

# EPA’s Indian Environmental General Assistance Program (GAP) Frequently Asked Questions (FAQs)



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# 1. BACKGROUND

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## 1. Did the Agency conduct consultation and coordination to involve tribes in the development of the new GAP Guidance?

Yes. The Agency shared an initial draft “Guidebook for Building Tribal Environmental Capacity” with tribes and conducted a six-month consultation and coordination process that ran from August 2011 through January 2012. In response to input from tribes, EPA revised the initial draft document and conducted a second consultation and coordination process from November 2012 through February 2013. The robust discussions with tribes, as well as the extensive written comments received from tribes and tribal organizations, substantially influenced the creation of the *Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortia* (GAP Guidance).

## 2. How does the GAP Guidance support the 1984 “EPA Policy for the Administration of Environmental Programs on Indian Reservations”?

The GAP Guidance supports EPA’s 1984 Indian Policy in a number of ways. Examples include:

- 1984 EPA Indian Policy Principle #2: THE AGENCY WILL RECOGNIZE TRIBAL GOVERNMENTS AS THE PRIMARY PARTIES FOR SETTING STANDARDS, MAKING ENVIRONMENTAL POLICY DECISIONS AND MANAGING PROGRAMS FOR RESERVATIONS, CONSISTENT WITH AGENCY STANDARDS AND REGULATIONS.
  - In keeping with the principle of Indian self-government, the GAP Guidance identifies the environmental protection program capacities most essential for tribes to successfully become the “primary parties for setting standards, making environmental policy decisions, and managing programs for reservations, consistent with Agency standards and regulations.”
- 1984 EPA Indian Policy Principle #3: THE AGENCY WILL TAKE AFFIRMATIVE STEPS TO ENCOURAGE AND ASSIST TRIBES IN ASSUMING REGULATORY AND PROGRAM MANAGEMENT RESPONSIBILITIES FOR RESERVATION LANDS.
  - The national framework for building tribal capacity defined by the GAP Guidance, including the identified capacity indicators, maximizes the likelihood that interested tribes will achieve a lead regulatory or co-regulatory role for implementing federal program requirements (i.e., in lieu of direct implementation by the EPA). This is an “affirmative step to encourage and assist tribes in assuming regulatory and program management responsibilities.”

- 1984 EPA Indian Policy Principle #5: THE AGENCY, IN KEEPING WITH THE FEDERAL TRUST RESPONSIBILITY, WILL ASSURE THAT TRIBAL CONCERNS AND INTERESTS ARE CONSIDERED WHENEVER EPA'S ACTIONS AND/OR DECISIONS MAY AFFECT RESERVATION ENVIRONMENTS.
  - The EPA-Tribal Environmental Plans (ETEPs) required by the GAP Guidance institutionalize a mechanism by which EPA can be informed of and appropriately consider tribal environmental interests associated with EPA responsibilities for program implementation.
  
- 1984 EPA Indian Policy Principle #6: THE AGENCY WILL ENCOURAGE COOPERATION BETWEEN TRIBAL, STATE AND LOCAL GOVERNMENTS TO RESOLVE ENVIRONMENTAL PROBLEMS OF MUTUAL CONCERN.
  - Throughout the GAP Guidance, EPA promotes cooperation between tribal, state and local governments to resolve environmental problems of mutual concern. Specifically, the GAP Guidance identifies capacity indicators that encourage tribal governments to cooperate with and, when appropriate, enter into intergovernmental agreements with federal, state or local governments to address environmental concerns as co-regulators.
  
- 1984 EPA Indian Policy Principle #8: THE AGENCY WILL STRIVE TO ASSURE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS.
  - The GAP Guidance promotes compliance with environmental statutes and regulations on a tribe-by-tribe basis in a number of ways. For example, by including an "inventory of regulated entities" as a required component of an ETEP, the GAP Guidance institutionalizes a mechanism for identifying requirements for environmental regulatory program implementation on a tribe-by-tribe basis. This clarification of program implementation requirements establishes a shared understanding of the regulated entities within a particular tribal area and which governmental entity is responsible for ensuring compliance with applicable environmental requirements. The "inventory of regulated entities" informs how EPA and tribes identify mutual roles and responsibilities for implementing applicable federal programs that are designed to "assure compliance with environmental statutes and regulations" in Indian country.

