a grant under this section may be disapproved by the Administrator without prior notice and opportunity for a public hearing in the affected State, and no commitment or obligation of any funds under any such grant may be revoked or reduced without prior notice and opportunity for a public hearing in the affected State.” (CAA §105(e)). Once a tribe has completed a TAR eligibility determination (TAS) for this Section, it would be subject to the same requirements as a state (40 CFR 49.9(h)) in order to implement a program based on that eligibility. See also, 40 CFR 35.578 which provides that a “Regional Administrator will not disapprove an application for, or terminate or annul an award of financial assistance under 40 CFR 35.573 without prior notice and opportunity for a public hearing within the appropriate jurisdiction. . . .” Unlike the CAA §103 authority, which is project oriented and time limited, the CAA §105 authority provides for ongoing programs and will not be terminated without notice and an opportunity for public hearing, nor will an existing obligation or commitment be reduced without similar requirements.

It is important to note that while the processes laid out in the statutes and regulations are relatively rigid, there is flexibility in determining the recipients of limited funding through the grant award process. Regional Offices with inadequate funding to award grants to all applicants should make those awards through a selection process using criteria that are applied to all applicants in a manner that is neither arbitrary nor

capricious. Once the award process has been carried out, Regional Offices are not obligated to provide funding to a tribe that is eligible for §105 if applicants that scored higher in the rating system are awarded all the available funding.

Another advantage for a tribe pursuing a CAA §105 grant is that this kind of financial assistance can be incorporated into a Performance Partnership Grant.

#### **7. Are Section 105 grants awarded competitively?**

No, Section 105 grants are exempt from competition under EPA Order 5700.5A1, Policy for Competition of Assistance Agreements (1/11/05). EPA allots funding to tribes on a non-competitive basis based on the factors described above. Please note that even if a grant program is exempt from competition, EPA may choose to award funding competitively in particular cases if that is the most effective way to achieve the objectives of the grant program.

### **Performance Partnership Grants (PPGs)**

#### **1. What is the role of Performance Partnership Grants?**

EPA is authorized to award Performance Partnership grants (PPGs) to tribes and tribal consortia. PPGs enable Tribes and Tribal Consortia to combine funds from more than one environmental program grant into a single grant with a single budget under streamlined administrative requirements (40 CFR 35.530(b)). Environmental program grant funds eligible for a PPG include the General Assistance Program (GAP) and Clean Air Act §105 funds. CAA §103 grant funds are not available for inclusion in a PPG (see 40 CFR 35).

PPGs potentially offer many benefits to tribes. They offer opportunities to strengthen their partnership with EPA through joint planning and priority setting. They allow tribes to direct resources to those areas with the highest priority. They allow tribes to link program activities more effectively with their environmental and public health goals. And, by consolidating several programs, PPGs reduce the administrative burden on the tribe. A tribe looking to develop an integrated environmental management program that includes an air quality protection program might apply for CAA §105 funding (rather than a CAA §103 grant) in order to be able to include it in a PPG with funds from other eligible programs.

For tribes eligible for CAA §105 grants that have not established eligibility for Treatment as a State, PPGs offer an option to receive funding under CAA §105 with a reduced match. The PPG cost share (match plus maintenance of effort) is the sum of the cost shares required for all individual program grants included in the PPG, but for funds from programs with a required cost share of greater than 5%, EPA will only require a 5% cost share. However, after the first two years, it may be raised to 10%. All tribes eligible for

CAA §105 grants may be eligible for a waiver of the cost share in a PPG (see 40 CFR 35.536). This affords an additional opportunity for tribes unwilling or unable to apply for a grant as an eligible tribe under 40 CFR 35.573(a).

## **Direct Implementation Tribal Cooperative Agreements (DITCAs)**

### **1. What are DITCAs?**

DITCAs are an avenue for tribes and EPA to partner in implementing meaningful environmental protection in Indian country under federal authority. They provide tribes with the flexibility and opportunity to develop staff capacity to manage environmental programs, to address specific tribal environmental needs and priorities that are within EPA's authority for direct implementation, and to determine the scope and pace of tribal involvement, all through a DITCA work plan<sup>1</sup>.

