



August 24, 2018

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**RE: Tribal Consultation - GAP Guidance Evaluation**

Dear Principal Deputy Assistant Administrator Nishida:

The National Tribal Air Association (NTAA) is pleased to submit these comments regarding the Indian Environmental General Assistance Program (GAP) Guidance evaluation.

The NTAA is a member-based organization with 135 principal member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of Indian Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important to understand interactions with the organization do not substitute for government-to-government consultation, which can only be achieved through direct communication between the federal government and Indian Tribes.

NTAA recommends that any revision considerations with respect to the GAP Guidance should primarily focus on broad interpretation in the interest of Tribes and should focus on USEPA's accountability in addressing the 2008 Office of Inspector General (OIG) GAP Report. With that said, in response to EPA's request for consultation on the GAP Guidance evaluation, NTAA's position entails the following concerns with respect to the GAP Guidance, based upon input from principal member Tribal representatives:

Section 1.2 Program Priorities:

The GAP Guidance states: "Funding is provided under GAP for the purposes of planning, developing, and establishing tribal environmental protection programs consistent with programs and authorities administered by the EPA."

The funding provided under GAP is not sufficient to ensure that Tribes are able to plan, develop, and establish Tribal environmental programs. Furthermore, USEPA imposes unrealistic deadlines for Tribes to establish their programs, with no consideration of the challenges and obstacles that Tribes face in such efforts.

For example, while Tribes are very interested in establishing Climate Change Adaptation Plans, they often lack sufficient staff resources to bring to finality such plans. Many Tribes' homelands are located in remote, rural areas of the country where it is difficult to attract



technical staff for employment. Tribal members are gaining educational degrees in such areas, but they may be hired off the reservation or their credentials are not quite in the area of needed expertise. Given these challenges that Tribes face with limited staff resources and technical capabilities, it would be preferable that USEPA apply different, customized benchmarks for determining whether various programs and activities under GAP are accomplishing targeted goals.

#### Section 1.2 Program Priorities:

The GAP Guidance states: “Developing baseline capacities for media-specific environmental protection programs that are related to the needs of the recipient and to EPA statutory programs (e.g., ambient and indoor air quality; water quality; managing wastes; managing asbestos, lead-based paint, pesticides, toxics, and pollution prevention programs).”

Essential parts of baseline capacity development are not offered under the GAP program, or the definitions for eligible baseline capacity development activities are inconsistent between regional USEPA departments, Project Officers, and Grant Managers. For example, USEPA has deemed the compiling of data during initial indoor air quality (IAQ) monitoring assessments to be ineligible, removing the key threshold determination as to whether there exists a need to develop new programs or expand a program’s capacity. USEPA is also directing Air and Water Quality, Pollution Prevention, and Pesticide Programs to media specific funding programs, resulting in multiple processes and requirements to gain vital federal support for Tribal programs in these areas. Collection of baseline data supports Tribes to identify the need/justification to develop or expand media specific programs and to initiate inter-jurisdictional collaborative projects. Thus, this important first step in program development should be a part of GAP.

#### Section 1.3 EPA Program Roles and Responsibilities:

The GAP Guidance states: “Making award decisions consistent with this Guidance.”

EPA Regional Offices are currently inconsistent with award decisions. No specific statute or guidance requires the submission of EPA-Tribal Environmental Plans (ETEPs) and Integrated Waste Management Plans (IWMPs) for formal approval; however, in some regions, certain Regional Tribal Offices have mandated that they “approve” ETEPs in order to be eligible for future GAP funding. USEPA, more generally, is conditioning the granting of GAP funding on whether a Tribe has submitted an ETEP or IWMP. These preconditions are contradictory to the principles of the 1984 EPA Indian Policy and are not expressly stated in the law as conditions for being eligible for GAP funding. One of the central objectives of GAP is to support Tribes’ efforts to engage in capacity building. Therefore, it is incongruent to precondition access to GAP based on the submission of plans that require the very kinds of resources and staffing that GAP was aimed to address in the first instance.