## 2. EPA-TRIBAL ENVIRONMENTAL PLANS (ETEPS)

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### 3. Is there a required format for ETEPS in the GAP Guidance?

No. The GAP Guidance states that “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” (page 15 of 22). However, an ETEP should contain the following four 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.

### 4. Are intertribal consortia that are receiving GAP grants required to establish ETEPs?

No. However, consortia should refer to the individual ETEPs of their member tribes when developing work plans to ensure that proposed activities are responsive to their member tribes’ program-development goals. See footnote #36 in the GAP Guidance Section 4.2 (“Purpose and Format for ETEPs,” page 15 of 22).

### 5. Are ETEPs mandatory under the GAP Guidance?

Yes. Every EPA grant program issues Agency guidance to ensure programmatic goals are met and national consistency is maintained. Tribes that do not have an ETEP can continue to receive GAP funds as they work to establish an ETEP with their respective EPA regional office, in accordance with the regional schedule established pursuant to GAP Guidance Section 4.4 (“Development, Use and Management of the ETEP,” page 18 of 22). If an EPA regional office encounters difficulties meeting its established ETEP development schedule, it may request approval from the director of EPA’s American Indian Environmental Office (AIEO) to modify its schedule. If the AIEO director finds that a region has presented reasonable justification to modify its ETEP development schedule, a schedule modification may be granted. If an EPA regional office fails to establish an ETEP with a tribe in accordance with the approved schedule, EPA may consider the ETEP grant condition to be unmet and the GAP grant could be denied.

### 6. Are completed ETEPs required before a tribe receives a GAP assistance agreement?

No. However, tribes are expected to establish an ETEP with their respective EPA regional offices in accordance with the regional schedule established pursuant to GAP Guidance Section 4.4 (“Development, Use and Management of the ETEP,” page 18 of 22).

## **7. What is the purpose of the ETEP?**

ETEPs are intergovernmental strategic planning agreements that define mutual roles and responsibilities for the development and implementation of environmental protection programs. The ETEP institutionalizes a joint EPA-tribal strategic planning process to identify each tribe's intermediate and long-term program development goals, including a tribe's plans to administer EPA-authorized environmental regulatory programs.

ETEPs also serve to clarify and document EPA's responsibilities to protect human health and the environment as they apply to each tribe's unique circumstances, especially where tribes are not authorized to administer EPA programs.

Approved GAP work plans should contain activities and capacity indicators that are related to accomplishing the goals identified in the ETEPs. By developing ETEPs, EPA and tribes will be better positioned to ensure that GAP is being used effectively to build tribal environmental program capacity consistent with EPA and tribal environmental priorities and EPA-administered programs.

A tribe should not need to change its ETEP with each work plan, as the ETEP is a long-term strategic planning document. For more information on the purpose of an ETEP, see GAP Guidance Section 4.2, "Purpose and Format of ETEPs" (page 15 of 22).

## **8. Must ETEPs be signed? Who can modify/update an ETEP?**

No. The GAP Guidance does not require signatures on ETEPs. However, the GAP Guidance states that "The ETEP should have the support of senior officials in both EPA and the tribal government..." (page 18 of 22). AIEO considers senior-level support essential to a successful intergovernmental planning framework.

The ETEPs are intended to be living, usable documents for both tribes and EPA, as environmental partners, to use in planning, guiding and tracking the progress of our work. To underscore this point, the GAP Guidance states that "The ETEP should be reviewed jointly by tribes and EPA at least annually, and updated as appropriate" (page 18 of 22). Therefore, ETEPs should be modified as necessary by EPA and the tribe in response to changing priorities.