DITCAs were initially authorized in the FY 2001 Appropriations Act (Pub. L. No. 107 – 73, 115 Stat. 686 (2001)) to enable EPA to award cooperative agreements to federally recognized Indian tribes and eligible intertribal consortia to assist EPA in implementing federal environmental programs for eligible Indian tribes in the absence of an acceptable tribal program. The approach was developed with the recognition that some tribes are not implementing environmental programs, such as under tribal authority for EPA's "treatment in a manner similar to state" (TAS) process for a variety of reasons.

DITCA documentation should specifically indicate that the activities to be carried out by a tribe or intertribal consortium are consistent with environmental program regulations governing the implementation of federal environmental programs. For example, if a DITCA is awarded to a tribe to assist EPA in implementing a Federal Implementation Plan under the Clean Air Act, the DITCA should indicate that the activities to be carried out under the DITCA work plan are consistent with the regulations governing those federal programs.

### **2. Who is eligible for DITCA grants?**

DITCAs may be awarded to (1) federally recognized Indian tribes and (2) intertribal consortia consistent with applicable provisions. In order for an intertribal consortium to be eligible to receive cooperative agreements under this authority, an intertribal consortium should be consistent with applicable provisions, such as 40 CFR 35.504(a).

### **3. What activities are eligible for DITCA support?**

The DITCA statutory authority states that EPA may award cooperative agreements to assist EPA "in implementing Federal environmental programs for Indian Tribes required or authorized by law in the absence of an acceptable state or tribal program. . . ."

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<sup>1</sup> For more information, please see the DITCA reference document listed on page 14.

Several CAA provisions require EPA to implement programs where a state (or tribe) is unwilling or unable to do so. Therefore, activities on these kinds of programs are eligible for DITCA funding. Of course, the particular activities funded would be those that the program office deemed appropriate to accomplish the implementation of the program. Consultation with the EPA Regional Offices will assist in determining any eligibility questions and accelerate the DITCA development and finalization process.

#### **4. What are the limitations to this authority?**

- DITCA funded personnel may not perform inherently governmental activities;
- EPA Project Officer can provide guidance to DITCA Project Managers based only on the written DITCA work plan. EPA project officers cannot treat DITCA Project Managers as EPA employees by participating in hiring, disciplining, or firing;
- DITCA funded personnel cannot operate vehicles which are either owned or leased by the federal government;
- DITCAs for Title V permitting may be funded only with funds appropriated to EPA for federal CAA Title V work; and
- It is important that EPA and the tribe (or tribal consortium) understand the status of the individuals carrying out EPA's direct implementation activities under these cooperative agreements. It is recommended that the status of such individuals be clearly stated in the work plan to accompany the DITCA. These individuals are employees of the DITCA recipient (a tribe or intertribal consortium) or its contractor. They are not EPA employees nor are they EPA contractors by virtue of being the recipient of a DITCA.

#### **5. How are DITCA grants awarded?**

Since DITCAs are cooperative agreements, they are subject to all applicable Agency financial assistance policies. A cooperative agreement is a funding vehicle in which substantial federal involvement in the performance of each DITCA project is expected. Because the statutory authority for DITCAs is only for cooperative agreements and not grants, there must be substantial federal involvement in the performance of each DITCA.

As discussed in the section on CAA Authority, Congress has provided that CAA §105 and § 103 funding can be awarded under the DITCA mechanism.

