Wisconsin Tribal Conservation Advisory Council Meeting Minutes
Wednesday, November 2, 2011
Oneida

Meeting called to order at 8:05 am by Jonathan Pyatskowit.

1. Roll Call

Present: St. Croix (Tony Havranek), Lac du Flambeau (Scott McDougall), Oneida (Pat Pelky, Jeff Mears, voting member left at approximately 10:30 am), Mole Lake (Tina Van Zile, Roman Ferdinand), Red Cliff (Melonee Montano), LCO (Brett McConnell), Jonathan Pyatskowit (Menominee), FCPC (Nate Guldan), Stockbridge-Munsee (Luke Hennigan), Ho-Chunk (Sara Schmidt), Bad River (Cyrus Hester)

Others present: Matt Otto (NRCS), Tyrone Larson (NRCS), Sherrie Zenk-Reed (NRCS), Jerry Thompson (WTCAC), Tom Melnarik (NRCS), Keith Sengbusch (WTCAC), Tom Fredrickson (NRCS), Gary Haughn (NRCS), Michael Stinebrink (NRCS), Bob Battaglia (USDA-NASS), Brian Kowalkowski (College of Menominee Nation), Tony Bush (NRCS), Chris Borden (NRCS), Donna Huebner (Rural Development), JoAnn Cruse (APHIS), Mary Rasmussen (USFS), Pat Leavenworth (NRCS), Renae Anderson (NRCS), Jason Suckow (APHIS), Mic Dutcher (APHIS).

2. Approval of Agenda

Small Project Proposals, Small Project Final Reports, Program Manager Report, and NASS need to be added to the agenda.

MOTION: Motion to approve the agenda with additions. Motion by Oneida, seconded by St. Croix. All ayes, zero opposed, motion carried.

3. Approval of Minutes

Jerry Thompson needs to be added to the attendance on Thursday, September 8.

MOTION: Motion to approve the September 7 and 8, 2011 minutes with addition. Motion by LCO, seconded by St. Croix. All ayes, zero opposed, motion carried.

4. Small Project Reports

Oneida –Ted Skenadore gave a presentation on Oneida's project entitled "Aquaponics Pilot Project at Tsyunhehkwa Farm." Oneida built an aquaponics system that will raise perch and grow mixed salad greens and water cress. They need to get the water quality right before they add fish. They could hold 370 fish but they are only going to start with 30. Are there mold concerns? They are going to try and ventilate it. They are using a solar light so when the sun

comes up the light goes on and off at night. They used perch because of the marketability and the heat requirements are less than tilapia. They will be using pots for the plants with holes in to keep the pea gravel cleaner as the perch need cleaner water than tilapia. You need to occasionally add water because of evaporation. Perch are currently selling for $9/fish and $18/lb for water cress.

MOTION: Motion to approve payment of $6,569.21 to Oneida for the Aquaponics Pilot Project at Tsyunhehkwa Farm small project. Motion by FCPC, seconded by Mole Lake. All ayes, zero opposed, Oneida abstains, motion carried.

5. National Agricultural Statistics Service

Bob Battaglia – they want to make sure they get everyone counted in the upcoming survey. The definition of a farm is $1,000 in sales. They have the old farms, but they need to know about any new ones. He wanted to come to the meetings to get to know us. The surveys will be mailed out in 2012. All individual data is held confidential. They do use all the data even if it is disclosed. Important to get everyone counted. The $1,000 can be based on potential income (if growing Christmas trees but not selling them yet was given as an example).

6. EPA Update

Jim Ruppel could not make is, but Jeff Mears wanted to give an update. Tom Maulson, the Lac du Flambeau Chairman, was nominated as the NTOC representative and RTOC will vote at the next Tribal Caucus meeting.

Please forward any issue you may have for NTOC on to Jeff. The GAP Guidebook comments are due November 30. Oneida went through and made comments in the book. Jeff will send their comments to everyone (attached).

Everyone should have gotten extra GAP funds. We recommended that each tribe should get $10,000 and that is what EPA did. The next RTOC meeting was supposed to be at Red Cliff. EPA said they couldn't make it so the meeting was cancelled. They are having a Tribal Caucus meeting instead on November 29 in Oneida (agenda attached). Luke Jones has been invited to present on the GAP guidebook. They encourage each tribe to submit comments. It will have a big impact on all EPA funded programs.

Fee to Trust – If you have questions on how Oneida has done it feel free to contact them.

Jim Ruppel had suggested that he channel all emails to the Tribes. We didn't recommend this as we would like them to come from the different media.

Jerry had submitted an application to EPA for grants to fund the Mole Lake Aquaculture Facility and TribalCorps, however it was not accepted. BIA did get $876,000 through this program and they have already distributed the funds to the Tribes.

7. Rural Development

Donna Huebner - She is attending for Stan. Stan's message that he sent is very clear, even though Rural Development doesn't have many programs that deal with Farming or Conservation he feels it is very important for them to be here to see where they can partner up. They are looking at a 10 – 15% budget cut. They need to really look at collaboration and partnerships to make sure they go with the best projects. He has talked to Brad Pfaff and discussed holding a tribal listening session. Rural Development had a good year last year and sent all their allocations and received money from other states. They met with several of the tribes. They have the 'Know Your Farmer, Know Your Foods" program so how could that fit in aquaponics, etc. They have a value added producer program, for example if you are currently a fish farmer and add value, potentially by becoming organic. However, she doesn't think it could be used as a startup. What about a community farm or garden, would they be considered already functioning? They can do community kitchens, build food stands for people. It has to be something that is normally provided by the Tribal community. They also have the Value Added Producer Grant and Community Producer Program. Their funding will be tripled for the Community Producer Program.

8. Small Projects Reports (continued)

Ho-Chunk – Sara Schmidt gave a presentation on Ho-Chunk's "Species Composition Inventory; with an emphasis on threatened, endangered, and culturally significant resources" small project. One of their goals is to have more outreach to youth and their families to get them excited about natural resources and maybe pursue that type of career. They started a citizen science based monitoring program. The grant helped them purchase supplies to pursue this inventory of a few properties owned by the Ho-Chunk Nation. 13 volunteers participated in the Bio Blitz model which is a model used throughout the Nation. They did have trouble recruiting volunteers. The one property they did have 13 volunteers.

WTCAC needs to see a final budget with the 10% match broken out. Once WTCAC has the final budget, the project can be approved via email.

9. APHIS Update

JoAnn Cruse – Not much for budget updates, on continuing resolution until November 18. Other than La Crosse County, no additional EAB finds. Gypsy moth numbers are extremely high in the north, Bayfield, Ashland, Clark Counties. APHIS may need to talk to tribes about quarantines. They will lose 2 out of 7 people because of budget cuts. So much is dependent on the budget so she doesn't have much to say right now. They want to move forward with the full

scale exercise so she needs to get back in touch with Menominee. It will probably be happen in May and September next year.

Mic Dutcher – No budget yet for 2012, the proposed one is only 80% of 2011 budget. They maintain cooperative agreements and grants with several tribes and WTCAC. They will be impacted. The VHS and CWD programs look like they will be completely cut in 2012. Not in stone but doesn't look very promising. Within the last couple of weeks, they were given the opportunity to tap into some funds for outreach. Dr. Deveau talked to Dan Cornelius and they may have identified some funding for LCO to promote traditional farming with school age kids. They submitted a request for funding last week. They are hoping to do this long term and turn it into a program at tribal colleges.

Jason Suckow – He went through things they are working on with Tribes in Wisconsin. Bad River – they had an intern through WTCAC (Charles Wiggins), it was a good, positive experience for APHIS as well as Charles. They have an agreement where they help Bad River capture and collar wolves. They also have another project protecting piping plovers on Long Island (many agencies involved as well as Bad River). FCPC – Completed an MOU in working with various wildlife management issues as it relates to wildlife damage. When personal are flying various streams, they provide FCPC with the reports. Ho-Chunk – Agreement for capturing and collaring wolves and successful in helping them do that. LCO – Agreement for capturing and collaring wolves and they caught at least 1 this year. They spend a lot of time in consultation issues with LCO on bear issues. Oneida – Conducted a site visit to look at concerns with cormorants. There is a concern of cormorants affecting ponds in Tribal members' back yards. Oneida is being proactive. Lac du Flambeau – Continue to work with bear issues. They have an MOU in progress with them as well. Trout streams go through their property that are significant to the DNR so they conduct beaver management on them. Menominee – On going relationship primarily discussing beaver dam management activities. Mole Lake – They are working on protecting trout streams and wild rice. Red Cliff – They are working with the National Park Service on the Apostle Islands as they have a problem with deer overgrazing Canada Yew which is one of the last spots it is found in Wisconsin. They have been trying to bring the deer numbers under control and APHIS has been assisting. The deer that are culled are given to Red Cliff. They are also working on wolf issues adjacent or near the reservation. St Croix – They are working with them on bear issues. GLIFWC – They established an agreement to provide beaver damage management for the protection of wild rice (22 different lakes). They also work on providing research data. They provide beaver to them to assist with pine marten release program.

The delisting announcement for wolves should be coming out in December or January. Then wolves would become a state issue. The process will likely be slowed. If delisted, would APHIS still cooperate on Tribal lands? He said that it is a good question. Currently the DNR is

helping fund their wolf program as the federal funding got cut. As long as they continue to receive funding from the state, the assistance to tribes should continue. If they no longer have the funding, then it will be a different story.

The Mississippi flyway approved a harvest season for sandhill cranes. There was a season in Minnesota. It will be interesting to see where it goes for the rest of the flyways.

10. FSA Update

Susan Hunter – Susan handed out a report (attached). Wild Rice Issue – 2 days before the deadline she got a call saying they could approve 1 for a pilot project. They were able to get a NAP policy in place and get the check cut for $250. The way it stands right now, only available on lakes or waterbodies where the Tribe has complete control of the management of the wild rice. With the ceded territories, it is not 100% controlled by the tribe, therefore anyone that harvests on these waters would have to be party to the NAP policy. There does not need to be a water control structure to be eligible. If a Tribe wants to be eligible next year they should be pulling together production data for this past year. There has to be at least a 50% loss to earn a payment. For example, if you had a 60% loss you would get a 10% payment.

On perennial crops, they need to be sold commercially. It would eligible if you are trading raw sap for maple syrup. The fee can be waived if the income for all farming operations is less than $22,000 or $23,000; however the loss has to be almost 100% before you get any payments.

Their agency is interests in career fairs at the Tribal colleges and they are looking for contacts.

11. NRCS Update

Pat Leavenworth – She just found out yesterday on their 2012 Budget they are on a continuing resolution until November 14. They passed a bill to fund agriculture and it will move to conference and a significant amount of work has been done on the preconference bill. Not expecting it to be filed until November 14. Agriculture may be the only thing that will have the special passage through Congress while everyone else may be under an omnibus bill. Farm Bill – there is the super committee working to resolve the federal deficit. House and Senate Ag committees are working on getting a prototype farm bill to this committee. They are in a deadlock over the commodity title and they want to cut direct payments but undecided on what sort of safety net they want to put in place. They released the assessment of the effects of conservation for the Great Lakes Region. The whole country will eventually be done. Three have been completed: Chesapeake, Upper Mississippi Basin and the Great Lakes (attach).

They have filled most of their needed vacancies. They are in good shape in terms of meeting whatever challenges come to them in the future.

Matt Otto – EQIP signup, there are 3 national initiatives: 1) Organic 2) Seasonal High Tunnel (all states will offer it) 3) National Energy Initiative. They are hoping by early December to have cookbooks ready. February 3 will be application cut off dates. The initiatives have some national dates (multiple national cutoffs with first one on Feb 3 and last one in June). The land must have a crop history (needs to be crop land) to qualify for a high tunnel. Energy iniaitves are mostly related to cropping. Energy audits need to be completed first which can also be funded by NRCS. They haven't heard much news on WHIP however they are expecting it to be the same as last year. WHIP has the same dates as EQIP.

Matt passed out a summary of the Aquaculture Initiative (attached). The handout discusses how aquaculture practices will work in 2012. St Croix was wondering about a couple of practices to add. One would be pipeline that could be possibly be removed, do they apply for it under EQIP or should they apply for small project funding to make a recommendation? Keith thinks it would fall under pipeline similar to an irrigation system as it has to be removed in the winter so it doesn't freeze into the lake. Matt doesn't think they have a scenario for a flexible pipeline. Pipeline is one of the Regional Scenarios for this year and there is no flexible pipeline scenario right now. So they should probably apply under a small project. There may be an issue with the pipe being portable. Lac du Flambeau just leaves the pipeline in the lake during the winter. They use 4 inch PE. Heavy use path was another thing St Croix was looking at. Heavy use path would work according to Matt. Another one would be the fence; there is a better scenario that now fits for this scenario for 2012. An aerator is a small project to look into.

There were revisions to the EQIP manual, one thing was that they could not pay for practices that were submerged. They questioned it and the issue is it cannot be a floating practice. If they are attached to a dock that is connected to land is it still floating?

12. Conservation Stewardship Program (CSP)

Michael Stinebrink – They worked through a CSP application with Lac du Flambeau last winter. It was the first one in Wisconsin with a Tribe. Lac du Flambeau included only forest land. He explained it like a rewards program. One part is payment for what you have already done in conservation and then you need to do additional things as well. First, it is a five year contract which can range from $1/acre/year up to $24/acre/year in Wisconsin. He knew Lac du Flambeau would be on the lower end. The one issue they worked through was the land control issue as you have to enroll all of your eligible acres therefore all forest land had to be entered. Lac du Flambeau has trust, allotted and fee land. The allotted land was an issue, the easy solution was to call the BIA and get the GIS data and it had to be more than 50% tribal control to be eligible. There is an interview to establish the current level of conservation (only took 30 -45 minutes). They choose 4 enhancements: 1) FSI for wildlife habitat and soil quality, 2) Forest Wildlife Structures 3) Hardwood Crop Tree Release 4) Conifer crop tree release. How does this affect our ability to apply for EQIP was a question last year? They are only doing enhancements on a

small amount of acreage so you can still do other EQIP practices on the other acreage. The FSA office was very good at changing the farm tract boundaries. No deadline has been established for CSP sign up this year. They enrolled 28,000 acres. A lot of these practices were things they are already doing. Scott was trying to figure out if this would be good for the program or a drag on it. Lac du Flambeau alone exceeded the acreage allotted for the state but they were able to use acres from other states that did not use up all of their allocations. Scott said so far so good.

13. Technical Service Provider (TSP) Training

Brian Kowalkowski – We met on Oct 18 and 19. On the 18th the NRCS folks did presentations on what the TSP process was and how it worked. On the 19th we sat down and went over the benefits of being a TSP and what the challenges would be. We need to decide who is going to be in the program, what their names are and how we can get started with the process of getting them certified. Send Brian a list of the people that interested in receiving the training. There is the potential for 3 different training sessions (possibly at Menominee, Fond du Lac, and Shakopee). The modules are also being done for another group so there would be another avenue for training as well.

14. Forest Service Update

Mary Rasmussen – The Chequamegon-Nicolet is dealing with a large number of retirements, the Forest is going to take a close look at its organization. There will probably be some upcoming career opportunities with the Forest and some career student positions. Chequamegon-Nicolet continues to work with the state, GLIFWC and the Tribes by moving elk from Clam Lake to other areas of suitable habitat. They are working with GLIWC on pine marten translocation and research. At the Northern Great Lakes Visitor Center they worked on a climate change exhibit with GLIFWC, Red Cliff, and Bad River. What would happen to the Ojibwa culture if climate change affected wild rice? She has been in discussion with the Field Representative for their state and private branch of the Forest Service. Their main focus is non-federal lands so she really wants to make a connection with this group. There may be some financial assistance. Barb T. would like to come to a meeting on the west side of the state. Under the Farm Bill there are opportunities for the tribes to get timber from USFS lands for traditional, non-commercial purposes.

15. Student Intern Program

Jerry handed out his report to the Office of the Secretary. We talked to them last year about their Tribal Scholar Program. That was the last we heard of them, Stephanie Koziski sent out a report to all the State Conservationists talking about all of her efforts trying to promote student internships and Scholars. The report had little to say about Wisconsin and didn't mention WTCAC's internship program but it did discuss all her efforts in Michigan and Minnesota. Jerry sent her an email outlining everything WTCAC had done.

For next year's interns, the first day of work would be June 4 and ending August 10 at $12.50/hr. Federal holidays are paid days but no sick or vacation pay. They can work with their supervisor on taking unpaid time off and can extend their internship past August 10 to complete 10 weeks. The interns last summer really enjoyed the Pioneer Production Challenge Conservation Camp at UW-Platteville Farm. NRCS signed them up as Earth Team volunteers so they could drive vehicles and have computer access if needed. There was a thought about holding a 1 day training on how to complete a federal job application and maybe have the different USDA folks come in and talk about the different kinds of positions they have. There is a student orientation meeting on June 4 in Medford. They must have a valid driver's license.

Potential Locations
1) Rhinelander – NRCS (1)
2) APHIS – WS (1- could partner with pretty much any Tribe)
3) APHIS – VS (1, Madison or maybe Stevens Point)
4) Spooner - NRCS (1, partner with St. Croix and Rural Development)
5) Shawano – NRCS (1, Partner with Menominee)
6) Watersmeet, MI – USFS (2 and housing is available, production oriented nursery)
7) Ashland – USFS (2 and housing may be available, Northern Great Lakes Visitor Center)
8) Hayward – USFS (1 and housing is available, LCO Conservation Youth Corps Crew Leader)
9) Ashland – NRCS (1, could partner with Red Cliff and Bad River)
10) Oneida – NRCS (1, partner with Oneida)
11) City of Menominee - Rural Development (1)
12) La Crosse - NRCS (1, maybe could partner with APHIS-Plant Protection)

It was decided that all of the positions should be advertised and we will try to come up with more funds.

16. Federal Government Travel Budget Cuts

There was a discussion about teleconferencing capabilities because of travel budget cuts for federal employees. The Rhinelander USFS and Northern Great Lakes Visitor Center were discussed as possible locations to hold WTCAC meetings as they have teleconferencing capabilities. It was decided that for the time being we would just continue to rotate through the Tribes and see how that continues to work.

17. EQIP/WHIP

Preliminary amounts are $365,398.40 for EQIP and $20,814.00 for WHIP. Red Cliff does not have their projects ready so we will have more. **We will need the final numbers at WTCAC in December!** We will also need to discuss the EQIP/WHIP ranking question descriptions at the next meeting.

Oneida has to list and apply for their projects by county and they feel that they should only have to report as Oneida Nation, not break it out by county.

18. Small Projects Reports (continued)

Mole Lake – Roman does not have their final report finished but he will present on it at the December meeting.

St. Croix – Tony Havranek reported on St. Croix's "Miinan (Blueberry)/Aninaatig (Sugar Maple) Habitat Restoration Initiative" special project. The project was a Reservation wide resource assessment. They parsed out 2 parcels for blueberries and 2 parcels for sugarbush. They plan to sign up under Forest Management Plan through EQIP. They have developed the management practices which were the main goal of the project.

MOTION: Motion to approve payment of $19,372.54 to St. Croix for the Miinan (Blueberry)/Aninaatig (Sugar Maple) Habitat Restoration Initiative small project. Motion by FCPC, seconded by Stockbridge-Munsee. All ayes, zero opposed, St. Croix abstains, motion carried.

Red Cliff – Melonee doesn't have a final report, however they will plan to present it at the December meeting.

19. Small Projects Proposals

Bad River – Bad River presented a proposal for a small project titled "Improving Wildlife Habitat through Wild Rice Monitoring." They are interested in improving wild rice monitoring. The project consists primarily of some monitoring data collection and harvester surveys. Funding is salary support and sediment cores.

MOTION: Motion to approve Bad River's "Improving Wildlife Habitat through Wild Rice Monitoring" small project for $20,868. Motion by St. Croix, seconded by Red Cliff. All ayes, zero opposed, Bad River abstains, motion carried.

LCO – LCO presented a proposal for a small project titled "LCO Hatchery Floating Raceway System."

MOTION: Motion to approve the "LCO Hatchery Floating Raceway System" small project for $17,500. Motion by FCPC, seconded by Bad River. All ayes, zero opposed, LCO abstains, motion carried.

Jerry will put out an email indicating we will be accepting more small project proposals at the December meeting.

20. INCA Meeting Update

Jonathan was supposed to have a meeting in October but it got cancelled. Jerry and Jonathan will be going to the INCA/IAC Conference in Las Vegas in December.

21. Program Manager Update

WTCAC decided to have a booth at the INCA Conference.

Jerry handed out his and Keith's time sheets for the month of October.

He is going to modify the budget to add in the extra needed to cover fringe for the students. Interns will only have 2 options for being paid, direct deposit or debit card.

Jerry passed out the quarterly report to the Office of Advocacy and Outreach.

Taxes for 2010 – All the reports he can generate in our accounting software is helping immensely. This September he will report out taxes for 2010 for the last 12 months. This December he will use a short form to go in and change our tax accounting year and will catch us up so we can file from January – December. He has copies of all the tax stuff. We still have an IRS issue. For some reason they sent us a check however we feel we should have gotten more back. He does not know why they are hanging on to the extra money. Brett has the check but Dave said not to deposit it until the issue is resolved. We could give Jerry power of attorney so he can talk to the IRS on a continual basis. He will not be able to sign things. It will just give him the authority to talk to them.

MOTION: Motion to give Jerry Thompson the Power of Attorney to talk to the IRS about WTCAC's taxes. Motion by FCPC, seconded by Stockbridge-Munsee. All ayes, zero opposed, motion carried.

We can only ask for money from the 2501 grant on an as needed basis. Once we have spent all the old money, he has to start on a new system. The maximum he can project out is 2 days in advance. The money should be in the account in 48 hours. They really want us to incur the expense and then ask for reimbursement. He will look into delaying the direct deposits.

There was an issue with getting the checkbook to balance. But Jerry got it figured out.

He handed out the current budget for this quarter.

We need to revise the employee handbook particularly looking at the paid vacation, clarification of accrual of time and carry over dates.

Jerry will be on vacation for 2 weeks. He will have his computed and phone with him if needed. He is leaving Friday morning.

22. Elections

Elections were held for the Vice President and Treasurer.

Nate Guldan was nominated by Brett McConnell for Vice President. Nate Guldan accepted the nomination. All in favor, Nate Guldan abstains, Nate Guldan is reelected Vice President.

Brett McConnell was nominated by Nate Guldan for Treasurer. Brett McConnell accepted the nomination. All in favor, Brett McConnell was reelected Treasurer.

23. Technical Recommendations

There was a request to look into some training for contractors on installing silt fence. NRCS used to do it a lot. Keith will look into it.

Keith indicated that they are on the verge of having all the numbers for the bottomless culverts and bridges.

23. Next Meeting

The next meeting was scheduled for December 13 at LCO.

MOTION: Motion to adjourn. Motion by Ho-Chunk seconded by Stockbridge-Munsee. All ayes, zero opposed motion carried. Meeting adjourned at 5:07 pm.

WTCAC EQIP Aquaculture Initiative

A summary of the FY11 initiative and the process for FY12

Background

WTCAC approached NRCS in 2010 with a request to add aquaculture systems to the list of available practices in Wisconsin. NRCS requested more time to learn about these systems from a technical standpoint and the feasibility of offering them through financial assistance programs. This work was completed and WI NRCS requested a special WHIP initiative to fund aquaculture systems. Feedback was received from the NRCS national office that the initiative proposal should be submitted under EQIP because the fish in these ponds are considered livestock and part of an aquaculture/agricultural operation while WHIP funds should be used to focus on habitat restoration. The proposal was resubmitted under EQIP but funding was not received. However, WI NRCS had also requested and received additional general EQIP funding and did set-aside $100,000 of this for a 2011 WTCAC Aquaculture program.

Results

Two applications were received for the WTCAC Aquaculture sign-up and one application was funded. Practices available in the sign-up included Aquaculture Pond (397), Critical Area Planting (342), Fence (382), Pipeline (516), Pumping Plant (533), and Well (642).

Aquaculture in FY12

Aquaculture practices will move from being part of a special initiative in 2011 to a general suite of practices available in the perennial EQIP WTCAC funding pool. As was clarified by the NRCS national office, aquaculture ponds are a livestock agriculture practice and therefore existing aquaculture ponds with resource concerns must be present in order to be eligible for a new pond(s) that addresses those resource concerns. This parallels the use of EQIP with other livestock practices, such as Waste Storage (313) or Prescribed Grazing (528), where livestock and associated resource concerns must be present in order to be eligible for EQIP. EQIP cannot fund the creation of new livestock/aquaculture operations where none existed previously.

The practices available in 2011 will again be available in 2012 with some minor changes. Other supporting practices will also be available. A payment limitation placed on Aquaculture Pond (397), similar to what is done with Waste Storage (313), but there will not be an overall payment limit on the suite of practices needed for these systems as there was in 2011. The floating raceway concept will not be available in 2012. Much like the original proposal, more time will be needed to evaluate those systems from a technical and programmatic standpoint.

Despite a trend of declining EQIP allocations, it is the intent of WI NRCS to continue the established EQIP WTCAC allocation of $440,000. If demand is present and resources become available, additional funding for EQIP WTCAC will be considered.

Attachments to November 2, 2011 WTCAC Meeting Minutes

Oneida Comments on GAP Guidebook

Guidebook for Building Tribal Environmental Capacity

Consultation Draft – August 1, 2011

Consultation Draft

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INTERNATIONAL AND TRIBAL AFFAIRS
1200 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20460

REPLY TO THE ATTENTION OF: 2610R

August 1, 2011

Re: Guidebook for Building Tribal Environmental Capacity

Dear Honorable Leader:

As part of our ongoing commitment to effective oversight of tribal capacity building resources and our response to an Office of Inspector General (OIG) audit report, "Framework for Developing Tribal Capacity Needed in the Indian General Assistance Program" (Report No. 08-P-0083, 02/19/2008), I am pleased to transmit the following "Guidebook for Building Tribal Environmental Capacity".

The purpose of this Guidebook is to provide the overall framework for how EPA should work with tribes to build their capacity to administer environmental protection programs that are responsive to tribal environmental priorities and that are consistent with Agency authorities. Implementing the framework outlined in this Guidebook will increase accountability for making measureable progress in building tribal capacity, improve management of the Indian Environmental General Assistance Program (GAP), and provide EPA regional offices and grant recipients improved guidance on effective use of GAP resources. Implementing the Guidebook will also help EPA headquarters and regional offices effectively plan for full program implementation in Indian country through a government-to-government environmental program development and implementation planning process. Finally, implementing the Guidebook will also help tribes identify Agency funded capacity development pathways appropriate for their own environmental protection priorities.

JM: This framework seems above and beyond just the GAP program. This will impact all EPA funding.

Since the program's inception in 1993, GAP grants have played a major role in the successful development and implementation of tribal environmental programs. This Guidebook will help create a nationally consistent framework for building tribal environmental program capacities and improve our ability to report progress in building these capacities.

In keeping with my July 22, 2011 letter providing notice of our intent to initiate consultation on this Guidebook, we look forward to fully considering tribal input. Please visit our tribal portal website for additional information about the consultation process.

We look forward to working with you to further develop, finalize, and implement this Guidebook and we thank you in advance for your active participation in this effort to ensure long term success of our tribal capacity building investments.

Please feel free to contact me, or have your staff contact AIEO Director JoAnn Chase (202-564-1310) or AIEO Senior Policy Advisor Luke Jones (202-564-4013) with any questions.

Sincerely,

// original signed //

Michelle DePass
Assistant Administrator

Table of Contents

Guidebook for Building Tribal Environmental Capacity

Working Draft – August 1, 2011

1.0 Introduction

1.1 Background – EPA/Tribal Environmental Partnership in Indian Country

The mission of the U.S. Environmental Protection Agency (EPA or Agency) is to protect human health and the environment. In keeping with that charge and the federal trust responsibility, the Agency is responsible for ensuring that EPA environmental statutes are fully implemented in Indian country. Depending on the particular statute, the Agency has a number of options it can use to ensure that regulated facilities, sites, and/or activities are in compliance with federal requirements. For example, the Agency can directly administer a federal program, approve eligible tribes to administer the program, or enter into an intergovernmental agreement with tribes to jointly implement aspects of the federal program.

No matter which mechanism EPA may employ to meet its obligations in Indian country, it must consider tribal interests and closely involve the appropriate tribal governments. The 1984 EPA Policy for the Administration of Environmental Programs (EPA Indian Policy) outlined principles to guide the implementation of the Agency's programs in Indian country. Based on the principles of Indian self-government, the EPA Indian Policy recognizes that tribes are the primary authority for reservation affairs and are not political subdivisions of states. The Agency's goal is to ensure that tribes are able play a lead role in environmental protection on reservations and other tribal land areas and to coordinate with tribal governments on the implementation of environmental statutory obligations. As a result, the Agency is committed to assisting tribes to develop environmental programs in order to assume federal regulatory and program management responsibilities on reservations and other parts of Indian country.

One of the Agency's most important tools for assisting tribal governments to develop environmental regulatory and management programs is the Indian Environmental General Assistance Program (GAP). In 1992, GAP was created to provide technical and financial assistance to build tribal capacity to develop and administer federal environmental programs. GAP was designed to be multi-media in scope, allowing tribes to develop capacities across the various federal statutes and focus their efforts where the environmental need was greatest.

EPA also provides technical and financial assistance to build environmental program capacity for tribes that, for whatever reason, are not currently able to implement federally authorized regulatory and enforcement programs. This helps EPA ensure that all federally recognized tribes have the opportunity to meaningfully participate in the Agency's policy making, standard setting, and direct implementation activities potentially affecting tribal

interests. This also helps all tribal governments cooperate and, when appropriate, enter into intergovernmental agreements with neighboring state and local government authorities in an informed manner. This assistance helps tribes identify and characterize environmental protection priorities for their communities and meaningfully participate as informed partners to resolve environmental problems.

EPA is committed to continuing this partnership with tribal governments to protect human health and the environment in Indian country and other tribal areas. This Guidebook has been developed to enhance and support that partnership through joint strategic planning, identification of mutual responsibilities, targeting resources to build needed tribal capacities, and measuring program development progress over time. Indicators of tribal government capacity contained in this Guidebook provide a clear and measurable framework for tracking progress, even when GAP funds are combined with media-specific funds through Performance Partnership Grants.

1.2 Purpose – Enhancing the EPA/Tribal Partnership for Environmental Protection in Indian Country and Measuring Tribal Program Development Progress

As referenced above, GAP has provided tribal governments with valuable support for environmental management activities and there are numerous examples of how GAP resources have allowed tribes to become involved in environmental issues, design projects and programs to respond to environmental threats, and pursue other EPA media-specific programs. However, evaluations of the GAP have found that the program does not have a means of determining whether the use of GAP funding is effectively and efficiently achieving progress toward the goal of tribes operating environmental management programs or assuming federal authorities.

In February 2008, the Office of Inspector General (OIG) released an Audit Report entitled "Framework for Developing Tribal Capacity Needed in the Indian General Assistance Program." The OIG concluded that the Agency had "not provided a framework for tribes to follow or adapt as they develop their capacity to implement environmental programs." Furthermore, the OIG observed that "it is not clear whether IGAP funding will result in tribes being able to operate their own environmental programs." To address this finding, the OIG recommended that EPA: develop a framework for achieving tribal capacity; require regions to negotiate environmental plans with tribes that would be linked to GAP work plans and measure progress; and revise the distribution of GAP funding to emphasize prior progress, environmental capacity needs, and long-term goals.

> *PJP: Will the Tribes be able to have input in developing this framework? Will it be different for each tribe based on what they are trying to achieve in environmental protection?*
>
> *LKM: How will EPA revise the funding? What criteria will they use to make their determination? GAP has historically been a non-competitive grant to all tribes equally- how will this change?*

Similarly, in May 2007 EPA's Office of Policy, Economics & Innovation and the Office of the Chief Financial Officer issued a report titled, "Evaluation of the Tribal General Assistance Program." That evaluation offered several recommendations on improving management of the GAP grant program, including: "Consider working more directly with tribes and regions to enhance administrative, legal, and enforcement capacity"; and "Track progress toward achievement of the new 2006-2011 strategic goals and targets".

These evaluations of GAP underscore that the Agency needs a nationally consistent approach that will ensure that GAP resources are managed effectively to support the Agency's statutory obligations and that the principles of the 1984 Indian Policy are upheld as we coordinate with tribes. This approach must be based on an understanding between the Agency and each tribal government about environmental conditions in each Indian country area, the known inventory of regulated facilities, current tribal environmental programs and priorities, and how the tribe would like to partner with EPA to administer the federal programs. This information serves as the foundation for identifying what environmental program capacities each tribe intends to develop, the timeline for development of those capacities, and the federal technical and financial assistance that may be available to support development of those capacities.

The purpose of this Guidebook is to present this enhanced approach to the EPA-tribal partnership through strategic environmental program planning and more effective use of GAP funding as a means to achieve tribal capacity. The Guidebook will begin with a discussion of the core program capacities that each tribal environmental program should establish. Building from that foundation, the Guidebook will offer guidelines on developing EPA-tribal environmental plans that would serve as the basis for developing more complex tribal environmental program capacities. The remainder of the document provides more detail and example pathways on developing tribal capacity-building and implementation activities associated with specific federal environmental statutes.

It is important to note that while this Guidebook outlines a process to develop and maintain a partnership between EPA and the tribes, it should not be interpreted as a prescription for all tribal environmental programs. The Guidebook is not meant to limit tribal environmental program activities to what is included in the federal statutes, nor is the list of tribal capacity building and implementation activities it contains all-inclusive. Each tribe should define the scope and content of its particular environmental program, based on its priorities, environmental conditions, jurisdictional situation, or other factors. Many tribal environmental programs will include projects and issues unrelated to EPA authorities and programs. In keeping with the Agency's 1984 Indian Policy, EPA will encourage cooperation between tribal, state, and local governments to resolve environmental problems of mutual concern where appropriate. Therefore, EPA will support tribes in their efforts to develop relationships and partnerships with other appropriate federal agencies, state and local governments, and non-governmental organizations to obtain support and to coordinate activities related to those issues.

Where there are connections between specific tribal environmental priorities and the federal environmental statutes, this Guidebook will provide a framework for coordinating EPA and tribal activities, including building tribal program capacity, coordinating on the

implementation of the federal statutes, pursuing federal statutory authorities as appropriate, and identifying EPA financial and technical resources that can support tribal environmental programs. GAP resources should be targeted to those activities designed to build a tribe's capacity to administer environmental protection programs that address tribal priorities that support the objectives of EPA's statutory and regulatory programs.

2.0 Building Core Environmental Protection Program Capacities

2.1 Purpose

Similar to EPA's work with states, EPA stands ready to support tribes in their efforts to establish the infrastructure and skills to effectively develop and implement sustainable environmental management programs. This infrastructure is the foundation of tribal environmental management programs and is required for tribes that decide to pursue federal environmental authorities. These core capacities are also important because many tribal environmental programs are small in size with limited staff. As staff turnover occurs, much of the institutional knowledge may be lost. In order to sustain these environmental programs and continue progress it is critical that each tribe have this strong foundation.

After receiving GAP grant resources for five or more years to build core program capacities, EPA anticipates that many tribes will require continued funding to sustain their programs while pursuing media specific grant resources to address specific environmental problems. In some cases, this will represent a transition from GAP to other funding sources. In those cases, continued GAP funding can be directed to other program development activities, including activities that expand on existing capacity to address more advanced degrees of complexity in the tribe's core multi-media program.

> *LKM: Will EPA use this to discontinue funding? Each tribe has different needs, are at different levels of program development, and have different steps they take to build capacity.*

Because core environmental protection program capacities are important to establish and maintain in order to manage EPA funding programs, ensure a sustainable environmental program, prioritize tribal environmental priorities, and respond to human health and environmental threats, it is expected that most GAP grant work plans will include activities related to core environmental management program capacity-building. Indicators of core capacities are included below and EPA project officers should refer to these during negotiation with tribal staff to evaluate the tribe's current status in developing/updating core capacities and the activities proposed for new work plans.

The remainder of this section will outline the core capacities that are necessary for planning, developing, and establishing tribal environmental management programs. The exact nature of the capacities will depend on the size and structure of the tribe.

2.2 Administrative

Establishing administrative core capacities includes assessing, modifying, or developing policies and guidance that will be used to manage the environmental program. This includes a defined organizational structure with appropriate personnel management systems. Roles and responsibilities should be assigned for program activities such as setting program goals and evaluating progress, staff hiring and supervision, work plan negotiation, budget monitoring, and reporting. Internally, there should be procedures for communicating issues to tribal leadership and receiving direction and feedback on the environmental management program. In addition, there should be procedures for how the environmental management program would work with other tribal departments and programs on issues of interest. An appropriate number of staff with suitable skills should be maintained to meet the needs of the environmental program. Training plans should be developed to meet the tribe's environmental program development needs. Tribes should develop measures similar to the Administrative Procedures Act (APA) to keep the public informed of activities, include public participation and meaningful involvement in rulemaking processes and other key decisions, and define options for requesting reconsideration of decisions.

Indicators of Capacity: To demonstrate administrative capacity, a tribal government should develop the following: (1) organizational system for the environmental program that defines staff roles and responsibilities, describes the relationship of the environmental program to tribal leadership and other departments, and includes supporting personnel management policies/procedures that outline how staff will be managed; (2) staff with appropriate skills, knowledge and experience to manage the environmental program; (3) training plan for staff that reflects the capacity-building priorities for the environmental program; (4) program evaluation system that will determine if program objectives are met, fiscal resources are appropriately managed, and assistance award requirements satisfied; (5) any necessary inter-governmental (federal, state, local) agreements to implement the environmental program; and (6) written procedures similar to the APA to ensure meaningful involvement and fair treatment in public participation.

2.3 Financial Management

Establishing financial management core capacities includes assessing, modifying, or developing financial, procurement, equipment tracking, property management, and grants management procedures to ensure that the tribal systems are in compliance with federal requirements. Procedures should clearly delineate roles and responsibilities, describe recordkeeping activities, and define auditing and other evaluation methods that will be used to ensure fiscal accountability.

Indicators of Capacity: To demonstrate core capacity for financial management, the tribal government should develop the following: (1) a statement by the appropriate tribal financial department that demonstrates that the tribe's accounting system, internal controls, and financial reporting procedures adhere to the requirements found in 40 CFR Part 31 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", 40 CFR Part 35 Environmental Program Grants for Tribes, 2 CFR, Part 225 (formerly OMB Circular A-87 "Cost Principles for State, Local and Indian tribal governments)", and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations"; (2) a statement by the appropriate tribal financial department that

demonstrates that the Tribe has a procurement procedure that meets the minimum requirements for purchasing systems (responsibility, code of conduct, competition, cost and price review, disadvantaged business opportunity, debarment and suspension) as outlined in 40 CFR Part 31; (3) written procedure for tracking (including final disposition) equipment and supplies acquired by the environmental program in compliance with 40 CFR Part 31; (4) written procedure that describes how the environmental program will coordinate with other tribal departments to satisfy grant terms and conditions and reporting requirements (for example, application development/review/approval, creation and submission of required reports, maintenance of official file, closeout of award); and (5) current indirect cost rate agreement.

2.4 Information Management

Establishing information management core capacities includes assessing, modifying, or developing systems to maintain administrative records and files, useful reference material for the environmental management program, and information on environmental and human health conditions that may impact tribal members or tribal resources. These systems should clearly identify roles and responsibilities, format for the material, location of the information, any confidentiality issues, and whether this information must be legally maintained for a specific time period. Information management is also essential for measuring and tracking program performance over time, including data management on environmental indicators. Data collection, management, and reporting are key features of a core environmental protection program.

Key sources of information management information include:

- Environmental Information Exchange Network & Grant Program: http://www.epa.gov/exchangenetwork/grants/index.html
- EPA Quality Management System: Quality Management Tools - QA Project Plans: http://www.epa.gov/quality/qapps.html
- Doing Business with EPA: Quality Specifications for non-EPA Organizations: http://www.epa.gov/quality/exmural.html

Indicators of Capacity: To demonstrate core capacity for information management, the tribal government should develop the following: (1) written procedure for establishing an official file for each assistance award that will contain all documentation from application through final closeout and requires retaining those records in compliance with 40 CFR Part 31; (2) written inventory of administrative and technical procedures, policies, regulations, or other guidelines developed to implement the environmental program; (3) system to store and organize data and information collected or generated by the environmental program for future use in characterizing environmental and human health conditions, responding to information requests, developing environmental projects/initiatives, or other project management data systems; (4) exchanging and/or sharing data through the National Environmental Information Exchange Network.