## **9. Can a work plan include activities that are not covered in an ETEP?**

Yes. The GAP Guidance does not impose hard-and-fast standards on how to address this issue. Project officers (POs) should use the ETEPs to: "[D]evelop 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." Similarly, POs should ensure that ETEPs help "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 [consistent with those priorities and goals]." (Quotes from Section 4.2, "Purpose and Format for ETEPs," page 15 of 22.) From time to time, funding work plan activities that are not aligned with ETEP goals may be justified. However, when work plans substantially deviate from ETEP goals, or when successive work plans contain activities not aligned with ETEP goals, the ETEP strategic

planning process may be ineffective and an appropriate management response to improve it should be undertaken.

**10. Will the identification of regulated entities that may affect tribal interests result in jurisdictional determinations? Described in the GAP Guidance Section 4.3 (“4.3 Components of an ETEP,” page 16 of 22).**

No. Identifying sites, facilities or other regulated entities that may affect tribal interests helps inform the EPA-tribal planning process by including publicly available information about potential pollution sources in the ETEPs to ensure pollution is being appropriately addressed. Where programmatically available, tribes may seek to partner with EPA to implement the Agency’s regulatory-program responsibilities or assume a lead role for administering aspects of the federal program, but the ETEP does not result in jurisdictional determinations.

**11. How does the GAP Guidance address tribally defined priorities and interests in a manner consistent with EPA-administered programs?**

As discussed above, ETEPs are the primary mechanism through which EPA and tribes should discuss and describe tribal environmental priorities. Approved GAP work plans should contain activities and capacity indicators that are related to accomplishing the goals identified in the ETEPs.

The GAP Guidance’s non-exclusive list of indicators of tribal environmental protection capacity provides examples of the types of program-development outcomes that GAP can support. This tiered approach, including ETEPs, work plans and capacity indicators, presents EPA and tribes with an efficient way to align GAP funds with agreed-upon environmental protection priorities and environmental program development goals.

The following sections of the GAP Guidance provide additional details.

- On page 15 of 22, the GAP Guidance states: “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 facilities/sites/activities; and (4) identification of mutual roles and responsibilities.” By structuring the ETEP around tribal priorities and program-development goals and EPA program requirements, the GAP Guidance helps tribes and EPA ensure that GAP work plans are developed to support the long-term priorities and goals of the tribe, and that GAP funds are directed toward building environmental program capacities consistent with EPA-administered programs.
- Section A.1 of Appendix I, “Guidebook for Building Tribal Environmental Program Capacity,” (Guidebook; page 1 of 42) states:

“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 [emphasis added]. 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 ETEP, to link the 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. 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.”

## 3. ELIGIBILITY AND ALLOWABLE ACTIVITIES

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### 12. Are facility construction costs allowable under GAP?

Yes. There are certain allowable construction costs. For example, the GAP Guidance Section E.4(c) (page 31 of 42) provides examples of allowable construction costs for “source separation projects.” These examples include: “transfer stations, recycling centers, compost facilities, household hazardous waste collection facilities, bulk waste/appliance/electronic waste collection facilities; construction and demolition debris facilities, used oil collection stations, and other similar facilities.” Because transfer stations typically receive the entire municipal waste stream rather than just the separated portion, the grantee should calculate the percentage of total transfer station construction costs that relate to the source-separation project and request GAP funding for that portion of the project, rather than funding the entire transfer station.

### 13. Does GAP fund the same activity for more than one year?

Yes. GAP will fund activities as long as it reasonably takes to achieve completion on a capacity indicator. For example, some indicators could be accomplished in a single year (e.g., emissions inventory) and for others it may take several years (e.g., promulgation of regulations). The GAP Guidance states: “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. Tribes that have successfully developed capacity in a given area can continue to receive GAP funding to expand, enhance or evolve their capacity” (page 2 of 42 in the GAP Guidebook).

