

NATIONAL TRIBAL AIR ASSOCIATION FACT SHEET

Treatment of Indian Tribes in a Similar Matter as States, a.k.a. 'TAS' Fact Sheet

OVERVIEW

This Frequently Asked Question (FAQ) Sheet helps Tribes better understand what treatment of Indian Tribes in a similar manner as states, also known as Treatment as a State (TAS) for environmental programs such as air quality.

I. GENERAL INFORMATION

A. What is TAS and TAS Requirements?

- Under the Tribal Authority Rule (TAR) section of the Clean Air Act (CAA) §301(d) authorizes Tribe's Treatment in A Manner Similar to a State (TAS) for administering air quality programs
- Under §301(d), the TAS requirements are: be a federally recognized Tribe, have a governing body carrying out substantial governmental duties and powers, have appropriate authority, and be capable of carrying out the functions of the program¹.

B. What is the advantage of having TAS?

- Your Tribe's advantages of having TAS authority enable your Tribe to implement Air Quality program for your Reservation instead of the State or Federal Government implementing one for your Tribe.
- The implementation of a Tribally run Air Quality program promotes Tribal sovereignty. Air Quality programs with TAS authority reduce the match requirement under CFR 35.375 Maximum Federal Share for §105 Grant funding from 40% to 5% for the first two years of air quality program implementation².
- Another advantage of CAA TAS authority also qualifies your Tribe to be treated as an "affected state" "under the operating permits program (i.e., receive a notice and an opportunity to comment when neighboring states issue permits to facilities having the potential to impact your lands)³.



August 2013 during the Silver Fire, Riverside County, California
Photo Credit: Pamela Atcitty <https://morongonation.org/tribal-air>

II. WHAT IS THE DIFFERENCE BETWEEN 103 AND 105 GRANT FUNDING?

A. Section 103(b) Grant Funding

- Section 103 Grant funding supports short-term projects to conduct and promote research investigations, experiments, demonstrations, surveys, and studies relating to the causes/effects (including health and welfare effects), extent, prevention, and air pollution control.
- There is no match requirement for 103 funding if a Tribe does not have TAS status⁴.

B. Section 105 Grant Funding

- Section 105 Grant Funding authorizes EPA to make grants for implementing programs for prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.
- A 105 grant can be rolled into Performance Partnership Grant (PPG) and Performance Part-

1. <https://www.govinfo.gov/content/pkg/CFR-2010-title40-vol1/pdf/CFR-2010-title40-vol1-sec35-575.pdf>

2. <https://www.govinfo.gov/content/pkg/CFR-2010-title40-vol1/pdf/CFR-2010-title40-vol1-sec35-575.pdf>

3. https://www.epa.gov/sites/production/files/2016-02/documents/caa_tas_document_final_draft.pdf

4. <https://www.govinfo.gov/content/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapI-partA-sec7403.htm>

nership Agreements (PPA) and has no performance timeline that 103 funding has.

- There is a match requirement for 105 funding, and if a Tribe has TAS status, then that match requirement stands at 5% for the first two years. After the first two years, the match requirement will be 10%.
- If a Tribe does not have TAS status, then the match requirement is 40%, or, if a Tribe successfully demonstrates financial hardship, the match requirement is waived⁵.

C. What are the advantages of 103(b)?

- There is no match requirement for 103(b) Grant funding.
- 103 funding can be used for air quality characterization studies, identification of air pollution sources, air quality monitoring, baseline studies, and training^{6, 7}.

D. What are the advantages of 105 grants?

- Ability to review Title V permits that may impact Tribal AQ, build capacity for other media (i.e., like water if your Tribe does not have water TAS).
- Long-term financial security that acts as base funding for AQ programs.

E. How do I ask for a hardship waiver for my 105 Match requirements?

- Under 40 CFR 35.575 Maximum federal share, “The Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that 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”⁸.

F. Does a Tribe need to have TAS to pursue 105?

- No, your Tribe does not need TAS status to pursue 105 funding. TAS status lowers match requirements for 105 funding from 40% to 5% for the first two years of program implementation. After the first two years, match requirements increase to 10%, with TAS status.

G. If I have water TAS does that make getting air TAS easier?

- Yes, if your Tribe has water TAS authority, then the criteria used for water TAS can be used for Air TAS or vice versa. The requirements for water are, more or less, the same because water is considered a media.

B. Does a Tribe need to pursue 105 grants, or can they continue under a 103 grant indefinitely?

- A Tribe can continue under 103 funding, but not indefinitely and only for activities approved under the 103 grants.
- 103 funding is used for short-term projects that take an average of 5 years until those projects become programs, if the Tribes wishes to implement an AQ program.

III. WHAT IS A PERFORMANCE PARTNERSHIP GRANT (PPG)?

- PPG’s, “Streamline administrative requirements, give states greater flexibility to direct resources to their most pressing environmental problems, and make it easier to fund efforts that cut across program boundaries”⁹.
- A PPG can also fund efforts that involve multiple programs, such as geographic initiatives or data management projects, as approved by the EPA Regional Administrator air quality programs being one.

A. What are the advantages of having a PPG?

- Advantages of having a PPG is that PPG funds can be used to carry out any allowable activity under at least one of the environmental program grants from which funds are combined in the PPG (i.e., approved 105 grant funding activities for air quality programs)
- The ability to fund a broad range of activities is one of the most flexible features of PPGs. The more program grants included in the PPG, the greater the range of activities funded with the PPG⁹.

B. Can a 105 be rolled into a PPG?

- Yes, and into a PPA as long as the Tribes have the EPA administrator’s approval. For example, “Funds from Clean Air Act (CAA) Sec. 105, Clean Water Act (CWA) Sec. 106, and Solid Waste Disposal Act (SWDA) Sec. 3011(a) programs, these multi-media inspections could be funded through the PPG”⁹.

5. <https://www.govinfo.gov/content/pkg/FR-1998-02-12/pdf/98-3451.pdf>

6. <https://www.govinfo.gov/content/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapI-partA-sec7403.htm>

7. [www7.nau.edu/itep/main/docs/training/webinar/airQlty/EPA-Grants-and-Tribal-Air-Qlty-Prgm-2/Childers.Tribal Grants Presentation.pdf](http://www7.nau.edu/itep/main/docs/training/webinar/airQlty/EPA-Grants-and-Tribal-Air-Qlty-Prgm-2/Childers.Tribal%20Grants%20Presentation.pdf)

8. <https://www.govinfo.gov/content/pkg/CFR-2010-title40-vol1/pdf/CFR-2010-title40-vol1-sec35-575.pdf>

9. <https://www.epa.gov/sites/production/files/documents/2006-0325-ppg-guide.pdf>