2.5 Baseline Needs Assessment

A baseline needs assessment is a primary step to determine the environmental and human health issues facing a particular tribal community. Such an assessment can help a tribe to identify and prioritize the needs facing the tribal community and inform a tribe's approach for undertaking protection and restoration efforts. Additional information on conducting a baseline needs assessment can be found in Appendix 10.1. Periodically, the baseline needs assessment should be updated in response to factors such as: new sources of pollution, changing environmental conditions, new development in the community, acquisition of new lands, and changes to the environmental program.

Indicators of Capacity: A recent baseline needs assessment (or comparable planning document) that reflects known information about existing/potential threats to human health and the environment within the tribe's jurisdiction, an evaluation of the potential impact of these threats to tribal members and resources, and prioritization of activities by the environmental program to address identified threats.

2.6 Public Participation, Community Involvement, Education, and Communication

Establishing public participation, community involvement, education, and communication core capacities includes assessing, modifying, or developing systems to ensure that the tribal environmental management program can notify the general public of important events or information, publicize activities related to its projects and programs, engage the tribal community, including non-members, to develop an understanding of their environmental and public health concerns, educate the public on human health and environmental protection issues important to the tribe, and be responsive to concerns raised. These systems should identify the various routes or methods of disseminating information, and the time frame and particular audience that each method would reach.

Indicators of Capacity: To demonstrate capacity for public participation, community involvement, education, and communication, a tribal government should develop a written public communication and engagement protocol/procedure, which describes the following: (1) outreach methods that will be used to reach specific affected communities and groups; (2) format for public notices, press releases, and other types of communication with the public; (3) methods that will be used to collect public concerns and respond to issues raised; (4) contact lists for other governmental entities and types of information that will be shared; and (5) methods to conduct general public education, awareness, community engagement, and information exchange on issues related to human health and the environment.

2.7 Legal

Establishing legal core capacities includes assessing, modifying, or developing tribal codes and regulations, including associated policies and guidance, that are necessary to prevent environmental deterioration, abate pollution conditions, and manage or enforce specific regulatory programs. The tribe should determine what legal authorities it may use to regulate and what enforcement actions are appropriate regarding facilities and activities that may impact air, land, or water resources within its jurisdiction. The tribe should determine and take steps if necessary to ensure that it has the legal authority and ability to establish

standards, permitting processes, certification requirements, and civil enforcement procedures.

Indicators of Capacity: To demonstrate legal core capacity, a tribal government should develop the following: (1) a statement by tribal legal counsel that demonstrates that the tribe has authority to pass and enforce laws/ordinances to protect human health and the environment; (2) a statement by tribal legal counsel that demonstrates that tribal government authorities provide the tribe with power to enjoin activities determined to be harmful to the health or welfare of persons or natural resources; and (3) a dedicated section of its codes/ordinances/statutes for environmental protection program activities.

2.8 Technical and Analytical Capacities

Tribes may use GAP resources to build baseline environmental program capacities that will be then further developed and enhanced through media-specific EPA programs and other funding sources. GAP should be used to provide a foundation of technical and analytical skills, knowledge, and resources that will be valuable to tribes as they make decisions to pursue specific media projects and programs.

Indicators of Capacities: To demonstrate technical and analytical capacities, tribal government should develop the following: (1) quality assurance and management plans; (2) establishing intergovernmental agreements with other jurisdictions; (3) leveraging funding from other sources; and (4) developing environmental monitoring/sampling programs.

2.9 Capacity Development as a Continuing Programmatic Requirement

Ultimately, establishing sufficient core program capacities should result in tribes being able to fully or partially participate in the national system of environmental protection, in accordance with the desired capacity level of each tribe, as the governmental units responsible for implementing environmental management programs in Indian country and implementing federal authorities on the lands within their jurisdiction. However, EPA recognizes that establishing core environmental protection program capacities is an on-going effort, reflecting that core capacities will evolve as the tribal environmental program itself expands and undertakes additional authorities. Tribes should re-evaluate their core program capacities on a regular basis to ensure that these systems, procedures, and policies are still appropriate for the current stage of the environmental management program. In addition, other core capacities may need to be added to support the more complex activities that will be undertaken as tribes develop media-specific environmental initiatives.

2.10 Core Capacity Development for Tribes with Limited Environmental Program Jurisdiction

Some tribes may not have exclusive environmental regulatory jurisdiction over facilities, activities, or sites within their territories. In keeping with the general federal trust responsibility and the EPA Indian Policy, the Agency recognizes that these tribal governments should still be afforded the opportunity to develop an environmental program that will support their meaningful involvement in the protection of tribal member health and

natural resources that may be utilized by tribal members. Tribes with limited jurisdiction to implement federal environmental regulatory programs may develop core program capacities for purposes consistent with the extent of their authorities, such as developing voluntary or partial environmental management programs, participating in EPA policy making, coordinating with EPA or other federal agencies to implement federal environmental programs, and may consider entering into joint environmental management programs with neighboring state or local environmental agencies.

2.11 Intertribal Consortia

An "Intertribal consortium" refers to a group of tribes that applies for a grant in the same manner as a single tribe. Tribes that form consortia may be able to use their limited resources more efficiently and address environmental issues more effectively than they could if each tribe individually developed and maintained separate environmental programs. EPA believes this approach is a practical, reasonable and prudent way to help interested tribes strengthen environmental protection when limited funding is available to support tribal environmental programs.

For GAP grants, an intertribal consortium will be eligible if (1) a majority of the consortium's members meet the eligibility requirements for the grant; (2) all members that meet the eligibility requirements authorize the consortium to apply for and receive the grant; and (3) only the members that meet the eligibility requirements will benefit directly from the grant project and the consortium agrees to a grant condition to that effect. This means that a consortium may receive a GAP grant even if the consortium includes tribal governments that are not federally recognized so long as the consortium meets the three requirements specified above. The Indian Environmental General Assistance Program Act of 1992 (42 U.S.C. 4368b) , explicitly authorizes GAP grants to an ''Intertribal Consortium,'' which it defines as ''a partnership of two or more Indian Tribal governments authorized by the governing bodies of those Tribes to apply for and receive assistance pursuant to this section.''

While many of the Core Environmental Program Capacities listed above also apply to Consortia, these organizations must demonstrate how their proposed activities assist their member tribes in achieving specific capacity building and program implementation goals.

3.0 Developing EPA-Tribal Environmental Plans

3.1 Purpose

Since 1995, EPA and states have been implementing the National Environmental Performance Partnership System (NEPPS). NEPPS is a performance-based system of environmental protection designed to improve the efficiency and effectiveness of EPA-state partnerships. The goals of performance partnerships include: joint planning and priority-setting, increasing flexibility for states to direct resources to the most pressing environmental problems, and measuring results through a combination of environmental indicators and traditional activity measures. To implement these performance partnerships,

EPA and the states negotiate Performance Partnership Agreements, which identify joint priorities and associated protection strategies and activities.

As discussed above in Section 1.0, the Agency has likewise long recognized the importance of joint EPA-tribal planning processes to ensure that the federal programs are fully implemented in Indian country and to effectively respond to tribal environmental problems and priorities. In addition, EPA has acknowledged that EPA-tribal environmental plans can be an important component of assistance awards to tribes.

The remainder of this section will outline the suggested components that would be included in a comprehensive EPA-tribal environmental plan. It is recommended that these plans have a short-term duration (1-3 years) to allow for specific activities to be identified for joint action.

3.2 Identifying Applicable EPA Statutory Programs

EPA's mission to protect human health and the environment is carried out within the context of EPA's environmental statutes. And as the EPA Indian Policy underscores, until tribal governments assume responsibility for delegable EPA programs, EPA retains responsibility for managing these statutory programs in Indian country. Defining the federal environmental programs that must be implemented in each Indian country area is therefore the initial step in developing an EPA-tribal environmental plan.

EPA regional offices should evaluate how each of the primary federal environmental statutes applies in each Indian country area.[1] This evaluation should include program implementation activities such as permitting, compliance assurance (including inspections and enforcement), inventorying regulated facilities/activities/sites, issuing identification numbers for regulated facilities, issuing certifications, and other official actions associated with program implementation. In Sections 4.0 – 8.0 below, detail is provided on the federal environmental programs under each statute.

Once the evaluation of applicable federal environmental programs is completed, this information should be shared with the appropriate tribal government for their review and with EPA headquarters. As the Agency is looking to partner with tribes to implement these programs, it is important that there is mutual understanding of what is required under the federal statutes, the time frames for this work, and the expected outputs and/or outcomes.

3.3 Developing an Inventory of Regulated Facilities/Sites/Activities

In general, the presence of regulated facilities, sites, or activities in Indian country determine which federal environmental statutes are applicable. The Agency maintains many program-specific databases of regulated entities, and state programs may also contain information on

[1] Clean Air Act; Clean Water Act; Safe Drinking Water Act; Resource Conservation and Recovery Act; Comprehensive Environmental Response, Compensation and Liability Act; Emergency Planning, Community Right-to-Know Act; Small Business Liability Relief and Brownfield Revitalization Act; Asbestos Hazard Emergency Response Act; Federal Insecticide, Fungicide and Rodenticide Act; and Toxic Substances Control Act

regulated entities in Indian country. Many tribes also have developed databases of facilities within their jurisdiction or have knowledge of sources that may not be in EPA's inventory.

As the regional EPA office determines which federal environmental programs are applicable at each tribal land area, the associated known inventory of regulated facilities should be compiled and shared with the appropriate tribal government. Tribal staff may have knowledge of additional sources to include in the inventory and/or information on the operating status of facilities currently on the inventory.

3.4 Identifying Tribal Programs and Priorities

Many tribal governments have already developed programs to address human health and environmental threats facing their communities. These programs may have been developed under inherent tribal authorities or under federal environmental programs. Other tribes may have yet to develop programs, but have conducted needs assessments or community surveys, or have used a comprehensive planning process (for example, development of a Integrated Resource Management Plan) that have identified and prioritized current environmental concerns for their communities. These priorities will be an important factor in how a particular tribal government will want to partner with the Agency in the short and long term.

As part of developing an EPA-tribal environmental plan, tribal governments should submit environmental program priorities for their community. For each priority, the following detail should be included: short description of the priority, actions the tribal government would like to undertake during the time period of the environmental plan, and any type of assistance (training, technical assistance, EPA direct implementation actions, financial, etc.) that may be needed. This information should be reviewed by regional EPA staff to identify any connections to implementation of the federal statutory programs and to identify potential EPA assistance that could be provided to accomplish the proposed actions.

> *LKM: How does this differ from the Tribal Environmental Agreements? Will TEAs no long exists?*
> *JM: TEA's do not exist. They are now Environmental Program Development and Implementation Agreements (EPDIA's)*

3.5 Negotiating Mutual Roles and Responsibilities for Federal Environmental Programs

> *LKM: Same comment as above.*

While the EPA Indian Policy ultimately envisions that tribal governments will assume responsibility for managing federal programs in Indian country, most federal environmental authorities are currently implemented by EPA. The EPA Indian Policy contemplates a substantial role for tribes to partner with the Agency in its implementation of the federal statutes, and encourages tribes "to participate in policy-making and to assume lesser or partial roles" in the management of environmental programs in Indian country.

The information on regulated facilities, applicable federal authorities and tribal priorities discussed above will provide the basis for discussion between regional EPA staff and tribal staff on partnering to ensure the federal environmental programs are implemented in Indian country. In Sections 4.0 – 8.0, further detail on opportunities for tribal involvement in the implementation of the specific federal statutes is provided. The EPA-tribal environmental plan should define the actual activities that EPA anticipates conducting during the time period of the agreement, any activities that tribal staff will perform to support EPA direct implementation, and any activities that tribes will undertake to either apply for program approval/delegation and/or build capacities to assist EPA to implement the federal programs.

3.6 Linking Activities to EPA Funding Programs

It is important for the Agency to efficiently use its financial assistance programs to ensure that its statutory programs are effectively implemented. While the EPA-tribal environmental plans are not budgetary documents and they cannot be used to guarantee funding, these documents can serve a valuable purpose in identifying the funding options available from EPA to support tribal capacity-building, tribal involvement in the implementation of federal programs, and tribal activities related to pursuing approval/delegation of federal programs. (See Appendix 10.5 EPA Funding Programs that Support Tribal Environmental Program Capacity Development and/or Implementation Activities)

3.7 Tracking Progress

EPA and tribal activities identified in an EPA-tribal environmental plan should have defined completion dates to allow progress to be measured. EPA regional offices should periodically evaluate progress on activities to ensure that EPA and tribal program efforts remain on track. Regional offices should consider summarizing their activities related to each tribe on an annual basis and providing this information to the tribe.

4.0 Protecting Ambient Air Quality in Indian Country

Please note that the information provided in this Section does not replace any program-specific regulation, guidance, strategy, or other information resource. It is highly recommended that tribal staff review the Clean Air Act resources that have been developed by EPA and, as appropriate, use these to develop air quality protection projects and programs for their communities. The material below has been provided as reference information that can be used during the development of EPA-tribal environmental plans, and to provide general guidance to the tribes on the options that are available for developing capacities beyond the core program capacities described in Section 2.0.

Key sources of program guidance include:

- The Tribal Air Grants Framework: A Menu of Options. EPA. October 2007. http://www.epa.gov/oar/tribal/pdfs/Tribal%20Air%20Grants%20Framework%20rev%2011_07.pdf
- Tribal Air Program Resources. EPA. http://www.epa.gov/air/tribal/airprogs.html

- Office of Air and Radiation National Program and Grant Guidance. http://epa.gov/planandbudget/

4.1 EPA's Clean Air Act Programs

Air quality is regulated primarily under the Clean Air Act (CAA). The CAA was first promulgated in 1963 and underwent significant revisions in 1970 and 1990. The CAA focuses on three key areas: (1) reducing outdoor, or ambient, concentrations of air pollutants that cause smog, haze, acid rain, and other problems; (2) reducing emissions of toxic air pollutants that are known to, or are suspected to, cause cancer or other serious health effects; and (3) phasing out production and use of chemicals that destroy stratospheric ozone. For more information on the CAA, visit: http://www.epa.gov/air/caa/.

Under the CAA, EPA implementation activities in Indian country include: (1) designation of non-attainment areas for national ambient air quality standards; (2) development and promulgation of federal implementation plans (FIPs); (3) issuing construction permits and operating permits for sources of air pollution; (4) compliance assurance (including inspections and enforcement); (5) processing asbestos notifications for demolitions/renovations or regulated structures; and (6) ensuring risk management plans are submitted by regulated facilities.

4.2 Inventories of Regulated Facilities/Activities

The Air Facility System (AFS) contains compliance and permit data for stationary sources of air pollution (such as electric power plants, steel mills, factories, and universities) regulated by EPA, state and local air pollution agencies. The information in AFS is used to prepare Federal Implementation Plans or Tribal Implementation Plans (TIPs) and to track the compliance status of point sources under the CAA. AFS can be accessed at http://www.epa.gov/enviro/facts/afs/index.html. Tribal staff may be aware of other facilities on the reservation that may be subject to regulation under the CAA.

4.3 Ability for Tribes to Implement Air Federal Programs

The CAA Tribal Authority Rule (TAR) offers tribes the option to request delegation to develop air quality management programs, write rules to reduce air pollution, and implement and enforce rules that are appropriate for their communities. To receive program authorization, tribes must meet the applicable program requirements and be eligible for "treatment in the same manner as a state" (TAS) status. Once a tribe receives EPA approval for TAS, it may request delegation to implement one or more CAA program. For example, tribes with EPA approved TAS applications may develop a Tribal Implementation Plan (TIP) to manage air quality on their lands. Upon EPA approval of a TIP, tribes may use it to identify sources of air pollution and determine what reductions are necessary to meet federal air quality standards. An approved TIP is legally binding under the CAA within the tribal territory and may be enforced by the tribe, EPA, or the public.

For tribes that are interested in pursuing federal authorities, Appendix 10.3 presents general background information on applying for program eligibility or TAS, and provides media-specific references.

4.4 Other Opportunities for Tribal Involvement in Implementation of the CAA

In addition to pursuing federal CAA authorities under the TAR, there are other opportunities for tribal governments to partner with EPA on implementing the CAA in Indian country. As appropriate, EPA regional offices can utilize direct implementation cooperative agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in CAA implementation. Examples of activities that tribal staff may engage in with EPA include: (1) assisting the Agency to develop/update a list of facilities regulated under the CAA; (2) conducting compliance assistance activities for regulated facilities on the reservation; (3) obtaining federal inspection credentials to inspect regulated facilities; (4) assisting EPA to draft permits for regulated facilities; (5) assisting EPA to develop FIPs; (6) assisting EPA to review risk management plans for adequacy under Section 112(r) of the CAA.

4.5 Activities Eligible for Funding under EPA Programs that Support Tribal Capacity Development and/or Implementation of the CAA

This subsection outlines the types of activities that tribes and/or inter-tribal consortia could undertake with EPA funding to protect outdoor air quality. In general, it is expected that funding under GAP would be used to build baseline environmental program capacities, and then tribal programs would transition to funding under media-specific programs to support more complex program development and implementation. Appendix 10.5 provides a list of potential sources of EPA funding related to CAA activities. Please note that certain funding programs listed in Appendix 10.5 are eligible to be combined in a Performance Partnership Grant [Catalog of Federal Domestic Assistance (CFDA) No. 66.605].

Tribal Capacity-Building Pathways

The first stage in developing an air quality management program is to develop the necessary expertise and skills to identify, address, and manage air quality issues. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on air quality issues, collecting and analyzing new air quality data, and using this information to make decisions on further development of an air quality management program.

Years 1-2:

- Identify who will serve as coordinator for air quality issues and define initial roles and responsibilities
- Become familiar with the major goals, programs, and requirements of the CAA; the national structure for implementing the CAA; and the EPA regional personnel and organization.
- Attend EPA and other professional trainings to learn about air quality issues, monitoring, and program development

- Establish participation in regional and national policy groups in order to learn about current air quality issues, communicate perspective and needs of the community, participate in air quality related projects and programs
- Establish mechanisms for community outreach and education to increase community awareness and knowledge of air quality issues and obtain input from community members on air quality issues
- Gather existing air quality data (sources of emissions, current air monitoring efforts, tribal/state/federal records or data, current attainment/nonattainment status for criteria pollutants)

Years 2-5:

- Collect new data (as needed, identify pollutants or issues of interest, develop and implement air monitoring strategy and associated quality assurance program plan, investigate pollution sources, survey the community)
- Analyze data and identify priorities (evaluate data to determine if there are air quality issues of concern; evaluate the relative severity of impacts to human health, ecology, economy, and culture; set short and long-term priorities for any issues of concern)
- Develop an emissions inventory for the reservation that provides an understanding of the air pollution sources and types and amounts of materials emitted.
- Evaluate types of air pollution control options that might be necessary to address the short and long-term air pollution issues identified.
  Identify the level of funding that would be required to implement the selected air pollution control options and potential sources of funding (including pursuing CAA-specific EPA funding).

Tribal Implementation Pathways

After building fundamental program capacities related to the CAA and evaluating the type of air quality issues facing the community, tribes may consider undertaking efforts to develop and implement air quality protection programs. Please note that the planning and development activities related to implementation of an air quality program may be eligible for funding under GAP. Tribes and inter-tribal consortia are encouraged to seek funding support under the media-specific programs to the extent possible. There are three primary types of implementation pathways related to the CAA that tribal governments could pursue individually or in some combination.

- Develop and implement programs under tribal authority that support the goals and objectives of the CAA. Examples include:

  Diesel emissions reduction program (identify diesel engine use on reservation; evaluate short and long-term priorities for reduction of emissions; select implementation options such as installing diesel retrofit devices with verified technologies on school buses, maintaining/repairing/rebuilding engines, replacing older vehicles/equipment with more efficient engines or engines that run on cleaner fuel, improve operational strategies).

  Air toxics program that monitors for acid and mercury deposition, samples subsistence food sources to measure the accumulation of toxics, partners with other jurisdictions on

assessment projects, communicates potential threats to tribal members, develops and implements actions to reduce sources of air toxics pollution.

- Pursue federal authorities under the CAA that correspond to the air quality needs and priorities identified for the reservation. Under the TAR, tribes could:

  Develop/submit a request to redesignate the reservation as a CAA Class I area

  Develop/implement a Tribal Implementation Plan under CAA Section 301 to identify sources of air pollution and to determine what reductions are necessary to meet federal air quality standards

  Develop/implement a Title V operating permit program for major sources of air pollution on reservation

  Develop/implement a new source review permitting program for minor sources of air pollution on the reservation

  Develop/implement a compliance assistance and enforcement program to ensure compliance with permitting program

- Assist EPA to implement specific aspects of the CAA on the reservation (see Section 4.4 above)

4.6 Indicators of Federal Air Program Capacity

- Staff has completed appropriate training and acquired baseline knowledge and skills related to the CAA
- Emissions inventory completed and submitted to the National Emissions Inventory Database
- Air monitoring strategy and associated quality assurance project plan developed and implemented
- Quality assured ambient air monitoring data uploaded into AQS database
- Report completed that analyzes air quality issues impacting the reservation (identifies air pollution sources and known levels of emissions, defines potential human health and environmental impacts of current air quality, provides recommendations for action)

4.7 Indicators of Federal Air Program Implementation

Building on air quality management program capacity building activities, a tribe may wish to transition its program to the implementation phase. Indicators for this phase of a tribal program include: Receiving funding under the CAA to support air quality projects and programs; Specific air quality projects/programs that have been initiated; Federal inspector credentials obtained; Applications submitted under the TAR for specific CAA authorities; Development of a Tribal Implementation Plan; Redesignation of reservation to a Class I area; Development of air quality standards; CAA permits issued; Development of an EPA-tribal MOA/MOU concerning joint implementation of CAA authorities; Specific CAA

compliance assistance activities conducted; Specific CAA compliance inspections conducted; and Pursue enforcement to address noncompliance.

5.0 Protecting Water Resources in Indian Country

Please note that the information provided in this Section does not replace any program-specific regulation, guidance, strategy, or other information resource. It is highly recommended that tribal staff review the Clean Water Act and Safe Drinking Water Act resources that have been developed by EPA and, as appropriate, use these to develop water protection projects and programs for their communities. The material below has been provided as reference information that can be used during the development of EPA-tribal environmental plans, and to provide general guidance to the tribes on the options that are available for developing capacities beyond the core program capacities described in Section 2.0.

Key sources of program guidance include:

- "Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act." EPA. http://www.epa.gov/owm/cwfinance/final-Tribal-guidance.pdf
- "Draft Conceptual Pathway for Tribal Water Programs." EPA Region 9, June 2010.
- "Handbook for Developing and Managing Tribal Nonpoint Source Pollution Programs Under Section 319 of the Clean Water Act." EPA, 2010. http://water.epa.gov/polwaste/nps/tribal/index.cfm

5.1 EPA's Clean Water Act and Safe Drinking Water Act Programs

The Clean Water Act (CWA) is the primary federal law protecting the chemical, physical, and biological quality of surface water. The law was originally passed in 1972, and was amended in 1977 and 1987. The CWA employs several regulatory and non-regulatory tools to reduce direct pollutant discharges into water ways, finance municipal wastewater treatment facilities, manage polluted runoff, and ensuring continuing water quality. For more information on the CWA, visit http://www.epa.gov/lawsregs/laws/cwa.html

Under the CWA, EPA implementation activities in Indian country include: (1) issuing surface water discharge permits; (2) compliance assurance (including inspections and enforcement); (3) issuing water quality certifications; (4) reviewing Section 404 dredge and fill permit applications; (5) coordinating Section 404 compliance activities with the U.S. Army Corps of Engineers; (6) responding to releases of petroleum products to navigable waters; and (7) ensuring that regulated facilities have spill prevention, control and counter-measures (SPCC) plans.

The Safe Drinking Water Act (SDWA) is the primary federal law that protects drinking water. The law was originally passed in 1974, and it was amended in 1986 and 1996. Under the SDWA, EPA sets standards for drinking water quality to protect public health, provides oversight on regulated facilities that must meet those standards, reviews and tracks required monitoring reports, and conducts compliance assistance and enforcement activities. The SDWA also established national requirements for proper operation of underground injection

control wells. EPA is responsible for permitting facilities subject to the UIC requirements and providing compliance assistance and enforcement. For more information on the SDWA, visit http://water.epa.gov/lawsregs/rulesregs/sdwa/index.cfm

Under the SDWA, EPA implementation activities in Indian country include: (1) monitoring public water supplies and compliance assurance at PWSS (including inspections and enforcement); (2) permit actions for regulated UIC wells; (3) compliance assurance at regulated UIC wells (including inspections and enforcement)

5.2 Developing Inventories of Regulated Facilities/Activities

The Permit Compliance System (PCS) provides information on facilities that have been issued permits to discharge to surface water. The Safe Drinking Water Information System (SDWIS) contains information about public water systems that have been reported to EPA by state agencies. To access PCS or SDWIS information, please visit http://www.epa.gov/enviro/index.html

The Agency is currently developing a national information system for facilities regulated under the UIC Program. In the meantime, the EPA regional offices maintain separate databases of UIC injection well activities.

Tribal staff may be aware of other facilities on the reservation that may be subject to regulation under the CWA and SDWA.

5.3 Ability for Tribes to Assume Federal Authorities

Tribes are not required to administer CWA programs, but may choose to apply for TAS eligibility under CWA Section 518(e) to administer certain CWA programs. In addition to acquiring eligibility for water-related funding programs, tribes may also receive authorization to develop their own water quality standards, water discharge permit programs, non-point source pollution programs, water quality certification programs, and wetlands management (including dredge and fill permitting) programs.

Under Section 1451 of the SDWA, tribes may choose to apply for primacy to administer a public water supply supervision program and/or the requirements related to underground injection control wells.

For tribes that are interested in pursuing federal authorities, Appendix 10.3 presents general background information on applying for program eligibility or TAS, and provides media-specific references.

5.4 Other opportunities for Tribal Involvement in Implementation of the CWA and SDWA

In addition to pursuing program eligibility for federal CWA authorities, there are other opportunities for tribal governments to partner with EPA to ensure the CWA is implemented in Indian country. As appropriate, EPA regional offices can utilize direct implementation

cooperative agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in the implementation of the CWA. Examples of activities that tribal staff may engage in with EPA include: (1) assisting the Agency to develop/update an inventory of facilities regulated under the CWA; (2) conducting compliance assistance activities for regulated facilities on the reservation; (3) obtaining federal inspection credentials to inspect regulated facilities; (4) assisting EPA to draft permits for regulated facilities; and (5) assisting EPA to develop water quality certifications.

There are also opportunities for tribal governments to partner with EPA to ensure that the SDWA is implemented in Indian country. As appropriate, EPA regional offices can utilize direct implementation cooperative agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in the implementation of the SDWA. Examples of activities that tribal staff may engage in with EPA include: (1) assisting the Agency to develop/update an inventory of facilities regulated under the SDWA; (2) conducting compliance assistance activities for regulated facilities on the reservation; (3) obtaining federal inspection credentials to inspect regulated facilities and (4) assisting EPA to draft permits for regulated facilities.

5.5 Activities Eligible for Funding Under EPA Programs that Support Tribal Capacity Development and/or Implementation of the CWA and SDWA

This subsection outlines the types of activities that tribes and/or inter-tribal consortia could undertake with EPA funding to protect surface and ground water quality. In general, it is expected that funding under GAP would be used to build baseline environmental program capacities, and then tribal programs would transition to funding under media-specific programs to support more complex program development and implementation. Appendix 10.5 provides a list of potential sources of EPA funding related to CWA and SDWA activities. Please note that certain funding programs listed in Appendix 10.5 are eligible to be combined in a Performance Partnership Grant [Catalog of Federal Domestic Assistance (CFDA) No. 66.605].

<u>Tribal Capacity-Building Pathways</u>
The first stage in developing a water quality management program is to develop the necessary expertise and skills to identify, address, and manage water quality issues. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on water quality issues, collecting and analyzing new water quality data, and using this information to make decisions on further development of a water quality management program.

Years 1-2:
- Identify who will serve as coordinator for tribal water quality issues and define initial roles and responsibilities
- Become familiar with the major goals, programs, and requirements of the CWA; the national structure for implementing the CWA; and the EPA regional personnel and organization

- Become familiar with the major goals, programs, and requirements of the SDWA; the national structure for implementing the SDWA; and the EPA regional personnel and organization
- Work with tribal water system operators to determine if appropriate training and certification has been obtained, and if not assist with acquiring
- Attend EPA and other professional trainings to learn about water quality issues, monitoring, and program development
- Establish participation in regional and national policy groups in order to learn about current water quality issues, communicate perspective and needs of the community, participate in water quality related projects and programs
- Establish mechanisms for community outreach and education to increase community awareness and knowledge of water quality issues and obtain input from community members on water quality issues
- Gather existing water quality data (sources of discharge, current water quality monitoring efforts, tribal/state/federal records or data, any water bodies on CWA 305(b) list)

Years 2-5:

- Collect new data (as needed, identify pollutants or issues of interest, develop and implement surface water/wetland monitoring strategy and associated quality assurance program plan, investigate pollution sources, survey the community)
- Analyze data and identify priorities (evaluate data to determine if there are water quality issues of concern; evaluate the relative severity of impacts to human health, ecology, economy, and culture; set short and long-term priorities for any issues of concern)
- Develop a nonpoint source pollution assessment report
- Develop a nonpoint source pollution management plan
- Evaluate types of water pollution control options that might be necessary to address the short and long-term water pollution issues identified
- Identify the level of funding that would be required to implement the selected water pollution control options and potential sources of funding (including pursuing CWA and/or SDWA-specific program funding)
- Develop water quality analysis laboratory management plan, sampling protocols, and operation evaluation procedures.

<u>Tribal Implementation Pathways</u>

After building fundamental program capacities related to the CWA and SDWA and evaluating the type of water quality issues facing the community, tribes may consider undertaking efforts to develop and implement water quality protection programs. Please note that the planning and development activities related to implementation of a water quality protection program may be eligible for funding under GAP. Tribes and inter-tribal consortia are encouraged to seek funding support under the media-specific programs to the extent possible. Outlined below are the primary types of implementation pathways related to the CWA that tribal governments could pursue, either individually or in some combination.

- Develop and implement programs under tribal authority that support the goals and objectives of the CWA. Examples include:

Implement voluntary surface water and/or wetlands protection and restoration activities

Work with other stakeholders to develop watershed management plan

Develop/implement tribal-enforceable surface and/or wetlands water quality standards

Develop/implement voluntary programs and/or specific projects to prevent or mitigate nonpoint source pollution

Develop tribal oil spill response plan that addresses remediation, oversight, and enforcement

- Develop and implement programs under tribal authority that support the goals and objectives of the SDWA. Examples include:

  Develop source water assessment and protection plans and/or wellhead protection plans for community water supplies

  Develop/implement operation and maintenance program for tribal water supply systems, including oversight, design standards, ordinances, and establishing utility organizations

- Pursue federal authorities under the CWA that correspond to the water quality needs and priorities identified for the reservation. Examples include:

  Develop and implement federally-enforceable surface and/or wetlands water quality standards

  Develop and implement a CWA Section 401 certification program

  Monitor federally-approved surface and/or wetlands water quality standards and perform triennial review

  Develop and implement surface water discharge permit program

  Develop/implement a compliance assistance and enforcement program to ensure compliance with permitting program

  Develop/implement permit program for dredge and fill activities regulated under CWA Section 404

  Develop/implement total maximum daily loads

- Pursue federal authorities under the SDWA that correspond to the groundwater protection needs and priorities identified for the reservation. Examples include:

  Develop/implement primacy program for public water supplies

Develop/implement primacy program for underground injection control wells

- Assist EPA to implement specific aspects of the CWA on the reservation (see Section 5.4 above)

- Assist EPA to implement specific aspects of the SDWA on the reservation (see Section 5.4 above)

5.6 Indicators of Federal Water Program Capacity

- Staff has completed appropriate training and acquired baseline knowledge and skills related to the CWA and SDWA
- Surface water monitoring strategy and associated quality assurance project plan developed and implemented
- Quality assured surface monitoring data uploaded into STORET database
- Report completed that analyzes water quality issues impacting the reservation (identifies dischargers and types/amounts of discharge, defines potential human health and environmental impacts of current water quality, provides recommendations for action)
- Nonpoint source pollution assessment plan developed
- Nonpoint source pollution management plan developed

5.7 Indicators of Federal Water Program Implementation

Building on water quality management program capacity building activities, a tribe may wish to transition their program to the implementation phase. Indicators for this phase of a tribal program include: Receiving funding under the CWA and/or SDWA to support surface water or groundwater quality protection projects and programs; Specific water quality projects/programs that have been initiated; Federal inspector credentials obtained; Drinking water and/or waste water operator certifications obtained; Applications for program eligibility submitted for specific CWA and SDWA authorities; Water quality standards developed; CWA permits issued; Development of an EPA-tribal MOA/MOU concerning joint implementation of CWA and/or SDWA authorities; Specific CWA or SDWA compliance assistance activities conducted; Specific CWA or SDWA compliance inspections conducted; and Pursue enforcement to address noncompliance.

6.0 Managing Wastes and Underground Storage Tanks in Indian Country

Please note that the information provided in this Section does not replace any program-specific regulation guidance, strategy, or other information resource. It is highly recommended that tribal staff review the Resource Conservation and Recovery Act resources that have been developed by EPA and, as appropriate, use these to develop waste management and underground storage tank (UST) projects and programs for their communities. The material below has been provided as reference information that can be used during the development of EPA-tribal environmental plans, and to provide general guidance to the tribes on the options that are available for developing capacities beyond the core program capacities described in Section 2.0.

Key sources of program guidance include:

- "OSWER Tribal Strategy: EPA and Tribal Partnership to Preserve and Restore Land in Indian Country". EPA. November 2008. http://www.epa.gov/oswer/tribal/pdfs/oswer_tribal_strategy.pdf
- "Building a Tribal Solid Waste Program" EPA Region 10.
- "Report to Congress on Implementing and Enforcing the Underground Storage Tank Program in Indian Country." EPA. August 2007. http://www.epa.gov/oust/fedlaws/rtc_finalblnkpgs.pdf
- "Strategy for an EPA/Tribal Partnership to Implement Section 1529 of the Energy Policy Act of 2005." EPA. August 2006. http://www.epa.gov/oust/fedlaws/Tribal%20Strategy_080706r.pdf

6.1 EPA's Resource Conservation and Recovery Act (RCRA) Program

The Resource Conservation and Recovery Act (RCRA) is the primary federal law for managing solid waste, hazardous waste, and USTs. The law was originally enacted in 1976, and has been subsequently amended. Under RCRA, the Agency established: a "cradle-to-grave" system of permitting and extensive tracking activities for managing hazardous wastes; standards for the land disposal of solid wastes; and requirements for the operation and closure of USTs. For more information on RCRA, visit: http://www.epa.gov/epawaste/inforesources/online/index.htm

Under RCRA, EPA implementation activities in Indian country include: (1) issuing permits to hazardous waste treatment, storage, and disposal facilities; (2) issuing RCRA identification numbers to facilities that handle (generate, store, transport, etc.) hazardous waste; (3) conducting compliance assurance (including inspections and enforcement) at facilities subject to the hazardous waste or UST requirements; (4) accepting required notifications from regulated USTs; (5) overseeing corrective action activities at facilities subject to the hazardous waste or UST requirements; and (6) working with tribes to identify open dumps; and, (7) exercising enforcement options as necessary under RCRA 7003 or 4005(x).

6.2 Developing Inventories of Regulated Facilities/Activities

Resource Conservation and Recovery Act Information (RCRAInfo) is a national program management and inventory system that maintains information on hazardous waste generators, transporters, treatment facilities, storage facilities, and disposal facilities. To access RCRAInfo, please visit http://www.epa.gov/enviro/facts/rcrainfo/index.html. Tribal staff may be aware of other facilities on the reservation that may be subject to regulation under RCRA.

6.3 Opportunities for Tribal Involvement in Implementation of Solid and Hazardous Waste and Underground Storage Tank Programs

Tribes are not eligible for authorization to administer a hazardous waste program under RCRA Subtitle C or Subtitle I. Nor may tribal permit program s be approved by EPA under

RCRA Subtitle D. However, tribes can develop their own waste management programs under tribal authority that are similar to the requirements in RCRA. In addition, there are other opportunities for tribal governments to partner with EPA in its RCRA activities in Indian country. As appropriate, EPA regional offices can utilize direct implementation cooperative agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in the implementation of the RCRA. Examples of activities that tribal staff may be able to engage in with EPA include: (1) assisting the Agency to develop/update an inventory of RCRA facilities; (2) conducting compliance assistance activities for facilities on the reservation; (3) obtaining federal inspection credentials to inspect facilities; (4) assisting EPA to draft facility permits; and (5) assist EPA to provide oversight of necessary corrective actions.

6.4 Activities Eligible for Funding Under EPA Programs that Support Tribal Capacity Development and/or Implementation of Solid and Hazardous Waste and Underground Storage Tank Programs

This subsection outlines the types of activities that tribes and/or inter-tribal consortia could undertake with EPA funding to manage solid and hazardous wastes and USTs. In general, it is expected that funding under GAP would be used to build baseline environmental program capacities, and then tribal programs would transition to funding under media-specific programs to support more complex program development and implementation. Appendix 10.5 provides a list of potential sources of EPA funding related to RCRA activities. Please note that certain funding programs listed in Appendix 10.5 are eligible to be combined in a Performance Partnership Grant [Catalog of Federal Domestic Assistance (CFDA) No. 66.605].

Tribal Capacity Building Pathways

The first stage in developing a waste management program is to develop the necessary expertise and skills to identify, address, and manage the solid and hazardous waste issues facing the community. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on waste management issues, and using this information to make decisions on further development of a waste management program. Based on the presence or absence of certain facilities or activities (for example, hazardous waste disposal facilities or USTs) on the reservation, it will not be necessary for all tribes to develop all the capacities below.

Years 1-2 (solid and hazardous waste management):

- Identify who will serve as coordinator for tribal waste management issues and define initial roles and responsibilities
- Become familiar with the major goals, programs, and requirements related to solid and hazardous waste management in RCRA; the national structure for implementing these programs; and the EPA regional personnel and organization
- Attend EPA and other professional trainings to learn about waste management issues and program development
- Conduct an initial waste management assessment to characterize the current solid and hazardous waste issues facing the community (locate existing surveys and reports, engage

tribal leaders and community for input, evaluate effectiveness of current waste management system, evaluate options and costs)
- Create an open dump inventory (include GPS location; estimated size/volume; contents/type of waste; estimated distance to nearest homes, surface water and groundwater) and share with EPA and Indian Health Service
- Draft an Integrated Waste Management Plan (IWMP) and obtain Tribal Council approval
- Develop solid waste codes, ordinances, regulations to support the implementation of the IWMP and obtain Tribal Council approval
- Evaluate IWMP to determine if there are additional funding needs for implementation and identify potential sources of funding (including RCRA-specific program funding)
- Develop a protocol to address small-scale illegal dumping/burning activities
- Participate in peer-match program to obtain waste management technical assistance from other tribes or local/municipal governments

Years 1-2 (underground storage tanks):
- Identify who will serve as coordinator for tribal UST issues and define initial roles and responsibilities
- Become familiar with the major goals, programs, and requirements related to USTs in RCRA; the national structure for implementing these programs; and the EPA regional personnel and organization
- Attend EPA and other professional trainings to learn about UST issues and program development
- Verify and coordinate with EPA the inventory and operating status of regulated USTs on the reservation
- Verify and coordinate with EPA the inventory and status of any leaking USTs on the reservation
- If appropriate, develop UST siting and operation codes, ordinances, or regulations
- Determine if funding is needed to implement UST/LUST projects or programs and identify potential funding sources (including RCRA-specific program funding)

<u>Tribal Implementation Pathways</u>

After building fundamental waste management and UST program management capacities, and evaluating the type of related issues that may be facing the community, tribes may consider undertaking efforts to implement programs to address these issues. Please note that the planning and development activities related to implementation of a waste management or UST program may be eligible for funding under GAP. Tribes and inter-tribal consortia are encouraged to seek funding support under the media-specific programs to the extent possible. EPA has identified two primary implementation pathways related to waste management and USTs that tribal governments could pursue either individually or in combination.