#### Section 1.3 EPA Program Roles and Responsibilities:

The GAP Guidance states: “Each Regional Administrator, or their designee, will review completed GAP applications and either approve, conditionally approve, or disapprove those applications within 60 days of receipt.”

The GAP Application Approval Timeframe currently does not coincide with USEPA’s stated objective. It is currently nearly 180 days for initial discussions with project officers to occur, with no guarantee that it will lead to approval and an award letter.



#### Section 1.4 Allowable Activities and Restrictions under GAP:

The GAP Guidance states: “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.”

USEPA should facilitate Pilot Study projects to determine the need for development or expansion of Tribal environmental air programs where requested. For example, a test or pilot study on air quality for criteria pollutants, hazardous pollutants, and ambient conditions would identify any new potential health concerns that could determine the need for a Tribe to develop a full-fledged Clean Air Act (CAA) §103 or §105 program. With limited funding available in CAA §103, Tribes are not likely to acquire funding if a nearby Tribe or a Tribe in the same air shed is conducting air quality monitoring. The Salton Sea is an example of this, where a local Tribe has been denied monitoring funding assistance to acquire baseline data and continue monitoring to identify trends or any changes in air quality as the Salton Sea will slowly evaporate and dry up due to significant water surface diversions since January 2018. At the very least, USEPA should coordinate Regional efforts where requested as a Regional priority.

As discussed above, GAP does not cover IAQ pilot studies or assessments over time. The lack of funding for these initial studies, which are instrumental in determining whether more Tribal engagement is needed, leaves Tribes with no option but to use less reliable and inexpensive techniques to ascertain the existence of air quality issues, such as by conducting visual inspections, and only allowing for such initial testing in Tribal administration buildings and other offices, but not in Tribal homes.

#### Section 2.2 Types of Assistance:

The GAP Guidance states: “The flexibility of a PPG [*Performance Partnership Grant – ed.*] can allow for improved environmental performance, increased programmatic flexibility, and administrative savings.”

There is a lack of consistency across U.S. EPA Regions in how Grant Project Officers manage PPGs. For many Tribes PPG flexibility as intended is not available equitably in all Regions, as Project Officers in some Regions will not approve reprogramming funds from one GAP grant to another in the PPG. Project Officers and Grant Managers are directing Tribes to utilize media specific program funding. Funding to address turnover, which requires new hires and training, is not eligible unless it specifically pertains to GAP, and no Clean Water Act §106 /319 activities are allowed in GAP. Thus, it would be helpful if there could be flexibility between grant programs to ensure all needs are addressed instead of relying on strict silos between grant programs.

#### Sections 2.3 Eligibility Information and 2.5 Length of the Award

The GAP Guidance states: “...an intertribal consortium is eligible to receive a GAP award if the consortium demonstrates that ... (2) all members that meet GAP eligibility requirements authorize the consortium to apply for and receive the award;” and, “[t]he term of a GAP award may exceed one year,



but may not exceed four years. The term is determined at the time of the award and documented in the work plan.”

In practice, USEPA has required each member Tribe of inter-Tribal consortia on an annual basis to provide proof of eligibility, which adds an unreasonable administrative burden to consortia and elected Tribal Leaders within consortia, and threatens their very existence. Additionally, if the consortia needs to amend the grant mid-year and the grant number is modified, then the consortia will have to once again get approval letters from all member Tribes, adding an additional administrative burden, as well as limiting (or at least discouraging) changes to grant management plans by the consortia. In lieu of this arduous approach, and in accordance with the legal principle of Tribal sovereignty, USEPA should accept Tribal council resolutions or other equivalent documents as proof of approval and authorization to engage in the establishment of Tribal environmental programs and the proper administration of grant funds. Otherwise, USEPA is placing an expiration date on Tribal Resolutions that reflect the official position of the member Tribes until rescinded by each Tribal Council. We agree that it is important for member Tribes to be aware of what the consortia is proposing, but this awareness can be accomplished by the consortia recording that the work plan was sent to all member Tribes with a comment period of “X” days, with a “deemed approved” decision at the end of the time period.