### 14. Does GAP fund community outreach, education and communication activities for more than one grant cycle?

Yes. GAP can fund recurring activities – including activities related to community outreach, education and communication – provided they directly support tribal environmental protection program capacity building. If a GAP grantee demonstrates that an activity supports the planning, developing and establishing phases of a tribal environmental program, it is generally considered to be fundable under GAP.

In 2008, EPA’s Office of the Inspector General (OIG) published an audit report titled, “Framework for Developing Tribal Capacity Needed in the Indian General Assistance Program” (Report No. 08-P-0083, February 19, 2008). In that report, the OIG identified the tendency to repeat the same work plan activity from year to year as a problem that needed to be addressed. Specifically, the OIG stated that because “tribes continued to receive IGAP funding with similar activities from year to year, it was difficult to determine what the tribe was trying to accomplish or what environmental issues it was addressing” (page 12).



An important principle that applies to all work plan activities is to demonstrate how the activity will achieve specific, measurable tribal program capacity-building goals; the same principle holds true for recurring activities, like participation in community outreach, education and communication activities.

As a result, proposals to use GAP funds for community outreach, education and communication activities should demonstrate how the proposed activity will help increase knowledge and/or change behavior to achieve specific environmental program development goals, and how changes in knowledge and/or behavior will be measured to evaluate the activity's effectiveness at achieving stated goals.

**15. Why does GAP only allow implementation activities for tribal solid and hazardous waste programs? Why does GAP not support other tribal program implementation activities?**

Under the Indian Environmental General Assistance Act of 1992 (42 U.S.C. § 4368b), Congress authorized EPA to award GAP funds “for the purpose of planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency.” The Act also authorized the EPA to award GAP funds for “the development *and implementation* of solid and hazardous waste programs for Indian lands [...] in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (SWDA)” [emphasis added]. EPA similarly supports tribal program implementation under other EPA tribal grant programs which have separate Congressional authorization (e.g., financial assistance provided under the Clean Air Act and the Clean Water Act).

**16. Can GAP be expanded to allow for implementation of EPA delegated programs?**

No. As written, the GAP statute does not authorize the EPA to fund implementation activities other than as discussed in the previous question.

**17. Can tribes use GAP funds for commercial enterprises, such as establishing environmentally preferable best management practices and planning for development projects?**

No. The use of GAP resources for activities that *primarily* support a commercial enterprise is inconsistent with the purposes of GAP and generally outside the scope of programs administered by the EPA. For example, if a tribal commercial enterprise is developing a natural resource extraction project (e.g., timber, natural gas or minerals) and the enterprise is required to conduct an environmental assessment for the project, the use of GAP resources to conduct the assessment could be viewed as a subsidy to the commercial enterprise and would therefore be considered unallowable. However, GAP funds may be used to plan, develop and/or establish the capacity for tribal governments to administer environmental protection programs, including the establishment of generally applicable laws, codes and/or regulations that impose compliance requirements on commercial activities consistent with the scope of the tribe's authority.

**18. Can grantees use GAP funding to administer tribal environmental programs outside of their jurisdictional Indian country boundaries?**

No. However, tribes may use GAP funds to establish the capacity to participate meaningfully in environmental regulatory programs administered by other governmental entities (state, local, federal, tribal). The EPA recognizes that tribal governments have interests in environmental regulatory and compliance activities potentially affecting environmental quality both within and outside of Indian country. The GAP Guidance states that a tribe may use GAP funds to establish “Documentation supporting the tribe’s claim of interests to usual and accustomed areas and to cultural resources potentially affected by environmental protection activities.” (Section B.7, “Establishing Core Legal Capacities,” indicator B.7.5, page 11 of 42). The GAP Guidance also explicitly states that a tribe does not need to demonstrate exclusive environmental regulatory jurisdiction in order to receive GAP assistance, including planning, developing and establishing program capacity to participate meaningfully in environmental regulatory programs administered by other governmental entities.