- Develop and implement waste management and UST programs under tribal authority that support the goals and objectives of RCRA. Examples include:

  Implement an IWMP through developing and administering programs such as waste collection/disposal, household hazardous waste collection/disposal, recycling, used oil

collection/disposal, junk vehicle removal, bulk waste/appliance/electronic waste collection/disposal, and/or composting.

Upgrade/develop and administer any required solid waste collection, transport, or disposal facilities

Manage tribal open dump and solid waste facility inventory

Implement tribal codes/ordinances/regulations for hazardous waste management activities (generation, transport, treatment, storage, etc.) conducted on reservation.

Implement tribal codes/ordinances/regulations for USTs located on the reservation

Conduct community outreach and education programs on solid waste, hazardous waste, and USTs

- Assist EPA to implement specific aspects of RCRA on the reservation (see Section 6.3 above)

6.5 Indicators of Tribal Waste Management Program Capacity

- Staff has completed appropriate training and acquired baseline knowledge and skills related to RCRA
- Solid waste assessment completed
- IWMP developed
- Solid waste management code/ordinance that supports the IWMP developed and approved by Tribal Council
- Open dump inventory completed and submitted to EPA and IHS
- Receiving funding under RCRA or other programs to support waste management and/or UST projects and programs
- Tribal staff leading circuit rider, train the trainer, and peer-match programs

6.6 Indicators of Tribal Waste Management Program Implementation

Building on waste management program capacity, a tribe may wish to transition their program to the implementation phase. Indicators for this phase of a tribal program include: Open dump(s) closed/cleaned up; Obtain federal inspector credentials for federal hazardous waste program; Obtain federal inspector credentials for federal UST program; Specific programs related to waste management (used oil collection program, junk vehicle program, etc.) developed and implemented; Development of an EPA-tribal agreement concerning joint implementation of RCRA authorities; Specific RCRA compliance assistance activities conducted; Specific RCRA compliance inspections conducted; and Pursue enforcement to address noncompliance.

7.0 Remediating Contaminated Sites and Providing Emergency Response in Indian Country

Please note that the information provided in this Section does not replace any program-specific regulation, guidance, strategy, or other information resource. It is highly recommended that tribal staff review the program-specific resources that have been developed by EPA and, as appropriate, use these to develop emergency response and site cleanup projects and programs for their communities. The material below has been provided as reference information that can be used during the development of EPA-tribal environmental plans, and to provide general guidance to the tribes on the options that are available for developing capacities beyond the core program capacities described in Section 2.0.

Key sources of program guidance include:

- "OSWER Tribal Strategy: EPA and Tribal Partnership to Preserve and Restore Land in Indian Country". EPA. November 2008. http://www.epa.gov/oswer/tribal/pdfs/oswer_tribal_strategy.pdf
- "Tribal Brownfields and Response Programs: Respecting Our Land, Revitalizing Our Communities." EPA. 2009. http://www.epa.gov/brownfields/state_tribal/tribalreport11.pdf
- "Plan to Enhance the Role of States and Tribes in the Superfund Program," Chapter 4: Tribal Recommendations. EPA. March 1998. http://www.epa.gov/superfund/partners/osrti/pdfs/chapt4.pdf
- Emergency Planning and Community Right-to-Know Act (EPCRA) Local Emergency Planning Requirements. EPA. http://www.epa.gov/osweroe1/content/epcra/epcra_plan.htm
- "Guidance for Preparing Tribal Emergency Response Plans". EPA Region 10. September 2004. http://www.epa.gov/oswer/tribal/pdfs/guidance_for_preparing_tribal_erps.pdf

7.1 EPA's Comprehensive Environmental Response, Compensation and Liability Act; Emergency Planning, Community Right-to-Know Act; and Small Business Liability Relief and Brownfields Revitalization Act Programs

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, is the primary federal law that ensures responses to releases or threatened releases of hazardous substances that may endanger public health or the environment. The law was originally passed in 1980 and amended in 1986 by the Superfund Amendments and Reauthorization Act. CERCLA authorizes both short-term removals, to address releases requiring prompt response, and long-term remedial response actions to address dangers associated with releases or threats of releases to the environment that are serious but not immediately life-threatening. EPA coordinates long-term remedial actions on sites listed on the National Priorities List, which are the most serious uncontrolled or abandoned hazardous waste sites. The Superfund Enforcement program provides EPA with multiple authorities to ensure cleanup and payment for cleanup. If a responsible party does not agree to do the cleanup, EPA can issue an order to do certain work, or work with the Department of Justice to pursue the party through the federal court system. If a party is out of compliance with an order or settlement, the Superfund enforcement program takes action

to bring them into compliance. For more information on CERCLA, visit: http://www.epa.gov/superfund/index.htm.

The Emergency Planning and Community Right-to-Know Act (EPCRA) establishes hazardous chemical emergency planning and reporting requirements for federal, state and local governments, Indian tribes, and industry. The right-to-know provisions are designed to increase the public's knowledge and access to information on hazardous substances at specific facilities, their uses, and releases into the environment. Government entities use this information to prepare for and respond to emergencies involving hazardous substances. For more information, visit: http://www.epa.gov/ceppo/web/content/epcra/.

The Small Business Liability Relief and Brownfields Revitalization Act, commonly referred to as Brownfields, provides CERCLA liability relief for certain property owners and small businesses, and limits CERCLA enforcement authority at sites remediated under state voluntary cleanup programs. The Act also significantly expands federal grant authority to increase Brownfields redevelopment. For more information on Brownfields, visit: http://epa.gov/Brownfields/laws/2869sum.htm.

EPA implementation activities in Indian country include: (1) maintaining and updating the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) database to reflect newly identified sites where contaminants are suspected to have been released or new actions at existing sites; (2) emergency response/removal actions to address immediate or short-term clean-up of hazardous substances; (3) long-term remediation and post-clean up monitoring at sites on the National Priorities List (NPL); (4) compliance assistance and enforcement actions to ensure that required EPCRA reports are submitted to formal EPCRA organizations.

7.2 Developing Inventories of Regulated Facilities/Activities

CERCLIS contains information contains information on hazardous waste sites, potentially hazardous waste sites and remedial activities across the nation, including NPL sites or that are being considered for the NPL. The information is updated by the EPA regional offices every 90 days. The data describes what has happened at Superfund sites, identifies involved parties (other federal agencies, states, and tribes), and includes information on human exposure, ground water migration, and construction status.

While there is no national database of Brownfield sites, an important component of the Brownfields Program is the development of site inventories for Indian country.

Tribal staff may be aware of other facilities on the reservation that may be subject to regulation under CERCLA or EPCRA.

7.3 Opportunities for Tribal Involvement in Implementation of CERCLA, EPCRA, and Brownfields

Tribes are able to implement federal authorities under CERCLA and EPCRA and can form agreements with EPA to become involved in decision-making concerning CERCLA sites,

including assuming the lead role for site assessment or long-term cleanup of sites. In addition, tribes with contaminated federal facilities on their reservations can partner with other federal agencies, such as the Department of Defense and Department of Energy, through advisory boards and committees to help make site decisions.

Under EPCRA, tribal governments have the lead role in ensuring an EPCRA-compliant emergency response organization covers the reservation. Tribes can establish Tribal Emergency Response Commissions (TERCs), join existing Local Emergency Planning Committees (LEPCs), or coordinate with State Emergency Response Commissions (SERCs) to draft and implement an Emergency Response Plan.

Under Brownfields, tribes are eligible to apply for several categories of EPA grants and loans to assess and clean up specific Brownfields sites under inherent tribal authorities (including open dumps), establish site response programs, and/or receive technical assistance such as job training.

7.4 Activities Eligible for Funding Under EPA Programs that Support Tribal Capacity Development and/or Implementation of CERCLA, EPCRA, and Brownfields

This subsection outlines the types of activities that tribes and/or inter-tribal consortia could undertake with EPA funding to address issues related to CERCLA, EPCRA, or Brownfields. In general, it is expected that funding under GAP would be used to build baseline environmental program capacities, and then tribal programs would transition to funding under media-specific programs to support more complex program development and implementation. Appendix 10.5 provides a list of potential sources of EPA funding related to CERCLA, EPCRA, and Brownfields activities. Please note that certain funding programs listed in Appendix 10.5 are eligible to be combined in a Performance Partnership Grant [Catalog of Federal Domestic Assistance (CFDA) No. 66.605].

Tribal Capacity-Building Pathways

The first stage in developing a tribal site response program is to develop the necessary expertise and skills in order to establish an appropriate response planning committee, evaluate the threats from contaminated sites on the reservation, evaluate the options for tribal programs, and develop partnerships with appropriate federal agencies to address any contamination on the reservation. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on contaminated land issues, and using this information to make decisions on further development of a tribal site response program.

Years 1-2:

- Identify who will serve as coordinator for tribal response issues and define initial roles and responsibilities
- Become familiar with the major goals, programs, and requirements in CERCLA, EPCRA, and Brownfields; the national structure for implementing these programs; and the EPA regional personnel and organization

- Acquire certification in an Incident Command System (ICS) course (for example ICS level 100, 200, and more advanced level courses are offered for free on line through FEMA).
- Coordinate with state and federal agencies on specific spill response trainings (hands on response to oil and chemical hazards).
- Attend EPA and other professional trainings to learn about tribal site response issues and program development
- Complete training to acquire proficiency in All Appropriate Inquiries (EPA 40 CFR 312), Phase 1 ESA (ASTM E 1527-05), and ECM 10-2 (Department of Interior)
- Conduct community outreach to solicit input from tribal members on site contamination concerns
- Create a site inventory that identifies properties of environmental concern and identify potential EPA program(s) associated with the sites of concern
- Determine EPCRA status of the tribal government (TERC, member of LEPC, partnership with SERC), and take any necessary actions to organize in compliance with EPCRA
- Ensure that the tribe has an EPCRA-compliant emergency response plan or that tribal lands and resources are included in a regional plan
- Evaluate information collected to date on emergency response and cleanup issues on the reservation, determine whether additional funding is needed to implement specific projects or programs, and identify potential funding sources (including CERCLA, EPCRA, or Brownfields-specific program funding)

Tribal Implementation Pathways

After building fundamental program capacities related to CERCLA, EPCRA, and Brownfields, and evaluating the type of related issues that may be facing the community, tribes may consider undertaking efforts to develop and programs to address these issues. Please note that the planning and development activities related to implementation of a tribal site response program may be eligible for funding under GAP. Tribes and inter-tribal consortia are encouraged to seek funding support under the media-specific programs to the extent possible. There are two primary types of implementation pathways related to CERCLA, EPCRA, and Brownfields that tribal governments could pursue either individually or in some combination.

- Develop and implement programs under tribal authority that support the goals and objectives of CERCLA, EPCRA, and Brownfields. Examples include:

  Create a Tribal Development Plan that outlines future development on contaminated properties after site assessment and remediation

  Conduct Phase I and Phase II site assessments

  Conduct site remediation activities

  Develop a tribal site response program that inventories sites, assesses contamination, conducts site clean-ups, and works with other tribal departments to redevelop cleaned-up properties

Establish and maintain EPCRA-compliant emergency planning organization

Develop (or partner with surrounding jurisdictions) a local emergency response plan that covers the reservation

Conduct emergency response training and exercises (e.g., orientation seminars to review the contents of the emergency response plan for tribal members; table tops drills to verify understanding of notification procedures and response actions; and field exercises to ensure that response personnel are familiar with equipment and responsibilities)

Develop codes and regulations and mechanisms to conduct and oversee investigation and cleanup of contaminated sites

Establish mechanisms to provide meaningful opportunities for public participation in site cleanup decisions

- Partner with federal agencies to provide for tribal involvement in decisions to address contaminated facilities and sites within the reservation.

  Participate in Department of Defense and Department of Energy advisory boards (Federal Facilities Restoration and Reuse) that involve stakeholders in cleanup decisions

  Establish support agency cooperative agreements with EPA to provide for tribal input in cleanup decisions at CERCLA sites

  Develop MOA/MOU with EPA on joint implementation of CERCLA authorities on the reservation

7.5 Indicators of Tribal Emergency Response and Remediation Program Capacity

- Staff has completed appropriate training and acquired baseline knowledge and skills related to CERCLA, EPCRA, and Brownfields
- Site inventory of properties of concern completed
- Tribe has established EPCRA-organization (TERC, LEPC, etc.)
- Reservation lands and resources covered by an EPCRA-compliant local emergency plan
- Emergency response training and exercises completed
- Tribe has enacted codes/ordinances and/or regulations establishing oversight and enforcement authority to address contaminated sites
- Tribe has established cleanup standards for soil and groundwater to guide response and remediation decisions on contaminated sites.
- Tribe has established mechanisms to provide meaningful opportunities for public participation in site cleanup decisions

7.6 Indicators of Tribal Emergency Response and Remediation Program Implementation

Building on emergency response and remediation program capacity building activities, a tribe may wish to transition its program to the implementation phase. Indicators for this phase of a tribal program include: Receiving funding under CERCLA, EPCRA, or Brownfields to support emergency response or site remediation projects and programs; Tribal Development Plan completed; Site remediation activities completed (e.g., the number of sites addressed and the number of acres of contaminated land returned to reuse); Development of an EPA-tribal MOA/MOU concerning joint implementation of CERCLA; Development of a support agency cooperative agreement; Participation in a DOD or DOE advisory board to provide input on cleanup decisions at federal facilities.

8.0 Managing Asbestos, Lead-Based Paint, Pesticides, and Toxics in Indian Country

Please note that the information provided in this Section does not replace any program-specific regulation, guidance, strategy, information resource. It is highly recommended that tribal staff review the program-specific resources that have been developed by EPA and, as appropriate, use these to develop projects and programs for their communities. The material below has been provided as reference information that can be used during the development of EPA-tribal environmental plans, and to provide general guidance to the tribes on the options that are available for developing capacities beyond the core program capacities described in Section 2.0.

Key sources of program guidance include:

- "Guidance for Funding Development and Administration of Tribal Pesticide Field Program and Enforcement Cooperative Agreements," January 3, 2011. http://www.epa.gov/region9/tribal/pdf/Tribal-PesticideGrantGuid-Final.pdf
- "The National Pesticide Tribal Program: Achieving Public Health and Environmental Protection in Indian Country and Alaska Native Villages." EPA. October 2009. http://www.epa.gov/oppfead1/Publications/tribal-brochure.pdf

8.1 EPA's Asbestos Hazard Emergency Response Act; Federal Insecticide, Fungicide and Rodenticide Act; and Toxic Substances Control Act Programs

The Asbestos Hazard Emergency Response Act (AHERA) is a provision of the Toxic Substances Control Act that was enacted in 1986. AHERA requires local education agencies to inspect K-12 schools for asbestos-containing building material and prepare management plans to prevent or reduce asbestos hazards. AHERA requirements include: performing an original inspection and re-inspection every three years of asbestos-containing material; developing, maintaining, and updating an asbestos management plan and keeping a copy at the school; providing yearly notification to parent, teacher, and employee organizations regarding the availability of the school's asbestos management plan and any asbestos abatement actions taken or planned in the school; designating and training a contact person

to ensure the responsibilities of the local education agency are properly implemented; performing periodic surveillance of known or suspected asbestos-containing building material; ensuring that properly-accredited professionals perform inspections and response actions and prepare management plans; and providing custodial staff with asbestos-awareness training. To implement AHERA, the Agency provides outreach and compliance assistance, and conducts compliance inspections. For more information on AHERA, visit: http://www.epa.gov/asbestos/pubs/asbestos_in_schools.html.

In addition to AHERA requirements, the Asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP) under the CAA specifies practices to be followed for renovations or demolition of buildings containing asbestos.

The Federal Insecticide, Fungicide, and Rodenticide (FIFRA) provides for federal regulation of pesticide distribution, sale, and use. All pesticides distributed or sold in the United States must be registered by EPA. Pesticide use is regulated through requirements to apply pesticides in a manner consistent with the label. The labeling requirements include directions for use, warnings, and cautions, along with the uses for which the pesticide is registered (i.e., pests and appropriate applications). Labeling requirements also include specific conditions for the application, mixture, storage, and time period for re-entry to fields following pesticide application, and when crops may be harvested after applications. If a pesticide is used in a manner contrary to the labeling, that use constitutes a violation of FIFRA. Through FIFRA, EPA also addresses the certification and training of pesticide applicators, and establishes requirements for pesticide record-keeping and reporting, storage, disposal, and transportation. The law was originally passed in 1947, substantially revised in 1972, and amended in 1988, 1996, and 2003. To implement FIFRA, the Agency provides outreach and compliance assistance, and conducts compliance inspections. For more information on FIFRA, visit: http://www.epa.gov/lawsregs/laws/fifra.html.

The Toxic Substances Control Act (TSCA) provides EPA with the authority to regulate the importation, manufacture, and use of chemical substances and/or mixtures. It does this through reporting, recordkeeping, and testing requirements, as well as restrictions and bans. TSCA addresses the production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, radon and lead-based paint. TSCA was originally enacted in 1976, and significantly amended in 1986, 1988, and 1992. To implement TSCA, EPA provides outreach and compliance assistance and conducts compliance inspections. For more information on TSCA, visit: http://www.epa.gov/lawsregs/laws/tsca.html.

The Residential Lead-Based Paint Hazard Reduction Act's Real Estate Notification and Disclosure Rule requires landlords, property management companies, real estate agencies, and sellers to inform potential lessees and purchasers of the presence of lead-based paint and lead-based paint hazards in pre-1978 housing. This ensures that potential tenants and home buyers are receiving the information necessary to protect themselves and their families from lead-based paint hazards. The Lead-based Paint Activities Training and Certification Rule holds that no individuals or firms can perform lead-based paint activities without certification from EPA. The Renovation, Repair and Painting Rule addresses common renovation activities like sanding, cutting, and demolition that can create hazardous lead

dust and chips by disturbing lead-based pain, Under the rule, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified by EPA-approved training providers and must follow specific work practices to prevent lead contamination.

8.2 Developing Inventories of Regulated Facilities/Activities

For many of the activities regulated under AHERA, FIFRA, and TSCA, the Agency does not maintain a national inventory of regulated facilities. Instead, EPA regional offices will need to work closely with tribal staff to identify facilities on each reservation that may be subject to the requirements in these federal statutes.

8.3 Ability for Tribes to Assume Federal Authorities

While tribal governments are not able to apply for program eligibility to operate the federal AHERA program, EPA may approve tribes to implement certain lead-based paint and pesticide programs under TSCA and FIFRA in the same manner as states. For example, tribal governments are eligible to apply for federal programs to regulate the training and certification of pesticide applicators.

For tribes that are interested in pursuing federal authorities, Appendix 10.3 presents general background information on applying for program eligibility or TAS, and provides media-specific references.

8.4 Opportunities for Tribal Involvement in the Implementation of FIFRA and TSCA

EPA generally is the primary enforcement authority for pesticide use violations in Indian country. Tribes may restrict the sale or use of a federally registered pesticide, but may not allow the sale or use of a federally prohibited product. EPA works cooperatively with tribal government to enforce FIFRA, as it does with states and territories. For example, under FIFRA Section 23, EPA may enter into cooperative agreements with tribes. These agreements may include provisions for tribes to assist EPA in ensuring compliance with FIFRA by obtaining federal inspector credentials, conducting inspections, and recommending enforcement actions to EPA.

Under FIFRA and TSCA, EPA regional offices can utilize, as appropriate, direct implementation cooperative agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in the implementation of the federal program. Examples of activities that tribal staff may engage in with EPA include conducting compliance assistance activities for regulated facilities on the reservation and obtaining federal inspection credentials to inspect regulated activities on the reservation.

8.5 Activities Eligible for Funding Under EPA Programs that Support Tribal Capacity Development and/or Implementation of AHERA, FIFRA, and TSCA

This subsection outlines the types of activities that tribes and/or inter-tribal consortia could undertake with EPA funding to address issues related to AHERA, FIFRA, or TSCA. In general, it is expected that funding under GAP would be used to build baseline environmental program capacities, and then tribal programs would transition to funding under media-specific programs to support more complex program development and implementation. Appendix 10.5 provides a list of potential sources of EPA funding related to AHERA, FIFRA, and TSCA activities. Please note that certain funding programs listed in Appendix 10.5 are eligible to be combined in a Performance Partnership Grant [Catalog of Federal Domestic Assistance (CFDA) No. 66.605].

Tribal Capacity-Building Pathways

The first stage in developing programs related to asbestos, lead-based paint, radon, and toxics is to develop the necessary expertise and skills to identify, address, and manage any of those issues that may be facing the community. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on toxics issues, and using this information to make decisions on further development of asbestos, lead-based paint, radon, and toxics programs. Based on the presence or absence of certain facilities or activities (for example, pesticide use, residences or child-occupied buildings with lead-based paint) on the reservation, it will not be necessary for all tribes to develop all the capacities below.

Years 1-2:

- Identify who will serve as coordinator (or coordinators) for issues on the reservation related to asbestos, pesticides, lead-based paint, radon, etc. and define initial roles and responsibilities.
- Become familiar with the major goals, programs, and requirements related to AHERA, FIFRA, and TSCA; the national structure for implementing these programs; and the EPA regional personnel and organization.
- Attend EPA and other professional trainings to learn about managing toxics issues and program development.
- Conduct community outreach to solicit input from tribal members on concerns related to toxics on the reservation.
- Identify any K-12 schools on the reservation and work with EPA to determine whether they are subject to the requirements of AHERA.
- Conduct an initial pesticides needs assessment that collects and evaluates existing data on pesticide use on the reservation.
- Determine the amount of pre-1978 target housing and/or child-occupied buildings on the reservation.
- Gather existing information on radon levels in structures on the reservation
- Based on the information gathered, assess the current need to develop projects or programs related to asbestos, pesticides, lead-based-paint, and radon; and evaluate short-term and long-term options to address those identified needs.
- Identify the level of funding that would be required to implement applicable programs and potential sources of funding (including pursuing program-specific EPA funding).

- Prepare appropriate quality assurance project plans to cover sampling and analysis activities related to assessing radon, blood lead, and lead based paint investigations.

Years 2-3:

- If warranted, conduct a more intensive pesticides needs assessment that includes collection of additional data through questionnaires, sampling, and/or the use of risk assessment tools and software

Tribal Implementation Pathways

After building fundamental program capacities related to the federal asbestos, pesticides, lead-based paint, radon, and toxics programs and evaluating the type of related issues that may be facing the community, tribes may consider undertaking efforts to develop and implement programs to address these issues. Please note that the planning and development activities related to implementation of asbestos, lead-based paint, pesticides, and toxics programs may be eligible for funding under GAP. Tribes and inter-tribal consortia are encouraged to seek funding support under the media-specific programs to the extent possible. The types of implementation pathways available are dependent on the particulars of the associated federal statute. Tribes may elect to pursue these pathways individually or in some combination.

- Develop and implement programs under tribal authority that support the goals and objectives of the FIFRA and TSCA. Examples include:

  Develop and implement a Pesticides Field Program that includes: creating an internal system to facilitate collection of data and reporting of incidents; outreach, education, and training to community members; criteria to identify priority incidents; and a means to address high level/priority episodes and complaints.

  Identify possible pesticide inspection targets and pesticide-specific issues to determine the kind of approach needed to address concerns related to the use and sale of pesticides.

  Develop and implement a Pesticides Enforcement Program under which a tribal inspector completes all required training and, upon EPA approval, obtains federal credential to conduct inspections of the regulated community (e.g., pesticide applicators, marketplaces that sell pesticides, etc.) to determine compliance with FIFRA or tribal pesticide regulations.

  Develop and implement a tribal radon program that tests residential and other occupied structures for radon, identifies alternatives to address dwellings and other occupied structures that test above the EPA action level, and conducts outreach and education in the community.

  Develop and implement a tribal certification and training plan for restricted use pesticide applicators (commercial and private) to educate applicators and control restricted use pesticides in Indian country.

- Pursue federal authorities under TSCA that correspond to the lead-based paint needs and priorities identified for the reservation. Examples include:

  Develop a training/accreditation/certification program similar to TSCA Section 402 for individuals and firms engaged in lead-paint activities.

  Develop a compliance assistance/inspection/enforcement program similar to TSCA Section 406(b) that requires distribution of information on lead-based paint hazards.

  Develop a program similar to the Renovation, Repair and Painting Rule.

- Participate in an EPA Pesticides circuit rider or peer match program that will provide technical assistance, training, and/or outreach and education assistance.

- Participate in a circuit rider enforcement program that will provide inspection coverage for the host tribe and the circuit tribes, including any necessary training.

- Assist EPA to implement specific aspects of FIFRA and TSCA on the reservation (see Section 8.4 above)

8.6 Indicators of Federal Toxics Program Capacity

- Staff has completed appropriate training and acquired baseline knowledge and skills related to AHERA, FIFRA, and TSCA
- Inventory of K-12 schools on reservation completed
- Pesticides needs assessments completed
- Amount of pre-1978 target housing and child-occupied buildings documented
- Tribal staff leading circuit rider, train the trainer, and peer-match programs

8.7 Indicators of Federal Toxics Program Implementation

Building on asbestos, pesticides, lead-based paint, radon, and toxics program capacity building activities, a tribe may wish to transition their program to the implementation phase. Indicators for this phase of a tribal program include: Receiving funding under FIRFRA and/or TSCA to support projects or programs related to managing toxics; Specific pesticides, lead-based paint, and/or radon projects or programs have been initiated; Federal inspector credentials obtained; Applications for program eligibility submitted for TSCA authorities; Development of an EPA-tribal MOA/MOU concerning joint implementation of FIFRA and/or TSCA authorities; Specific FIFRA/TSCA compliance assistance activities conducted; tribal applicator training and certification program is in place; Specific FIFRA/TSCA compliance inspections conducted; and Pursue enforcement to address noncompliance.

9.0 Implementation of the Guidebook

[Section would discuss how HQ, regional offices and the tribes will implement the Guidebook – roles and responsibilities, initial implementation schedule, tracking progress, etc.]

LKM: This section is the critical piece to the Guidebook- how EPA will implement the suggestions of the OIG?
JM: Oneida has made great strides in many of the EPA programs listed above including air, water, wastes, UST's, brownfields, etc. Progress is through EPA media specific grants. There was no reason to report this progress through the GAP program. EPA should have all the information needed for Oneida from the various media grants.

10.0 Appendices

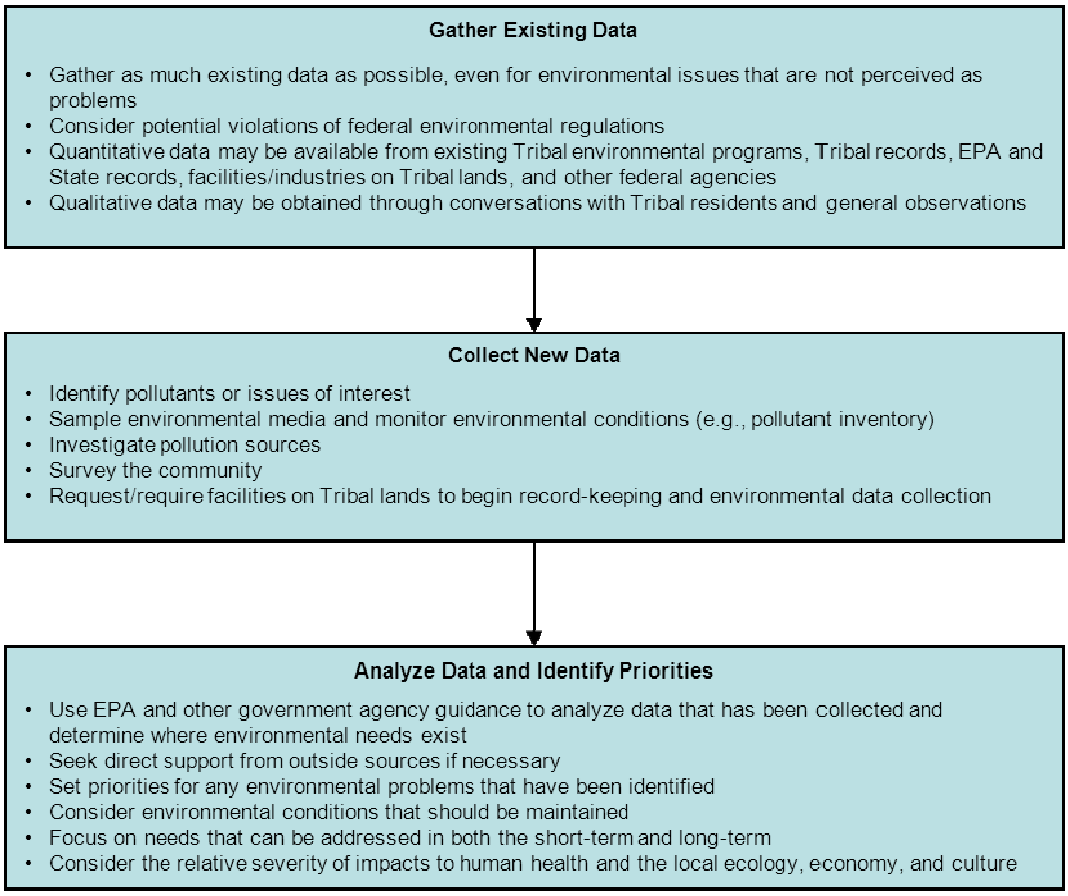
10.1 Baseline Needs Assessment
10.2 GAP Online System
10.3 Program Eligibility/TAS for Federal Authorities
10.4 Summary of Capacity & Implementation Indicators
10.5 EPA Funding Programs that Support Tribal Environmental Program Capacity Development and/or Implementation Activities
10.6 Case Studies

Appendix 10.1

Baseline Needs Assessment

The diagram below illustrates the types of steps that Tribes can take to identify and prioritize the environmental issues they need to address. Such an assessment can help inform a tribe's approach for undertaking protection and restoration efforts. As a Tribe develops a more sophisticated environmental program, it may undertake extensive sampling and monitoring efforts. The baseline needs assessment is not meant to be such an extensive data collection effort, but rather a primary step to determine general environmental issues.

Conducting a Baseline Needs Assessment



Appendix 10.2

GAP Online System

The GAP Online system provides EPA project officers and grant recipients with a centralized, web-based tool for creating work plans and reporting progress. The work plan management tool is based on the most current EPA GAP Guidance Guideline (GAP Guidance, 2006). The GAP Online system is managed through the American Indian Environmental Office (AIEO).

GAP Online serves to:

- Move GAP work plan development and reporting to an electronic medium.
  - Enables tribal and EPA staff to easily access grant-specific and program summary information.

- Enhance the ability for GAP grant recipients to include a greater level of detail to describe work plan goals and activities.
  - Enables EPA to provide comprehensive information about GAP-funded activities.
  - Allows recipients to closely link GAP funded activities to specific deliverables and overall program progress.
  - Increases opportunity for grant recipients to include supporting documents with their proposed work plans.

- Create an easily accessible archive of GAP work plans and progress reports, available to recipient and EPA personnel at any time.
  - Provides greater opportunity for GAP recipients to work on documents at their own pace, and within the framework of their other day-to-day tasks.
  - Facilitates the production of printed records when needed.

GAP Online can be accessed at: https://iaspub.epa.gov/GAP_Online

Usernames and passwords for eligible grant recipients are provided through EPA regional grant project officers.

Appendix 10.3

Program Eligibility/TAS for Federal Authorities

Excerpt from: Profile of Tribal Government Operations
EPA Office of Compliance Sector Notebook Project
Chapter 4.2: Tribal Assumption of Federal Environmental Programs
http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/tribal.html

In the EPA Indian Policy, EPA announced its support for tribal assumption of environmental programs under federal statutes, stating, among other things, that "[t]he 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."

Three environmental statutes - the Safe Drinking Water Act (SDWA), the Clean Water Act (CWA), and the Clean Air Act (CAA) - explicitly authorize EPA to "treat tribes in the same manner as states" (TAS) for purposes of implementing various environmental programs. In addition, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) explicitly include a provision that affords tribes substantially the same treatment as states with respect to certain provisions of the Act, while the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) also provides a role for tribes. Although the Toxic Substances Control Act (TSCA) and the Emergency Planning and Community Right-to-Know Act (EPCRA) do not explicitly provide for TAS, EPA has taken the position that it has the discretion to approve tribes to implement certain programs in the same manner as states in order to fill gaps in how the statutes are implemented in Indian country.

For tribes to assume many of EPA's regulatory programs, they generally must go through the TAS process and meet the following criteria:

- The tribe must be federally-recognized;
- The tribe must have or be able to exercise substantial governmental powers;
- The tribe must have or have been delegated jurisdiction over the area in question; and
- The tribe must be reasonably expected to have the capability to effectively implement a program.

In general, once a tribe has been deemed eligible for one EPA program, it need only establish that it has jurisdiction and capability for each subsequent program. If a tribe does not have capability, it must have a plan for acquiring capability over time. A capability showing is required because each program may require different skills and activities to provide protection that meets the requirements of specific statutes and regulations.

Perhaps the most important of the tribe-specific eligibility criteria is whether the functions to be exercised by a tribe are within the applicant tribe's jurisdiction. EPA asks tribes that are applying for regulatory programs to demonstrate in their applications that they have adequate jurisdiction

over the areas to be regulated. Under principles of federal Indian law, tribes generally have inherent sovereign authority to regulate both their members and land held in trust (although specific statutes may have affected this general principal for some tribes). Depending on the scope of the application, EPA may also need to evaluate whether a particular tribe has jurisdiction over nonmember activities on nonmember-owned fee lands within the boundaries of an Indian reservation. Jurisdiction over nonmember activities on fee lands may come from two potential sources: a tribe may have inherent authority over these activities; or Congress may, by statute, delegate federal authority to a tribe. Tribal applications for authorization to administer the program are sent to EPA's Regional Administrators.

Appendix 10.4

Summary of Capacity & Implementation Indicators

Chapter-by-Chapter Summary of Capacity & Implementation Indicators	
2.0 Building Core Environmental Protection Program Capacities	
Indicators of Administrative Capacity	(1) Organizational system for the environmental program that defines staff roles and responsibilities, describes the relationship of the environmental program to tribal leadership and other departments, and includes supporting personnel management policies/procedures that outline how staff will be managed (2) Staff with appropriate skills, knowledge and experience to manage the environmental program (3) Training plan for staff that reflects the capacity-building priorities for the environmental program (4) Program evaluation system that will determine if program objectives are met, fiscal resources are appropriately managed, and assistance award requirements satisfied (5) any necessary inter-governmental (federal, state, local) agreements to implement the environmental program (6) written procedures similar to the APA to ensure meaningful involvement and fair treatment in public participation
Indicators of Financial Management Capacity	(1) a statement by the appropriate tribal financial department that demonstrates that the tribe's accounting system, internal controls, and financial reporting procedures adhere to the requirements found in 40 CFR Part 31 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", 40 CFR Part 35 Environmental Program Grants for Tribes, 2 CFR, Part 225 (formerly OMB Circular A-87 "Cost Principles for State, Local and Indian tribal governments)", and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" (2) a statement by the appropriate tribal financial department that demonstrates that the Tribe has a procurement procedure that meets the minimum requirements for purchasing systems (responsibility, code of conduct, competition, cost and price review, disadvantaged business opportunity, debarment and suspension) as outlined in 40 CFR Part 31 (3) written procedure for tracking (including final disposition) equipment and supplies acquired by the environmental program in compliance with 40 CFR Part 31 (4) written procedure that describes how the environmental program will coordinate with other tribal departments to satisfy grant terms and conditions and reporting requirements (for example, application development/review/approval, creation and submission of required reports, maintenance of official file, closeout of award) (5) current indirect cost rate agreement
Indicators of Information Management Capacity Indicators	(1) written procedure for establishing an official file for each assistance award that will contain all documentation from application through final closeout and requires retaining those records in compliance with 40 CFR Part 31 (2) written inventory of administrative and technical procedures, policies, regulations, or other guidelines developed to implement the environmental program (3) system to store and organize data and information collected or generated by the environmental program for future use in characterizing environmental and human health conditions, responding to information requests, developing environmental projects/initiatives, or other project management data systems (4) exchanging and/or sharing data through the National Environmental Information Exchange Network

Chapter-by-Chapter Summary of Capacity & Implementation Indicators	
Indicators of Baseline Needs Assessment	A recent baseline needs assessment (or comparable planning document) that reflects known information about existing/potential threats to human health and the environment within the tribe's jurisdiction, an evaluation of the potential impact of these threats to tribal members and resources, and prioritization of activities by the environmental program to address identified threats.
Indicators of Public Participation, Community Involvement, Education, and Communication Capacity	(1) outreach methods that will be used to reach specific affected communities and groups (2) format for public notices, press releases, and other types of communication with the public (3) methods that will be used to collect public concerns and respond to issues raised (4) contact lists for other governmental entities and types of information that will be shared (5) methods to conduct general public education, awareness, community engagement, and information exchange on issues related to human health and the environment
Indicators of Legal Capacity	(1) a statement by tribal legal counsel that demonstrates that the tribe has authority to pass and enforce laws/ordinances to protect human health and the environment (2) a statement by tribal legal counsel that demonstrates that tribal government authorities provide the tribe with power to enjoin activities determined to be harmful to the health or welfare of persons or natural resources (3) a dedicated section of its codes/ordinances/statutes for environmental protection program activities
Indicators of Technical and Analytical Capacities	(1) quality assurance and management plans (2) establishing intergovernmental agreements with other jurisdictions (3) leveraging funding from other sources (4) developing environmental monitoring/sampling programs
4.0 Protecting Ambient Air Quality in Indian Country	
Indicators of Federal Air Program Capacity	Staff has completed appropriate training and acquired baseline knowledge and skills related to the CAA Emissions inventory completed and submitted to the National Emissions Inventory Database Air monitoring strategy and associated quality assurance project plan developed and implemented Quality assured ambient air monitoring data uploaded into AQS database Report completed that analyzes air quality issues impacting the reservation (identifies air pollution sources and known levels of emissions, defines potential human health and environmental impacts of current air quality, provides recommendations for action)
Indicators of Federal Air Program Implementation	Receiving funding under the CAA to support air quality projects and programs Specific air quality projects/programs that have been initiated Federal inspector credentials obtained Applications submitted under the TAR for specific CAA authorities Development of a Tribal Implementation Plan Redesignation of reservation to a Class I area Development of air quality standards CAA permits issued Development of an EPA-tribal MOA/MOU concerning joint implementation of CAA authorities Specific CAA compliance assistance activities conducted Specific CAA compliance inspections conducted Pursue enforcement to address noncompliance

Chapter-by-Chapter Summary of Capacity & Implementation Indicators	
5.0 Protecting Water Resources in Indian Country	
Indicators of Federal Water Program Capacity	Staff has completed appropriate training and acquired baseline knowledge and skills related to the CWA and SDWA Surface water monitoring strategy and associated quality assurance project plan developed and implemented Quality assured surface monitoring data uploaded into STORET database Report completed that analyzes water quality issues impacting the reservation (identifies dischargers and types/amounts of discharge, defines potential human health and environmental impacts of current water quality, provides recommendations for action) Nonpoint source pollution assessment plan developed Nonpoint source pollution management plan developed
Indicators of Federal Water Program Implementation	Receiving funding under the CWA and/or SDWA to support surface water or groundwater quality protection projects and programs Specific water quality projects/programs that have been initiated Federal inspector credentials obtained Drinking water and/or waste water operator certifications obtained Applications for program eligibility submitted for specific CWA and SDWA authorities Water quality standards developed CWA permits issued Development of an EPA-tribal MOA/MOU concerning joint implementation of CWA and/or SDWA authorities Specific CWA or SDWA compliance assistance activities conducted Specific CWA or SDWA compliance inspections conducted; and Pursue enforcement to address noncompliance
6.0 Managing Wastes and Underground Storage Tanks in Indian Country	
Indicators of Tribal Waste Management Program Capacity	Staff has completed appropriate training and acquired baseline knowledge and skills related to RCRA Solid waste assessment completed IWMP developed Solid waste management code/ordinance that supports the IWMP developed and approved by Tribal Council Open dump inventory completed and submitted to EPA and IHS Receiving funding under RCRA or other programs to support waste management and/or UST projects and programs Tribal staff leading circuit rider, train the trainer, and peer-match programs
Indicators of Tribal Waste Management Program Implementation	Open dump(s) closed/cleaned up Obtain federal inspector credentials for federal hazardous waste program Obtain federal inspector credentials for federal UST program Specific programs related to waste management (used oil collection program, junk vehicle program, etc.) developed and implemented Development of an EPA-tribal agreement concerning joint implementation of RCRA authorities Specific RCRA compliance assistance activities conducted Specific RCRA compliance inspections conducted Pursue enforcement to address noncompliance

Chapter-by-Chapter Summary of Capacity & Implementation Indicators	
7.0 Remediating Contaminated Sites and Providing Emergency Response in Indian Country	
Indicators of Tribal Emergency Response and Remediation Program Capacity	Staff has completed appropriate training and acquired baseline knowledge and skills related to CERCLA, EPCRA, and Brownfields Site inventory of properties of concern completed Tribe has established EPCRA-organization (TERC, LEPC, etc.) Reservation lands and resources covered by an EPCRA-compliant local emergency plan Emergency response training and exercises completed Tribe has enacted codes/ordinances and/or regulations establishing oversight and enforcement authority to address contaminated sites Tribe has established cleanup standards for soil and groundwater to guide response and remediation decisions on contaminated sites. Tribe has established mechanisms to provide meaningful opportunities for public participation in site cleanup decisions
Indicators of Tribal Emergency Response and Remediation Program Implementation	Receiving funding under CERCLA, EPCRA, or Brownfields to support emergency response or site remediation projects and programs Tribal Development Plan completed Site remediation activities completed (e.g., the number of sites addressed and the number of acres of contaminated land returned to reuse) Development of an EPA-tribal MOA/MOU concerning joint implementation of CERCLA Development of a support agency cooperative agreement Participation in a DOD or DOE advisory board to provide input on cleanup decisions at federal facilities
8.0 Managing Asbestos, Lead-Based Paint, Pesticides, and Toxics in Indian Country	
Indicators of Federal Toxics Program Capacity	Staff has completed appropriate training and acquired baseline knowledge and skills related to AHERA, FIFRA, and TSCA Inventory of K-12 schools on reservation completed Pesticides needs assessments completed Amount of pre-1978 target housing and child-occupied buildings documented Tribal staff leading circuit rider, train the trainer, and peer-match programs
Indicators of Federal Toxics Program Implementation	Receiving funding under FIRFRA and/or TSCA to support projects or programs related to managing toxics Specific pesticides, lead-based paint, and/or radon projects or programs have been initiated Federal inspector credentials obtained Applications for program eligibility submitted for TSCA authorities Development of an EPA-tribal MOA/MOU concerning joint implementation of FIFRA and/or TSCA authorities Specific FIFRA/TSCA compliance assistance activities conducted; tribal applicator training and certification program is in place Specific FIFRA/TSCA compliance inspections conducted; and Pursue enforcement to address noncompliance

Appendix 10.5

EPA Funding Programs that Support Tribal Environmental Program Capacity Development and/or Implementation Activities

Indian Environmental General Assistance Program [CFDA No. 66.926]: Assistance to build tribal capacity to administer environmental regulatory programs on Indian lands, and technical assistance in the development of multimedia programs. Supports planning, developing, and establishing the capability to implement programs administered by EPA and includes 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. Please note that Appendix 10.2 provides information on using the GAP Online Tool.