#### **Source Documents:**

*Indian Tribes: Air Quality Planning and Management* (40 C.F.R. Part 49)

*Environmental Program Grants for Tribes* (40 C.F.R. Part 35 subpart B)

*Office of Air and Radiation National Program Guidance (issued annually)*

*Office of Air and Radiation Grant Guidance (issued annually)*

*OMB Circular A-87: Cost Principles for State, Local, and Indian Tribal Governments*

*OMB Circular A-102: Uniform Administrative Requirements for Grants and Agreements with State and Local Government. 40 CFR 31.*

*Guidelines for Direct Implementation Cooperative Agreements, AIEO, 2004*

*Guidance on the Award and Management of General Assistance Agreements for Indian Tribes, AIEO, 2002 and 2006*

## Frequently Asked Questions

### 1. What are the key differences between the CAA §103 and §105 authorities?

Section 103 authority is a project grant. Activities under this authority are for efforts like research, investigations and surveys, and tribes have used CAA §103 grants for activities associated with identifying air quality problems. These activities include initial air quality assessments, emission inventories, gathering monitoring data to understand air quality within Indian country, attending air quality training courses, preparing outreach to tribal members and becoming involved with local, regional and national planning and policy efforts. Section 105 grants are program grants provided to tribes to carry out ongoing air quality programs. Ongoing activities like long term monitoring networks, inspections and enforcement, regulatory development and similar activities which are part of an ongoing air program should be funded by CAA §105. Another key difference is that a CAA §105 grant typically requires that a tribe share some of the cost of the grant.

### 2. When should a tribe consider moving from a CAA §103 grant to a CAA §105 grant? Can a tribe be granted a CAA §103 grant and a CAA §105 grant at the same time?

Tribes typically should move to CAA §105 funding when their research and investigation under CAA §103 funding enables them to determine that an ongoing air quality program is needed or desired by the tribe, and the tribe is making a long-term commitment. A primary factor would be the quality of the air within Indian country. Tribes in areas not meeting national or tribal standards would likely want to carry out a CAA §105 program to address air quality issues both on the reservation and in non-reservation areas within their jurisdiction. In many cases, a tribe may have good air quality but still be concerned with impacts from sources outside of Indian country as well as issues such as long range transport and regional haze. The tribe might wish to maintain some ongoing air quality expertise and capacity in order to review and comment on permits for sources affecting their airshed, carry out an outreach program for tribal and neighboring communities, and participate in local, regional and national planning and policy efforts.

It is possible and not unusual for tribes (and other eligible grantees) to be funded under both authorities at the same time. In some instances, as a tribal air program develops, the tribe might choose to fund their ongoing activities under CAA §105 while retaining funding for project activities under CAA §103 until they are completed. In addition, a tribe being funded under CAA §105 that wishes to carry out a new project, can apply for CAA §103 funding for that project while continuing with ongoing CAA §105 activities. These activities can be carried out concurrently but should be accounted for and reported as separate grants.

### 3. Does a TAR eligibility determination for CAA §105 grant funding necessarily mean that a tribe will receive actual CAA §105 funding?

No, there is no assurance of funding for tribes that have been determined to be eligible for CAA §105. While all tribes are welcome to apply for funding, when available funds are insufficient to meet all requests, each Region will make funding determinations based on

established criteria designed to ensure that the funds are utilized in the most effective and efficient manner. Also please note that 40 CFR 35.578 specifies that applications may not be disapproved, and existing awards may not be terminated, without prior notice and opportunity for a public hearing within the appropriate jurisdiction.

**4. How can a tribe meet the match requirement under a CAA §105 grant?**

There are three options for meeting the match requirements under CAA §105. The most common way is to provide 5 or 10% of the grant (if required) from tribal funding sources. This would often be drawn from a “general” fund maintained by the tribe, but could be provided from any source of tribal revenue excluding all funds provided to the tribe by the federal government, with the exception of federal funds specifically allowed by statute to be used for match. See 40 CFR 31.24(b)(1) (e.g. funds provided under PL 638). A tribe may also provide a match through “in kind” sources, commonly contributions to the program from other tribal personnel, or through the provision of office space, supplies or overhead costs. This type of contribution would need to be supported by documentation quantifying its value. The third option available to tribes is to demonstrate hardship in providing match and apply to the Regional Administrator for a waiver. A tribe would send a letter to the Regional Administrator describing how the fiscal situation of the tribe prohibits the provision of matching funds.

Note that for tribes choosing not to seek TAS eligibility to receive CAA §105 funds under 40 CFR 35.573(a), the statutory requirement to provide a 40% match remains in effect. However, those tribes without TAS may reduce the match requirement by including the CAA §105 funds in a PPG.

