

Legal Provisions and Policies Applicable to Guidance for the Indian Environmental General Assistance Program (GAP)

Prepared as a Resource for Tribal Governments during
Consultation on the GAP Guidance Evaluation

To administer financial assistance programs created by Congress through statutes, EPA generally promulgates regulations and issues program guidance. The regulations and guidance are necessary to enable the EPA to solicit applications for funding, award and manage grants and cooperative agreements, and report on the results achieved through grantee activities.

In addition to regulations and guidance developed for a specific funding program, there are many other sources of law and policy that apply to all or a subset of EPA funding programs, such as Uniform Grant Guidelines and EPA Orders.

This document is intended to summarize many of the legal provisions and policies that are applicable to EPA's guidance for the Indian Environmental General Assistance Program (GAP), including provisions that EPA must follow in administering GAP funds and those that provide an important point of reference for GAP program implementation.¹ Some of the specific legal provisions and policies that apply to administration of GAP include, but are not limited to, the following:²

Statutory Requirements Applicable to All GAP Financial Assistance Agreements

- **Indian Environmental General Assistance Act of 1992** 42 U.S.C. § 4368b: This Act was created to assist federally recognized tribes and intertribal consortia to plan, develop, and establish the capacity to implement programs administered by the EPA and to assist in the development and implementation of solid and hazardous waste programs in accordance with applicable provisions of law, such as the Solid Waste Disposal Act.

Statutory Requirements Applicable to Some GAP Financial Assistance Agreements

Note: Applicability of federal environmental statutes listed below to any particular GAP financial assistance agreement depends on the types of environmental program activities in the work plan. For example, if a tribe is using GAP funding to build an air program, the Clean Air Act would apply. This is directly related to EPA's authority under the Indian Environmental General Assistance Act of 1992, which states that "Any general assistance under this section shall be expended for the purpose of planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency." The statutes listed below (in alphabetical order) cover the programs administered by the EPA.

¹ During EPA's GAP Guidance Evaluation consultation call with tribal governments on June 28, 2018, one tribal representative requested more information about the legal authorities underlying the 2013 GAP Guidance so that tribes can make more informed comments.

² This document should not serve as a substitute for any other legally binding requirements.

- **Asbestos Hazard Emergency Response Act (AHERA):** AHERA requires local education agencies to inspect public and non-profit private K-12 schools for asbestos-containing building material and prepare management plans to prevent or reduce asbestos hazards.
- **Brownfields Utilization, Investment and Local Development Act (BUILD) 2018:** The BUILD Act reauthorized EPA's Brownfields Program, and made amendments to the 2002 Small Business Liability Relief and Brownfields Revitalization Act. The Act authorized changes affect brownfields grants, ownership and liability provisions, and State & Tribal Response Programs.
- **Clean Air Act (CAA) 42 U.S.C. Chapter 55:** The CAA is the comprehensive federal law that regulates air emissions from stationary and mobile sources. Among other things, this law authorizes EPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and public welfare and to regulate emissions of hazardous air pollutants.
- **Clean Water Act (CWA) 33 U.S.C. 1251 et. seq.:** The CWA establishes the basic structure for regulating discharges of pollutants into the U.S. waters and regulating quality standards for surface waters.
- **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Chapter 103, also known as Superfund:** CERCLA is the primary federal law that ensures responses to releases or threatened releases of hazardous substances that may endanger public health or the environment.
- **Federal insecticide, Fungicide and Rodenticide Act (FIFRA) 7 U.S.C. § 136:** FIFRA governs the registration, distribution, sale, and use of pesticides in the U.S.
- **Indian Lands Open Dump Cleanup Act of 1994 25 U.S.C. Chapter 41:** Requires the Director of the Indian Health Service to: (1) study and inventory open dumps on Indian and Alaska Native lands; and (2) develop and implement a ten-year plan to address solid waste disposal needs on such lands.
- **National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. Chapter 55:** NEPA requires federal agencies to assess the environmental and related social and economic effects of their proposed actions prior to making decisions.
- **Pollution Prevention Act (PPA) 42 U.S.C. Chapter 133:** PPA focused industry, government, and public attention on reducing the amount of pollution through cost-effective changes in production, operation, and raw materials use. Opportunities for source reduction are often not realized because of existing regulations, and the industrial resources required for compliance, focus on treatment and disposal.
- **Safe Drinking Water Act (SDWA) 42 U.S.C. Chapter 6A:** SDWA is the federal law that protects public drinking water supplies throughout the nation. Under the SDWA, EPA sets standards for drinking water quality and with its partners implements various technical and financial programs to ensure drinking water safety.
- **Solid Waste Disposal Act as amended, commonly known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Chapter 82:** This Act creates the federal framework for the proper management of hazardous and non-hazardous solid waste.
- **Toxic Substances Control Act (TSCA) 15 U.S.C. § 2601 et seq.:** TSCA provides EPA with authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures. Certain substances are generally excluded from TSCA, including, among others, food, drugs, cosmetics and pesticides.