Direct Implementation Tribal Cooperative Agreements [CFDA No. 66.473]: Assistance authority to support tribes to work with EPA to directly implement federal environmental programs required or authorized by law in the absence of an acceptable Tribal program.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of CAA

Training, Investigations, and Special Purpose Activities of Federally-Recognized Indian Tribes Consistent with the Clean Air Act, Tribal Sovereignty and the Protection and Management of Air Quality CAA Section 103 (Tribal CAA 103 Project Grants) [CFDA No. 66.038]: Assistance to support tribal efforts to understand, assess and characterize air quality; design methods and plans to protect and improve air quality on tribal lands through surveys, studies, research, training, investigations, and special purpose activities.

Air Pollution Control Support Program (CAA Section 105) [CFDA No. 66.01]: Assistance for planning, developing, establishing, improving, and maintaining adequate programs for the continuing prevention and control of air pollution and/or in the implementation of national primary and secondary air quality standards.

National Clean Diesel Emissions Reduction Program [CFDA No. 66.039]: Assistance through grants and low-cost revolving loans to eligible entities to fund the costs of a retrofit technology that significantly reduces emissions for buses (including school buses), medium heavy-duty or heavy heavy-duty diesel trucks, marine engines, locomotives, or nonroad engines or diesel vehicles or equipment used in construction, handling of cargo (including at port or airport), agriculture, mining, or energy production. In addition, eligible entities may also use funds awarded for programs or projects to reduce long-duration idling using verified technology involving a vehicle or equipment described above, or the creation of low-cost revolving loan programs to finance diesel emissions reduction projects.

Chemical and Emergency Preparedness and Prevention Technical Assistance Grants [CFDA No. 66.810]: Assistance for chemical accident prevention activities that relate to the Risk Management Program under the Clean Air Act Section 112(r), chemical emergency

planning, and community right-to-know programs which are established to prevent or eliminate unreasonable risk to the health and environment of the community.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of CWA and SDWA

  SDWA Capitalization Grants for Drinking Water State Revolving Funds (Drinking Water Infrastructure Grants: Tribal Set-Aside Program) [CFDA No. 66.468]: Assistance to finance infrastructure improvements for public drinking water systems.

  Construction Grants for Wastewater Treatment Works & Capitalization Grants for Clean Water State Revolving Funds (Indian Set Aside Program) [CFDA No. 66.418, 66.458]: Assistance for planning, design and construction of wastewater treatment facilities; low-cost financing to eligible entities within tribal lands for water quality projects including all types of nonpoint source, watershed protection or restoration, and estuary management projects, as well as more traditional municipal wastewater treatment projects.

  Assessment and Watershed Protection Program Grants (CWA Section 104(b)(3)) [CFDA No. 66.480]: Assistance to support a watershed approach to water quality problems and building capacity to develop and implement programs for watershed protection, restoration, and management.

  Surveys, Studies, Investigations, Demonstrations, and Training Grants and Cooperative Agreements – Section 104(b)(3) of the Clean Water Act [CFDA No. 66.436]: Assistance to support the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, reduction, and elimination of water pollution.

  Regional Wetland Program Development Grants (CWA Section 104(b)(3)) [CFDA No. 66.461]: Assistance for building programs which protect, manage, and restore wetlands.

  Water Pollution Control State, Interstate, and Tribal Program Support (CWA Section 106) [CFDA No. 66.419]: Assistance to establish and maintain adequate measures for prevention and control of surface and ground water pollution from both point and nonpoint sources.

  Nonpoint Source Implementation Grants (CWA Section 319) [CFDA No. 66.460]: Assistance for implementing EPA-approved nonpoint source management programs.

  Beach Program Monitoring and Notification Implementation Grants [CFDA No. 66.472]: Assistance for eligible coastal and Great Lakes Tribes to develop and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public.

  Surveys, Studies, Investigations, Demonstrations, and Training Grants – Section 1442 of the Safe Drinking Water Act [CFDA No. 66.424]: Assistance for source water protection program support, operator certification program support, tribal capacity development program support, and administration of drinking water system infrastructure.

State Public Water System Supervision [CFDA No. 66.432]: Assistance for eligible tribes (those that have Primary Enforcement Responsibility for the Public Water System Supervision Program, or are developing such a program) for implementation of Public Water Systems Supervision Program.

State Underground Water Source Protection [CFDA No. 66.433]: Assistance for development and implementation of underground injection control programs.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of RCRA

  Tribal Solid Waste Management Assistance Projects [CFDA No. 66.808]: Assistance to characterize/assess open dumps; develop IWM plans and tribal codes and regulations; develop and implement alternative solid waste management activities/facilities (including equipment acquisition); and develop and implement cleanup, closure, and post-closure programs for open dumps in Indian Country.

  Headquarters and Regional Underground Storage Tank Program [CFDA 66.816]: Assistance to support activities that promote the prevention, compliance, and identification of USTs and to support activities that promote corrective action, enforcement and management of releases from UST systems.

  Underground Storage Tank Prevention, Detection, and Compliance Program [CFDA No. 66.804]: Assistance for the development and implementation of UST programs and for leak prevention, compliance and other activities.

  Leaking Underground Storage Tank Trust Fund Corrective Action Program [CFDA No. 66.805]: Assistance for the oversight and corrective action associated with petroleum releases from federally-regulated USTs, as well as for enforcement activities related to such corrective action.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of CERCLA, EPCRA, and Brownfields

  Superfund State, Political Subdivision, and Indian Tribe Site-Specific Cooperative Agreements [CFDA No. 66.802]: Assistance to conduct site characterization activities at potential or confirmed hazardous waste sites; undertake response planning and implementation actions at sites on the NPL to clean up the hazardous waste sites that are found to pose hazards to human health; and effectively implement the statutory requirements of CERCLA 121(f) which mandates substantial and meaningful involvement.

  Superfund State and Indian Tribe Core Program Cooperative Agreements [CFDA No. 66.809]: Assistance to conduct CERCLA activities which are not assignable to specific sites, but support a recipient's site-specific response program, such as developing procedures for emergency response actions and remediation of environmental and health risks; establishing

legal authorities and enforcement support; hiring and training staff; and activities that support EPA/recipient interaction.

Chemical and Emergency Preparedness and Prevention Technical Assistance Grants [CFDA No. 66.810]: Assistance for chemical accident prevention activities that relate to the Risk Management Program under the Clean Air Act Section 112(r), chemical emergency planning, and community right-to-know programs which are established to prevent or eliminate unreasonable risk to the health and environment of the community.

State and Tribal Site Response Program Grants [CFDA No. 66.817]: Assistance to develop and enhance site response programs, including inventorying brownfields sites, establishing legal authorities for emergency response actions and addressing contaminated sites, including brownfields; hiring and training staff; creating procedures for community involvement and for approval of cleanups; and activities to reduce the number of contaminated sites.

Brownfield Environmental Workforce Development and Job Training Grants [CFDA No. 66.808, 66.813, & 66.815]: Assistance to recruit, train, and place unemployed and under-employed predominantly low-income and minority persons, providing them with the skills needed to secure full-time, sustainable employment in the environmental field and in the assessment and cleanup work taking place in or near their communities.

Brownfields Revolving Loan Fund Assessment and Cleanup Cooperative Agreements [CFDA No.66.818]: Assistance to: inventory, characterize, assess, and conduct planning and community involvement related to Brownfield sites; capitalize a revolving loan fund (RLF) and provide sub-grants to carry out cleanup activities at Brownfield sites; and carry out cleanup activities at Brownfield sites that are owned by the grant recipient.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of AHERA, FIFRA, and TSCA

  Community Action for a Renewed Environmental Program [CFDA No. 66.035]: Assistance to support analyses, studies, evaluations, surveys, investigations, conferences, demonstrations and special purpose projects which empower communities to reduce risks from exposures to toxic pollutants in the air, in the water, and on the land through collaborative action at the local level.

  Consolidated Pesticides Enforcement Cooperative Agreements [CFDA No. 66.700]: Assistance for developing and maintaining comprehensive pesticide programs that address all aspects of pesticide enforcement, and special pesticide initiatives; sponsor cooperative surveillance, monitoring and analytical procedures; and encourage regulatory activities to support and strengthen pesticide compliance programs, including pesticide compliance monitoring, inspection and enforcement activities.

  Pesticide Environmental Stewardship Regional Grants [CFDA No. 66.714]: Assistance to support integrated pest management approaches that reduce the risks associated with pesticide use in agricultural and non-agricultural settings, including: pesticide risk reduction,

pesticide pollution prevention, Integrated Pest Management (IPM) implementation, and children's health issues related to pesticides.

Tribal Education Outreach on Lead Poisoning and Baseline Assessment of Tribal Children's Existing and Potential Exposure and Risks Associated with Lead [CFDA: No. 66.715]: Assistance to support tribal outreach and baseline assessment activities on lead-based paint to identify children's risk to lead hazards and lead poisoning.

Research, Development, Monitoring, Public Education, Training, Demonstrations, and Studies [CFDA No. 66.716]: Assistance support Research, Development, Monitoring, Public Education, Training, Demonstrations, and Studies assistance relating to the protection of public health and the environment from pesticides and potential risk from toxic substances. Projects for safer use of pesticides, including worker protection, certification and training of pesticide applicators, protection of endangered species, tribal pesticide programs, integrated pest management; environmental stewardship.

Pollution Prevention Grants Program [CFDA No. 66.708]: Assistance to implement pollution prevention technical Assistance services for businesses, and promote training in pollution prevention/source reduction techniques.

State Indoor Radon Grants [CFDA No. 66.032]: Assistance to develop and implement programs to assess and mitigate radon-related lung cancer risk.

Surveys, Studies, Investigations, Training Demonstrations, and Educational Outreach Related to Environmental Information and the Release of Toxic Chemicals [CFDA No. 66.612]: Assistance to educate the public on the how to obtain access to and effectively use environmental information, including information about toxic chemical releases and other waste management activities.

Toxic Substances Compliance Monitoring Cooperative Agreements [CFDA No. 66.701]: Assistance to develop and maintain compliance monitoring programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances or mixtures, specifically asbestos, PCB, and lead-based paint; encourage establishment of regulatory activities for lead-based paint and asbestos; and support enforcement activities for asbestos and lead-based paint programs.

TSCA Title IV State Lead Grants Certification of Lead-Based Paint Professionals [CFDA No. 66.707]: Assistance to develop and implement authorized programs that: certify contractors engaged in lead-based paint activities and accredit lead-based paint activities training programs; certify contractors engaged in renovation, repair and painting activities that disturb painted surfaces in most target housing; and/or require distribution of lead-hazard information prior to renovation (pre-renovation education program).

Appendix 10.6

Case Studies

Section 4 Case Study: Protecting Ambient Air Quality in Indian Country

Gila River Indian Community (AZ)

In 1996, the Gila River Indian Community (GRIC) received a CAA Section 103 grant from EPA for the development of an air quality program. The first step in evaluating the air quality priorities of the Community was to assess the sources of pollution within GRIC boundaries. An air quality specialist was hired and in 1997 completed an inventory of pollution sources.

The Community is located just south of Phoenix, Arizona on 374,000 acres and has a reservation population of approximately 15,000 people. The Community has three industrial parks containing approximately 50 industrial plants, as well as several facilities located in out-lying areas. The northern portion of the Community lies in Maricopa County (nonattainment for national air quality standards), and the rest of GRIC is in Pinal County, which is an attainment area.

The inventory that was developed includes emissions from point sources, area sources, on-road mobile, non-road mobile, and non-anthropogenic (not caused by humans) sources of air pollution. The inventory provides emission estimates for carbon monoxide, nitrogen oxides (NOx), sulfur oxides, volatile organic compounds (VOCs), and ozone. Emissions of lead were not calculated since there are no significant sources emitting ambient lead emissions within the Community and leaded gasoline is no longer available in Arizona. Emissions were calculated using several methods including mass balance, best engineering estimates, AP-42 emissions factors, California Air Resources Board (CARB) emission factors, performance test factors, and the State of Arizona emissions factors. Emissions inventories from several individual facilities were developed by private consultants or in-house environmental personnel and were reviewed by the air quality specialist. The inventories were logged on a spreadsheet and compiled with emissions from other categories within the Community.

The 1997 emissions inventory provides baseline information that was compared to future inventories to determine the percent reduction of ambient air pollutants following the implementation of the air quality program. The emissions inventory was also used to determine what type of pollutants to monitor, as well as the placement of monitoring stations within the Community.

The inventory demonstrated that by far the largest source of pollution at GRIC comes from vehicles traveling on Interstate 10, which bisects the Community. I-10 is the major transportation artery between Phoenix and Tucson and will have additional lanes added within the next five years. Emissions sources of precursors to ozone from within all of GRIC totaled 1038 tons of VOCs and 1901 tons of NOx. Emissions from the nonattainment portion of GRIC measured 250 tons of VOCs and 490 tons of NOx per year. Though these

numbers may sound high, the total emissions of VOCs from the GRIC nonattainment area are still less than .002% of all VOC emissions from the Phoenix nonattainment area. NOx emissions compare at less than .006%.

The Gila River Indian Community applied for and received authority in 1998 to implement applicable elements of the CAA for air quality management within its reservation. Under the TAR eligible Tribes are able to generally exercise the same rights and have the same responsibilities as states under the CAA. In August of 2002, the GRIC Council approved the first section of a TIP for air quality management, including Adoption of NAAQS as Community Standards. This ordinance adopts the National Air Quality Standards for six key pollutants: sulfur dioxide, ozone, lead, carbon monoxide, nitrogen oxide, and particulate matter.

The second section of the TIP, currently being drafted, will contain provisions on enforcement and permitting. The third and final section will contain individual ordinances for reservation areas and point sources.

Gila River's primary purpose for developing its TIP is to provide a regulatory structure for minor industrial sources that are currently not permitted by the Tribe or EPA. The Community also plans to include major source (Title V) permitting as part of the TIP. The majority of GRIC's industry is located in a serious nonattainment area for CO, PM10 and ozone and is therefore subject to the rigorous regulatory requirements that are imposed on major sources in "dirty air" areas. GRIC's TIP will provide a mechanism for the Tribe to permit industry that would otherwise be considered a major source by establishing a "Synthetic Minor" permit program. This allows setting restrictions, such as limited hours of operation, and basing permit requirements on actual emissions rather than on potential emissions, as is currently required.

Saint Regis Mohawk Tribe (NY)

Air pollution called particulate matter includes dust, dirt, soot, smoke and liquid droplets directly emitted into the air by sources such as factories, power plants, cars, construction activities, fires, and natural windblown dust. Particles formed in the atmosphere by condensation or the transformation of emitted gases such as SO2 and VOCs are also considered particulate matter. Particles less than 2.5µ (microns) in diameter are formed primarily by combustion or secondary chemical reactions in the atmosphere whereas particles greater than 2.5µ are formed primarily by mechanical processes (construction, demolition, wind erosion). Since particles originate from a variety of mobile and stationary sources, their chemical and physical compositions vary widely depending on location and time of year.

The St. Regis Tribe implemented an air program to better understand the concentrations and pattern of particulate matter. The Tribe collected monitoring data for comparison to the national standards, and also used the data for reporting short-term concentrations and understanding diurnal and episodic behavior of fine particles. The data was also utilized by health scientists investigating exposure patterns (i.e., for asthma studies). Samples were collected continuously with TEOM (Tapered Element Oscillating Microbalance) monitors. These monitors are true "gravimetric" instruments that draw ambient air through a filter at a

constant flow rate, continuously weighing the filter and calculating near real-time (10 minute) mass concentrations. The monitors can collect particulate matter of 10µ or less, and if they are equipped with an optional Automatic Cartridge Collection Unit (ACCU), they can collect particles of 2.5µ and less.

Wampanoag Tribe of Gay Head (Aquinnah) (MA)

The Wampanoag Tribe of Gay Head (Aquinnah) also operates an air monitoring program, in partnership with the Massachusetts Department of Environmental Protection. The program employs an ozone monitor, IMPROVE sampler, and meteorological station. Massachusetts provides quality assurance audits, data entry into AQS, and technical support for the ozone monitoring, while the Tribe operates and maintains the monitoring site. EPA provided the air monitoring equipment and data logger through the Tribal Air Grant Program.

Navajo Nation (AZ, NM, UT)

On October 15, 2004, EPA Region 9 and the Navajo Nation EPA (NNEPA) entered into a Delegation of Authority Agreement. Under the Agreement, the Navajo Nation took over Title V permitting responsibilities for twelve existing major stationary air pollution sources on its reservation, while Region 9 maintained oversight of Part 71 permits for the Navajo Generating Station and the Four Corners Power Plant. Region 9 determined that the Navajo Nation met TAS eligibility requirements and waived the collection of Part 71 permit fees from sources that NNEPA was also collecting fees from under Tribal law. For more information on the Navajo Nation's Title V Operating Permit Program, please visit http://www.epa.gov/region9/air/permit/permitdelegation.html.

Manilaq Association (AK)

In collaboration with the Alaska Department of Environmental Conservation (ADEC), the Maniilaq Association has planned an air toxics monitoring program that includes evaluating indoor and outdoor concentrations of hydrocarbons, aldehydes, and toxic metals in a large community setting as well as a smaller village (300-500 people). Outdoor monitoring is scheduled to occur regularly on every 12th day in both settings. Indoor sampling is planned to occur in sets of four to five households in each setting approximately 12 times a year, with more sampling during the summer and winter months. The ADEC has enlisted Washington State University (WSU) as a partner in the monitoring program. WSU will perform the analytical services, and the data that is collected will be shared with the ADEC and the involved Maniilaq communities. The data may also be used to inform future WSU research projects.

Section 5 Case Study: Protecting Water Resources in Indian Country

The Confederated Salish and Kootenai Tribes of the Flathead Reservation

The Flathead Reservation is located on 1.2 million acres in west-central Montana and has a population of approximately 20,000. It is home to several threatened and endangered species that rely upon wetland ecosystems for food, water, and habitat. Historically, these wetlands have been threatened by farming and ranching activities on the reservation, as well as by construction and development on the reservation and on surrounding lands.

Wetlands Conservation Strategy and Plan – In 1994, the Confederated Tribes completed The Flathead Reservation Wetlands Conservation Strategy as a first step towards wetlands protection and restoration. The Strategy included the Tribes' wetlands goals and objectives, an assessment of wetland resources on the reservation, a wetland inventory QAPP, an evaluation of existing Tribal mechanisms for wetlands protection, plans for improvement, and recommendations for implementation and documentation of progress. The Tribes later developed a Wetlands Conservation Plan as a detailed road map for implementing the Strategy.

Wetlands Inventory and Assessment – As the basis for their Wetlands Conservation Strategy, the Confederated Tribes completed a broad assessment of the wetlands resources on their Reservation. The assessment included the production and digitization of National Wetland Inventory maps, acquisition and classification of aerial wetlands imagery, and completion of vegetation and water quality sampling. Such an assessment allowed the Confederated Tribes to determine meaningful wetlands goals and a plan for reaching their goals.

Nonpoint Source Management Plan – In addition to completing their Wetlands Conservation Strategy and Plan, the Confederated Tribes have developed a plan for managing NPS pollution. This plan details the implementation of best management practices at the watershed level as well as a nutrient loading study to evaluate the contribution of NPS pollution to surface waters (note that CWA Section 319 funds may not be used for the purposes of studies).

Voluntary Activities with Partners and Stakeholders – Because a significant portion of Flathead Reservation lands are owned by non-Indians, and because many government organizations have land holdings or land management responsibilities on the reservation, the Confederated Tribes recognized the importance of working with these groups to protect their surface water quality and wetlands. Coordination between Tribal wetlands and water quality staff and government agencies, private landowners, and nongovernmental organizations is extensive and frequent. For example, the Confederated Tribes partnered with the Montana Department of Transportation to implement a wetland ecosystem restoration project on the reservation. To ensure the long-term success of the project, the Confederated Tribes defined clearly stated goals and objectives, determined performance standards, created a detailed monitoring plan and schedule, and considered operation and maintenance issues. By tracking their results on the restoration project, the Confederated Tribes were better able to plan for additional surface water quality and wetlands projects.

Regulatory Activities – In addition to undertaking voluntary surface water quality and wetlands projects, the Confederated Tribes have instituted regulatory programs to legally protect wetland resources on their reservation. The Tribes' Shoreline Protection Program administers a shoreline protection ordinance as well as an aquatic lands conservation ordinance, which governs the construction of projects on aquatic reservation lands. The Tribes are also approved for TAS to manage their CWA Section 303 Water Quality Standards Program and their CWA Section 401 Water Quality Certification Program. Under these programs, the Confederated Tribes have established water quality criteria, designated uses, and an anti-degradation policy. The Tribes additionally administer a surface water

quality management ordinance that specifies reporting requirements and enforcement mechanisms.

EPA Funding Sources – The Confederated Tribes received funding under CWA Section 104(b)(3) to develop their Wetlands Conservation Strategy and Plan. They also used CWA Section 104(b)(3) funding to conduct public education and outreach on wetlands protection issues, assess their wetlands resources, determine evaluation criteria for their wetlands protection projects, and train staff working on regulatory programs. Although the Tribe did not use other EPA funding sources, most of its activities would also have been covered under a combination of CWA Section 106, CWA Section 319, and GAP funds.

Section 6 Case Study: Managing Wastes and Underground Storage Tanks in Indian Country

Eastern Band of Cherokee Indians Transfer Station (NC)

When the federal RCRA Subtitle D landfill regulations went into effect, the Eastern Band of Cherokee Indians closed its old, non-compliant landfill and constructed a transfer station that can accept 300 tons of waste per day. The transfer station is successful because the Tribe sized and sited it properly during the planning phase and provided employees with extensive training. Before breaking ground on the facility, the Tribe explored three different disposal options, conducted a waste assessment, and investigated tipping fees at several area landfills to negotiate an agreement with a landfill in South Carolina. After the landfill was constructed, seven employees became certified transfer station managers. Source: http://www.epa.gov/osw/wycd/tribal/thirds/cherokee2.htm

The Shoshone-Bannock Tribes DITCA for Underground Storage Tanks (ID)

The Shoshone-Bannock Tribes established a Direct Implementation Tribal Cooperative (DITCA) with EPA in 2004 to develop and implement an UST program on the Reservation. A tribal employee became the first federally-credentialed tribal inspector in the nation for USTs. Ten USTs have been removed and several UST facilities have been removed since the Agreement was signed. Source: http://www.epa.gov/oust/fedlaws/rtc_finalblnkpgs.pdf

Section 7 Case Studies: Remediating Contaminated Sites and Providing Emergency Response in Indian Country

The Gila River Indian Community EPCRA Program (AZ)

The Gila River Indian Community developed an EPCRA program within its Department of Environmental Quality. The program serves as the primary staff support and contact for the Chemical Tribal Emergency Response Committee and receives federal and tribal required chemical inventory reports from facilities with hazardous substances. EPA currently uses the Gila River Indian Community Program as the model TERC for other tribes to view when developing their own programs. The Gila River Indian Community EPCRA Ordinance is available at: http://www.chemicalspill.org/tribal.html. Source: http://www.gilariver.org/index.php/departments-cols5-colw1190-colw2190-col3w190col4w190-col5w190-right0-tribal-departments/78-department-of-environmental-quality.

Section 8 Case Studies: Managing Asbestos, Lead-Based Paint, Pesticides, and Toxics in Indian Country

The Colorado River Indian Tribes Pesticide & Lead-Based Paint Baseline Assessment Programs (AZ)

The Colorado River Indian Tribe (CRIT) Pesticide Program has developed a Pesticide Tracking System which allows it to identify and track pesticide applications, as well as tribal and state pesticide certifications and permit expiration dates. Information in the tracking system is accessed on laptop computers that inspectors carry in the field. Source: http://www.epa.gov/oppfead1/Publications/tribal-brochure.pdf Under a TSCA Section 10 grant, CRIT assesses potential lead-based paint hazards at pre-1978 child-occupied facilities on this reservation. Among other accomplishments, the tribal lead risk assessor identified lead-based paint in a deteriorating condition at a childcare facility. The tribe safely removed the lead-based paint during the summer break, removing a potential source of lead exposure to tribal children.

The Confederated Salish and Kootenai Tribes Water Quality Monitoring Project (MT)

EPA and the U.S. Geological Survey awarded a grant to the Confederated Salish and Kootenai Tribes (CSKT) of Montana to begin baseline water quality monitoring of its 180,000 acres of rivers, lakes, streams, and wetlands. The data generated is intended to direct CSKT to pesticide applications that may be affecting water quality, and to help to focus outreach and inspection activities within the areas of greatest concern. Source: http://www.epa.gov/oppfead1/Publications/tribal-brochure.pdf

The Coeur D'Alene Tribe Circuit Rider (ID)

EPA Region 10 provides funding through a cooperative agreement to the Coeur d'Alene Tribe in northern Idaho to conduct non-regulatory and regulatory pesticide activities on behalf of EPA within that reservation, as well as, for five other tribes in northern Idaho and eastern Washington. The Coeur d'Alene Circuit Rider conducts inspections to assure that pesticides are sold and used properly; provides technical assistance, education, and training; and works closely with Idaho and Washington State pesticide agencies on cross-jurisdictional issues and to share training opportunities. Source: http://www.epa.gov/oppfead1/Publications/tribal-brochure.pdf

The Nunakauyarmiut Tribe Priority Toxics Issues (AK)

Using multiple CARE program grants, the villages of the Nunakauyarmiut Tribe of Toksook Bay have been able to work collaboratively to determine risks and strategies concerning environmental hazards. They are currently executing initiatives that address priority risks identified: lead-acid batteries, household batteries, fluorescent lights, Freon gas, and lead weight sinkers. These wastes are currently being discarded at open dump sites and/or subsistence camps, and potentially exposing children and adults to harmful toxics such as heavy metals, mercury, Freon gas, and lead. Through these initiatives, the Nunakauyarmiut hope to address the environmental stressors that plague the community and threaten their unique traditional lifestyle. Source: http://www.epa.gov/care/community2009.html

The Spirit Lake Tribe Lead Baseline Assessment and Educational Outreach (ND)

EPA has funded two projects with the Spirit Lake Tribe under the Tribal Lead Grant Program: a lead outreach project and a baseline assessment of Tribal children's blood-lead

levels. The outreach grant supports comprehensive outreach to the Tribe, including several lead prevention information sessions. The baseline assessment grant supports efforts to perform blood-lead level tests of Tribal children, as well as, conduct lead risk assessments and inspections of Tribal homes and provide training to Tribal staff. Source: http://www.epa.gov/lead/pubs/grants/tribal2008-spirit.htm

Tribal Caucus Meeting Agenda

R5TOC Tribal Caucus Meeting

AGENDA

Tues., November 29, 2011

8:30am – 3:30pm

Oneida, WI
(Norbert Hill Center:
2nd Floor Conf. Room)

- 8:00am – Continental Breakfast
- 8:30am - Call to Order
- 8:35am - Roll Call
- 8:40am - Approval of Previous Meeting Minutes
- 8:45am - Priority Development
  - facilitated session on strategy
  - Identify
- 10:45am – Break
- 11:00am – Ceded Territories
- 12:00 noon – Lunch (On Your Own)
- 1:15pm – GAP Guidebook
  - Invited - Luke Jones
- 1:45pm – Grants Consistency Workgroup Status Update
- 2:00pm – NTOC Update
  - Invited – Monica Hedstrom
- 2:30pm – Reinvigoration Item(s)
- Next Meeting Date
- Adjournment

FSA Report

USDA FSA

United States Department of Agriculture | Farm and Foreign Agricultural Services | Farm Service Agency

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FSA REPORT TO WTCAC – NOVEMBER 2011

By Susan Hunter, FSA Tribal Liaison (715) 362-5941 ext 104, susan.hunter@wi.usda.gov

Wild Rice Eligibility for Loss Coverage – After working with Washington DC, the Wisconsin State FSA office and MN FSA and tribal entities who have wild rice, we were able to approve one Lake wild rice loss coverage application in Wisconsin at the last minute before the September 30th deadline as a pilot project (Sokaogan Chippewa on Mole Lake).

Here are some of the details on what wild rice is eligible for annual loss coverage under the Non-Insured Assistance Program (NAP). See attached fact sheet for more general information on NAP.

- Only lakes and water bodies, where the tribe has COMPLETE CONTROL of the seeding, management and harvest of wild rice, can be included as a NAP unit for coverage. This would limit the NAP coverage only to reservation controlled waters. The problem that USDA-FSA has with the ceded territories that are off-reservation is that the management and control of the beds and production/harvest is not 100% under the control of the tribe. On wild rice waters within the ceded territories, GLIFWC member tribes permit their members to harvest wild rice with the assistance of family members (poling only). Plus non-Indians are able to purchase state licenses from the Wisconsin DNR and harvest rice under state regulations. Because of this, anyone who does any type of harvest on the non-reservation ceded territories would have to be party to the NAP policy and this would be an administrative impossibility. Therefore, just the wild rice water bodies within the reservation and where 100% tribal control is in place could be eligible for a NAP policy with FSA. Plus, riparian areas of rivers and flowages belong to the adjacent land owner (WI State Law), so wild rice on these waters is technically owned by the riparian owner, and thus may be private or public. This is a very small part of the total harvest each year, but is not under control of the tribe who would have the NAP coverage policy.
- Each tribal band is a separate entity for NAP purposes and should have a tax ID number. If there is a separate tribal entity managing the wild rice, the policy would be under their tax ID number.
- An official document must be presented to FSA that indicates who has signature authority for the tribe. There are various applications and forms that must be signed.
- Required fee is $250 per year. Losses must exceed 50% to earn any payment.
- A document will be submitted to FSA summarizing the tribe's wild rice cultural and management practices regarding the wild rice establishment, maintenance, harvesting and production monitoring.
- The tribe must supply FSA with yield, production data and acres for the previous 4 years if possible to allow FSA to analyze the data and develop a yield.
- Crop acreage and harvested production reporting is required each year by July 15th to the local FSA office

FSA Loss Coverage Deadlines in November for Non-Insurable Crops. The following November deadline is coming up for crops that cannot be insured by local crop insurance agents and can be covered by catastrophic loss policies through FSA's Non-Insured Assistance Program (NAP) at $250 per crop:

- November 20th – Final date to obtain a NAP policy for commercially grown and harvested Honey, Maple Sap and Perennial Crops which includes Apples, Cranberries, Raspberries, Blueberries, Grapes, Strawberries and Blackberries

USDA FSA

FACT SHEET

UNITED STATES DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY

August 2011

Noninsured Crop Disaster Assistance Program (NAP) for 2011 and Subsequent Years

Overview

USDA's Farm Service Agency's (FSA) Noninsured Crop Disaster Assistance Program (NAP) provides financial assistance to producers of noninsurable crops when low yields, loss of inventory or prevented planting occur due to a natural disaster.

Eligible Producers

An eligible producer is a landowner, tenant or sharecropper who shares in the risk of producing an eligible crop and is entitled to an ownership share of that crop. As authorized by the Food, Conservation, and Energy Act of 2008 (2008 Act), an individual's or entity's average nonfarm adjusted gross income (AGI) limitation cannot exceed $500,000 to be eligible for NAP.

Eligible Crops

Eligible crops must be commercially produced agricultural commodity crops for which the catastrophic risk protection level of crop insurance is not available and be any of the following:

- Crops grown for food;
- Crops planted and grown for livestock consumption, including, but not limited to grain and forage crops, including native forage;
- Crops grown for fiber, such as cotton and flax (except for trees);
- Crops grown in a controlled environment, such as mushrooms and floriculture;
- Specialty crops, such as honey and maple sap;
- Value loss crops, such as aquaculture, Christmas trees, ginseng, ornamental nursery and turfgrass sod;
- Sea oats and sea grass and;
- Seed crops where the propagation stock is produced for sale as seed stock for other eligible NAP crop production.

Producers must contact a crop insurance agent for questions regarding insurability of a crop in their county.

For further information on whether a crop is eligible for NAP coverage, producers must contact the FSA county office where their farm records are maintained.

Eligible Natural Disaster

An eligible natural disaster is any of the following:

- Damaging weather, such as drought, freeze, hail, excessive moisture, excessive wind or hurricanes;
- An adverse natural occurrence, such as earthquake or flood; A condition related to damaging weather or an adverse natural occurrence, such as excessive heat, plant disease, volcanic smog (VOG), insect infestation or;
- Any combination of these conditions.

The natural disaster must occur during the coverage period, before or during harvest and must directly affect the eligible crop.

Applying for Coverage

Eligible producers must apply for coverage of noninsurable crops using Form CCC-471, "Application for Coverage," and pay the applicable service fee at the FSA office where their farm records are maintained. The application and service fee must be filed by the application closing date as established by the FSA State Committee.

The service fee is the lesser of $250 per crop or $750 per producer per administrative county, not to exceed a total of $1,875 for a producer with farming interests in multiple counties. This fee is authorized by the 2008 Act.

Limited resource producers may request a waiver of the service fee. To qualify for an administrative service fee waiver, the producer must meet both of the following criteria:

- Earn no more than $100,000 gross income in farm sales from each of the previous two years (to be increased starting in FY 2004 to adjust for inflation, using the prices paid by farmers index as compiled by the National Agricultural Statistics Service (NASS);
- Have a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household for both of the previous two years.

Limited resource producer status may be determined using the USDA Limited Resource Farmer and Rancher Online Self Determination Tool located on the Limited Resource Farmer and Rancher - (LRF/R) home page at **www.lrftool.sc.egov.usda.gov/** . The automated system calculates and displays adjusted gross farm sales per year and the higher of the national poverty level or county median household income.

Coverage Period for NAP

The coverage period for NAP may vary depending on the crop.

The coverage period for an annual crop begins the later of:

- 30 days after application for coverage and the applicable service fees have been paid or;
- The date the crop is planted (cannot exceed the final planting date) and ends the earlier of:

1. The date the crop harvest is completed;
2. The normal harvest date for the crop;
3. The date the crop is abandoned or;
4. The date the entire crop acreage is destroyed.

The coverage period for a perennial crop, other than a crop intended for forage, begins 30 calendar days after the application closing date and ends the earlier of:

- 10 months from the application closing date;
- The date the crop harvest is completed;
- The normal harvest date for the crop;
- The date the crop is abandoned or;
- The date the entire crop acreage is destroyed.

Contact a local FSA office for information on the coverage periods for perennial forage crops, controlled-environment crops, specialty crops and value loss crops.

Information Required to Remain Eligible for NAP

To remain eligible for NAP assistance, the following crop acreage information must be reported annually:

- Name of the crop (lettuce, clover, etc.);
- Type and variety (head lettuce, red clover, etc.);
- Location and acreage of the crop (field, sub-field, etc.);
- Share of the crop and the names of other producers with an interest in the crop;
- Type of practice used to grow the crop (irrigated or non-irrigated);
- Date the crop was planted in each field and;
- Intended use of the commodity (fresh, processed, etc.).

Producers should report crop acreage shortly after planting (early in the risk period) to ensure reporting deadlines are not missed and coverage is not lost.

In addition, producers must annually provide the following production information:

- The quantity of all harvested production of the crop in which the producer held an interest during the crop year;
- The disposition of the harvested crop, such as whether it is marketable, unmarketable, salvaged or used differently than intended and;
- Verifiable or reliable crop production records (when required by FSA).

When those records are required by FSA, producers must provide them in a manner that can be easily understood by the FSA county committee. Producers should contact the FSA office where their farm records are maintained for questions regarding acceptable production records. .

Failure to report acreage and production information may result in reduced or zero NAP assistance. Be aware that acreage reporting and final planting dates vary by crop and by region. Producers should contact the FSA office where their farm records are maintained for questions regarding local acreage reporting and final planting dates.

For aquaculture, floriculture and ornamental nursery operations, producers must maintain records according to industry standards, including daily crop inventories. Unique reporting requirements apply to beekeepers and producers of Christmas trees, turfgrass sod, maple sap, mushrooms, ginseng and commercial seed or forage crops. Producers should contact the FSA office where their farm records are maintained regarding these requirements.

FSA Use of Reported Acreage and Production

FSA uses acreage reports to verify the existence of the crop and to record the number of acres covered by the application. The acreage and the production reports are used to calculate the approved yield (expected production for a crop year). The approved yield is an average of a producer's actual production history (APH) for a minimum of four to a maximum of 10 crop years (five years for apples and peaches). To calculate APH, FSA divides a producer's total production by the producer's crop acreage.

A producer's approved yield may be calculated using substantially reduced yield data if the producer does not report acreage and production or reports fewer than four years of crop production.

Applying for NAP Assistance When a Natural Disaster Strikes

When a crop or planting is affected by a natural disaster, producers must notify the FSA office where their farm records are maintained and complete Part B, (the Notice of Loss portion) of Form CCC-576, Notice of Loss and Application for Payment. This must be completed

within 15 calendar days of whichever occurs earlier:

- Natural disaster occurrence;
- Final planting date if planting was prevented by a natural disaster;
- Date damage to the crop or loss of production became apparent;
- The normal harvest date.

To receive NAP benefits, producers must complete Form CCC-576, Notice of Loss and Application for Payment, Parts D, E, and F as applicable, and certify in Part G, no later than the immediately subsequent crop year acreage reporting date for the crop. The CCC-576 requires acceptable appraisal information. Producers must provide evidence of production and note whether the crop was marketable, unmarketable, salvaged or used differently than intended.