**5. Under what circumstances can the match requirement for CAA §105 grants under 40 CFR 35.575(a) be waived?**

Tribes are eligible for a waiver of the 5 or 10% match requirement at the discretion of the Regional Administrator. The Regional Administrator must provide an objective assessment of a tribes ability to increase it’s share, or a tribe can write to the Regional Administrator and present information to demonstrate that providing the matching amount would cause the tribe undue hardship. Please see 40 CFR 35.205 and 35.220 for detailed requirements.

**6. For a tribe applying for CAA §105 funds as an eligible tribe under 40 CFR 49.6, how can it meet the “reservation or other areas within the tribe’s jurisdiction” requirement?**

To show that the tribe meets the “reservation” requirement, a tribe needs to show “with clarity and precision the exterior boundaries of the reservation including, for example, a map and a legal description of the area.” 40 CFR 49.7(a)(3). For applications concerning “other areas within the tribe’s jurisdiction,” the tribe should include a map or legal description of the area covered by the application and a statement by the applicant’s legal counsel that describes the basis for the tribe’s assertion of authority over that area for purposes of the grant.



To satisfy the capability requirement, the tribes must be reasonably expected to be capable of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations. A tribe should include a narrative statement describing the capability of the tribe to carry out the functions to be exercised under the grant. The narrative statement may include a description of: (1) the Tribe's previous management experience; (2) existing environmental or public health programs administered by the Tribe; (3) the agency or office that will carry out the primary functions to be exercised under the grant; and (4) the technical and administrative capabilities of the staff to administer and manage the functions to be exercised or a plan which proposes how the tribe will acquire administrative and technical expertise. EPA recognizes that certain tribes may not have substantial experience administering environmental programs. A lack of experience will not preclude a Tribe from demonstrating the required capability. Rather, Tribes should show that they either have the necessary management and technical skills or submit a plan detailing steps for acquiring those skills.

**7. Are there specific activities that are allowed or not allowed under the authorities for CAA §103 and CAA §105?**

Specific workplan activities are generally negotiated between a tribe and the Regional Offices. As discussed earlier, CAA §103 activities should be research and demonstration projects with a distinct duration and result. As part of a project, a tribe would generally be investigating their air quality through inventories, assessments and monitoring. In addition, the tribe could be developing their capacity to operate an air quality program by attending training, and building relationships with their peers at local, regional and national meetings and events involving the discussion and creation of air quality policies such as regional haze planning.

Under the CAA §105 authority, many of these same activities would be allowable, as well as additional activities such as regulatory development, inspection of sources, major and minor source permitting, and ongoing monitoring efforts. The principle difference is an air quality project compared to an ongoing air quality program, and the activities may be similar, but have a different objective.

Please note that these lists are not inclusive and Regional Offices have some flexibility in allowing tasks that they find appropriate to be performed under either grant authority. All activities are subject to the cost principles as enunciated in OMB Circular A-87.

**8. What are the requirements to assure the quality of data being developed by tribes?**

Many tribal programs are expected to undertake projects or programs which involve the collection or creation of environmental data (an example is ambient monitoring). Tribes must have an approved quality assurance project plan (QAPP) to assure the quality of data being collected or created prior to beginning the part of the project or program that involves data collection (40 CFR 31.45). An EPA guidance document is available at <http://www.epa.gov/quality1>, and the Institute for Tribal Environmental Professionals at Northern Arizona University offers regular workshops and other tools for tribes to learn how to develop these plans (<http://www4.nau.edu/itep/>).

**9. Can a tribe use federal financial assistance to defend itself in court?**

Reimbursement of legal expenses is governed by the cost principles in OMB Circular A-87 and may be allowable. Funds from either CAA §103 or CAA §105 should be used for activities stated and approved as part of the project workplan.

**10. Is there any certification required from the tribe regarding the use of federal funds?**

Consistent with the Agency's annual appropriation act, a chief executive officer of every assistance recipient is required to certify that none of the federal funds were used to lobby the federal government or in litigation against the United States unless authorized under existing law.