#### Section 3.0 Capacity Indicators:

The GAP Guidance states: “The indicators in Appendix I are designed to help identify and measure the status of tribal environmental program capacity.”

USEPA appears to interpret capacity indicators differently within regional offices and regionally nationwide. The indicators are also too rigid, and should not be an exclusive list of the health of a Tribal program. It is unclear what capacity indicators are supposed to measure, since they are not necessarily reflective of the actual work on the ground. Applying a uniform definition of “achieving” capacity is ill suited to address the wide diversity of Tribes. Additionally, the difference between implementation and capacity building is not clear. For instance, educational outreach programs are critical to the growth of Tribal environmental programs

It is troubling that that USEPA is utilizing these measures to disqualify Tribes from funding in some Regions, such as concluding that a Tribal Environmental Outreach Plan is insufficient to justify further funding. Another example is that USEPA has concluded that staff who are conversant in Google Earth and Paint have achieved ArcGIS Capacity, whereas Arc View training is only allowable when available free through the Branch of Geospatial Support. Thus, the Tribes’ preferred mode of using Arc View has not achieved the level of availability or recognition from USEPA.

#### Section A-1 Enhancing the EPA/Tribal partnership for Environmental Protection and Measuring Tribal Program Development Progress:

The GAP Guidance states: “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 and to link funded activities to the program capacity being developed.”

USEPA has not applied this guidance in practice and has shown no flexibility in developing capacity indicators, nor do they consistently define capacity indicators. USEPA should work with Tribes to



develop mutually acceptable Tribal Indicators specific to the unique needs of the Tribe when the listed indicators are not compatible with capacity building in Tribal environmental programs.

Section A-2 Capacity Development for Tribes with Limited Environmental Program Jurisdiction:

The GAP Guidance states: “Evaluating environmental conditions; developing voluntary or partial environmental protection programs; participating in environmental policy making; and entering into joint environmental protection programs with neighboring tribal, state, or local environmental agencies.”

Tribes may use GAP funds for joint programs activities; however, Tribes with limited jurisdiction have not seen sufficient efforts to provide for intergovernmental agreements with neighboring jurisdictions, or opportunities for cross sharing of technical knowledge, enforcement, and policy developments. USEPA is uniquely positioned to create connections between the various environmental programs across the nation and give Tribes critical information about activities occurring within their respective region. It would be helpful to create a centrally accessible online chat community for government environmental officials to gain access to information about upcoming events, studies, new regulations and policies, and other similar public information to share with their government counterparts in the region. We would be happy to discuss this concept further if it is something that USEPA would be interested in exploring.

Section A-3 Capacity Development is a Continuing Programmatic Need:

The GAP Guidance states: “...maintaining environmental program capacities is an on-going effort requiring capacities to evolve...”

Maintaining Program Capacities is difficult when there are limited funds for training. For instance, Project Officers and Grant Managers are only allowing specific, one-time trainings to be conducted, despite significant staff turnover at many programs. During turnover or new hires, Tribes may wish to provide training to ensure new staff can achieve program commitments. Additionally, maintaining technical capacity is another area that USEPA identifies as one-and-done courses, and suggests utilizing media specific program funding for maintaining capacity. Tribes can utilize GAP funding only to attend Institute for Tribal Environmental Professionals (ITEP) trainings. The lack of additional training funds with flexibility in availability would assist in the goal of maintaining program capacity.

The GAP Guidance states: “Similarly, a tribe with basic water program capacity may continue to receive GAP funds to expand their water program by adding new baseline data to their existing program, developing additional laboratory analysis quality assurance plans, or adding capacity to share additional water quality data across multiple data platforms.”

In addition to water programs, Tribes also seek to build capacity to conduct monitoring or assessments for other criteria pollutants, indoor air pollutants, or hazardous air pollutants, to determine the need to expand monitoring activities in an air quality program. Similarly, more funding to conduct emissions inventories (EIs) is necessary as data accumulation is essential to completing a thorough EI and for CAA §103 eligibility. USEPA is urging Tribes to reference local or neighboring EIs to create inventories instead of funding Tribes’ needs. Air monitoring QAPPs, Air Quality Assessments, and air monitoring strategy and plan development are central to assessing and developing a comprehensive Tribal program but USEPA does not permit funding for such efforts under GAP.