Amount of Production Loss to Receive a NAP Payment

The natural disaster must have either:

- Reduced the expected unit production of the crop by more than 50 percent or;
- Prevented the producer from planting more than 35 percent of the intended crop acreage.

Expected production is the amount of the crop produced in the absence of a natural disaster. FSA compares expected production to actual production to determine the percentage of crop loss.

Defining a NAP Unit

The NAP unit includes all the eligible crop acreage in the county where the producer has a unique crop interest. A unique crop interest is either:

- 100 percent interest or;
- A shared interest with another producer.

How Much Loss NAP Covers

NAP covers the amount of loss greater than 50 percent of the expected production based on the approved yield and reported acreage.

Information FSA Uses to Calculate Payment

The NAP payment is calculated by unit using:

- Crop acreage;
- Approved yield;
- Net production;
- 55 percent of an average market price for the specific commodity established by the FSA state committee;
- A payment factor reflecting the decreasing cost incurred in the production cycle for the crop that is harvested, unharvested or prevented from being planted.

Payment Limitation

NAP payments received, directly or indirectly, will be attributed to the applicable individual or entity and limited to $100,000 per crop year, per individual or entity.

Risk Management Purchase Requirement for Other Programs

Noninsurable commodities on a farm, except forage crops intended for grazing, are required to have NAP coverage in order for producers on that farm to be eligible for the Supplemental Revenue Assistance Payments (SURE) Program, Tree Assistance Program (TAP) and the Emergency Assistance for Livestock, Honey Bees, and Farm-raised Fish Program (ELAP).

Producers are required only to have NAP coverage on the forage crop acreage intended for grazing and for which benefits are being requested to be eligible for the Livestock Forage Disaster Program (LFP).

More Information

Further information on NAP is available from your local FSA office or on FSA's website at **www.fsa.usda.gov/nap**.

Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Great Lakes Region

USDA NRCS
United States Department of Agriculture
Natural Resources Conservation Service
Conservation Effects Assessment Project

September 2011

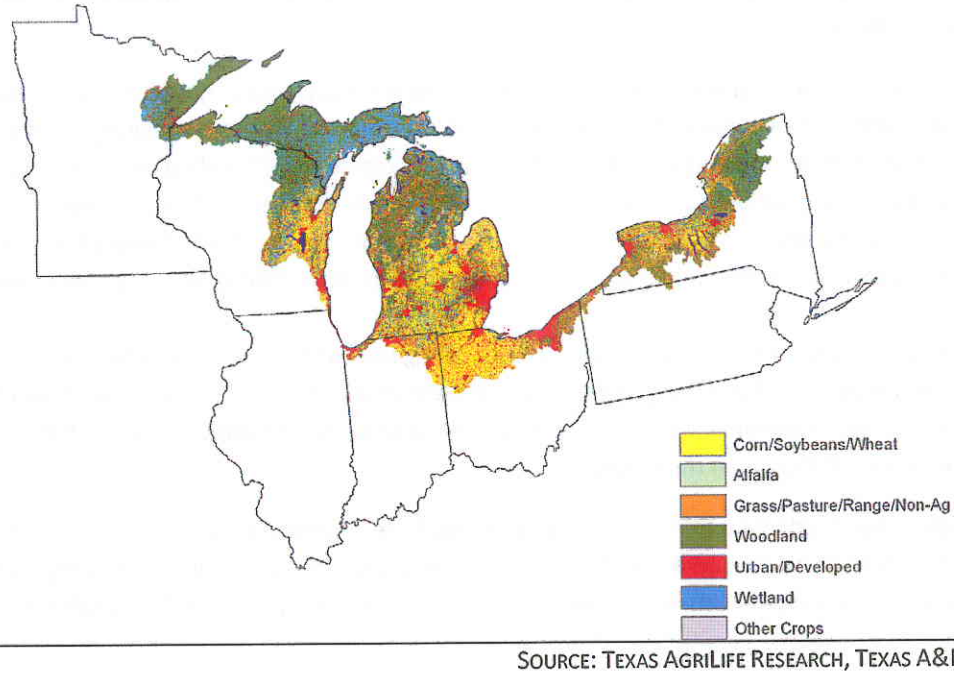
Summary of Findings

Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Great Lakes Region

The U.S. Department of Agriculture's Conservation Effects Assessment Project (CEAP) has undertaken a series of studies designed to quantify the effects of conservation practices on cultivated cropland in the conterminous 48 States. The third study in this series, on the *U.S. portion* of the Great Lakes drainage, is referred to as the Great Lakes Region. This region covers about 174,000 square miles and includes parts of eight states—nearly all of Michigan, significant parts of Wisconsin, New York, and Ohio, and small parts of Minnesota, Indiana, Illinois, and Pennsylvania. Cultivated cropland makes up 24 percent of the land area of the Great Lakes Region (fig. 1). All of the reports in the series are based on computer modeled simulations of conservation outcomes derived from the use of farming and conservation practices as reported by farmers during the period 2003 to 2006.

As with the two previously published reports in the series, CEAP modeling efforts found that farmers have reduced onsite and offsite environmental problems stemming from agricultural activities. Even so, significant additional progress can be achieved, particularly through more rigorous application of nutrient management in combination with erosion-control practices. Simulation modeling showed that conservation practices in the region have reduced edge-of-field losses of sediment, nitrogen, and phosphorus as well as loadings of these materials in rivers, streams, and the Lakes. The resource concern with the most widespread need for additional conservation treatment related to cropland in the region is nitrogen loss in subsurface flows. Additional conservation practices to address excessive phosphorus loss (sediment adsorbed and soluble) from fields are also important but the need for these practices occurs on a smaller proportion of the cropland than treatment needs for nitrogen loss.

Figure 1. *Location of and land cover in the U.S. portion of the Great Lakes drainage*



SOURCE: TEXAS AGRILIFE RESEARCH, TEXAS A&M UNIVERSITY

Study Findings

Voluntary, Incentives-Based Conservation Approaches Are Achieving Results

Farmers have reduced sediment, nutrient, and pesticide losses from farm fields through conservation practice adoption throughout the Great Lakes Region, compared to a no-practice scenario that simulates losses that would be expected if no conservation practices were in use. Although only 17 percent of the cropland in the region is classified as highly erodible land, structural practices for controlling soil erosion are in place on 26 percent of all cropped acres in the region and on 37 percent of the highly erodible cropland. Eighty-two percent of the cropland acres meet criteria for no-till (32 percent) or mulch till (50 percent), and all but 9 percent have evidence of some kind of reduced tillage on at least one crop in the rotation. Ninety-four percent have structural or management practices, or both.

Table 1 shows reductions in losses of sediment and nutrients from farm fields and reductions in loadings of sediment and nutrients to rivers, streams, and the Lakes.

Table 1. Reductions in edge-of-field losses and in loadings of sediment and nutrients from cultivated cropland through existing conservation treatment, Great Lakes Region

Pollutant	Reduction in edge-of-field losses	Reduction in loads to rivers and streams	Reduction in loads to the Lakes (all sources)
	Percent		
Sediment	47	50	12
Total Nitrogen	28	37	21
Total Phosphorus	39	36	20

Opportunities Exist to Further Reduce Sediment and Nutrient Losses from Cultivated Cropland

The need for additional conservation treatment in the region was determined by imbalances between the level of conservation practice use and the level of inherent vulnerability. Areas of sloping soils are more vulnerable to surface runoff and consequently to loss of sediment and soluble nutrients with overland flow of water; areas of level, permeable soils are generally not vulnerable to sediment loss or nutrient loss through overland flow but are more prone to nitrogen losses through subsurface pathways. Three levels of treatment need were estimated:

- **A high level of need** for conservation treatment exists where the loss of sediment and/or nutrients is greatest and where additional conservation treatment can provide the greatest reduction in agricultural pollutant loadings. *Some 2.8 million acres—19 percent of the cultivated cropland in the region—have a high level of need for additional conservation treatment.*
- **A moderate level of need** for conservation treatment exists where the loss of sediment and/or nutrients is not as great and where additional conservation treatment has less potential for reducing agricultural pollutant loadings. *Approximately 5 million acres—34 percent of the cultivated cropland in the region—have a moderate level of need for additional conservation treatment.*
- **A low level of need** for conservation treatment exists where the existing level of conservation treatment is adequate compared to the level of inherent vulnerability. Additional conservation treatment on these acres would provide little additional reduction in sediment and/or nutrient loss. *Approximately 6.9 million acres—47 percent of the cultivated cropland in the region—have a low level of need for additional conservation treatment.*

Table 2 shows potential reductions in sediment, nitrogen, and phosphorus losses and delivery to rivers and streams in the Great Lakes Region and to the Lakes themselves. Potential reductions are those that could be achieved from existing levels through implementation of suites of conservation practices on cropped acres having high or moderate levels of treatment need.

Table 2. Potential for further reductions in edge-of-field losses and in loadings of sediment and nutrients from cultivated cropland through comprehensive conservation treatment of high- and moderate treatment-need cropland, Great Lakes Region

Pollutant	Potential reduction in edge-of-field losses	Potential reduction in loads to rivers and streams	Potential reduction in loads to the Lakes (all sources)
	Percent		
Sediment	64	58	9
Total Nitrogen	31	37	16
Phosphorus	36	33	15

Comprehensive Conservation Planning and Implementation Are Essential

The resource concern with the most widespread need for additional conservation treatment related to cropland in the region is nitrogen loss in subsurface flows. Additional conservation practices are also needed to address excessive phosphorus loss (sediment adsorbed and soluble) from fields, but on a smaller proportion of the region's cropland.

About 16 percent of the cropped acres have a high need for treatment to reduce subsurface losses of nitrogen, and 29 percent have a moderate need. Twelve percent of cropped acres in the region have a moderate need for additional treatment to reduce phosphorus loss. Suites of practices that include both soil erosion control and nutrient management—appropriate rate, form, timing, *and* method of application—are required to simultaneously address soil erosion and nutrient losses in runoff and through leaching. Increased water infiltration and loss of nutrients through subsurface pathways can be unintended consequences of using structural and residue management practices to control runoff, erosion, and sedimentation without appropriate nutrient management.

Targeting Enhances Effectiveness and Efficiency

Targeting critical acres significantly improves the effectiveness of conservation practice implementation. Use of additional conservation practices on acres that have a high need for additional treatment—acres most prone to runoff or leaching and with low levels of conservation practice use—can reduce sediment and nutrient per-acre losses by about twice as much on average as treatment of acres with a moderate level of need. Even greater efficiencies can be achieved when comparing treatment of high- or moderate-need acres to low-treatment need acres.

Conservation Practice Effects on Water Quality

Reductions in field-level losses due to conservation practices, including land in long-term conserving cover, are expected to improve water quality in streams and rivers in the region. Figures 2, 3, and 4 summarize the extent to which conservation practices on cultivated cropland acres have reduced, and can further reduce, sediment, nitrogen, and phosphorus loads in the Great Lakes Region, on the basis of the model simulations. In each figure, the top map shows delivery from cultivated cropland to rivers and streams within the region and the bottom map shows delivery from all sources to the Lakes after accounting for losses and gains through instream processes. On all three figures—

- "baseline" refers to estimates of conditions based on farming and conservation practices in use during 2003–06;
- "no-practice scenario" refers to conditions that would be expected if no conservation practices were in use;
- "critical under-treated acres" refers to land with a high level of conservation treatment need, as defined on page 2;
- "all under-treated acres" refers to land with high and moderate levels of conservation treatment need, as defined on page 2; and
- "background" refers to expected levels of sediment and nutrient loadings if there were no acres were cultivated in the region. Estimates of background loadings simulate a grass and tree mix cover without any tillage or addition of nutrients or pesticides for all cultivated cropland acres in the watershed. Background loads also include loads from all other land uses—hayland, pastureland, rangeland, horticultural land, forest land, and urban land—as well as point sources.

The effects of practices in use during 2003–06 are seen by contrasting loads for the baseline conservation condition to loads for the no-practice scenario. The effects of additional conservation treatment on loads are seen by contrasting the loads for the baseline condition to either loads for treatment of acres with a *high* level of treatment need (2.84 million critical under-treated acres), or loads for treatment of all under-treated acres (7.9 million acres with either a *high* or *moderate* level of treatment need).

Sediment Loss

In figure 2, the top map shows that the use of conservation practices has reduced ***sediment loads delivered from cropland to rivers and streams*** in the region by 50 percent from conditions that would be expected without conservation practices. Application of additional conservation practices would reduce baseline sediment loads delivered to rivers and streams within the region by 25 percent by treating acres with a "high" level of treatment need. Treating ALL under-treated acres (acres with either a "high" or "moderate" need for treatment) would reduce baseline sediment loads delivered to rivers and streams within the region by 58 percent.

The bottom map shows that the use of conservation practices on cropland has reduced ***sediment loads delivered to the Lakes from all sources*** by 12 percent from conditions that would be expected without conservation practices. Application of additional conservation practices would reduce baseline sediment loads delivered to the Lakes by 4 percent by treating acres with a "high" level of treatment need. Treating ALL under-treated acres (acres with either a" high" or "moderate" need for treatment) would reduce baseline sediment loads delivered to the Lakes by 9 percent.

Nitrogen Loss

In figure 3, the top map shows that the use of conservation practices has reduced ***total nitrogen loads delivered from cropland to rivers and streams*** in the region by 37 percent from conditions that would be expected without conservation practices. Application of additional conservation practices would reduce baseline total nitrogen loads delivered to rivers and streams within the region by 18 percent by treating acres with a "high" level of treatment need. Treating ALL under-treated acres (acres with either a" high" or "moderate" need for treatment) would reduce baseline nitrogen loads delivered to rivers and streams within the basin by 37 percent.

The bottom map shows that the use of conservation practices on cropland has reduced ***total nitrogen loads delivered to the Lakes from all sources*** by 21 percent from conditions that would be expected without conservation practices. Application of additional conservation practices would reduce baseline total nitrogen loads delivered to the Lakes by 8 percent by treating acres with a "high" level of treatment need. Treating ALL under-treated acres (acres with either a "high" or "moderate" need for treatment) would reduce baseline nitrogen loads delivered to the Lakes by 16 percent.

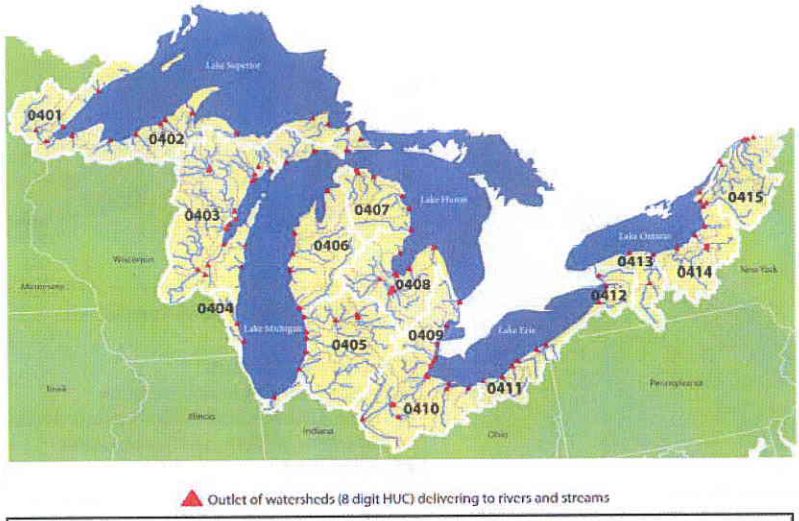
Phosphorus Loss

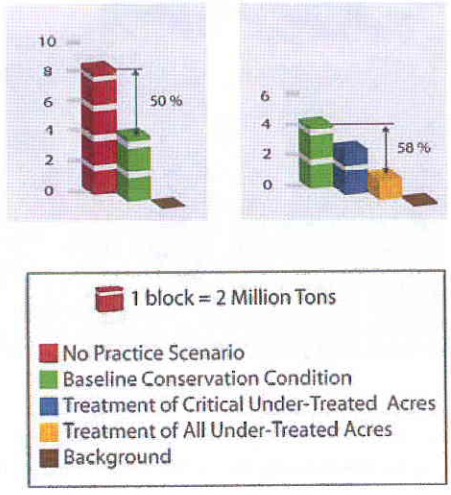
In figure 4, the top map shows that the use of conservation practices has reduced ***total phosphorus loads delivered from cropland to rivers and streams*** in the region by 36 percent from conditions that would be expected without conservation practices. Application of additional conservation practices would reduce baseline total phosphorus loads delivered to rivers and streams by 11 percent by treating acres with a "high" level of treatment need. Treating ALL under-treated acres (acres with either a "high" or "moderate" need for treatment) would reduce baseline phosphorus loads delivered to rivers and streams within the basin by 33 percent.

The bottom map shows that the use of conservation practices on cropland has reduced ***total phosphorus loads delivered to the Lakes from all sources*** by 20 percent from conditions that would be expected without conservation practices. Application of additional conservation practices would reduce baseline total phosphorus loads delivered to the Lakes by 5 percent by treating acres with a "high" level of treatment need. Treating ALL under-treated acres (acres with either a "high" or "moderate" need for treatment) would reduce baseline phosphorus loads delivered to the Lakes by 15 percent.

Figure 2. Summary of the effects of conservation practices on sediment loads in the Great Lakes Region

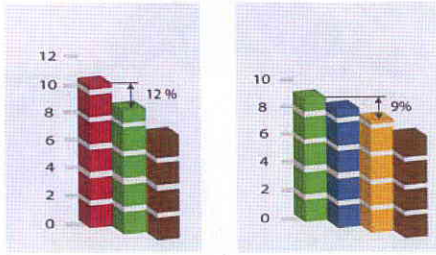
Sediment delivered from cultivated cropland to rivers and streams in the Great Lakes Basin

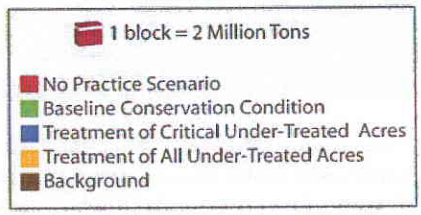




Critical under-treated acres are acres with a high need for additional treatment.
Under-treated acres have either a high or moderate need for additional treatment.

Sediment delivered to the Great Lakes (all sources-instream loads)



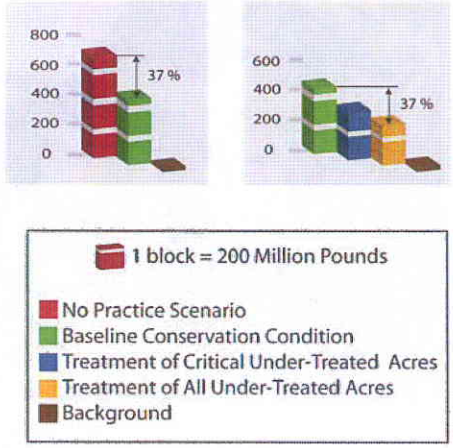


Critical under-treated acres are acres with a high need for additional treatment.
Under-treated acres have either a high or moderate need for additional treatment.

Figure 3. Summary of the effects of conservation practices on total nitrogen loads in the Great Lakes Region

Nitrogen delivered from cultivated cropland to rivers and streams in the Great Lakes Basin

▲ Outlet of watersheds (8 digit HUC) delivering to rivers and streams



Critical under-treated acres are acres with a high need for additional treatment.
Under-treated acres have either a high or moderate need for additional treatment.

Nitrogen delivered to the Great Lakes (all sources-instream loads)

▲ Outlet of watersheds (8 digit HUC) delivering directly into the Lakes

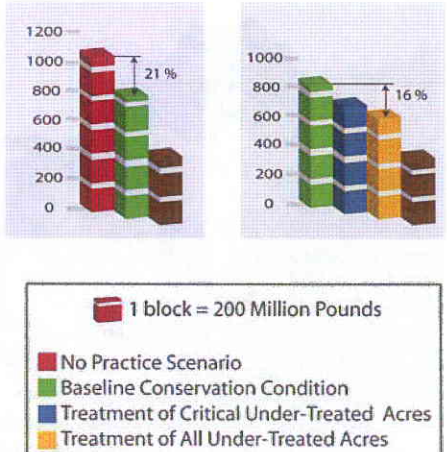


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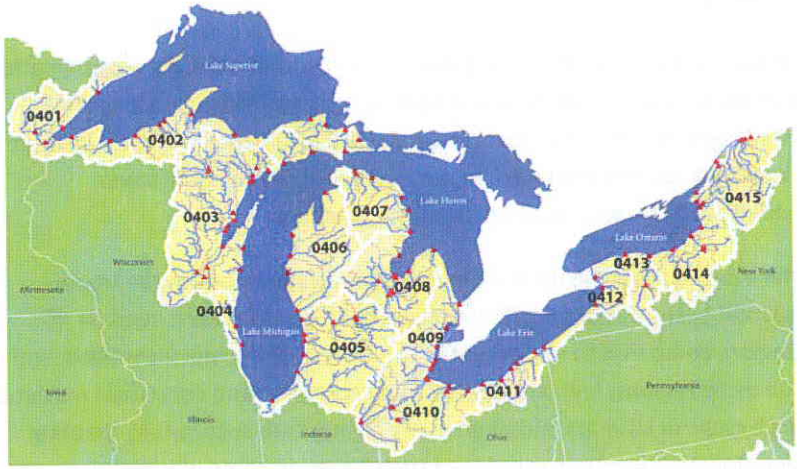
Figure 4. *Summary of the effects of conservation practices on total phosphorus loads in the Great Lakes Region*

Phosphorus delivered from cultivated cropland to rivers and streams in the Great Lakes Basin



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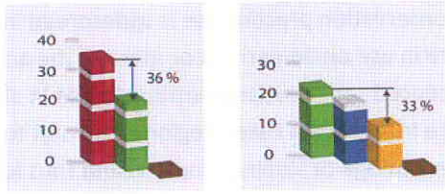

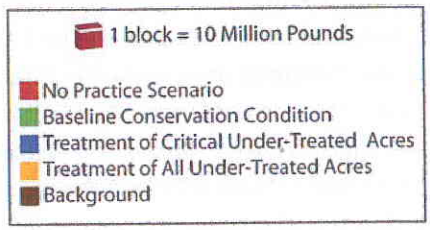

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Phosphorus delivered to the Great Lakes (all sources-instream loads)

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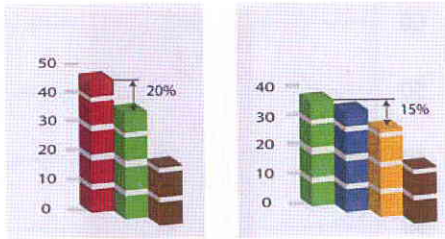
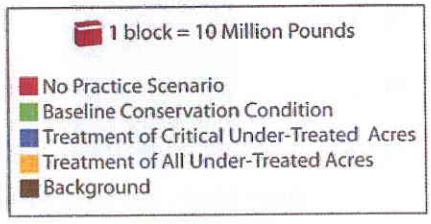




Critical under-treated acres are acres with a high need for additional treatment.
Under-treated acres have either a high or moderate need for additional treatment.

Regional Comparisons

The differences in findings among the three regional studies completed so far—Upper Mississippi River Basin, Chesapeake Bay Region, and Great Lakes Region—are more in degree than in kind. Table 2 compares several factors across the three regions. By most measures, the inherent vulnerability factors for sediment and nutrient losses are less severe in the Great Lakes Region than in the other two.

Conservation practice use is widespread in all three regions. Structural or tillage practices used alone or in combination are in use on 94 percent or more of the acres in all regions, and farmers' use of structural and tillage practices has reduced sediment and nutrient losses in all three regions. The lower percentage of structural erosion control practice use in the Great Lakes Region is due not to a lessened conservation ethic in the region but to the much lower percentage of sloping cropland and thus less need for terraces and other structural practices.

Reducing the loss of nitrogen through subsurface pathways is the most extensive conservation need in the Upper Mississippi and the Chesapeake as well as the Great Lakes. Controlling these losses is a high treatment need on 45 percent of cropped acres in the Great Lakes Region, compared to 47 percent in the Upper Mississippi River Basin and 62 percent in the Chesapeake Bay Region. In all three regions, few farmers are using complete and consistent nutrient application *rate, form, timing,* and *method* on all crops in all years, although many farmers are successfully meeting one or more of these criteria. Although conservation practice use has reduced such losses, in some places the effectiveness of erosion-control practices in reducing runoff and erosion has encouraged soil infiltration of water and soluble nutrients.

Figure 5. *Extent of high- and moderate-treatment-need cropland in the Upper Mississippi River Basin, Chesapeake Bay Region, and Great Lakes Region*

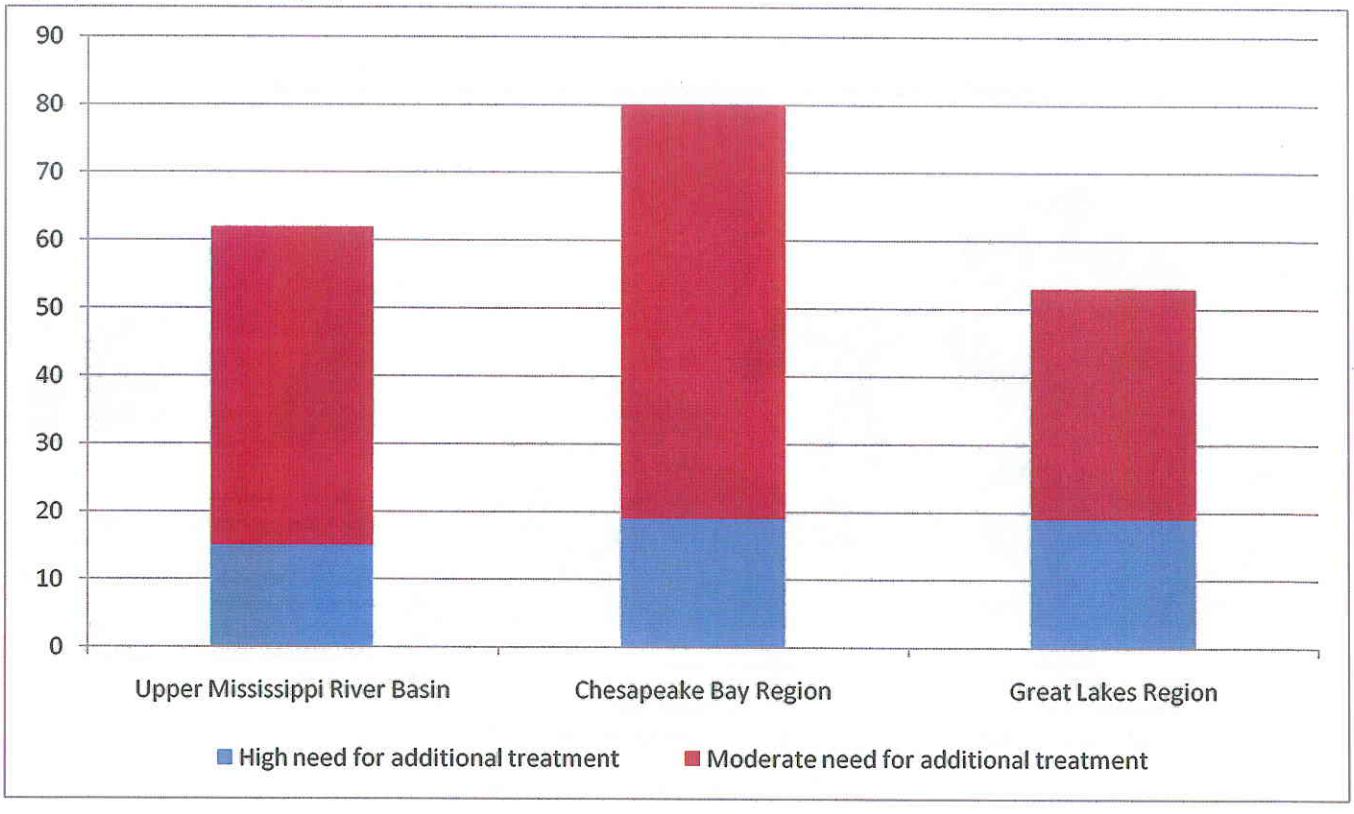


Table 3. Comparison of conservation factors in the Upper Mississippi River Basin, Chesapeake Bay Region, and Great Lakes Region

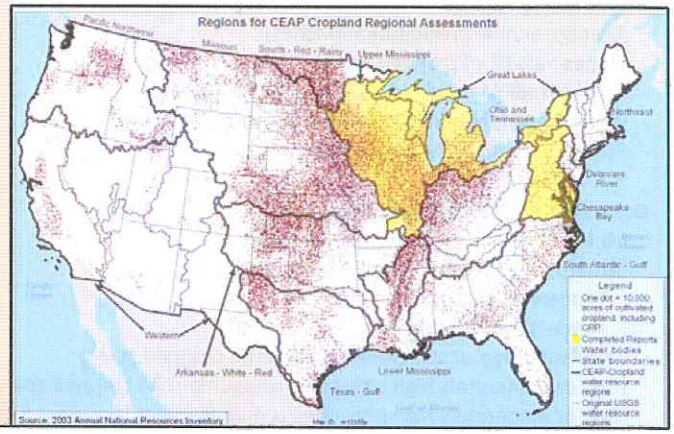
Factor	Upper Mississippi River Basin	Chesapeake Bay Region	Great Lakes Region
Basin Overview			
Total acres (million acres excluding water)	118.2	42.7	73.3
Acres of cultivated cropland (million acres)	63.5	4.6	17.8
Percent cultivated cropland (excluding water)	54	11	24
Percent urban land (excluding water)	8	9	10
Vulnerability Factors			
Average annual precipitation (inches)	34	42	34
Slopes >2% (% of cropped acres)	42	60	34
Highly erodible cropland (% of cropped acres)	18	44	17
Prone to surface water runoff (% of cropped acres)	13	23	6
Prone to leaching (% of cropped acres)	9	46	30
Conservation Practice Use (2003–06)			
Mulch till or no-till (% cropped acres)	91	88	82
Structural practices for water erosion control:			
Percent of all cropped acres	45	46	26
Percent of HEL cropland	72	63	37
Reduced tillage or structural practices (% cropped acres)	96	96	94
High or moderately high nitrogen management (% cropped acres)	41	38	45
High or moderately high phosphorus management (% cropped acres)	54	38	47
Sediment and nutrient losses, baseline* (average annual)			
Wind erosion (tons/acre)	0.23	0.27	0.85
Sediment (tons/acre)	0.9	1.2	0.6
Nitrogen (surface) (pounds/acre)	9	9	6
Nitrogen (subsurface) (pounds/acre)	19	33	26
Phosphorus lost to surface water (pounds/acre)	2.7	3.7	2.1
Edge-of-Field Reductions Due to Conservation Practice Use (2003-06)			
Sediment (% reduction)	61	55	47
Nitrogen (surface) (% reduction)	45	42	43
Nitrogen (subsurface) (% reduction)	9	31	30
Total Phosphorus (% reduction)	44	40	39
Conservation treatment needs			
Most extensive need:	Subsurface nitrogen loss	Subsurface nitrogen loss	Subsurface nitrogen loss
Treatment need for one or more resource concerns:			
Cropland with high need (% of cropped acres)	15	19	19
Cropland with moderate need (% of cropped acres)	45	61	34
High or moderate need (% of cropped acres)	60	80	53
High or moderate need by resource concern:			
Wind erosion (% of cropped acres)	0	0	2
Sediment loss due to water erosion (% of cropped acres)	10	24	6
Nitrogen loss with surface water (% of cropped acres)	24	24	6
Nitrogen loss in subsurface flows (% of cropped acres)	47	62	45
Phosphorus loss (% of cropped acres)	22	51	12

*"baseline" refers to estimates of conditions based on farming and conservation practices in use during 2003–06.

River Basin Cropland Modeling Study Reports The U.S. Department of Agriculture initiated the Conservation Effects Assessment Project (CEAP) in 2003 to determine the effects and effectiveness of soil and water conservation practices on agricultural lands. The CEAP report *Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Great Lakes Region* is the third is a series of studies covering the major river basins and water resource regions of the contiguous 48 United States. It was designed to quantify the effects of conservation practices commonly used on cultivated cropland in the Chesapeake Bay Watershed, evaluate the need for additional conservation treatment in the region, and estimate the potential gains that could be attained with additional conservation treatment. This series is a cooperative effort among USDA's Natural Resources Conservation Service and Agricultural Research Service, Texas AgriLife Research of Texas A&M University, and the University of Massachusetts.

Upper Mississippi River Basin (released June 2010)
Chesapeake Bay Region (released March 2011)
Great Lakes Region (released September 2011)
Ohio-Tennessee River Basin
Missouri River Basin
Arkansas-White-Red River Basins
Lower Mississippi River Basin
Delaware River Watershed
Northeast Region
South Atlantic-Gulf Region
Texas Gulf Water Resource Region
Souris-Red-Rainy Water Resource Regions
Pacific Northwest and Western Water Resource Regions

Expect release of these reports through early 2012.



Methodology Used for the Cropland Assessments
A simulation model was used to estimate the effects of conservation practices that were in use during the period 2003 to 2006, but does not capture practices implemented since then. The NRCS National Resources Inventory, a statistical survey of conditions and trends in soil, water, and related resources on U.S. non-Federal land, provided the statistical framework. Information on farming activities and conservation practices was obtained from a farmer survey. Using those data, conservation practice effects were evaluated in terms of—

- reductions in losses of sediment, nutrients, and pesticides from farm fields;
- enhancement of soil quality through increases in soil organic carbon in the field; and
- reductions in instream loads of sediment, nutrients, and pesticides in the region's rivers and streams.

The physical process models used in this study are mathematical representations of the real world designed to estimate complex and varying environmental events and conditions. To estimate the effects of conservation practices, model simulation results were used to make *relative comparisons* between two model runs—one that includes conservation practices and one that excludes conservation practices. All other aspects of the input data and the model parameters were held constant. Model results are scientifically defensible to the level of 4-digit hydrologic unit code (HUC) (subregion) watersheds.

Difference between these two scenarios represents the benefits of the accumulation of conservation practices currently in place on the landscape.

The assessment includes conservation practices in use regardless of how or why they came to be in use. It is not restricted to only those practices associated with Federal conservation programs; the assessment also includes the conservation efforts of States, independent organizations, and individual landowners and farm operators.

To view or download a PDF version of the full report, visit the CEAP Web site at http://www.nrcs.usda.gov, and follow links to Technical Resources / Natural Resources Assessment / CEAP.

Aquaculture Initiative Summary

WTCAC EQIP Aquaculture Initiative

A summary of the FY11 initiative and the process for FY12

Background

WTCAC approached NRCS in 2010 with a request to add aquaculture systems to the list of available practices in Wisconsin. NRCS requested more time to learn about these systems from a technical standpoint and the feasibility of offering them through financial assistance programs. This work was completed and WI NRCS requested a special WHIP initiative to fund aquaculture systems. Feedback was received from the NRCS national office that the initiative proposal should be submitted under EQIP because the fish in these ponds are considered livestock and part of an aquaculture/agricultural operation while WHIP funds should be used to focus on habitat restoration. The proposal was resubmitted under EQIP but funding was not received. However, WI NRCS had also requested and received additional general EQIP funding and did set-aside $100,000 of this for a 2011 WTCAC Aquaculture program.

Results

Two applications were received for the WTCAC Aquaculture sign-up and one application was funded. Practices available in the sign-up included Aquaculture Pond (397), Critical Area Planting (342), Fence (382), Pipeline (516), Pumping Plant (533), and Well (642).

Aquaculture in FY12

Aquaculture practices will move from being part of a special initiative in 2011 to a general suite of practices available in the perennial EQIP WTCAC funding pool. As was clarified by the NRCS national office, aquaculture ponds are a livestock agriculture practice and therefore existing aquaculture ponds with resource concerns must be present in order to be eligible for a new pond(s) that addresses those resource concerns. This parallels the use of EQIP with other livestock practices, such as Waste Storage (313) or Prescribed Grazing (528), where livestock and associated resource concerns must be present in order to be eligible for EQIP. EQIP cannot fund the creation of new livestock/aquaculture operations where none existed previously.

The practices available in 2011 will again be available in 2012 with some minor changes. Other supporting practices will also be available. A payment limitation placed on Aquaculture Pond (397), similar to what is done with Waste Storage (313), but there will not be an overall payment limit on the suite of practices needed for these systems as there was in 2011. The floating raceway concept will not be available in 2012. Much like the original proposal, more time will be needed to evaluate those systems from a technical and programmatic standpoint.

Despite a trend of declining EQIP allocations, it is the intent of WI NRCS to continue the established EQIP WTCAC allocation of $440,000. If demand is present and resources become available, additional funding for EQIP WTCAC will be considered.

USDA FSA

United States Department of Agriculture | Farm and Foreign Agricultural Services | Farm Service Agency

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FSA REPORT TO WTCAC – NOVEMBER 2011

By Susan Hunter, FSA Tribal Liaison (715) 362-5941 ext 104, susan.hunter@wi.usda.gov

Wild Rice Eligibility for Loss Coverage – After working with Washington DC, the Wisconsin State FSA office and MN FSA and tribal entities who have wild rice, we were able to approve one Lake wild rice loss coverage application in Wisconsin at the last minute before the September 30th deadline as a pilot project (Sokaogan Chippewa on Mole Lake).

Here are some of the details on what wild rice is eligible for annual loss coverage under the Non-Insured Assistance Program (NAP). See attached fact sheet for more general information on NAP.

- Only lakes and water bodies, where the tribe has COMPLETE CONTROL of the seeding, management and harvest of wild rice, can be included as a NAP unit for coverage. This would limit the NAP coverage only to reservation controlled waters. The problem that USDA-FSA has with the ceded territories that are off-reservation is that the management and control of the beds and production/harvest is not 100% under the control of the tribe. On wild rice waters within the ceded territories, GLIFWC member tribes permit their members to harvest wild rice with the assistance of family members (poling only). Plus non-Indians are able to purchase state licenses from the Wisconsin DNR and harvest rice under state regulations. Because of this, anyone who does any type of harvest on the non-reservation ceded territories would have to be party to the NAP policy and this would be an administrative impossibility. Therefore, just the wild rice water bodies within the reservation and where 100% tribal control is in place could be eligible for a NAP policy with FSA. Plus, riparian areas of rivers and flowages belong to the adjacent land owner (WI State Law), so wild rice on these waters is technically owned by the riparian owner, and thus may be private or public. This is a very small part of the total harvest each year, but is not under control of the tribe who would have the NAP coverage policy.
- Each tribal band is a separate entity for NAP purposes and should have a tax ID number. If there is a separate tribal entity managing the wild rice, the policy would be under their tax ID number.
- An official document must be presented to FSA that indicates who has signature authority for the tribe. There are various applications and forms that must be signed.
- Required fee is $250 per year. Losses must exceed 50% to earn any payment.
- A document will be submitted to FSA summarizing the tribe's wild rice cultural and management practices regarding the wild rice establishment, maintenance, harvesting and production monitoring.
- The tribe must supply FSA with yield, production data and acres for the previous 4 years if possible to allow FSA to analyze the data and develop a yield.
- Crop acreage and harvested production reporting is required each year by July 15th to the local FSA office

FSA Loss Coverage Deadlines in November for Non-Insurable Crops. The following November deadline is coming up for crops that cannot be insured by local crop insurance agents and can be covered by catastrophic loss policies through FSA's Non-Insured Assistance Program (NAP) at $250 per crop:

- November 20th – Final date to obtain a NAP policy for commercially grown and harvested Honey, Maple Sap and Perennial Crops which includes Apples, Cranberries, Raspberries, Blueberries, Grapes, Strawberries and Blackberries

USDA FSA

FACT SHEET

UNITED STATES DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY

August 2011

Noninsured Crop Disaster Assistance Program (NAP) for 2011 and Subsequent Years

Overview

USDA's Farm Service Agency's (FSA) Noninsured Crop Disaster Assistance Program (NAP) provides financial assistance to producers of noninsurable crops when low yields, loss of inventory or prevented planting occur due to a natural disaster.

Eligible Producers

An eligible producer is a landowner, tenant or sharecropper who shares in the risk of producing an eligible crop and is entitled to an ownership share of that crop. As authorized by the Food, Conservation, and Energy Act of 2008 (2008 Act), an individual's or entity's average nonfarm adjusted gross income (AGI) limitation cannot exceed $500,000 to be eligible for NAP.