Section A.2, “Capacity Development for Tribes with Limited Environmental Program Jurisdiction” (page 2 of 42) states:

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.

**19. Is revising a tribe’s existing environmental management plan/assessment an eligible GAP activity? For example, if a tribe has a CWA 319 management plan that needs to be revised every three years, can GAP pay for this revision?**

No, except when the tribe demonstrates that a new plan/assessment is necessary for planning, developing or establishing environmental protection program capacity. Generally, revising an existing plan/assessment would be considered a program implementation activity that GAP would not fund. However, there may be circumstances where a tribal program is looking to expand significantly a program to address new environmental issues, creating a need for new or expanded capacity, including new plans/assessments. Identifying the line between program implementation and planning, developing and establishing program capacity relies on the unique circumstances surrounding a proposed activity. Therefore, grantees should discuss those circumstances with their project officers.

**20. Can GAP funds be used to cover recurring costs associated with maintaining an environmental presence outside the context of planning, developing and establishing tribal environmental program capacity?**

No. GAP funds should not be used to cover recurring costs associated with maintaining an environmental presence outside the context of planning, developing and establishing tribal environmental protection program capacity. (See Section B.1, “Building Core Environmental Protection Program Capacities – Purpose,” page 5 of 42.)

Here are some examples of recurring costs which may be appropriate under GAP. In the context of re-establishing lost capacity following staff turnover, a tribe may request GAP funds to repeat previous work plan activities, especially for training new personnel. Tribes may also request GAP funds to repeat activities that are required to achieve measurable capacity-building milestones (e.g., community education/outreach events or environmental sampling activities to establish a longitudinal baseline). Finally, GAP-funded assistance agreements generally include funds for indirect costs and administrative activities necessary for executing the agreement. In this way, some recurring administrative costs are covered from year to year.

## 4. TRIBAL CAPACITY AND CAPACITY INDICATORS

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### **21. Once a GAP grantee has successfully established environmental protection program capacity, what other support is available for program implementation, either using GAP or other EPA funds?**

Under GAP, the Agency has created a mechanism for funding program implementation in a “testing” phase to evaluate tribal program effectiveness. Specifically, page 4 of 22 in the GAP Guidance states that

Establishing an environmental protection program may include performing a “test drive” of the program to determine whether the tribe is ready to move into the program implementation phase. “Test drives” of capacity to implement are for evaluating the effectiveness of a program and may be funded for up to four years under GAP. Work plans containing “test drive” activities should contain activities to collect information about program design and effectiveness and describe how this information will be used to identify options for improving the program, including but not limited to: new or revised environmental protection policies and procedures; more stringent standards and/or requirements; and additional capacity development needs.

Once a tribe has established the capacity to implement programs administered by the EPA, it can apply for environmental program implementation assistance under other EPA funding authorities. For example, once a tribe has established the capacity to administer an inspection and compliance assistance program under the Safe Drinking Water Act (SDWA), it can demonstrate its readiness to effectively manage SDWA financial assistance. In this way, tribes with demonstrated capacity to implement EPA authorized programs can direct other funding sources to support approved program implementation activities.

### **22. Is GAP funding flexible enough to address emerging issues and opportunities (e.g., technology, new environmental risks)? Can GAP fund activities to rebuild lost capacity (i.e., due to staff turnover)?**

Yes to both. EPA expects tribes receiving GAP funding to demonstrate capacity building progress over time, rather than repeating similar work plan activities from year to year; maintaining an environmental presence and funding the same capacity-building activities year after year is inconsistent with the purposes of GAP. However, tribes may need to address lost capacity by repeating capacity building activities. Similarly, tribal priorities may shift because of changing circumstances, including emerging environmental challenges. To address this reality, the GAP Guidance contains language explaining how GAP funding is flexible and can be used for these

purposes. For example, Section 3.0 (“Performance Reporting: Indicators of Tribal Environmental Program Capacity,” page 13 of 22) states:

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.