The GAP Guidance also states, “Tribes should re-evaluate their program capacity development goals on a regular basis to ensure that their systems, procedures, and policies are still appropriate for the current stage of the environmental protection program and to determine if additional capacities are needed to support media-specific environmental programs.”

USEPA currently does not recommend that Tribes review the ETEP’s annually and is suggesting Tri-Annual review for evaluation activities, despite the GAP Guidance stating that ETEPs are living documents and should be reviewed annually and updated as appropriate.

#### Section B-5 Establishing a Baseline Needs Assessment:

The GAP Guidance states: “The baseline needs assessment should be updated in response to factors such as: new sources of pollution, changing environmental conditions.”

We agree that baseline needs assessments should be considered in assessing the funding needs of Tribes where there are potential new sources of pollution or contamination. However, in practice, Tribes have not received such consideration, as in the case where USEPA denied funding for the changing Salton Sea, which is resulting in additional adverse impacts to air quality.

#### Section B-8 Establishing Core Technical and Analytical Capacities:

The GAP Guidance states: “Tribes may use GAP resources to build baseline environmental program capacities that will then be further developed and enhanced through media-specific EPA programs and other funding sources.”

The current approach to the GAP program does not foster opportunities for Tribes to build baseline capacities to expand or develop new programs despite requests to do so, and instead USEPA is directing Tribes to pursue funding from media specific funding sources. For example, USEPA is not approving all requests for QAPPs and SAPs development under GAP, and instead such efforts must be completed in media specific programs.

#### Section C-3 Indicators of Air Quality Program Capacity

USEPA is discouraging efforts by Tribes to build capacity in the GAP program and refers Tribes to media specific CAA §103 funding sources, but CAA §103 does not currently have adequate funding to support the needs of existing tribes with CAA §103 programs. USEPA is rarely approving new Tribe’s requests for funding.

As discussed above, the GAP program does not provide sufficient funding to conduct true Emissions Inventories to identify sources and levels of emissions on the reservation. IAQ activities are also very limited in GAP.

#### Emergency Planning

Some GAP program requests for support of emergency planning are being denied in some Regions and there is no strategy for addressing the fact that Tribes have limited staff to complete a NIMS-compliant Emergency Operations/Management Plan. If the GAP program authorized Tribes to leverage existing resources and knowledge with Tribally owned commercial enterprises, without being penalized for having such resources, then Tribes could develop such emergency plans as part of their environmental programs.

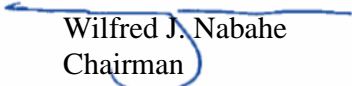


### Conclusion

In conclusion, GAP needs to advance and support innovation and customization in its application in Indian Country, so that Tribes have the flexibility to implement environmental programs that are appropriate for their own unique cultural, social, governmental, and community ideals. Tribes should be able to determine their own priorities, with the ability and allowance to change those priorities based upon the changing climate, environmental conditions, and in the event of natural disasters. Tribes need flexibility to implement and design programs, and should be able to set their own capacity indicators and environmental goals based on sound science and subject to reasonable baselines. A key priority for Tribes is to minimize the administrative burdens. Most importantly, the GAP Guidance should apply only as guidance, not as a rule or regulation, honoring the principles of the 1984 Indian Policy.

The NTAA is pleased to provide the aforementioned comments and recommendations regarding the General Assistance Program Guidance evaluation. If you have any questions or require clarification from NTAA, please do not hesitate to contact NTAA's Project Director, Andy Bessler, at 928-523-0526 or [andy.bessler@nau.edu](mailto:andy.bessler@nau.edu).

Sincerely,

  
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Chairman  
National Tribal Air Association  
Executive Committee

Cc: W. Charles McIntosh, EPA Assistant Administrator Nominee, OITA  
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