Eligible Crops

Eligible crops must be commercially produced agricultural commodity crops for which the catastrophic risk protection level of crop insurance is not available and be any of the following:

- Crops grown for food;
- Crops planted and grown for livestock consumption, including, but not limited to grain and forage crops, including native forage;
- Crops grown for fiber, such as cotton and flax (except for trees);
- Crops grown in a controlled environment, such as mushrooms and floriculture;
- Specialty crops, such as honey and maple sap;
- Value loss crops, such as aquaculture, Christmas trees, ginseng, ornamental nursery and turfgrass sod;
- Sea oats and sea grass and;
- Seed crops where the propagation stock is produced for sale as seed stock for other eligible NAP crop production.

Producers must contact a crop insurance agent for questions regarding insurability of a crop in their county.

For further information on whether a crop is eligible for NAP coverage, producers must contact the FSA county office where their farm records are maintained.

Eligible Natural Disaster

An eligible natural disaster is any of the following:

- Damaging weather, such as drought, freeze, hail, excessive moisture, excessive wind or hurricanes;
- An adverse natural occurrence, such as earthquake or flood; A condition related to damaging weather or an adverse natural occurrence, such as excessive heat, plant disease, volcanic smog (VOG), insect infestation or;
- Any combination of these conditions.

The natural disaster must occur during the coverage period, before or during harvest and must directly affect the eligible crop.

Applying for Coverage

Eligible producers must apply for coverage of noninsurable crops using Form CCC-471, "Application for Coverage," and pay the applicable service fee at the FSA office where their farm records are maintained. The application and service fee must be filed by the application closing date as established by the FSA State Committee.

The service fee is the lesser of $250 per crop or $750 per producer per administrative county, not to exceed a total of $1,875 for a producer with farming interests in multiple counties. This fee is authorized by the 2008 Act.

Limited resource producers may request a waiver of the service fee. To qualify for an administrative service fee waiver, the producer must meet both of the following criteria:

- Earn no more than $100,000 gross income in farm sales from each of the previous two years (to be increased starting in FY 2004 to adjust for inflation, using the prices paid by farmers index as compiled by the National Agricultural Statistics Service (NASS);
- Have a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household for both of the previous two years.

Limited resource producer status may be determined using the USDA Limited Resource Farmer and Rancher Online Self Determination Tool located on the Limited Resource Farmer and Rancher - (LRF/R) home page at **www.lrftool.sc.egov.usda.gov/** . The automated system calculates and displays adjusted gross farm sales per year and the higher of the national poverty level or county median household income.

Coverage Period for NAP

The coverage period for NAP may vary depending on the crop.

The coverage period for an annual crop begins the later of:

- 30 days after application for coverage and the applicable service fees have been paid or;
- The date the crop is planted (cannot exceed the final planting date) and ends the earlier of:

1. The date the crop harvest is completed;
2. The normal harvest date for the crop;
3. The date the crop is abandoned or;
4. The date the entire crop acreage is destroyed.

The coverage period for a perennial crop, other than a crop intended for forage, begins 30 calendar days after the application closing date and ends the earlier of:

- 10 months from the application closing date;
- The date the crop harvest is completed;
- The normal harvest date for the crop;
- The date the crop is abandoned or;
- The date the entire crop acreage is destroyed.

Contact a local FSA office for information on the coverage periods for perennial forage crops, controlled-environment crops, specialty crops and value loss crops.

Information Required to Remain Eligible for NAP

To remain eligible for NAP assistance, the following crop acreage information must be reported annually:

- Name of the crop (lettuce, clover, etc.);
- Type and variety (head lettuce, red clover, etc.);
- Location and acreage of the crop (field, sub-field, etc.);
- Share of the crop and the names of other producers with an interest in the crop;
- Type of practice used to grow the crop (irrigated or non-irrigated);
- Date the crop was planted in each field and;
- Intended use of the commodity (fresh, processed, etc.).

Producers should report crop acreage shortly after planting (early in the risk period) to ensure reporting deadlines are not missed and coverage is not lost.

In addition, producers must annually provide the following production information:

- The quantity of all harvested production of the crop in which the producer held an interest during the crop year;
- The disposition of the harvested crop, such as whether it is marketable, unmarketable, salvaged or used differently than intended and;
- Verifiable or reliable crop production records (when required by FSA).

When those records are required by FSA, producers must provide them in a manner that can be easily understood by the FSA county committee. Producers should contact the FSA office where their farm records are maintained for questions regarding acceptable production records. .

Failure to report acreage and production information may result in reduced or zero NAP assistance. Be aware that acreage reporting and final planting dates vary by crop and by region. Producers should contact the FSA office where their farm records are maintained for questions regarding local acreage reporting and final planting dates.

For aquaculture, floriculture and ornamental nursery operations, producers must maintain records according to industry standards, including daily crop inventories. Unique reporting requirements apply to beekeepers and producers of Christmas trees, turfgrass sod, maple sap, mushrooms, ginseng and commercial seed or forage crops. Producers should contact the FSA office where their farm records are maintained regarding these requirements.

FSA Use of Reported Acreage and Production

FSA uses acreage reports to verify the existence of the crop and to record the number of acres covered by the application. The acreage and the production reports are used to calculate the approved yield (expected production for a crop year). The approved yield is an average of a producer's actual production history (APH) for a minimum of four to a maximum of 10 crop years (five years for apples and peaches). To calculate APH, FSA divides a producer's total production by the producer's crop acreage.

A producer's approved yield may be calculated using substantially reduced yield data if the producer does not report acreage and production or reports fewer than four years of crop production.

Applying for NAP Assistance When a Natural Disaster Strikes

When a crop or planting is affected by a natural disaster, producers must notify the FSA office where their farm records are maintained and complete Part B, (the Notice of Loss portion) of Form CCC-576, Notice of Loss and Application for Payment. This must be completed

within 15 calendar days of whichever occurs earlier:

- Natural disaster occurrence;
- Final planting date if planting was prevented by a natural disaster;
- Date damage to the crop or loss of production became apparent;
- The normal harvest date.

To receive NAP benefits, producers must complete Form CCC-576, Notice of Loss and Application for Payment, Parts D, E, and F as applicable, and certify in Part G, no later than the immediately subsequent crop year acreage reporting date for the crop. The CCC-576 requires acceptable appraisal information. Producers must provide evidence of production and note whether the crop was marketable, unmarketable, salvaged or used differently than intended.

Amount of Production Loss to Receive a NAP Payment

The natural disaster must have either:

- Reduced the expected unit production of the crop by more than 50 percent or;
- Prevented the producer from planting more than 35 percent of the intended crop acreage.

Expected production is the amount of the crop produced in the absence of a natural disaster. FSA compares expected production to actual production to determine the percentage of crop loss.

Defining a NAP Unit

The NAP unit includes all the eligible crop acreage in the county where the producer has a unique crop interest. A unique crop interest is either:

- 100 percent interest or;
- A shared interest with another producer.

How Much Loss NAP Covers

NAP covers the amount of loss greater than 50 percent of the expected production based on the approved yield and reported acreage.

Information FSA Uses to Calculate Payment

The NAP payment is calculated by unit using:

- Crop acreage;
- Approved yield;
- Net production;
- 55 percent of an average market price for the specific commodity established by the FSA state committee;
- A payment factor reflecting the decreasing cost incurred in the production cycle for the crop that is harvested, unharvested or prevented from being planted.

Payment Limitation

NAP payments received, directly or indirectly, will be attributed to the applicable individual or entity and limited to $100,000 per crop year, per individual or entity.

Risk Management Purchase Requirement for Other Programs

Noninsurable commodities on a farm, except forage crops intended for grazing, are required to have NAP coverage in order for producers on that farm to be eligible for the Supplemental Revenue Assistance Payments (SURE) Program, Tree Assistance Program (TAP) and the Emergency Assistance for Livestock, Honey Bees, and Farm-raised Fish Program (ELAP).

Producers are required only to have NAP coverage on the forage crop acreage intended for grazing and for which benefits are being requested to be eligible for the Livestock Forage Disaster Program (LFP).

More Information

Further information on NAP is available from your local FSA office or on FSA's website at **www.fsa.usda.gov/nap**.

Guidebook for Building Tribal Environmental Capacity

Consultation Draft – August 1, 2011

Consultation Draft

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INTERNATIONAL AND TRIBAL AFFAIRS
1200 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20460

REPLY TO THE ATTENTION OF: 2610R

August 1, 2011

Re: Guidebook for Building Tribal Environmental Capacity

Dear Honorable Leader:

As part of our ongoing commitment to effective oversight of tribal capacity building resources and our response to an Office of Inspector General (OIG) audit report, "Framework for Developing Tribal Capacity Needed in the Indian General Assistance Program" (Report No. 08-P-0083, 02/19/2008), I am pleased to transmit the following "Guidebook for Building Tribal Environmental Capacity".

The purpose of this Guidebook is to provide the overall framework for how EPA should work with tribes to build their capacity to administer environmental protection programs that are responsive to tribal environmental priorities and that are consistent with Agency authorities. Implementing the framework outlined in this Guidebook will increase accountability for making measureable progress in building tribal capacity, improve management of the Indian Environmental General Assistance Program (GAP), and provide EPA regional offices and grant recipients improved guidance on effective use of GAP resources. Implementing the Guidebook will also help EPA headquarters and regional offices effectively plan for full program implementation in Indian country through a government-to-government environmental program development and implementation planning process. Finally, implementing the Guidebook will also help tribes identify Agency funded capacity development pathways appropriate for their own environmental protection priorities.

JM: This framework seems above and beyond just the GAP program. This will impact all EPA funding.

Since the program's inception in 1993, GAP grants have played a major role in the successful development and implementation of tribal environmental programs. This Guidebook will help create a nationally consistent framework for building tribal environmental program capacities and improve our ability to report progress in building these capacities.

In keeping with my July 22, 2011 letter providing notice of our intent to initiate consultation on this Guidebook, we look forward to fully considering tribal input. Please visit our tribal portal website for additional information about the consultation process.

We look forward to working with you to further develop, finalize, and implement this Guidebook and we thank you in advance for your active participation in this effort to ensure long term success of our tribal capacity building investments.

Please feel free to contact me, or have your staff contact AIEO Director JoAnn Chase (202-564-1310) or AIEO Senior Policy Advisor Luke Jones (202-564-4013) with any questions.

Sincerely,

// original signed //

Michelle DePass
Assistant Administrator

Table of Contents

Guidebook for Building Tribal Environmental Capacity

Working Draft – August 1, 2011

1.0 Introduction

1.1 Background – EPA/Tribal Environmental Partnership in Indian Country

The mission of the U.S. Environmental Protection Agency (EPA or Agency) is to protect human health and the environment. In keeping with that charge and the federal trust responsibility, the Agency is responsible for ensuring that EPA environmental statutes are fully implemented in Indian country. Depending on the particular statute, the Agency has a number of options it can use to ensure that regulated facilities, sites, and/or activities are in compliance with federal requirements. For example, the Agency can directly administer a federal program, approve eligible tribes to administer the program, or enter into an intergovernmental agreement with tribes to jointly implement aspects of the federal program.

No matter which mechanism EPA may employ to meet its obligations in Indian country, it must consider tribal interests and closely involve the appropriate tribal governments. The 1984 EPA Policy for the Administration of Environmental Programs (EPA Indian Policy) outlined principles to guide the implementation of the Agency's programs in Indian country. Based on the principles of Indian self-government, the EPA Indian Policy recognizes that tribes are the primary authority for reservation affairs and are not political subdivisions of states. The Agency's goal is to ensure that tribes are able play a lead role in environmental protection on reservations and other tribal land areas and to coordinate with tribal governments on the implementation of environmental statutory obligations. As a result, the Agency is committed to assisting tribes to develop environmental programs in order to assume federal regulatory and program management responsibilities on reservations and other parts of Indian country.

One of the Agency's most important tools for assisting tribal governments to develop environmental regulatory and management programs is the Indian Environmental General Assistance Program (GAP). In 1992, GAP was created to provide technical and financial assistance to build tribal capacity to develop and administer federal environmental programs. GAP was designed to be multi-media in scope, allowing tribes to develop capacities across the various federal statutes and focus their efforts where the environmental need was greatest.

EPA also provides technical and financial assistance to build environmental program capacity for tribes that, for whatever reason, are not currently able to implement federally authorized regulatory and enforcement programs. This helps EPA ensure that all federally recognized tribes have the opportunity to meaningfully participate in the Agency's policy making, standard setting, and direct implementation activities potentially affecting tribal

interests. This also helps all tribal governments cooperate and, when appropriate, enter into intergovernmental agreements with neighboring state and local government authorities in an informed manner. This assistance helps tribes identify and characterize environmental protection priorities for their communities and meaningfully participate as informed partners to resolve environmental problems.

EPA is committed to continuing this partnership with tribal governments to protect human health and the environment in Indian country and other tribal areas. This Guidebook has been developed to enhance and support that partnership through joint strategic planning, identification of mutual responsibilities, targeting resources to build needed tribal capacities, and measuring program development progress over time. Indicators of tribal government capacity contained in this Guidebook provide a clear and measurable framework for tracking progress, even when GAP funds are combined with media-specific funds through Performance Partnership Grants.

1.2 Purpose – Enhancing the EPA/Tribal Partnership for Environmental Protection in Indian Country and Measuring Tribal Program Development Progress

As referenced above, GAP has provided tribal governments with valuable support for environmental management activities and there are numerous examples of how GAP resources have allowed tribes to become involved in environmental issues, design projects and programs to respond to environmental threats, and pursue other EPA media-specific programs. However, evaluations of the GAP have found that the program does not have a means of determining whether the use of GAP funding is effectively and efficiently achieving progress toward the goal of tribes operating environmental management programs or assuming federal authorities.

In February 2008, the Office of Inspector General (OIG) released an Audit Report entitled "Framework for Developing Tribal Capacity Needed in the Indian General Assistance Program." The OIG concluded that the Agency had "not provided a framework for tribes to follow or adapt as they develop their capacity to implement environmental programs." Furthermore, the OIG observed that "it is not clear whether IGAP funding will result in tribes being able to operate their own environmental programs." To address this finding, the OIG recommended that EPA: develop a framework for achieving tribal capacity; require regions to negotiate environmental plans with tribes that would be linked to GAP work plans and measure progress; and revise the distribution of GAP funding to emphasize prior progress, environmental capacity needs, and long-term goals.

> *PJP: Will the Tribes be able to have input in developing this framework? Will it be different for each tribe based on what they are trying to achieve in environmental protection?*
>
> *LKM: How will EPA revise the funding? What criteria will they use to make their determination? GAP has historically been a non-competitive grant to all tribes equally- how will this change?*

Similarly, in May 2007 EPA's Office of Policy, Economics & Innovation and the Office of the Chief Financial Officer issued a report titled, "Evaluation of the Tribal General Assistance Program." That evaluation offered several recommendations on improving management of the GAP grant program, including: "Consider working more directly with tribes and regions to enhance administrative, legal, and enforcement capacity"; and "Track progress toward achievement of the new 2006-2011 strategic goals and targets".

These evaluations of GAP underscore that the Agency needs a nationally consistent approach that will ensure that GAP resources are managed effectively to support the Agency's statutory obligations and that the principles of the 1984 Indian Policy are upheld as we coordinate with tribes. This approach must be based on an understanding between the Agency and each tribal government about environmental conditions in each Indian country area, the known inventory of regulated facilities, current tribal environmental programs and priorities, and how the tribe would like to partner with EPA to administer the federal programs. This information serves as the foundation for identifying what environmental program capacities each tribe intends to develop, the timeline for development of those capacities, and the federal technical and financial assistance that may be available to support development of those capacities.

The purpose of this Guidebook is to present this enhanced approach to the EPA-tribal partnership through strategic environmental program planning and more effective use of GAP funding as a means to achieve tribal capacity. The Guidebook will begin with a discussion of the core program capacities that each tribal environmental program should establish. Building from that foundation, the Guidebook will offer guidelines on developing EPA-tribal environmental plans that would serve as the basis for developing more complex tribal environmental program capacities. The remainder of the document provides more detail and example pathways on developing tribal capacity-building and implementation activities associated with specific federal environmental statutes.

It is important to note that while this Guidebook outlines a process to develop and maintain a partnership between EPA and the tribes, it should not be interpreted as a prescription for all tribal environmental programs. The Guidebook is not meant to limit tribal environmental program activities to what is included in the federal statutes, nor is the list of tribal capacity building and implementation activities it contains all-inclusive. Each tribe should define the scope and content of its particular environmental program, based on its priorities, environmental conditions, jurisdictional situation, or other factors. Many tribal environmental programs will include projects and issues unrelated to EPA authorities and programs. In keeping with the Agency's 1984 Indian Policy, EPA will encourage cooperation between tribal, state, and local governments to resolve environmental problems of mutual concern where appropriate. Therefore, EPA will support tribes in their efforts to develop relationships and partnerships with other appropriate federal agencies, state and local governments, and non-governmental organizations to obtain support and to coordinate activities related to those issues.

Where there are connections between specific tribal environmental priorities and the federal environmental statutes, this Guidebook will provide a framework for coordinating EPA and tribal activities, including building tribal program capacity, coordinating on the

implementation of the federal statutes, pursuing federal statutory authorities as appropriate, and identifying EPA financial and technical resources that can support tribal environmental programs. GAP resources should be targeted to those activities designed to build a tribe's capacity to administer environmental protection programs that address tribal priorities that support the objectives of EPA's statutory and regulatory programs.

2.0 Building Core Environmental Protection Program Capacities

2.1 Purpose

Similar to EPA's work with states, EPA stands ready to support tribes in their efforts to establish the infrastructure and skills to effectively develop and implement sustainable environmental management programs. This infrastructure is the foundation of tribal environmental management programs and is required for tribes that decide to pursue federal environmental authorities. These core capacities are also important because many tribal environmental programs are small in size with limited staff. As staff turnover occurs, much of the institutional knowledge may be lost. In order to sustain these environmental programs and continue progress it is critical that each tribe have this strong foundation.

After receiving GAP grant resources for five or more years to build core program capacities, EPA anticipates that many tribes will require continued funding to sustain their programs while pursuing media specific grant resources to address specific environmental problems. In some cases, this will represent a transition from GAP to other funding sources. In those cases, continued GAP funding can be directed to other program development activities, including activities that expand on existing capacity to address more advanced degrees of complexity in the tribe's core multi-media program.

> *LKM: Will EPA use this to discontinue funding? Each tribe has different needs, are at different levels of program development, and have different steps they take to build capacity.*

Because core environmental protection program capacities are important to establish and maintain in order to manage EPA funding programs, ensure a sustainable environmental program, prioritize tribal environmental priorities, and respond to human health and environmental threats, it is expected that most GAP grant work plans will include activities related to core environmental management program capacity-building. Indicators of core capacities are included below and EPA project officers should refer to these during negotiation with tribal staff to evaluate the tribe's current status in developing/updating core capacities and the activities proposed for new work plans.

The remainder of this section will outline the core capacities that are necessary for planning, developing, and establishing tribal environmental management programs. The exact nature of the capacities will depend on the size and structure of the tribe.

2.2 Administrative

Establishing administrative core capacities includes assessing, modifying, or developing policies and guidance that will be used to manage the environmental program. This includes a defined organizational structure with appropriate personnel management systems. Roles and responsibilities should be assigned for program activities such as setting program goals and evaluating progress, staff hiring and supervision, work plan negotiation, budget monitoring, and reporting. Internally, there should be procedures for communicating issues to tribal leadership and receiving direction and feedback on the environmental management program. In addition, there should be procedures for how the environmental management program would work with other tribal departments and programs on issues of interest. An appropriate number of staff with suitable skills should be maintained to meet the needs of the environmental program. Training plans should be developed to meet the tribe's environmental program development needs. Tribes should develop measures similar to the Administrative Procedures Act (APA) to keep the public informed of activities, include public participation and meaningful involvement in rulemaking processes and other key decisions, and define options for requesting reconsideration of decisions.

Indicators of Capacity: To demonstrate administrative capacity, a tribal government should develop the following: (1) organizational system for the environmental program that defines staff roles and responsibilities, describes the relationship of the environmental program to tribal leadership and other departments, and includes supporting personnel management policies/procedures that outline how staff will be managed; (2) staff with appropriate skills, knowledge and experience to manage the environmental program; (3) training plan for staff that reflects the capacity-building priorities for the environmental program; (4) program evaluation system that will determine if program objectives are met, fiscal resources are appropriately managed, and assistance award requirements satisfied; (5) any necessary inter-governmental (federal, state, local) agreements to implement the environmental program; and (6) written procedures similar to the APA to ensure meaningful involvement and fair treatment in public participation.

2.3 Financial Management

Establishing financial management core capacities includes assessing, modifying, or developing financial, procurement, equipment tracking, property management, and grants management procedures to ensure that the tribal systems are in compliance with federal requirements. Procedures should clearly delineate roles and responsibilities, describe recordkeeping activities, and define auditing and other evaluation methods that will be used to ensure fiscal accountability.

Indicators of Capacity: To demonstrate core capacity for financial management, the tribal government should develop the following: (1) a statement by the appropriate tribal financial department that demonstrates that the tribe's accounting system, internal controls, and financial reporting procedures adhere to the requirements found in 40 CFR Part 31 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", 40 CFR Part 35 Environmental Program Grants for Tribes, 2 CFR, Part 225 (formerly OMB Circular A-87 "Cost Principles for State, Local and Indian tribal governments)", and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations"; (2) a statement by the appropriate tribal financial department that

demonstrates that the Tribe has a procurement procedure that meets the minimum requirements for purchasing systems (responsibility, code of conduct, competition, cost and price review, disadvantaged business opportunity, debarment and suspension) as outlined in 40 CFR Part 31; (3) written procedure for tracking (including final disposition) equipment and supplies acquired by the environmental program in compliance with 40 CFR Part 31; (4) written procedure that describes how the environmental program will coordinate with other tribal departments to satisfy grant terms and conditions and reporting requirements (for example, application development/review/approval, creation and submission of required reports, maintenance of official file, closeout of award); and (5) current indirect cost rate agreement.

2.4 Information Management

Establishing information management core capacities includes assessing, modifying, or developing systems to maintain administrative records and files, useful reference material for the environmental management program, and information on environmental and human health conditions that may impact tribal members or tribal resources. These systems should clearly identify roles and responsibilities, format for the material, location of the information, any confidentiality issues, and whether this information must be legally maintained for a specific time period. Information management is also essential for measuring and tracking program performance over time, including data management on environmental indicators. Data collection, management, and reporting are key features of a core environmental protection program.

Key sources of information management information include:

- Environmental Information Exchange Network & Grant Program: http://www.epa.gov/exchangenetwork/grants/index.html
- EPA Quality Management System: Quality Management Tools - QA Project Plans: http://www.epa.gov/quality/qapps.html
- Doing Business with EPA: Quality Specifications for non-EPA Organizations: http://www.epa.gov/quality/exmural.html

Indicators of Capacity: To demonstrate core capacity for information management, the tribal government should develop the following: (1) written procedure for establishing an official file for each assistance award that will contain all documentation from application through final closeout and requires retaining those records in compliance with 40 CFR Part 31; (2) written inventory of administrative and technical procedures, policies, regulations, or other guidelines developed to implement the environmental program; (3) system to store and organize data and information collected or generated by the environmental program for future use in characterizing environmental and human health conditions, responding to information requests, developing environmental projects/initiatives, or other project management data systems; (4) exchanging and/or sharing data through the National Environmental Information Exchange Network.

2.5 Baseline Needs Assessment

A baseline needs assessment is a primary step to determine the environmental and human health issues facing a particular tribal community. Such an assessment can help a tribe to identify and prioritize the needs facing the tribal community and inform a tribe's approach for undertaking protection and restoration efforts. Additional information on conducting a baseline needs assessment can be found in Appendix 10.1. Periodically, the baseline needs assessment should be updated in response to factors such as: new sources of pollution, changing environmental conditions, new development in the community, acquisition of new lands, and changes to the environmental program.

Indicators of Capacity: A recent baseline needs assessment (or comparable planning document) that reflects known information about existing/potential threats to human health and the environment within the tribe's jurisdiction, an evaluation of the potential impact of these threats to tribal members and resources, and prioritization of activities by the environmental program to address identified threats.

2.6 Public Participation, Community Involvement, Education, and Communication

Establishing public participation, community involvement, education, and communication core capacities includes assessing, modifying, or developing systems to ensure that the tribal environmental management program can notify the general public of important events or information, publicize activities related to its projects and programs, engage the tribal community, including non-members, to develop an understanding of their environmental and public health concerns, educate the public on human health and environmental protection issues important to the tribe, and be responsive to concerns raised. These systems should identify the various routes or methods of disseminating information, and the time frame and particular audience that each method would reach.

Indicators of Capacity: To demonstrate capacity for public participation, community involvement, education, and communication, a tribal government should develop a written public communication and engagement protocol/procedure, which describes the following: (1) outreach methods that will be used to reach specific affected communities and groups; (2) format for public notices, press releases, and other types of communication with the public; (3) methods that will be used to collect public concerns and respond to issues raised; (4) contact lists for other governmental entities and types of information that will be shared; and (5) methods to conduct general public education, awareness, community engagement, and information exchange on issues related to human health and the environment.

2.7 Legal

Establishing legal core capacities includes assessing, modifying, or developing tribal codes and regulations, including associated policies and guidance, that are necessary to prevent environmental deterioration, abate pollution conditions, and manage or enforce specific regulatory programs. The tribe should determine what legal authorities it may use to regulate and what enforcement actions are appropriate regarding facilities and activities that may impact air, land, or water resources within its jurisdiction. The tribe should determine and take steps if necessary to ensure that it has the legal authority and ability to establish

standards, permitting processes, certification requirements, and civil enforcement procedures.

Indicators of Capacity: To demonstrate legal core capacity, a tribal government should develop the following: (1) a statement by tribal legal counsel that demonstrates that the tribe has authority to pass and enforce laws/ordinances to protect human health and the environment; (2) a statement by tribal legal counsel that demonstrates that tribal government authorities provide the tribe with power to enjoin activities determined to be harmful to the health or welfare of persons or natural resources; and (3) a dedicated section of its codes/ordinances/statutes for environmental protection program activities.

2.8 Technical and Analytical Capacities

Tribes may use GAP resources to build baseline environmental program capacities that will be then further developed and enhanced through media-specific EPA programs and other funding sources. GAP should be used to provide a foundation of technical and analytical skills, knowledge, and resources that will be valuable to tribes as they make decisions to pursue specific media projects and programs.

Indicators of Capacities: To demonstrate technical and analytical capacities, tribal government should develop the following: (1) quality assurance and management plans; (2) establishing intergovernmental agreements with other jurisdictions; (3) leveraging funding from other sources; and (4) developing environmental monitoring/sampling programs.

2.9 Capacity Development as a Continuing Programmatic Requirement

Ultimately, establishing sufficient core program capacities should result in tribes being able to fully or partially participate in the national system of environmental protection, in accordance with the desired capacity level of each tribe, as the governmental units responsible for implementing environmental management programs in Indian country and implementing federal authorities on the lands within their jurisdiction. However, EPA recognizes that establishing core environmental protection program capacities is an on-going effort, reflecting that core capacities will evolve as the tribal environmental program itself expands and undertakes additional authorities. Tribes should re-evaluate their core program capacities on a regular basis to ensure that these systems, procedures, and policies are still appropriate for the current stage of the environmental management program. In addition, other core capacities may need to be added to support the more complex activities that will be undertaken as tribes develop media-specific environmental initiatives.

2.10 Core Capacity Development for Tribes with Limited Environmental Program Jurisdiction

Some tribes may not have exclusive environmental regulatory jurisdiction over facilities, activities, or sites within their territories. In keeping with the general federal trust responsibility and the EPA Indian Policy, the Agency recognizes that these tribal governments should still be afforded the opportunity to develop an environmental program that will support their meaningful involvement in the protection of tribal member health and

natural resources that may be utilized by tribal members. Tribes with limited jurisdiction to implement federal environmental regulatory programs may develop core program capacities for purposes consistent with the extent of their authorities, such as developing voluntary or partial environmental management programs, participating in EPA policy making, coordinating with EPA or other federal agencies to implement federal environmental programs, and may consider entering into joint environmental management programs with neighboring state or local environmental agencies.

2.11 Intertribal Consortia

An "Intertribal consortium" refers to a group of tribes that applies for a grant in the same manner as a single tribe. Tribes that form consortia may be able to use their limited resources more efficiently and address environmental issues more effectively than they could if each tribe individually developed and maintained separate environmental programs. EPA believes this approach is a practical, reasonable and prudent way to help interested tribes strengthen environmental protection when limited funding is available to support tribal environmental programs.

For GAP grants, an intertribal consortium will be eligible if (1) a majority of the consortium's members meet the eligibility requirements for the grant; (2) all members that meet the eligibility requirements authorize the consortium to apply for and receive the grant; and (3) only the members that meet the eligibility requirements will benefit directly from the grant project and the consortium agrees to a grant condition to that effect. This means that a consortium may receive a GAP grant even if the consortium includes tribal governments that are not federally recognized so long as the consortium meets the three requirements specified above. The Indian Environmental General Assistance Program Act of 1992 (42 U.S.C. 4368b) , explicitly authorizes GAP grants to an ''Intertribal Consortium,'' which it defines as ''a partnership of two or more Indian Tribal governments authorized by the governing bodies of those Tribes to apply for and receive assistance pursuant to this section.''

While many of the Core Environmental Program Capacities listed above also apply to Consortia, these organizations must demonstrate how their proposed activities assist their member tribes in achieving specific capacity building and program implementation goals.

3.0 Developing EPA-Tribal Environmental Plans

3.1 Purpose

Since 1995, EPA and states have been implementing the National Environmental Performance Partnership System (NEPPS). NEPPS is a performance-based system of environmental protection designed to improve the efficiency and effectiveness of EPA-state partnerships. The goals of performance partnerships include: joint planning and priority-setting, increasing flexibility for states to direct resources to the most pressing environmental problems, and measuring results through a combination of environmental indicators and traditional activity measures. To implement these performance partnerships,

EPA and the states negotiate Performance Partnership Agreements, which identify joint priorities and associated protection strategies and activities.

As discussed above in Section 1.0, the Agency has likewise long recognized the importance of joint EPA-tribal planning processes to ensure that the federal programs are fully implemented in Indian country and to effectively respond to tribal environmental problems and priorities. In addition, EPA has acknowledged that EPA-tribal environmental plans can be an important component of assistance awards to tribes.

The remainder of this section will outline the suggested components that would be included in a comprehensive EPA-tribal environmental plan. It is recommended that these plans have a short-term duration (1-3 years) to allow for specific activities to be identified for joint action.

3.2 Identifying Applicable EPA Statutory Programs

EPA's mission to protect human health and the environment is carried out within the context of EPA's environmental statutes. And as the EPA Indian Policy underscores, until tribal governments assume responsibility for delegable EPA programs, EPA retains responsibility for managing these statutory programs in Indian country. Defining the federal environmental programs that must be implemented in each Indian country area is therefore the initial step in developing an EPA-tribal environmental plan.

EPA regional offices should evaluate how each of the primary federal environmental statutes applies in each Indian country area.[1] This evaluation should include program implementation activities such as permitting, compliance assurance (including inspections and enforcement), inventorying regulated facilities/activities/sites, issuing identification numbers for regulated facilities, issuing certifications, and other official actions associated with program implementation. In Sections 4.0 – 8.0 below, detail is provided on the federal environmental programs under each statute.

Once the evaluation of applicable federal environmental programs is completed, this information should be shared with the appropriate tribal government for their review and with EPA headquarters. As the Agency is looking to partner with tribes to implement these programs, it is important that there is mutual understanding of what is required under the federal statutes, the time frames for this work, and the expected outputs and/or outcomes.

3.3 Developing an Inventory of Regulated Facilities/Sites/Activities

In general, the presence of regulated facilities, sites, or activities in Indian country determine which federal environmental statutes are applicable. The Agency maintains many program-specific databases of regulated entities, and state programs may also contain information on

[1] Clean Air Act; Clean Water Act; Safe Drinking Water Act; Resource Conservation and Recovery Act; Comprehensive Environmental Response, Compensation and Liability Act; Emergency Planning, Community Right-to-Know Act; Small Business Liability Relief and Brownfield Revitalization Act; Asbestos Hazard Emergency Response Act; Federal Insecticide, Fungicide and Rodenticide Act; and Toxic Substances Control Act

regulated entities in Indian country. Many tribes also have developed databases of facilities within their jurisdiction or have knowledge of sources that may not be in EPA's inventory.

As the regional EPA office determines which federal environmental programs are applicable at each tribal land area, the associated known inventory of regulated facilities should be compiled and shared with the appropriate tribal government. Tribal staff may have knowledge of additional sources to include in the inventory and/or information on the operating status of facilities currently on the inventory.

3.4 Identifying Tribal Programs and Priorities

Many tribal governments have already developed programs to address human health and environmental threats facing their communities. These programs may have been developed under inherent tribal authorities or under federal environmental programs. Other tribes may have yet to develop programs, but have conducted needs assessments or community surveys, or have used a comprehensive planning process (for example, development of a Integrated Resource Management Plan) that have identified and prioritized current environmental concerns for their communities. These priorities will be an important factor in how a particular tribal government will want to partner with the Agency in the short and long term.

As part of developing an EPA-tribal environmental plan, tribal governments should submit environmental program priorities for their community. For each priority, the following detail should be included: short description of the priority, actions the tribal government would like to undertake during the time period of the environmental plan, and any type of assistance (training, technical assistance, EPA direct implementation actions, financial, etc.) that may be needed. This information should be reviewed by regional EPA staff to identify any connections to implementation of the federal statutory programs and to identify potential EPA assistance that could be provided to accomplish the proposed actions.

> *LKM: How does this differ from the Tribal Environmental Agreements? Will TEAs no long exists?*
> *JM: TEA's do not exist. They are now Environmental Program Development and Implementation Agreements (EPDIA's)*

3.5 Negotiating Mutual Roles and Responsibilities for Federal Environmental Programs

> *LKM: Same comment as above.*

While the EPA Indian Policy ultimately envisions that tribal governments will assume responsibility for managing federal programs in Indian country, most federal environmental authorities are currently implemented by EPA. The EPA Indian Policy contemplates a substantial role for tribes to partner with the Agency in its implementation of the federal statutes, and encourages tribes "to participate in policy-making and to assume lesser or partial roles" in the management of environmental programs in Indian country.

The information on regulated facilities, applicable federal authorities and tribal priorities discussed above will provide the basis for discussion between regional EPA staff and tribal staff on partnering to ensure the federal environmental programs are implemented in Indian country. In Sections 4.0 – 8.0, further detail on opportunities for tribal involvement in the implementation of the specific federal statutes is provided. The EPA-tribal environmental plan should define the actual activities that EPA anticipates conducting during the time period of the agreement, any activities that tribal staff will perform to support EPA direct implementation, and any activities that tribes will undertake to either apply for program approval/delegation and/or build capacities to assist EPA to implement the federal programs.

3.6 Linking Activities to EPA Funding Programs

It is important for the Agency to efficiently use its financial assistance programs to ensure that its statutory programs are effectively implemented. While the EPA-tribal environmental plans are not budgetary documents and they cannot be used to guarantee funding, these documents can serve a valuable purpose in identifying the funding options available from EPA to support tribal capacity-building, tribal involvement in the implementation of federal programs, and tribal activities related to pursuing approval/delegation of federal programs. (See Appendix 10.5 EPA Funding Programs that Support Tribal Environmental Program Capacity Development and/or Implementation Activities)

3.7 Tracking Progress

EPA and tribal activities identified in an EPA-tribal environmental plan should have defined completion dates to allow progress to be measured. EPA regional offices should periodically evaluate progress on activities to ensure that EPA and tribal program efforts remain on track. Regional offices should consider summarizing their activities related to each tribe on an annual basis and providing this information to the tribe.

4.0 Protecting Ambient Air Quality in Indian Country

Please note that the information provided in this Section does not replace any program-specific regulation, guidance, strategy, or other information resource. It is highly recommended that tribal staff review the Clean Air Act resources that have been developed by EPA and, as appropriate, use these to develop air quality protection projects and programs for their communities. The material below has been provided as reference information that can be used during the development of EPA-tribal environmental plans, and to provide general guidance to the tribes on the options that are available for developing capacities beyond the core program capacities described in Section 2.0.

Key sources of program guidance include:

- The Tribal Air Grants Framework: A Menu of Options. EPA. October 2007. http://www.epa.gov/oar/tribal/pdfs/Tribal%20Air%20Grants%20Framework%20rev%2011_07.pdf
- Tribal Air Program Resources. EPA. http://www.epa.gov/air/tribal/airprogs.html

- Office of Air and Radiation National Program and Grant Guidance. http://epa.gov/planandbudget/

4.1 EPA's Clean Air Act Programs

Air quality is regulated primarily under the Clean Air Act (CAA). The CAA was first promulgated in 1963 and underwent significant revisions in 1970 and 1990. The CAA focuses on three key areas: (1) reducing outdoor, or ambient, concentrations of air pollutants that cause smog, haze, acid rain, and other problems; (2) reducing emissions of toxic air pollutants that are known to, or are suspected to, cause cancer or other serious health effects; and (3) phasing out production and use of chemicals that destroy stratospheric ozone. For more information on the CAA, visit: http://www.epa.gov/air/caa/.

Under the CAA, EPA implementation activities in Indian country include: (1) designation of non-attainment areas for national ambient air quality standards; (2) development and promulgation of federal implementation plans (FIPs); (3) issuing construction permits and operating permits for sources of air pollution; (4) compliance assurance (including inspections and enforcement); (5) processing asbestos notifications for demolitions/renovations or regulated structures; and (6) ensuring risk management plans are submitted by regulated facilities.

4.2 Inventories of Regulated Facilities/Activities

The Air Facility System (AFS) contains compliance and permit data for stationary sources of air pollution (such as electric power plants, steel mills, factories, and universities) regulated by EPA, state and local air pollution agencies. The information in AFS is used to prepare Federal Implementation Plans or Tribal Implementation Plans (TIPs) and to track the compliance status of point sources under the CAA. AFS can be accessed at http://www.epa.gov/enviro/facts/afs/index.html. Tribal staff may be aware of other facilities on the reservation that may be subject to regulation under the CAA.

4.3 Ability for Tribes to Implement Air Federal Programs

The CAA Tribal Authority Rule (TAR) offers tribes the option to request delegation to develop air quality management programs, write rules to reduce air pollution, and implement and enforce rules that are appropriate for their communities. To receive program authorization, tribes must meet the applicable program requirements and be eligible for "treatment in the same manner as a state" (TAS) status. Once a tribe receives EPA approval for TAS, it may request delegation to implement one or more CAA program. For example, tribes with EPA approved TAS applications may develop a Tribal Implementation Plan (TIP) to manage air quality on their lands. Upon EPA approval of a TIP, tribes may use it to identify sources of air pollution and determine what reductions are necessary to meet federal air quality standards. An approved TIP is legally binding under the CAA within the tribal territory and may be enforced by the tribe, EPA, or the public.

For tribes that are interested in pursuing federal authorities, Appendix 10.3 presents general background information on applying for program eligibility or TAS, and provides media-specific references.

4.4 Other Opportunities for Tribal Involvement in Implementation of the CAA

In addition to pursuing federal CAA authorities under the TAR, there are other opportunities for tribal governments to partner with EPA on implementing the CAA in Indian country. As appropriate, EPA regional offices can utilize direct implementation cooperative agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in CAA implementation. Examples of activities that tribal staff may engage in with EPA include: (1) assisting the Agency to develop/update a list of facilities regulated under the CAA; (2) conducting compliance assistance activities for regulated facilities on the reservation; (3) obtaining federal inspection credentials to inspect regulated facilities; (4) assisting EPA to draft permits for regulated facilities; (5) assisting EPA to develop FIPs; (6) assisting EPA to review risk management plans for adequacy under Section 112(r) of the CAA.