Regulations³ Applicable to All GAP Financial Assistance Agreements

- 2 CFR Parts 200 & 1500 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”
- 2 CFR Part 1536 Requirements for Drug-Free Workplace (Financial Assistance)
- 40 CFR Part 33 Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs
- 40 CFR Part 35, Subpart B Environmental Program Grants for Tribes

Regulations Applicable to Some GAP Financial Assistance Agreements

Note: Applicability of federal regulations listed below to any particular GAP financial assistance agreement depends on the types of environmental program activities in the work plan.

- 40 CFR Part 61 National Emission Standard for Hazardous Air Pollutants
- 40 CFR Part 257 Criteria for Classification of Solid Waste Disposal Facilities and Practices
- 40 CFR Part 258 Criteria for Municipal Solid Waste Landfills
- 40 CFR Part 261 Identification and Listing of Hazardous Waste
- 40 CFR Part 262 Standards Applicable to Generators of Hazardous Waste
- 40 CFR Part 312 Innocent Landowners, Standards for Conducting All Appropriate Inquiries
- 49 CFR Part 172 Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans
- 49 CFR Part 173 Shippers – General Requirements for Shipments and Packagings
- 49 CFR Part 178 Specifications for Packagings
- 49 CFR Part 179 Specifications for Tank Cars

Guidance and Policy Provisions⁴ (beginning with the most recent)

- **RAIN⁵-G01, EPA Office of Grants and Debarment Guidance on Selected Items of Cost for Recipients** (2018). RAIN-G01 informs recipients and applicants of new guidance on selected items of cost.
- **Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements** (2017). The Interim Procurement Guide describes the financial transactions covered by the competitive contracting requirements and other rules related to awarding and administering EPA funded contracts. Other rules that cover purchasing systems such as, conflicts of interest, cost and price analyses, required contract clauses, and bonding requirements for construction are also discussed.
- **GPI⁶ 16-01: EPA Sub Award Policy** (February 2016). This policy establishes the requirements and procedures for Grants Management Offices and Program Offices in making determinations regarding subrecipient eligibility, overseeing pass-through entity monitoring and management

³ The Code of Federal Regulations is available at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

⁴ For the most recent versions of policies relating to EPA grant and cooperative agreement recipients, visit <https://www.epa.gov/grants/epa-policies-epa-grant-recipients>.

⁵ RAIN is the abbreviation for Recipient/Applicant Information Notices.

⁶ GPI is the abbreviation for Grants Policy Issuance.

of sub awards, and authorizing fixed amount sub awards under 2 CFR 200.330, section 200.331, and section 200.332.