**23. Do the capacity indicators offer the GAP grantee flexibility to choose the most appropriate activities to achieve program capacity for their community?**

Yes. By illustrating the types of tribal capacity indicators appropriate for the GAP Guidance, EPA has established a performance-based approach that avoids describing *every* example allowable and unallowable activity. Section 1.4 (“Allowable Activities and Restrictions,” page 3 of 22) provides some general guidelines regarding eligible and ineligible activities, but it is not practicable to provide an exhaustive list of activities, given the diversity of tribes and tribal environmental protection programs being developed across the country under GAP.

As stated on page 4 of 44 in the GAP Guidebook, “The indicators offer a non-exclusive menu of choices organized by category of environmental program development; they need not all be selected.”

Similarly, Section 3 (“Performance Reporting: Indicators of Tribal Environmental Program Capacity,” page 13 of 22): “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.” Generally, any activity related to planning, developing and establishing tribal capacities needed to implement a tribal environmental protection program consistent with the purposes and requirements of programs administered by the EPA are allowable activities under GAP. This approach to focusing on measurable results allows for extensive flexibility when considering particular activities in any given work plan.

**24. Once the core capacities are established, how will the GAP eligibility of a grantee who is not pursuing, or unable to pursue (i.e., tribes with limited environmental regulatory jurisdiction) the implementation of a federally authorized regulatory and/or enforcement program be affected?**

Tribes may develop non-regulatory environmental protection program capacities under the GAP consistent with the tribes’ own priorities and authorities. The GAP Guidance specifically states that federally recognized tribes with limited jurisdiction continue to be eligible for GAP funding. For example, Section 1.1 (“Program Background,” page 2 of 22) states:

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. This approach helps EPA ensure that tribes have the opportunity to participate meaningfully in the Agency's policy making, standard setting, and direct implementation activities potentially affecting tribal interests. This approach also helps tribal governments cooperate with and, when appropriate, enter into intergovernmental agreements with federal, state, or local governments in an informed manner.

Similarly, Section 3.0 ("Performance Reporting: Indicators of Tribal Environmental Program Capacity," page 12 of 22) states:

Tribes that are not seeking TAS status [treatment in a manner similar to a state] may wish to establish other meaningful and important levels of environmental program capacity directly in support of environmental statutes the EPA implements, or for tribal environmental protection programs that are consistent with EPA's programs. Seeking TAS status is not a requirement for receiving funding under this program.

This message is echoed in Section A.2 ("Capacity Development for Tribes with Limited Environmental Program Jurisdiction," page 2 of 42), which states:

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 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.

To support this clearly stated policy, non-regulatory indicators of tribal environmental protection program capacity that do not require a jurisdictional determination are contained throughout sections B, C, D, E, and F of the GAP Guidance.

**25. Are GAP grantees required to develop all of the capacity indicators described in Appendix I?**

No. Tribes are not required to establish all of the core or media-specific environmental protection program capacities. As stated in the GAP Guidance, Section 1.4 ("Allowable Activities and Restrictions under GAP," page 4 of 22):

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

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Similarly, Section 3 (“Performance Reporting: Indicators of Tribal Environmental Program Capacity,” page 13 of 22) states:

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*. [Emphasis added.]

Recipients of GAP assistance should identify the indicators of environmental protection program capacity that are appropriate to their own specific needs and priorities.

## 5.FUNDING RELATED

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### **26. How are GAP funds allocated annually?**

EPA headquarters allocates a percentage of the annual GAP appropriation to each regional office based on a formula that includes the following regional data points as allocation factors: number of tribes, total tribal area (surface water + land), tribal population and number of GAP recipients in the prior fiscal year. Each region then establishes funding levels for individual awards based on a number of factors, including but not necessarily limited to:

- Total funding available to the region
- Past performance by the tribe in completing proposed activities
- Proposed work/commitments for the project period
- Quantity of qualified staff to complete the proposed work within the project period
- Amount requested by the tribe