4.5 Activities Eligible for Funding under EPA Programs that Support Tribal Capacity Development and/or Implementation of the CAA

This subsection outlines the types of activities that tribes and/or inter-tribal consortia could undertake with EPA funding to protect outdoor air quality. In general, it is expected that funding under GAP would be used to build baseline environmental program capacities, and then tribal programs would transition to funding under media-specific programs to support more complex program development and implementation. Appendix 10.5 provides a list of potential sources of EPA funding related to CAA activities. Please note that certain funding programs listed in Appendix 10.5 are eligible to be combined in a Performance Partnership Grant [Catalog of Federal Domestic Assistance (CFDA) No. 66.605].

Tribal Capacity-Building Pathways

The first stage in developing an air quality management program is to develop the necessary expertise and skills to identify, address, and manage air quality issues. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on air quality issues, collecting and analyzing new air quality data, and using this information to make decisions on further development of an air quality management program.

Years 1-2:

- Identify who will serve as coordinator for air quality issues and define initial roles and responsibilities
- Become familiar with the major goals, programs, and requirements of the CAA; the national structure for implementing the CAA; and the EPA regional personnel and organization.
- Attend EPA and other professional trainings to learn about air quality issues, monitoring, and program development

- Establish participation in regional and national policy groups in order to learn about current air quality issues, communicate perspective and needs of the community, participate in air quality related projects and programs
- Establish mechanisms for community outreach and education to increase community awareness and knowledge of air quality issues and obtain input from community members on air quality issues
- Gather existing air quality data (sources of emissions, current air monitoring efforts, tribal/state/federal records or data, current attainment/nonattainment status for criteria pollutants)

Years 2-5:

- Collect new data (as needed, identify pollutants or issues of interest, develop and implement air monitoring strategy and associated quality assurance program plan, investigate pollution sources, survey the community)
- Analyze data and identify priorities (evaluate data to determine if there are air quality issues of concern; evaluate the relative severity of impacts to human health, ecology, economy, and culture; set short and long-term priorities for any issues of concern)
- Develop an emissions inventory for the reservation that provides an understanding of the air pollution sources and types and amounts of materials emitted.
- Evaluate types of air pollution control options that might be necessary to address the short and long-term air pollution issues identified.
  Identify the level of funding that would be required to implement the selected air pollution control options and potential sources of funding (including pursuing CAA-specific EPA funding).

Tribal Implementation Pathways

After building fundamental program capacities related to the CAA and evaluating the type of air quality issues facing the community, tribes may consider undertaking efforts to develop and implement air quality protection programs. Please note that the planning and development activities related to implementation of an air quality program may be eligible for funding under GAP. Tribes and inter-tribal consortia are encouraged to seek funding support under the media-specific programs to the extent possible. There are three primary types of implementation pathways related to the CAA that tribal governments could pursue individually or in some combination.

- Develop and implement programs under tribal authority that support the goals and objectives of the CAA. Examples include:

  Diesel emissions reduction program (identify diesel engine use on reservation; evaluate short and long-term priorities for reduction of emissions; select implementation options such as installing diesel retrofit devices with verified technologies on school buses, maintaining/repairing/rebuilding engines, replacing older vehicles/equipment with more efficient engines or engines that run on cleaner fuel, improve operational strategies).

  Air toxics program that monitors for acid and mercury deposition, samples subsistence food sources to measure the accumulation of toxics, partners with other jurisdictions on

assessment projects, communicates potential threats to tribal members, develops and implements actions to reduce sources of air toxics pollution.

- Pursue federal authorities under the CAA that correspond to the air quality needs and priorities identified for the reservation. Under the TAR, tribes could:

  Develop/submit a request to redesignate the reservation as a CAA Class I area

  Develop/implement a Tribal Implementation Plan under CAA Section 301 to identify sources of air pollution and to determine what reductions are necessary to meet federal air quality standards

  Develop/implement a Title V operating permit program for major sources of air pollution on reservation

  Develop/implement a new source review permitting program for minor sources of air pollution on the reservation

  Develop/implement a compliance assistance and enforcement program to ensure compliance with permitting program

- Assist EPA to implement specific aspects of the CAA on the reservation (see Section 4.4 above)

4.6 Indicators of Federal Air Program Capacity

- Staff has completed appropriate training and acquired baseline knowledge and skills related to the CAA
- Emissions inventory completed and submitted to the National Emissions Inventory Database
- Air monitoring strategy and associated quality assurance project plan developed and implemented
- Quality assured ambient air monitoring data uploaded into AQS database
- Report completed that analyzes air quality issues impacting the reservation (identifies air pollution sources and known levels of emissions, defines potential human health and environmental impacts of current air quality, provides recommendations for action)

4.7 Indicators of Federal Air Program Implementation

Building on air quality management program capacity building activities, a tribe may wish to transition its program to the implementation phase. Indicators for this phase of a tribal program include: Receiving funding under the CAA to support air quality projects and programs; Specific air quality projects/programs that have been initiated; Federal inspector credentials obtained; Applications submitted under the TAR for specific CAA authorities; Development of a Tribal Implementation Plan; Redesignation of reservation to a Class I area; Development of air quality standards; CAA permits issued; Development of an EPA-tribal MOA/MOU concerning joint implementation of CAA authorities; Specific CAA

compliance assistance activities conducted; Specific CAA compliance inspections conducted; and Pursue enforcement to address noncompliance.

5.0 Protecting Water Resources in Indian Country

Please note that the information provided in this Section does not replace any program-specific regulation, guidance, strategy, or other information resource. It is highly recommended that tribal staff review the Clean Water Act and Safe Drinking Water Act resources that have been developed by EPA and, as appropriate, use these to develop water protection projects and programs for their communities. The material below has been provided as reference information that can be used during the development of EPA-tribal environmental plans, and to provide general guidance to the tribes on the options that are available for developing capacities beyond the core program capacities described in Section 2.0.

Key sources of program guidance include:

- "Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act." EPA. http://www.epa.gov/owm/cwfinance/final-Tribal-guidance.pdf
- "Draft Conceptual Pathway for Tribal Water Programs." EPA Region 9, June 2010.
- "Handbook for Developing and Managing Tribal Nonpoint Source Pollution Programs Under Section 319 of the Clean Water Act." EPA, 2010. http://water.epa.gov/polwaste/nps/tribal/index.cfm

5.1 EPA's Clean Water Act and Safe Drinking Water Act Programs

The Clean Water Act (CWA) is the primary federal law protecting the chemical, physical, and biological quality of surface water. The law was originally passed in 1972, and was amended in 1977 and 1987. The CWA employs several regulatory and non-regulatory tools to reduce direct pollutant discharges into water ways, finance municipal wastewater treatment facilities, manage polluted runoff, and ensuring continuing water quality. For more information on the CWA, visit http://www.epa.gov/lawsregs/laws/cwa.html

Under the CWA, EPA implementation activities in Indian country include: (1) issuing surface water discharge permits; (2) compliance assurance (including inspections and enforcement); (3) issuing water quality certifications; (4) reviewing Section 404 dredge and fill permit applications; (5) coordinating Section 404 compliance activities with the U.S. Army Corps of Engineers; (6) responding to releases of petroleum products to navigable waters; and (7) ensuring that regulated facilities have spill prevention, control and counter-measures (SPCC) plans.

The Safe Drinking Water Act (SDWA) is the primary federal law that protects drinking water. The law was originally passed in 1974, and it was amended in 1986 and 1996. Under the SDWA, EPA sets standards for drinking water quality to protect public health, provides oversight on regulated facilities that must meet those standards, reviews and tracks required monitoring reports, and conducts compliance assistance and enforcement activities. The SDWA also established national requirements for proper operation of underground injection

control wells. EPA is responsible for permitting facilities subject to the UIC requirements and providing compliance assistance and enforcement. For more information on the SDWA, visit http://water.epa.gov/lawsregs/rulesregs/sdwa/index.cfm

Under the SDWA, EPA implementation activities in Indian country include: (1) monitoring public water supplies and compliance assurance at PWSS (including inspections and enforcement); (2) permit actions for regulated UIC wells; (3) compliance assurance at regulated UIC wells (including inspections and enforcement)

5.2 Developing Inventories of Regulated Facilities/Activities

The Permit Compliance System (PCS) provides information on facilities that have been issued permits to discharge to surface water. The Safe Drinking Water Information System (SDWIS) contains information about public water systems that have been reported to EPA by state agencies. To access PCS or SDWIS information, please visit http://www.epa.gov/enviro/index.html

The Agency is currently developing a national information system for facilities regulated under the UIC Program. In the meantime, the EPA regional offices maintain separate databases of UIC injection well activities.

Tribal staff may be aware of other facilities on the reservation that may be subject to regulation under the CWA and SDWA.

5.3 Ability for Tribes to Assume Federal Authorities

Tribes are not required to administer CWA programs, but may choose to apply for TAS eligibility under CWA Section 518(e) to administer certain CWA programs. In addition to acquiring eligibility for water-related funding programs, tribes may also receive authorization to develop their own water quality standards, water discharge permit programs, non-point source pollution programs, water quality certification programs, and wetlands management (including dredge and fill permitting) programs.

Under Section 1451 of the SDWA, tribes may choose to apply for primacy to administer a public water supply supervision program and/or the requirements related to underground injection control wells.

For tribes that are interested in pursuing federal authorities, Appendix 10.3 presents general background information on applying for program eligibility or TAS, and provides media-specific references.

5.4 Other opportunities for Tribal Involvement in Implementation of the CWA and SDWA

In addition to pursuing program eligibility for federal CWA authorities, there are other opportunities for tribal governments to partner with EPA to ensure the CWA is implemented in Indian country. As appropriate, EPA regional offices can utilize direct implementation

cooperative agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in the implementation of the CWA. Examples of activities that tribal staff may engage in with EPA include: (1) assisting the Agency to develop/update an inventory of facilities regulated under the CWA; (2) conducting compliance assistance activities for regulated facilities on the reservation; (3) obtaining federal inspection credentials to inspect regulated facilities; (4) assisting EPA to draft permits for regulated facilities; and (5) assisting EPA to develop water quality certifications.

There are also opportunities for tribal governments to partner with EPA to ensure that the SDWA is implemented in Indian country. As appropriate, EPA regional offices can utilize direct implementation cooperative agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in the implementation of the SDWA. Examples of activities that tribal staff may engage in with EPA include: (1) assisting the Agency to develop/update an inventory of facilities regulated under the SDWA; (2) conducting compliance assistance activities for regulated facilities on the reservation; (3) obtaining federal inspection credentials to inspect regulated facilities and (4) assisting EPA to draft permits for regulated facilities.

5.5 Activities Eligible for Funding Under EPA Programs that Support Tribal Capacity Development and/or Implementation of the CWA and SDWA

This subsection outlines the types of activities that tribes and/or inter-tribal consortia could undertake with EPA funding to protect surface and ground water quality. In general, it is expected that funding under GAP would be used to build baseline environmental program capacities, and then tribal programs would transition to funding under media-specific programs to support more complex program development and implementation. Appendix 10.5 provides a list of potential sources of EPA funding related to CWA and SDWA activities. Please note that certain funding programs listed in Appendix 10.5 are eligible to be combined in a Performance Partnership Grant [Catalog of Federal Domestic Assistance (CFDA) No. 66.605].

<u>Tribal Capacity-Building Pathways</u>
The first stage in developing a water quality management program is to develop the necessary expertise and skills to identify, address, and manage water quality issues. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on water quality issues, collecting and analyzing new water quality data, and using this information to make decisions on further development of a water quality management program.

Years 1-2:
- Identify who will serve as coordinator for tribal water quality issues and define initial roles and responsibilities
- Become familiar with the major goals, programs, and requirements of the CWA; the national structure for implementing the CWA; and the EPA regional personnel and organization

- Become familiar with the major goals, programs, and requirements of the SDWA; the national structure for implementing the SDWA; and the EPA regional personnel and organization
- Work with tribal water system operators to determine if appropriate training and certification has been obtained, and if not assist with acquiring
- Attend EPA and other professional trainings to learn about water quality issues, monitoring, and program development
- Establish participation in regional and national policy groups in order to learn about current water quality issues, communicate perspective and needs of the community, participate in water quality related projects and programs
- Establish mechanisms for community outreach and education to increase community awareness and knowledge of water quality issues and obtain input from community members on water quality issues
- Gather existing water quality data (sources of discharge, current water quality monitoring efforts, tribal/state/federal records or data, any water bodies on CWA 305(b) list)

Years 2-5:

- Collect new data (as needed, identify pollutants or issues of interest, develop and implement surface water/wetland monitoring strategy and associated quality assurance program plan, investigate pollution sources, survey the community)
- Analyze data and identify priorities (evaluate data to determine if there are water quality issues of concern; evaluate the relative severity of impacts to human health, ecology, economy, and culture; set short and long-term priorities for any issues of concern)
- Develop a nonpoint source pollution assessment report
- Develop a nonpoint source pollution management plan
- Evaluate types of water pollution control options that might be necessary to address the short and long-term water pollution issues identified
- Identify the level of funding that would be required to implement the selected water pollution control options and potential sources of funding (including pursuing CWA and/or SDWA-specific program funding)
- Develop water quality analysis laboratory management plan, sampling protocols, and operation evaluation procedures.

<u>Tribal Implementation Pathways</u>

After building fundamental program capacities related to the CWA and SDWA and evaluating the type of water quality issues facing the community, tribes may consider undertaking efforts to develop and implement water quality protection programs. Please note that the planning and development activities related to implementation of a water quality protection program may be eligible for funding under GAP. Tribes and inter-tribal consortia are encouraged to seek funding support under the media-specific programs to the extent possible. Outlined below are the primary types of implementation pathways related to the CWA that tribal governments could pursue, either individually or in some combination.

- Develop and implement programs under tribal authority that support the goals and objectives of the CWA. Examples include:

Implement voluntary surface water and/or wetlands protection and restoration activities

Work with other stakeholders to develop watershed management plan

Develop/implement tribal-enforceable surface and/or wetlands water quality standards

Develop/implement voluntary programs and/or specific projects to prevent or mitigate nonpoint source pollution

Develop tribal oil spill response plan that addresses remediation, oversight, and enforcement

- Develop and implement programs under tribal authority that support the goals and objectives of the SDWA. Examples include:

  Develop source water assessment and protection plans and/or wellhead protection plans for community water supplies

  Develop/implement operation and maintenance program for tribal water supply systems, including oversight, design standards, ordinances, and establishing utility organizations

- Pursue federal authorities under the CWA that correspond to the water quality needs and priorities identified for the reservation. Examples include:

  Develop and implement federally-enforceable surface and/or wetlands water quality standards

  Develop and implement a CWA Section 401 certification program

  Monitor federally-approved surface and/or wetlands water quality standards and perform triennial review

  Develop and implement surface water discharge permit program

  Develop/implement a compliance assistance and enforcement program to ensure compliance with permitting program

  Develop/implement permit program for dredge and fill activities regulated under CWA Section 404

  Develop/implement total maximum daily loads

- Pursue federal authorities under the SDWA that correspond to the groundwater protection needs and priorities identified for the reservation. Examples include:

  Develop/implement primacy program for public water supplies

Develop/implement primacy program for underground injection control wells

- Assist EPA to implement specific aspects of the CWA on the reservation (see Section 5.4 above)

- Assist EPA to implement specific aspects of the SDWA on the reservation (see Section 5.4 above)

5.6 Indicators of Federal Water Program Capacity

- Staff has completed appropriate training and acquired baseline knowledge and skills related to the CWA and SDWA
- Surface water monitoring strategy and associated quality assurance project plan developed and implemented
- Quality assured surface monitoring data uploaded into STORET database
- Report completed that analyzes water quality issues impacting the reservation (identifies dischargers and types/amounts of discharge, defines potential human health and environmental impacts of current water quality, provides recommendations for action)
- Nonpoint source pollution assessment plan developed
- Nonpoint source pollution management plan developed

5.7 Indicators of Federal Water Program Implementation

Building on water quality management program capacity building activities, a tribe may wish to transition their program to the implementation phase. Indicators for this phase of a tribal program include: Receiving funding under the CWA and/or SDWA to support surface water or groundwater quality protection projects and programs; Specific water quality projects/programs that have been initiated; Federal inspector credentials obtained; Drinking water and/or waste water operator certifications obtained; Applications for program eligibility submitted for specific CWA and SDWA authorities; Water quality standards developed; CWA permits issued; Development of an EPA-tribal MOA/MOU concerning joint implementation of CWA and/or SDWA authorities; Specific CWA or SDWA compliance assistance activities conducted; Specific CWA or SDWA compliance inspections conducted; and Pursue enforcement to address noncompliance.

6.0 Managing Wastes and Underground Storage Tanks in Indian Country

Please note that the information provided in this Section does not replace any program-specific regulation guidance, strategy, or other information resource. It is highly recommended that tribal staff review the Resource Conservation and Recovery Act resources that have been developed by EPA and, as appropriate, use these to develop waste management and underground storage tank (UST) projects and programs for their communities. The material below has been provided as reference information that can be used during the development of EPA-tribal environmental plans, and to provide general guidance to the tribes on the options that are available for developing capacities beyond the core program capacities described in Section 2.0.

Key sources of program guidance include:

- "OSWER Tribal Strategy: EPA and Tribal Partnership to Preserve and Restore Land in Indian Country". EPA. November 2008. http://www.epa.gov/oswer/tribal/pdfs/oswer_tribal_strategy.pdf
- "Building a Tribal Solid Waste Program" EPA Region 10.
- "Report to Congress on Implementing and Enforcing the Underground Storage Tank Program in Indian Country." EPA. August 2007. http://www.epa.gov/oust/fedlaws/rtc_finalblnkpgs.pdf
- "Strategy for an EPA/Tribal Partnership to Implement Section 1529 of the Energy Policy Act of 2005." EPA. August 2006. http://www.epa.gov/oust/fedlaws/Tribal%20Strategy_080706r.pdf

6.1 EPA's Resource Conservation and Recovery Act (RCRA) Program

The Resource Conservation and Recovery Act (RCRA) is the primary federal law for managing solid waste, hazardous waste, and USTs. The law was originally enacted in 1976, and has been subsequently amended. Under RCRA, the Agency established: a "cradle-to-grave" system of permitting and extensive tracking activities for managing hazardous wastes; standards for the land disposal of solid wastes; and requirements for the operation and closure of USTs. For more information on RCRA, visit: http://www.epa.gov/epawaste/inforesources/online/index.htm

Under RCRA, EPA implementation activities in Indian country include: (1) issuing permits to hazardous waste treatment, storage, and disposal facilities; (2) issuing RCRA identification numbers to facilities that handle (generate, store, transport, etc.) hazardous waste; (3) conducting compliance assurance (including inspections and enforcement) at facilities subject to the hazardous waste or UST requirements; (4) accepting required notifications from regulated USTs; (5) overseeing corrective action activities at facilities subject to the hazardous waste or UST requirements; and (6) working with tribes to identify open dumps; and, (7) exercising enforcement options as necessary under RCRA 7003 or 4005(x).

6.2 Developing Inventories of Regulated Facilities/Activities

Resource Conservation and Recovery Act Information (RCRAInfo) is a national program management and inventory system that maintains information on hazardous waste generators, transporters, treatment facilities, storage facilities, and disposal facilities. To access RCRAInfo, please visit http://www.epa.gov/enviro/facts/rcrainfo/index.html. Tribal staff may be aware of other facilities on the reservation that may be subject to regulation under RCRA.

6.3 Opportunities for Tribal Involvement in Implementation of Solid and Hazardous Waste and Underground Storage Tank Programs

Tribes are not eligible for authorization to administer a hazardous waste program under RCRA Subtitle C or Subtitle I. Nor may tribal permit program s be approved by EPA under

RCRA Subtitle D. However, tribes can develop their own waste management programs under tribal authority that are similar to the requirements in RCRA. In addition, there are other opportunities for tribal governments to partner with EPA in its RCRA activities in Indian country. As appropriate, EPA regional offices can utilize direct implementation cooperative agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in the implementation of the RCRA. Examples of activities that tribal staff may be able to engage in with EPA include: (1) assisting the Agency to develop/update an inventory of RCRA facilities; (2) conducting compliance assistance activities for facilities on the reservation; (3) obtaining federal inspection credentials to inspect facilities; (4) assisting EPA to draft facility permits; and (5) assist EPA to provide oversight of necessary corrective actions.

6.4 Activities Eligible for Funding Under EPA Programs that Support Tribal Capacity Development and/or Implementation of Solid and Hazardous Waste and Underground Storage Tank Programs

This subsection outlines the types of activities that tribes and/or inter-tribal consortia could undertake with EPA funding to manage solid and hazardous wastes and USTs. In general, it is expected that funding under GAP would be used to build baseline environmental program capacities, and then tribal programs would transition to funding under media-specific programs to support more complex program development and implementation. Appendix 10.5 provides a list of potential sources of EPA funding related to RCRA activities. Please note that certain funding programs listed in Appendix 10.5 are eligible to be combined in a Performance Partnership Grant [Catalog of Federal Domestic Assistance (CFDA) No. 66.605].

Tribal Capacity Building Pathways

The first stage in developing a waste management program is to develop the necessary expertise and skills to identify, address, and manage the solid and hazardous waste issues facing the community. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on waste management issues, and using this information to make decisions on further development of a waste management program. Based on the presence or absence of certain facilities or activities (for example, hazardous waste disposal facilities or USTs) on the reservation, it will not be necessary for all tribes to develop all the capacities below.

Years 1-2 (solid and hazardous waste management):

- Identify who will serve as coordinator for tribal waste management issues and define initial roles and responsibilities
- Become familiar with the major goals, programs, and requirements related to solid and hazardous waste management in RCRA; the national structure for implementing these programs; and the EPA regional personnel and organization
- Attend EPA and other professional trainings to learn about waste management issues and program development
- Conduct an initial waste management assessment to characterize the current solid and hazardous waste issues facing the community (locate existing surveys and reports, engage

tribal leaders and community for input, evaluate effectiveness of current waste management system, evaluate options and costs)
- Create an open dump inventory (include GPS location; estimated size/volume; contents/type of waste; estimated distance to nearest homes, surface water and groundwater) and share with EPA and Indian Health Service
- Draft an Integrated Waste Management Plan (IWMP) and obtain Tribal Council approval
- Develop solid waste codes, ordinances, regulations to support the implementation of the IWMP and obtain Tribal Council approval
- Evaluate IWMP to determine if there are additional funding needs for implementation and identify potential sources of funding (including RCRA-specific program funding)
- Develop a protocol to address small-scale illegal dumping/burning activities
- Participate in peer-match program to obtain waste management technical assistance from other tribes or local/municipal governments

Years 1-2 (underground storage tanks):
- Identify who will serve as coordinator for tribal UST issues and define initial roles and responsibilities
- Become familiar with the major goals, programs, and requirements related to USTs in RCRA; the national structure for implementing these programs; and the EPA regional personnel and organization
- Attend EPA and other professional trainings to learn about UST issues and program development
- Verify and coordinate with EPA the inventory and operating status of regulated USTs on the reservation
- Verify and coordinate with EPA the inventory and status of any leaking USTs on the reservation
- If appropriate, develop UST siting and operation codes, ordinances, or regulations
- Determine if funding is needed to implement UST/LUST projects or programs and identify potential funding sources (including RCRA-specific program funding)

<u>Tribal Implementation Pathways</u>

After building fundamental waste management and UST program management capacities, and evaluating the type of related issues that may be facing the community, tribes may consider undertaking efforts to implement programs to address these issues. Please note that the planning and development activities related to implementation of a waste management or UST program may be eligible for funding under GAP. Tribes and inter-tribal consortia are encouraged to seek funding support under the media-specific programs to the extent possible. EPA has identified two primary implementation pathways related to waste management and USTs that tribal governments could pursue either individually or in combination.

- Develop and implement waste management and UST programs under tribal authority that support the goals and objectives of RCRA. Examples include:

  Implement an IWMP through developing and administering programs such as waste collection/disposal, household hazardous waste collection/disposal, recycling, used oil

collection/disposal, junk vehicle removal, bulk waste/appliance/electronic waste collection/disposal, and/or composting.

Upgrade/develop and administer any required solid waste collection, transport, or disposal facilities

Manage tribal open dump and solid waste facility inventory

Implement tribal codes/ordinances/regulations for hazardous waste management activities (generation, transport, treatment, storage, etc.) conducted on reservation.

Implement tribal codes/ordinances/regulations for USTs located on the reservation

Conduct community outreach and education programs on solid waste, hazardous waste, and USTs

- Assist EPA to implement specific aspects of RCRA on the reservation (see Section 6.3 above)

6.5 Indicators of Tribal Waste Management Program Capacity

- Staff has completed appropriate training and acquired baseline knowledge and skills related to RCRA
- Solid waste assessment completed
- IWMP developed
- Solid waste management code/ordinance that supports the IWMP developed and approved by Tribal Council
- Open dump inventory completed and submitted to EPA and IHS
- Receiving funding under RCRA or other programs to support waste management and/or UST projects and programs
- Tribal staff leading circuit rider, train the trainer, and peer-match programs

6.6 Indicators of Tribal Waste Management Program Implementation

Building on waste management program capacity, a tribe may wish to transition their program to the implementation phase. Indicators for this phase of a tribal program include: Open dump(s) closed/cleaned up; Obtain federal inspector credentials for federal hazardous waste program; Obtain federal inspector credentials for federal UST program; Specific programs related to waste management (used oil collection program, junk vehicle program, etc.) developed and implemented; Development of an EPA-tribal agreement concerning joint implementation of RCRA authorities; Specific RCRA compliance assistance activities conducted; Specific RCRA compliance inspections conducted; and Pursue enforcement to address noncompliance.

7.0 Remediating Contaminated Sites and Providing Emergency Response in Indian Country

Please note that the information provided in this Section does not replace any program-specific regulation, guidance, strategy, or other information resource. It is highly recommended that tribal staff review the program-specific resources that have been developed by EPA and, as appropriate, use these to develop emergency response and site cleanup projects and programs for their communities. The material below has been provided as reference information that can be used during the development of EPA-tribal environmental plans, and to provide general guidance to the tribes on the options that are available for developing capacities beyond the core program capacities described in Section 2.0.

Key sources of program guidance include:

- "OSWER Tribal Strategy: EPA and Tribal Partnership to Preserve and Restore Land in Indian Country". EPA. November 2008. http://www.epa.gov/oswer/tribal/pdfs/oswer_tribal_strategy.pdf
- "Tribal Brownfields and Response Programs: Respecting Our Land, Revitalizing Our Communities." EPA. 2009. http://www.epa.gov/brownfields/state_tribal/tribalreport11.pdf
- "Plan to Enhance the Role of States and Tribes in the Superfund Program," Chapter 4: Tribal Recommendations. EPA. March 1998. http://www.epa.gov/superfund/partners/osrti/pdfs/chapt4.pdf
- Emergency Planning and Community Right-to-Know Act (EPCRA) Local Emergency Planning Requirements. EPA. http://www.epa.gov/osweroe1/content/epcra/epcra_plan.htm
- "Guidance for Preparing Tribal Emergency Response Plans". EPA Region 10. September 2004. http://www.epa.gov/oswer/tribal/pdfs/guidance_for_preparing_tribal_erps.pdf

7.1 EPA's Comprehensive Environmental Response, Compensation and Liability Act; Emergency Planning, Community Right-to-Know Act; and Small Business Liability Relief and Brownfields Revitalization Act Programs

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, is the primary federal law that ensures responses to releases or threatened releases of hazardous substances that may endanger public health or the environment. The law was originally passed in 1980 and amended in 1986 by the Superfund Amendments and Reauthorization Act. CERCLA authorizes both short-term removals, to address releases requiring prompt response, and long-term remedial response actions to address dangers associated with releases or threats of releases to the environment that are serious but not immediately life-threatening. EPA coordinates long-term remedial actions on sites listed on the National Priorities List, which are the most serious uncontrolled or abandoned hazardous waste sites. The Superfund Enforcement program provides EPA with multiple authorities to ensure cleanup and payment for cleanup. If a responsible party does not agree to do the cleanup, EPA can issue an order to do certain work, or work with the Department of Justice to pursue the party through the federal court system. If a party is out of compliance with an order or settlement, the Superfund enforcement program takes action

to bring them into compliance. For more information on CERCLA, visit: http://www.epa.gov/superfund/index.htm.

The Emergency Planning and Community Right-to-Know Act (EPCRA) establishes hazardous chemical emergency planning and reporting requirements for federal, state and local governments, Indian tribes, and industry. The right-to-know provisions are designed to increase the public's knowledge and access to information on hazardous substances at specific facilities, their uses, and releases into the environment. Government entities use this information to prepare for and respond to emergencies involving hazardous substances. For more information, visit: http://www.epa.gov/ceppo/web/content/epcra/.

The Small Business Liability Relief and Brownfields Revitalization Act, commonly referred to as Brownfields, provides CERCLA liability relief for certain property owners and small businesses, and limits CERCLA enforcement authority at sites remediated under state voluntary cleanup programs. The Act also significantly expands federal grant authority to increase Brownfields redevelopment. For more information on Brownfields, visit: http://epa.gov/Brownfields/laws/2869sum.htm.

EPA implementation activities in Indian country include: (1) maintaining and updating the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) database to reflect newly identified sites where contaminants are suspected to have been released or new actions at existing sites; (2) emergency response/removal actions to address immediate or short-term clean-up of hazardous substances; (3) long-term remediation and post-clean up monitoring at sites on the National Priorities List (NPL); (4) compliance assistance and enforcement actions to ensure that required EPCRA reports are submitted to formal EPCRA organizations.

7.2 Developing Inventories of Regulated Facilities/Activities

CERCLIS contains information contains information on hazardous waste sites, potentially hazardous waste sites and remedial activities across the nation, including NPL sites or that are being considered for the NPL. The information is updated by the EPA regional offices every 90 days. The data describes what has happened at Superfund sites, identifies involved parties (other federal agencies, states, and tribes), and includes information on human exposure, ground water migration, and construction status.

While there is no national database of Brownfield sites, an important component of the Brownfields Program is the development of site inventories for Indian country.

Tribal staff may be aware of other facilities on the reservation that may be subject to regulation under CERCLA or EPCRA.

7.3 Opportunities for Tribal Involvement in Implementation of CERCLA, EPCRA, and Brownfields

Tribes are able to implement federal authorities under CERCLA and EPCRA and can form agreements with EPA to become involved in decision-making concerning CERCLA sites,

including assuming the lead role for site assessment or long-term cleanup of sites. In addition, tribes with contaminated federal facilities on their reservations can partner with other federal agencies, such as the Department of Defense and Department of Energy, through advisory boards and committees to help make site decisions.

Under EPCRA, tribal governments have the lead role in ensuring an EPCRA-compliant emergency response organization covers the reservation. Tribes can establish Tribal Emergency Response Commissions (TERCs), join existing Local Emergency Planning Committees (LEPCs), or coordinate with State Emergency Response Commissions (SERCs) to draft and implement an Emergency Response Plan.

Under Brownfields, tribes are eligible to apply for several categories of EPA grants and loans to assess and clean up specific Brownfields sites under inherent tribal authorities (including open dumps), establish site response programs, and/or receive technical assistance such as job training.

7.4 Activities Eligible for Funding Under EPA Programs that Support Tribal Capacity Development and/or Implementation of CERCLA, EPCRA, and Brownfields

This subsection outlines the types of activities that tribes and/or inter-tribal consortia could undertake with EPA funding to address issues related to CERCLA, EPCRA, or Brownfields. In general, it is expected that funding under GAP would be used to build baseline environmental program capacities, and then tribal programs would transition to funding under media-specific programs to support more complex program development and implementation. Appendix 10.5 provides a list of potential sources of EPA funding related to CERCLA, EPCRA, and Brownfields activities. Please note that certain funding programs listed in Appendix 10.5 are eligible to be combined in a Performance Partnership Grant [Catalog of Federal Domestic Assistance (CFDA) No. 66.605].

Tribal Capacity-Building Pathways

The first stage in developing a tribal site response program is to develop the necessary expertise and skills in order to establish an appropriate response planning committee, evaluate the threats from contaminated sites on the reservation, evaluate the options for tribal programs, and develop partnerships with appropriate federal agencies to address any contamination on the reservation. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on contaminated land issues, and using this information to make decisions on further development of a tribal site response program.

Years 1-2:

- Identify who will serve as coordinator for tribal response issues and define initial roles and responsibilities
- Become familiar with the major goals, programs, and requirements in CERCLA, EPCRA, and Brownfields; the national structure for implementing these programs; and the EPA regional personnel and organization

- Acquire certification in an Incident Command System (ICS) course (for example ICS level 100, 200, and more advanced level courses are offered for free on line through FEMA).
- Coordinate with state and federal agencies on specific spill response trainings (hands on response to oil and chemical hazards).
- Attend EPA and other professional trainings to learn about tribal site response issues and program development
- Complete training to acquire proficiency in All Appropriate Inquiries (EPA 40 CFR 312), Phase 1 ESA (ASTM E 1527-05), and ECM 10-2 (Department of Interior)
- Conduct community outreach to solicit input from tribal members on site contamination concerns
- Create a site inventory that identifies properties of environmental concern and identify potential EPA program(s) associated with the sites of concern
- Determine EPCRA status of the tribal government (TERC, member of LEPC, partnership with SERC), and take any necessary actions to organize in compliance with EPCRA
- Ensure that the tribe has an EPCRA-compliant emergency response plan or that tribal lands and resources are included in a regional plan
- Evaluate information collected to date on emergency response and cleanup issues on the reservation, determine whether additional funding is needed to implement specific projects or programs, and identify potential funding sources (including CERCLA, EPCRA, or Brownfields-specific program funding)

Tribal Implementation Pathways

After building fundamental program capacities related to CERCLA, EPCRA, and Brownfields, and evaluating the type of related issues that may be facing the community, tribes may consider undertaking efforts to develop and programs to address these issues. Please note that the planning and development activities related to implementation of a tribal site response program may be eligible for funding under GAP. Tribes and inter-tribal consortia are encouraged to seek funding support under the media-specific programs to the extent possible. There are two primary types of implementation pathways related to CERCLA, EPCRA, and Brownfields that tribal governments could pursue either individually or in some combination.

- Develop and implement programs under tribal authority that support the goals and objectives of CERCLA, EPCRA, and Brownfields. Examples include:

  Create a Tribal Development Plan that outlines future development on contaminated properties after site assessment and remediation

  Conduct Phase I and Phase II site assessments

  Conduct site remediation activities

  Develop a tribal site response program that inventories sites, assesses contamination, conducts site clean-ups, and works with other tribal departments to redevelop cleaned-up properties

Establish and maintain EPCRA-compliant emergency planning organization

Develop (or partner with surrounding jurisdictions) a local emergency response plan that covers the reservation

Conduct emergency response training and exercises (e.g., orientation seminars to review the contents of the emergency response plan for tribal members; table tops drills to verify understanding of notification procedures and response actions; and field exercises to ensure that response personnel are familiar with equipment and responsibilities)

Develop codes and regulations and mechanisms to conduct and oversee investigation and cleanup of contaminated sites

Establish mechanisms to provide meaningful opportunities for public participation in site cleanup decisions

- Partner with federal agencies to provide for tribal involvement in decisions to address contaminated facilities and sites within the reservation.

  Participate in Department of Defense and Department of Energy advisory boards (Federal Facilities Restoration and Reuse) that involve stakeholders in cleanup decisions

  Establish support agency cooperative agreements with EPA to provide for tribal input in cleanup decisions at CERCLA sites

  Develop MOA/MOU with EPA on joint implementation of CERCLA authorities on the reservation

7.5 Indicators of Tribal Emergency Response and Remediation Program Capacity

- Staff has completed appropriate training and acquired baseline knowledge and skills related to CERCLA, EPCRA, and Brownfields
- Site inventory of properties of concern completed
- Tribe has established EPCRA-organization (TERC, LEPC, etc.)
- Reservation lands and resources covered by an EPCRA-compliant local emergency plan
- Emergency response training and exercises completed
- Tribe has enacted codes/ordinances and/or regulations establishing oversight and enforcement authority to address contaminated sites
- Tribe has established cleanup standards for soil and groundwater to guide response and remediation decisions on contaminated sites.
- Tribe has established mechanisms to provide meaningful opportunities for public participation in site cleanup decisions

7.6 Indicators of Tribal Emergency Response and Remediation Program Implementation

Building on emergency response and remediation program capacity building activities, a tribe may wish to transition its program to the implementation phase. Indicators for this phase of a tribal program include: Receiving funding under CERCLA, EPCRA, or Brownfields to support emergency response or site remediation projects and programs; Tribal Development Plan completed; Site remediation activities completed (e.g., the number of sites addressed and the number of acres of contaminated land returned to reuse); Development of an EPA-tribal MOA/MOU concerning joint implementation of CERCLA; Development of a support agency cooperative agreement; Participation in a DOD or DOE advisory board to provide input on cleanup decisions at federal facilities.

8.0 Managing Asbestos, Lead-Based Paint, Pesticides, and Toxics in Indian Country

Please note that the information provided in this Section does not replace any program-specific regulation, guidance, strategy, information resource. It is highly recommended that tribal staff review the program-specific resources that have been developed by EPA and, as appropriate, use these to develop projects and programs for their communities. The material below has been provided as reference information that can be used during the development of EPA-tribal environmental plans, and to provide general guidance to the tribes on the options that are available for developing capacities beyond the core program capacities described in Section 2.0.

Key sources of program guidance include:

- "Guidance for Funding Development and Administration of Tribal Pesticide Field Program and Enforcement Cooperative Agreements," January 3, 2011. http://www.epa.gov/region9/tribal/pdf/Tribal-PesticideGrantGuid-Final.pdf
- "The National Pesticide Tribal Program: Achieving Public Health and Environmental Protection in Indian Country and Alaska Native Villages." EPA. October 2009. http://www.epa.gov/oppfead1/Publications/tribal-brochure.pdf

8.1 EPA's Asbestos Hazard Emergency Response Act; Federal Insecticide, Fungicide and Rodenticide Act; and Toxic Substances Control Act Programs

The Asbestos Hazard Emergency Response Act (AHERA) is a provision of the Toxic Substances Control Act that was enacted in 1986. AHERA requires local education agencies to inspect K-12 schools for asbestos-containing building material and prepare management plans to prevent or reduce asbestos hazards. AHERA requirements include: performing an original inspection and re-inspection every three years of asbestos-containing material; developing, maintaining, and updating an asbestos management plan and keeping a copy at the school; providing yearly notification to parent, teacher, and employee organizations regarding the availability of the school's asbestos management plan and any asbestos abatement actions taken or planned in the school; designating and training a contact person

to ensure the responsibilities of the local education agency are properly implemented; performing periodic surveillance of known or suspected asbestos-containing building material; ensuring that properly-accredited professionals perform inspections and response actions and prepare management plans; and providing custodial staff with asbestos-awareness training. To implement AHERA, the Agency provides outreach and compliance assistance, and conducts compliance inspections. For more information on AHERA, visit: http://www.epa.gov/asbestos/pubs/asbestos_in_schools.html.

In addition to AHERA requirements, the Asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP) under the CAA specifies practices to be followed for renovations or demolition of buildings containing asbestos.

The Federal Insecticide, Fungicide, and Rodenticide (FIFRA) provides for federal regulation of pesticide distribution, sale, and use. All pesticides distributed or sold in the United States must be registered by EPA. Pesticide use is regulated through requirements to apply pesticides in a manner consistent with the label. The labeling requirements include directions for use, warnings, and cautions, along with the uses for which the pesticide is registered (i.e., pests and appropriate applications). Labeling requirements also include specific conditions for the application, mixture, storage, and time period for re-entry to fields following pesticide application, and when crops may be harvested after applications. If a pesticide is used in a manner contrary to the labeling, that use constitutes a violation of FIFRA. Through FIFRA, EPA also addresses the certification and training of pesticide applicators, and establishes requirements for pesticide record-keeping and reporting, storage, disposal, and transportation. The law was originally passed in 1947, substantially revised in 1972, and amended in 1988, 1996, and 2003. To implement FIFRA, the Agency provides outreach and compliance assistance, and conducts compliance inspections. For more information on FIFRA, visit: http://www.epa.gov/lawsregs/laws/fifra.html.

The Toxic Substances Control Act (TSCA) provides EPA with the authority to regulate the importation, manufacture, and use of chemical substances and/or mixtures. It does this through reporting, recordkeeping, and testing requirements, as well as restrictions and bans. TSCA addresses the production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, radon and lead-based paint. TSCA was originally enacted in 1976, and significantly amended in 1986, 1988, and 1992. To implement TSCA, EPA provides outreach and compliance assistance and conducts compliance inspections. For more information on TSCA, visit: http://www.epa.gov/lawsregs/laws/tsca.html.