- **GPI 15-02: EPA’s Financial Assistance Conflict of Interest Policy** (September 2015). This policy is intended to prevent personal and organizational conflicts of interest in the award and administration of EPA financial assistance.
- **GPI 14-01: Electronic Submission of Initial Grant Applications** (effective February 2015). All initial applications for non-competitive assistance agreement awards submitted on or after February 17, 2015 must be submitted using Grants.gov. For a description of the process to request an exception, Applicants that have limited or no internet capacity should refer to the document available at <https://www.epa.gov/grants/exceptions-grantsgov-submission-requirement>.
- **GPI 12-06: Timely Obligation, Award and Expenditure of EPA Grant Funds** (2012; Amended April 2018). This policy furthers EPA’s mission of protecting human health and the environment by ensuring the timely obligation, award and expenditure of EPA grant funds.
- **GPI 13-02: Streamlining Tribal Grants Management** (November 2013). This policy provides a framework for a streamlined, consistent approach to managing grants (including cooperative agreements) awarded to tribes.
- **EPA Policy for Consultation and Coordination with Indian Tribes** (May 2011). This policy defines when and how consultation takes place, designates EPA consultation contacts to promote consistency and coordination of the process, and establishes management oversight and reporting to ensure accountability and transparency.
- **GPI 11-01: Managing Unliquidated Obligations and Ensuring Progress under EPA Assistance Agreement** (October 2010). This policy establishes procedures for managing Unliquidated Obligations (ULOs) under EPA assistance agreements, including grants, cooperative agreements and fellowships. It also includes provisions to further the timely progress of work under EPA assistance agreements.
- **Guidance and Policy for Implementation of Tribal Air Monitoring Programs** (April 2008). The purpose of this guidance is to improve the ability of tribes and EPA Regional Offices to prioritize monitoring needs, choose an appropriate level of funding for ambient air monitoring on tribal lands relative to other air management work, and ensure that monitoring funds are used effectively on chosen projects.
- **Guidance on Basic Elements of an EPA-Funded Tribal Pesticide Program** (March 2002). While this guidance’s main focus is on cooperative agreements authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 23(a), it also briefly discusses other cooperative agreement funding that may be available from EPA to address tribal pesticide issues.
- **Guidance on the Use of Section 7003 of RCRA** (October 1997). This provides guidance on the use of broad and effective enforcement tools that can be used to abate conditions that may present an imminent and substantial endangerment to health or the environment.
- **EPA Policy for the Administration of Environmental Programs on Indian Reservations** (1984). EPA’s formal policy specifying how it would interact with tribal governments and consider tribal interests in carrying out its programs to protect human health and the environment. This policy stresses two related themes: (1) that the Federal Government will pursue the principle of Indian “self-government” and (2) that it will work directly with Tribal Governments on a “government-to-government” basis.

Executive Order

- **EO 13175: Consultation and Coordination with Indian Tribal Governments** (2000). This Executive Order was created to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.

EPA Orders

- **EPA Order 5700.7A1: Environmental Results under EPA Assistance Agreements** (September 2013). This Order establishes EPA policy for addressing environmental results under EPA assistance agreements, including results that advance EPA's environmental and human health mission.
- **EPA Order 5700.1: Policy for Distinguishing Between Assistance and Acquisition** (March 1994). This Order provides the criteria for determining whether the award of funds should be in the form of an assistance agreement or a procurement contract, based on whether the primary purpose of the funding is to benefit the public.

Other Related Reference Materials

- **ANSI-ASQ E4: 2014 Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use.** A quality assurance system that enables an organization to formulate policies and procedures to plan and implement sufficient and adequate quality management practices for environmental programs.
- **ASTM⁷ E1527-13.** Provides the standard practice for environmental site assessments to define good commercial and customary practice in the U.S. for conducting an environmental site assessment of a parcel of commercial real estate with respect to the range of contaminants within the scope of CERCLA and petroleum products.
- **Environmental Compliance Memorandum (ECM) 10-2 Pre-Acquisition Environmental Assessment Guidance for Federal Land Transactions** (June 2010). Provides an overview of the All Appropriate Inquiry (AAI) regulations, to assist agencies identify environmental conditions associated with real property and to enable them to secure, to the extent possible, the protections of the liability defenses set forth in the Comprehensive Environmental Response, Compensation, and Liability Act and the Oil Pollution Act.
- **EPA Office of Inspector General Report No. 09-P-0083, Framework for Developing Tribal Capacity Needed in the Indian General Assistance Program** (February 2008). Report from the Inspector General providing their findings and recommendations after analyzing whether the EPA's GAP program has been effective in developing tribal capacity to implement environmental programs.
- **The National Pesticide Tribal Program: Achieving Public Health and Environmental Protection in Indian Country and Alaska Native Villages** (October 2009). This program addresses the priorities, challenges and successes of the Tribes, EPA, and stakeholders with pesticides.

⁷ ASTM is the abbreviation for the American Society for Testing and Materials Environmental Site Assessments.