The Residential Lead-Based Paint Hazard Reduction Act's Real Estate Notification and Disclosure Rule requires landlords, property management companies, real estate agencies, and sellers to inform potential lessees and purchasers of the presence of lead-based paint and lead-based paint hazards in pre-1978 housing. This ensures that potential tenants and home buyers are receiving the information necessary to protect themselves and their families from lead-based paint hazards. The Lead-based Paint Activities Training and Certification Rule holds that no individuals or firms can perform lead-based paint activities without certification from EPA. The Renovation, Repair and Painting Rule addresses common renovation activities like sanding, cutting, and demolition that can create hazardous lead

dust and chips by disturbing lead-based pain, Under the rule, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified by EPA-approved training providers and must follow specific work practices to prevent lead contamination.

8.2 Developing Inventories of Regulated Facilities/Activities

For many of the activities regulated under AHERA, FIFRA, and TSCA, the Agency does not maintain a national inventory of regulated facilities. Instead, EPA regional offices will need to work closely with tribal staff to identify facilities on each reservation that may be subject to the requirements in these federal statutes.

8.3 Ability for Tribes to Assume Federal Authorities

While tribal governments are not able to apply for program eligibility to operate the federal AHERA program, EPA may approve tribes to implement certain lead-based paint and pesticide programs under TSCA and FIFRA in the same manner as states. For example, tribal governments are eligible to apply for federal programs to regulate the training and certification of pesticide applicators.

For tribes that are interested in pursuing federal authorities, Appendix 10.3 presents general background information on applying for program eligibility or TAS, and provides media-specific references.

8.4 Opportunities for Tribal Involvement in the Implementation of FIFRA and TSCA

EPA generally is the primary enforcement authority for pesticide use violations in Indian country. Tribes may restrict the sale or use of a federally registered pesticide, but may not allow the sale or use of a federally prohibited product. EPA works cooperatively with tribal government to enforce FIFRA, as it does with states and territories. For example, under FIFRA Section 23, EPA may enter into cooperative agreements with tribes. These agreements may include provisions for tribes to assist EPA in ensuring compliance with FIFRA by obtaining federal inspector credentials, conducting inspections, and recommending enforcement actions to EPA.

Under FIFRA and TSCA, EPA regional offices can utilize, as appropriate, direct implementation cooperative agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in the implementation of the federal program. Examples of activities that tribal staff may engage in with EPA include conducting compliance assistance activities for regulated facilities on the reservation and obtaining federal inspection credentials to inspect regulated activities on the reservation.

8.5 Activities Eligible for Funding Under EPA Programs that Support Tribal Capacity Development and/or Implementation of AHERA, FIFRA, and TSCA

This subsection outlines the types of activities that tribes and/or inter-tribal consortia could undertake with EPA funding to address issues related to AHERA, FIFRA, or TSCA. In general, it is expected that funding under GAP would be used to build baseline environmental program capacities, and then tribal programs would transition to funding under media-specific programs to support more complex program development and implementation. Appendix 10.5 provides a list of potential sources of EPA funding related to AHERA, FIFRA, and TSCA activities. Please note that certain funding programs listed in Appendix 10.5 are eligible to be combined in a Performance Partnership Grant [Catalog of Federal Domestic Assistance (CFDA) No. 66.605].

Tribal Capacity-Building Pathways

The first stage in developing programs related to asbestos, lead-based paint, radon, and toxics is to develop the necessary expertise and skills to identify, address, and manage any of those issues that may be facing the community. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on toxics issues, and using this information to make decisions on further development of asbestos, lead-based paint, radon, and toxics programs. Based on the presence or absence of certain facilities or activities (for example, pesticide use, residences or child-occupied buildings with lead-based paint) on the reservation, it will not be necessary for all tribes to develop all the capacities below.

Years 1-2:

- Identify who will serve as coordinator (or coordinators) for issues on the reservation related to asbestos, pesticides, lead-based paint, radon, etc. and define initial roles and responsibilities.
- Become familiar with the major goals, programs, and requirements related to AHERA, FIFRA, and TSCA; the national structure for implementing these programs; and the EPA regional personnel and organization.
- Attend EPA and other professional trainings to learn about managing toxics issues and program development.
- Conduct community outreach to solicit input from tribal members on concerns related to toxics on the reservation.
- Identify any K-12 schools on the reservation and work with EPA to determine whether they are subject to the requirements of AHERA.
- Conduct an initial pesticides needs assessment that collects and evaluates existing data on pesticide use on the reservation.
- Determine the amount of pre-1978 target housing and/or child-occupied buildings on the reservation.
- Gather existing information on radon levels in structures on the reservation
- Based on the information gathered, assess the current need to develop projects or programs related to asbestos, pesticides, lead-based-paint, and radon; and evaluate short-term and long-term options to address those identified needs.
- Identify the level of funding that would be required to implement applicable programs and potential sources of funding (including pursuing program-specific EPA funding).

- Prepare appropriate quality assurance project plans to cover sampling and analysis activities related to assessing radon, blood lead, and lead based paint investigations.

Years 2-3:

- If warranted, conduct a more intensive pesticides needs assessment that includes collection of additional data through questionnaires, sampling, and/or the use of risk assessment tools and software

Tribal Implementation Pathways

After building fundamental program capacities related to the federal asbestos, pesticides, lead-based paint, radon, and toxics programs and evaluating the type of related issues that may be facing the community, tribes may consider undertaking efforts to develop and implement programs to address these issues. Please note that the planning and development activities related to implementation of asbestos, lead-based paint, pesticides, and toxics programs may be eligible for funding under GAP. Tribes and inter-tribal consortia are encouraged to seek funding support under the media-specific programs to the extent possible. The types of implementation pathways available are dependent on the particulars of the associated federal statute. Tribes may elect to pursue these pathways individually or in some combination.

- Develop and implement programs under tribal authority that support the goals and objectives of the FIFRA and TSCA. Examples include:

  Develop and implement a Pesticides Field Program that includes: creating an internal system to facilitate collection of data and reporting of incidents; outreach, education, and training to community members; criteria to identify priority incidents; and a means to address high level/priority episodes and complaints.

  Identify possible pesticide inspection targets and pesticide-specific issues to determine the kind of approach needed to address concerns related to the use and sale of pesticides.

  Develop and implement a Pesticides Enforcement Program under which a tribal inspector completes all required training and, upon EPA approval, obtains federal credential to conduct inspections of the regulated community (e.g., pesticide applicators, marketplaces that sell pesticides, etc.) to determine compliance with FIFRA or tribal pesticide regulations.

  Develop and implement a tribal radon program that tests residential and other occupied structures for radon, identifies alternatives to address dwellings and other occupied structures that test above the EPA action level, and conducts outreach and education in the community.

  Develop and implement a tribal certification and training plan for restricted use pesticide applicators (commercial and private) to educate applicators and control restricted use pesticides in Indian country.

- Pursue federal authorities under TSCA that correspond to the lead-based paint needs and priorities identified for the reservation. Examples include:

  Develop a training/accreditation/certification program similar to TSCA Section 402 for individuals and firms engaged in lead-paint activities.

  Develop a compliance assistance/inspection/enforcement program similar to TSCA Section 406(b) that requires distribution of information on lead-based paint hazards.

  Develop a program similar to the Renovation, Repair and Painting Rule.

- Participate in an EPA Pesticides circuit rider or peer match program that will provide technical assistance, training, and/or outreach and education assistance.

- Participate in a circuit rider enforcement program that will provide inspection coverage for the host tribe and the circuit tribes, including any necessary training.

- Assist EPA to implement specific aspects of FIFRA and TSCA on the reservation (see Section 8.4 above)

8.6 Indicators of Federal Toxics Program Capacity

- Staff has completed appropriate training and acquired baseline knowledge and skills related to AHERA, FIFRA, and TSCA
- Inventory of K-12 schools on reservation completed
- Pesticides needs assessments completed
- Amount of pre-1978 target housing and child-occupied buildings documented
- Tribal staff leading circuit rider, train the trainer, and peer-match programs

8.7 Indicators of Federal Toxics Program Implementation

Building on asbestos, pesticides, lead-based paint, radon, and toxics program capacity building activities, a tribe may wish to transition their program to the implementation phase. Indicators for this phase of a tribal program include: Receiving funding under FIRFRA and/or TSCA to support projects or programs related to managing toxics; Specific pesticides, lead-based paint, and/or radon projects or programs have been initiated; Federal inspector credentials obtained; Applications for program eligibility submitted for TSCA authorities; Development of an EPA-tribal MOA/MOU concerning joint implementation of FIFRA and/or TSCA authorities; Specific FIFRA/TSCA compliance assistance activities conducted; tribal applicator training and certification program is in place; Specific FIFRA/TSCA compliance inspections conducted; and Pursue enforcement to address noncompliance.

9.0 Implementation of the Guidebook

[Section would discuss how HQ, regional offices and the tribes will implement the Guidebook – roles and responsibilities, initial implementation schedule, tracking progress, etc.]

LKM: This section is the critical piece to the Guidebook- how EPA will implement the suggestions of the OIG?
JM: Oneida has made great strides in many of the EPA programs listed above including air, water, wastes, UST's, brownfields, etc. Progress is through EPA media specific grants. There was no reason to report this progress through the GAP program. EPA should have all the information needed for Oneida from the various media grants.

10.0 Appendices

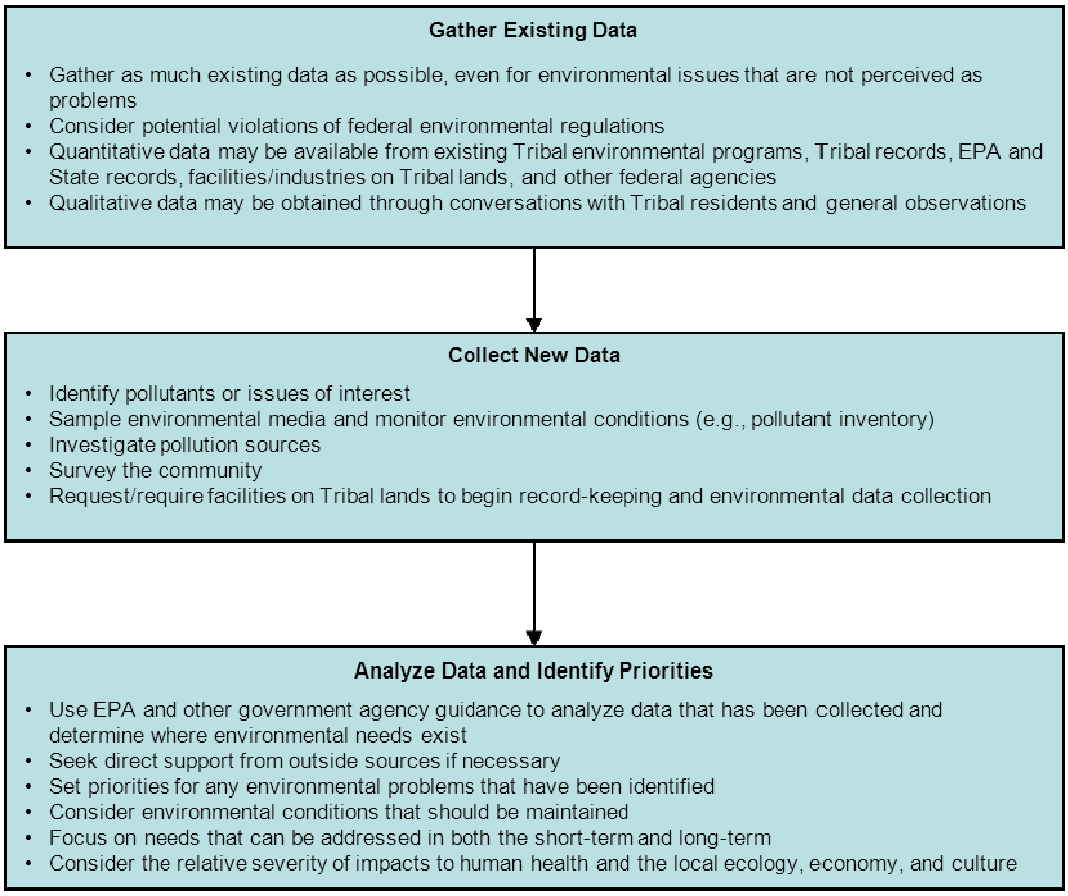
10.1 Baseline Needs Assessment
10.2 GAP Online System
10.3 Program Eligibility/TAS for Federal Authorities
10.4 Summary of Capacity & Implementation Indicators
10.5 EPA Funding Programs that Support Tribal Environmental Program Capacity Development and/or Implementation Activities
10.6 Case Studies

Appendix 10.1

Baseline Needs Assessment

The diagram below illustrates the types of steps that Tribes can take to identify and prioritize the environmental issues they need to address. Such an assessment can help inform a tribe's approach for undertaking protection and restoration efforts. As a Tribe develops a more sophisticated environmental program, it may undertake extensive sampling and monitoring efforts. The baseline needs assessment is not meant to be such an extensive data collection effort, but rather a primary step to determine general environmental issues.

Conducting a Baseline Needs Assessment



Appendix 10.2

GAP Online System

The GAP Online system provides EPA project officers and grant recipients with a centralized, web-based tool for creating work plans and reporting progress. The work plan management tool is based on the most current EPA GAP Guidance Guideline (GAP Guidance, 2006). The GAP Online system is managed through the American Indian Environmental Office (AIEO).

GAP Online serves to:

- Move GAP work plan development and reporting to an electronic medium.
  - Enables tribal and EPA staff to easily access grant-specific and program summary information.

- Enhance the ability for GAP grant recipients to include a greater level of detail to describe work plan goals and activities.
  - Enables EPA to provide comprehensive information about GAP-funded activities.
  - Allows recipients to closely link GAP funded activities to specific deliverables and overall program progress.
  - Increases opportunity for grant recipients to include supporting documents with their proposed work plans.

- Create an easily accessible archive of GAP work plans and progress reports, available to recipient and EPA personnel at any time.
  - Provides greater opportunity for GAP recipients to work on documents at their own pace, and within the framework of their other day-to-day tasks.
  - Facilitates the production of printed records when needed.

GAP Online can be accessed at: https://iaspub.epa.gov/GAP_Online

Usernames and passwords for eligible grant recipients are provided through EPA regional grant project officers.

Appendix 10.3

Program Eligibility/TAS for Federal Authorities

Excerpt from: Profile of Tribal Government Operations
EPA Office of Compliance Sector Notebook Project
Chapter 4.2: Tribal Assumption of Federal Environmental Programs
http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/tribal.html

In the EPA Indian Policy, EPA announced its support for tribal assumption of environmental programs under federal statutes, stating, among other things, that "[t]he 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."

Three environmental statutes - the Safe Drinking Water Act (SDWA), the Clean Water Act (CWA), and the Clean Air Act (CAA) - explicitly authorize EPA to "treat tribes in the same manner as states" (TAS) for purposes of implementing various environmental programs. In addition, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) explicitly include a provision that affords tribes substantially the same treatment as states with respect to certain provisions of the Act, while the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) also provides a role for tribes. Although the Toxic Substances Control Act (TSCA) and the Emergency Planning and Community Right-to-Know Act (EPCRA) do not explicitly provide for TAS, EPA has taken the position that it has the discretion to approve tribes to implement certain programs in the same manner as states in order to fill gaps in how the statutes are implemented in Indian country.

For tribes to assume many of EPA's regulatory programs, they generally must go through the TAS process and meet the following criteria:

- The tribe must be federally-recognized;
- The tribe must have or be able to exercise substantial governmental powers;
- The tribe must have or have been delegated jurisdiction over the area in question; and
- The tribe must be reasonably expected to have the capability to effectively implement a program.

In general, once a tribe has been deemed eligible for one EPA program, it need only establish that it has jurisdiction and capability for each subsequent program. If a tribe does not have capability, it must have a plan for acquiring capability over time. A capability showing is required because each program may require different skills and activities to provide protection that meets the requirements of specific statutes and regulations.

Perhaps the most important of the tribe-specific eligibility criteria is whether the functions to be exercised by a tribe are within the applicant tribe's jurisdiction. EPA asks tribes that are applying for regulatory programs to demonstrate in their applications that they have adequate jurisdiction

over the areas to be regulated. Under principles of federal Indian law, tribes generally have inherent sovereign authority to regulate both their members and land held in trust (although specific statutes may have affected this general principal for some tribes). Depending on the scope of the application, EPA may also need to evaluate whether a particular tribe has jurisdiction over nonmember activities on nonmember-owned fee lands within the boundaries of an Indian reservation. Jurisdiction over nonmember activities on fee lands may come from two potential sources: a tribe may have inherent authority over these activities; or Congress may, by statute, delegate federal authority to a tribe. Tribal applications for authorization to administer the program are sent to EPA's Regional Administrators.

Appendix 10.4

Summary of Capacity & Implementation Indicators

Chapter-by-Chapter Summary of Capacity & Implementation Indicators	
2.0 Building Core Environmental Protection Program Capacities	
Indicators of Administrative Capacity	(1) Organizational system for the environmental program that defines staff roles and responsibilities, describes the relationship of the environmental program to tribal leadership and other departments, and includes supporting personnel management policies/procedures that outline how staff will be managed (2) Staff with appropriate skills, knowledge and experience to manage the environmental program (3) Training plan for staff that reflects the capacity-building priorities for the environmental program (4) Program evaluation system that will determine if program objectives are met, fiscal resources are appropriately managed, and assistance award requirements satisfied (5) any necessary inter-governmental (federal, state, local) agreements to implement the environmental program (6) written procedures similar to the APA to ensure meaningful involvement and fair treatment in public participation
Indicators of Financial Management Capacity	(1) a statement by the appropriate tribal financial department that demonstrates that the tribe's accounting system, internal controls, and financial reporting procedures adhere to the requirements found in 40 CFR Part 31 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", 40 CFR Part 35 Environmental Program Grants for Tribes, 2 CFR, Part 225 (formerly OMB Circular A-87 "Cost Principles for State, Local and Indian tribal governments)", and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" (2) a statement by the appropriate tribal financial department that demonstrates that the Tribe has a procurement procedure that meets the minimum requirements for purchasing systems (responsibility, code of conduct, competition, cost and price review, disadvantaged business opportunity, debarment and suspension) as outlined in 40 CFR Part 31 (3) written procedure for tracking (including final disposition) equipment and supplies acquired by the environmental program in compliance with 40 CFR Part 31 (4) written procedure that describes how the environmental program will coordinate with other tribal departments to satisfy grant terms and conditions and reporting requirements (for example, application development/review/approval, creation and submission of required reports, maintenance of official file, closeout of award) (5) current indirect cost rate agreement
Indicators of Information Management Capacity Indicators	(1) written procedure for establishing an official file for each assistance award that will contain all documentation from application through final closeout and requires retaining those records in compliance with 40 CFR Part 31 (2) written inventory of administrative and technical procedures, policies, regulations, or other guidelines developed to implement the environmental program (3) system to store and organize data and information collected or generated by the environmental program for future use in characterizing environmental and human health conditions, responding to information requests, developing environmental projects/initiatives, or other project management data systems (4) exchanging and/or sharing data through the National Environmental Information Exchange Network

Chapter-by-Chapter Summary of Capacity & Implementation Indicators	
Indicators of Baseline Needs Assessment	A recent baseline needs assessment (or comparable planning document) that reflects known information about existing/potential threats to human health and the environment within the tribe's jurisdiction, an evaluation of the potential impact of these threats to tribal members and resources, and prioritization of activities by the environmental program to address identified threats.
Indicators of Public Participation, Community Involvement, Education, and Communication Capacity	(1) outreach methods that will be used to reach specific affected communities and groups (2) format for public notices, press releases, and other types of communication with the public (3) methods that will be used to collect public concerns and respond to issues raised (4) contact lists for other governmental entities and types of information that will be shared (5) methods to conduct general public education, awareness, community engagement, and information exchange on issues related to human health and the environment
Indicators of Legal Capacity	(1) a statement by tribal legal counsel that demonstrates that the tribe has authority to pass and enforce laws/ordinances to protect human health and the environment (2) a statement by tribal legal counsel that demonstrates that tribal government authorities provide the tribe with power to enjoin activities determined to be harmful to the health or welfare of persons or natural resources (3) a dedicated section of its codes/ordinances/statutes for environmental protection program activities
Indicators of Technical and Analytical Capacities	(1) quality assurance and management plans (2) establishing intergovernmental agreements with other jurisdictions (3) leveraging funding from other sources (4) developing environmental monitoring/sampling programs
4.0 Protecting Ambient Air Quality in Indian Country	
Indicators of Federal Air Program Capacity	Staff has completed appropriate training and acquired baseline knowledge and skills related to the CAA Emissions inventory completed and submitted to the National Emissions Inventory Database Air monitoring strategy and associated quality assurance project plan developed and implemented Quality assured ambient air monitoring data uploaded into AQS database Report completed that analyzes air quality issues impacting the reservation (identifies air pollution sources and known levels of emissions, defines potential human health and environmental impacts of current air quality, provides recommendations for action)
Indicators of Federal Air Program Implementation	Receiving funding under the CAA to support air quality projects and programs Specific air quality projects/programs that have been initiated Federal inspector credentials obtained Applications submitted under the TAR for specific CAA authorities Development of a Tribal Implementation Plan Redesignation of reservation to a Class I area Development of air quality standards CAA permits issued Development of an EPA-tribal MOA/MOU concerning joint implementation of CAA authorities Specific CAA compliance assistance activities conducted Specific CAA compliance inspections conducted Pursue enforcement to address noncompliance

Chapter-by-Chapter Summary of Capacity & Implementation Indicators	
5.0 Protecting Water Resources in Indian Country	
Indicators of Federal Water Program Capacity	Staff has completed appropriate training and acquired baseline knowledge and skills related to the CWA and SDWA Surface water monitoring strategy and associated quality assurance project plan developed and implemented Quality assured surface monitoring data uploaded into STORET database Report completed that analyzes water quality issues impacting the reservation (identifies dischargers and types/amounts of discharge, defines potential human health and environmental impacts of current water quality, provides recommendations for action) Nonpoint source pollution assessment plan developed Nonpoint source pollution management plan developed
Indicators of Federal Water Program Implementation	Receiving funding under the CWA and/or SDWA to support surface water or groundwater quality protection projects and programs Specific water quality projects/programs that have been initiated Federal inspector credentials obtained Drinking water and/or waste water operator certifications obtained Applications for program eligibility submitted for specific CWA and SDWA authorities Water quality standards developed CWA permits issued Development of an EPA-tribal MOA/MOU concerning joint implementation of CWA and/or SDWA authorities Specific CWA or SDWA compliance assistance activities conducted Specific CWA or SDWA compliance inspections conducted; and Pursue enforcement to address noncompliance
6.0 Managing Wastes and Underground Storage Tanks in Indian Country	
Indicators of Tribal Waste Management Program Capacity	Staff has completed appropriate training and acquired baseline knowledge and skills related to RCRA Solid waste assessment completed IWMP developed Solid waste management code/ordinance that supports the IWMP developed and approved by Tribal Council Open dump inventory completed and submitted to EPA and IHS Receiving funding under RCRA or other programs to support waste management and/or UST projects and programs Tribal staff leading circuit rider, train the trainer, and peer-match programs
Indicators of Tribal Waste Management Program Implementation	Open dump(s) closed/cleaned up Obtain federal inspector credentials for federal hazardous waste program Obtain federal inspector credentials for federal UST program Specific programs related to waste management (used oil collection program, junk vehicle program, etc.) developed and implemented Development of an EPA-tribal agreement concerning joint implementation of RCRA authorities Specific RCRA compliance assistance activities conducted Specific RCRA compliance inspections conducted Pursue enforcement to address noncompliance

Chapter-by-Chapter Summary of Capacity & Implementation Indicators	
7.0 Remediating Contaminated Sites and Providing Emergency Response in Indian Country	
Indicators of Tribal Emergency Response and Remediation Program Capacity	Staff has completed appropriate training and acquired baseline knowledge and skills related to CERCLA, EPCRA, and Brownfields Site inventory of properties of concern completed Tribe has established EPCRA-organization (TERC, LEPC, etc.) Reservation lands and resources covered by an EPCRA-compliant local emergency plan Emergency response training and exercises completed Tribe has enacted codes/ordinances and/or regulations establishing oversight and enforcement authority to address contaminated sites Tribe has established cleanup standards for soil and groundwater to guide response and remediation decisions on contaminated sites. Tribe has established mechanisms to provide meaningful opportunities for public participation in site cleanup decisions
Indicators of Tribal Emergency Response and Remediation Program Implementation	Receiving funding under CERCLA, EPCRA, or Brownfields to support emergency response or site remediation projects and programs Tribal Development Plan completed Site remediation activities completed (e.g., the number of sites addressed and the number of acres of contaminated land returned to reuse) Development of an EPA-tribal MOA/MOU concerning joint implementation of CERCLA Development of a support agency cooperative agreement Participation in a DOD or DOE advisory board to provide input on cleanup decisions at federal facilities
8.0 Managing Asbestos, Lead-Based Paint, Pesticides, and Toxics in Indian Country	
Indicators of Federal Toxics Program Capacity	Staff has completed appropriate training and acquired baseline knowledge and skills related to AHERA, FIFRA, and TSCA Inventory of K-12 schools on reservation completed Pesticides needs assessments completed Amount of pre-1978 target housing and child-occupied buildings documented Tribal staff leading circuit rider, train the trainer, and peer-match programs
Indicators of Federal Toxics Program Implementation	Receiving funding under FIRFRA and/or TSCA to support projects or programs related to managing toxics Specific pesticides, lead-based paint, and/or radon projects or programs have been initiated Federal inspector credentials obtained Applications for program eligibility submitted for TSCA authorities Development of an EPA-tribal MOA/MOU concerning joint implementation of FIFRA and/or TSCA authorities Specific FIFRA/TSCA compliance assistance activities conducted; tribal applicator training and certification program is in place Specific FIFRA/TSCA compliance inspections conducted; and Pursue enforcement to address noncompliance

Appendix 10.5

EPA Funding Programs that Support Tribal Environmental Program Capacity Development and/or Implementation Activities

Indian Environmental General Assistance Program [CFDA No. 66.926]: Assistance to build tribal capacity to administer environmental regulatory programs on Indian lands, and technical assistance in the development of multimedia programs. Supports planning, developing, and establishing the capability to implement programs administered by EPA and includes 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. Please note that Appendix 10.2 provides information on using the GAP Online Tool.

Direct Implementation Tribal Cooperative Agreements [CFDA No. 66.473]: Assistance authority to support tribes to work with EPA to directly implement federal environmental programs required or authorized by law in the absence of an acceptable Tribal program.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of CAA

Training, Investigations, and Special Purpose Activities of Federally-Recognized Indian Tribes Consistent with the Clean Air Act, Tribal Sovereignty and the Protection and Management of Air Quality CAA Section 103 (Tribal CAA 103 Project Grants) [CFDA No. 66.038]: Assistance to support tribal efforts to understand, assess and characterize air quality; design methods and plans to protect and improve air quality on tribal lands through surveys, studies, research, training, investigations, and special purpose activities.

Air Pollution Control Support Program (CAA Section 105) [CFDA No. 66.01]: Assistance for planning, developing, establishing, improving, and maintaining adequate programs for the continuing prevention and control of air pollution and/or in the implementation of national primary and secondary air quality standards.

National Clean Diesel Emissions Reduction Program [CFDA No. 66.039]: Assistance through grants and low-cost revolving loans to eligible entities to fund the costs of a retrofit technology that significantly reduces emissions for buses (including school buses), medium heavy-duty or heavy heavy-duty diesel trucks, marine engines, locomotives, or nonroad engines or diesel vehicles or equipment used in construction, handling of cargo (including at port or airport), agriculture, mining, or energy production. In addition, eligible entities may also use funds awarded for programs or projects to reduce long-duration idling using verified technology involving a vehicle or equipment described above, or the creation of low-cost revolving loan programs to finance diesel emissions reduction projects.

Chemical and Emergency Preparedness and Prevention Technical Assistance Grants [CFDA No. 66.810]: Assistance for chemical accident prevention activities that relate to the Risk Management Program under the Clean Air Act Section 112(r), chemical emergency

planning, and community right-to-know programs which are established to prevent or eliminate unreasonable risk to the health and environment of the community.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of CWA and SDWA

  SDWA Capitalization Grants for Drinking Water State Revolving Funds (Drinking Water Infrastructure Grants: Tribal Set-Aside Program) [CFDA No. 66.468]: Assistance to finance infrastructure improvements for public drinking water systems.

  Construction Grants for Wastewater Treatment Works & Capitalization Grants for Clean Water State Revolving Funds (Indian Set Aside Program) [CFDA No. 66.418, 66.458]: Assistance for planning, design and construction of wastewater treatment facilities; low-cost financing to eligible entities within tribal lands for water quality projects including all types of nonpoint source, watershed protection or restoration, and estuary management projects, as well as more traditional municipal wastewater treatment projects.

  Assessment and Watershed Protection Program Grants (CWA Section 104(b)(3)) [CFDA No. 66.480]: Assistance to support a watershed approach to water quality problems and building capacity to develop and implement programs for watershed protection, restoration, and management.

  Surveys, Studies, Investigations, Demonstrations, and Training Grants and Cooperative Agreements – Section 104(b)(3) of the Clean Water Act [CFDA No. 66.436]: Assistance to support the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, reduction, and elimination of water pollution.

  Regional Wetland Program Development Grants (CWA Section 104(b)(3)) [CFDA No. 66.461]: Assistance for building programs which protect, manage, and restore wetlands.

  Water Pollution Control State, Interstate, and Tribal Program Support (CWA Section 106) [CFDA No. 66.419]: Assistance to establish and maintain adequate measures for prevention and control of surface and ground water pollution from both point and nonpoint sources.

  Nonpoint Source Implementation Grants (CWA Section 319) [CFDA No. 66.460]: Assistance for implementing EPA-approved nonpoint source management programs.

  Beach Program Monitoring and Notification Implementation Grants [CFDA No. 66.472]: Assistance for eligible coastal and Great Lakes Tribes to develop and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public.

  Surveys, Studies, Investigations, Demonstrations, and Training Grants – Section 1442 of the Safe Drinking Water Act [CFDA No. 66.424]: Assistance for source water protection program support, operator certification program support, tribal capacity development program support, and administration of drinking water system infrastructure.

State Public Water System Supervision [CFDA No. 66.432]: Assistance for eligible tribes (those that have Primary Enforcement Responsibility for the Public Water System Supervision Program, or are developing such a program) for implementation of Public Water Systems Supervision Program.

State Underground Water Source Protection [CFDA No. 66.433]: Assistance for development and implementation of underground injection control programs.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of RCRA

  Tribal Solid Waste Management Assistance Projects [CFDA No. 66.808]: Assistance to characterize/assess open dumps; develop IWM plans and tribal codes and regulations; develop and implement alternative solid waste management activities/facilities (including equipment acquisition); and develop and implement cleanup, closure, and post-closure programs for open dumps in Indian Country.

  Headquarters and Regional Underground Storage Tank Program [CFDA 66.816]: Assistance to support activities that promote the prevention, compliance, and identification of USTs and to support activities that promote corrective action, enforcement and management of releases from UST systems.

  Underground Storage Tank Prevention, Detection, and Compliance Program [CFDA No. 66.804]: Assistance for the development and implementation of UST programs and for leak prevention, compliance and other activities.

  Leaking Underground Storage Tank Trust Fund Corrective Action Program [CFDA No. 66.805]: Assistance for the oversight and corrective action associated with petroleum releases from federally-regulated USTs, as well as for enforcement activities related to such corrective action.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of CERCLA, EPCRA, and Brownfields

  Superfund State, Political Subdivision, and Indian Tribe Site-Specific Cooperative Agreements [CFDA No. 66.802]: Assistance to conduct site characterization activities at potential or confirmed hazardous waste sites; undertake response planning and implementation actions at sites on the NPL to clean up the hazardous waste sites that are found to pose hazards to human health; and effectively implement the statutory requirements of CERCLA 121(f) which mandates substantial and meaningful involvement.

  Superfund State and Indian Tribe Core Program Cooperative Agreements [CFDA No. 66.809]: Assistance to conduct CERCLA activities which are not assignable to specific sites, but support a recipient's site-specific response program, such as developing procedures for emergency response actions and remediation of environmental and health risks; establishing

legal authorities and enforcement support; hiring and training staff; and activities that support EPA/recipient interaction.

Chemical and Emergency Preparedness and Prevention Technical Assistance Grants [CFDA No. 66.810]: Assistance for chemical accident prevention activities that relate to the Risk Management Program under the Clean Air Act Section 112(r), chemical emergency planning, and community right-to-know programs which are established to prevent or eliminate unreasonable risk to the health and environment of the community.

State and Tribal Site Response Program Grants [CFDA No. 66.817]: Assistance to develop and enhance site response programs, including inventorying brownfields sites, establishing legal authorities for emergency response actions and addressing contaminated sites, including brownfields; hiring and training staff; creating procedures for community involvement and for approval of cleanups; and activities to reduce the number of contaminated sites.

Brownfield Environmental Workforce Development and Job Training Grants [CFDA No. 66.808, 66.813, & 66.815]: Assistance to recruit, train, and place unemployed and under-employed predominantly low-income and minority persons, providing them with the skills needed to secure full-time, sustainable employment in the environmental field and in the assessment and cleanup work taking place in or near their communities.

Brownfields Revolving Loan Fund Assessment and Cleanup Cooperative Agreements [CFDA No.66.818]: Assistance to: inventory, characterize, assess, and conduct planning and community involvement related to Brownfield sites; capitalize a revolving loan fund (RLF) and provide sub-grants to carry out cleanup activities at Brownfield sites; and carry out cleanup activities at Brownfield sites that are owned by the grant recipient.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of AHERA, FIFRA, and TSCA

  Community Action for a Renewed Environmental Program [CFDA No. 66.035]: Assistance to support analyses, studies, evaluations, surveys, investigations, conferences, demonstrations and special purpose projects which empower communities to reduce risks from exposures to toxic pollutants in the air, in the water, and on the land through collaborative action at the local level.

  Consolidated Pesticides Enforcement Cooperative Agreements [CFDA No. 66.700]: Assistance for developing and maintaining comprehensive pesticide programs that address all aspects of pesticide enforcement, and special pesticide initiatives; sponsor cooperative surveillance, monitoring and analytical procedures; and encourage regulatory activities to support and strengthen pesticide compliance programs, including pesticide compliance monitoring, inspection and enforcement activities.

  Pesticide Environmental Stewardship Regional Grants [CFDA No. 66.714]: Assistance to support integrated pest management approaches that reduce the risks associated with pesticide use in agricultural and non-agricultural settings, including: pesticide risk reduction,

pesticide pollution prevention, Integrated Pest Management (IPM) implementation, and children's health issues related to pesticides.

Tribal Education Outreach on Lead Poisoning and Baseline Assessment of Tribal Children's Existing and Potential Exposure and Risks Associated with Lead [CFDA: No. 66.715]: Assistance to support tribal outreach and baseline assessment activities on lead-based paint to identify children's risk to lead hazards and lead poisoning.

Research, Development, Monitoring, Public Education, Training, Demonstrations, and Studies [CFDA No. 66.716]: Assistance support Research, Development, Monitoring, Public Education, Training, Demonstrations, and Studies assistance relating to the protection of public health and the environment from pesticides and potential risk from toxic substances. Projects for safer use of pesticides, including worker protection, certification and training of pesticide applicators, protection of endangered species, tribal pesticide programs, integrated pest management; environmental stewardship.

Pollution Prevention Grants Program [CFDA No. 66.708]: Assistance to implement pollution prevention technical Assistance services for businesses, and promote training in pollution prevention/source reduction techniques.

State Indoor Radon Grants [CFDA No. 66.032]: Assistance to develop and implement programs to assess and mitigate radon-related lung cancer risk.

Surveys, Studies, Investigations, Training Demonstrations, and Educational Outreach Related to Environmental Information and the Release of Toxic Chemicals [CFDA No. 66.612]: Assistance to educate the public on the how to obtain access to and effectively use environmental information, including information about toxic chemical releases and other waste management activities.

Toxic Substances Compliance Monitoring Cooperative Agreements [CFDA No. 66.701]: Assistance to develop and maintain compliance monitoring programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances or mixtures, specifically asbestos, PCB, and lead-based paint; encourage establishment of regulatory activities for lead-based paint and asbestos; and support enforcement activities for asbestos and lead-based paint programs.

TSCA Title IV State Lead Grants Certification of Lead-Based Paint Professionals [CFDA No. 66.707]: Assistance to develop and implement authorized programs that: certify contractors engaged in lead-based paint activities and accredit lead-based paint activities training programs; certify contractors engaged in renovation, repair and painting activities that disturb painted surfaces in most target housing; and/or require distribution of lead-hazard information prior to renovation (pre-renovation education program).

Appendix 10.6

Case Studies

Section 4 Case Study: Protecting Ambient Air Quality in Indian Country

Gila River Indian Community (AZ)

In 1996, the Gila River Indian Community (GRIC) received a CAA Section 103 grant from EPA for the development of an air quality program. The first step in evaluating the air quality priorities of the Community was to assess the sources of pollution within GRIC boundaries. An air quality specialist was hired and in 1997 completed an inventory of pollution sources.

The Community is located just south of Phoenix, Arizona on 374,000 acres and has a reservation population of approximately 15,000 people. The Community has three industrial parks containing approximately 50 industrial plants, as well as several facilities located in out-lying areas. The northern portion of the Community lies in Maricopa County (nonattainment for national air quality standards), and the rest of GRIC is in Pinal County, which is an attainment area.

The inventory that was developed includes emissions from point sources, area sources, on-road mobile, non-road mobile, and non-anthropogenic (not caused by humans) sources of air pollution. The inventory provides emission estimates for carbon monoxide, nitrogen oxides (NOx), sulfur oxides, volatile organic compounds (VOCs), and ozone. Emissions of lead were not calculated since there are no significant sources emitting ambient lead emissions within the Community and leaded gasoline is no longer available in Arizona. Emissions were calculated using several methods including mass balance, best engineering estimates, AP-42 emissions factors, California Air Resources Board (CARB) emission factors, performance test factors, and the State of Arizona emissions factors. Emissions inventories from several individual facilities were developed by private consultants or in-house environmental personnel and were reviewed by the air quality specialist. The inventories were logged on a spreadsheet and compiled with emissions from other categories within the Community.

The 1997 emissions inventory provides baseline information that was compared to future inventories to determine the percent reduction of ambient air pollutants following the implementation of the air quality program. The emissions inventory was also used to determine what type of pollutants to monitor, as well as the placement of monitoring stations within the Community.

The inventory demonstrated that by far the largest source of pollution at GRIC comes from vehicles traveling on Interstate 10, which bisects the Community. I-10 is the major transportation artery between Phoenix and Tucson and will have additional lanes added within the next five years. Emissions sources of precursors to ozone from within all of GRIC totaled 1038 tons of VOCs and 1901 tons of NOx. Emissions from the nonattainment portion of GRIC measured 250 tons of VOCs and 490 tons of NOx per year. Though these

numbers may sound high, the total emissions of VOCs from the GRIC nonattainment area are still less than .002% of all VOC emissions from the Phoenix nonattainment area. NOx emissions compare at less than .006%.

The Gila River Indian Community applied for and received authority in 1998 to implement applicable elements of the CAA for air quality management within its reservation. Under the TAR eligible Tribes are able to generally exercise the same rights and have the same responsibilities as states under the CAA. In August of 2002, the GRIC Council approved the first section of a TIP for air quality management, including Adoption of NAAQS as Community Standards. This ordinance adopts the National Air Quality Standards for six key pollutants: sulfur dioxide, ozone, lead, carbon monoxide, nitrogen oxide, and particulate matter.

The second section of the TIP, currently being drafted, will contain provisions on enforcement and permitting. The third and final section will contain individual ordinances for reservation areas and point sources.

Gila River's primary purpose for developing its TIP is to provide a regulatory structure for minor industrial sources that are currently not permitted by the Tribe or EPA. The Community also plans to include major source (Title V) permitting as part of the TIP. The majority of GRIC's industry is located in a serious nonattainment area for CO, PM10 and ozone and is therefore subject to the rigorous regulatory requirements that are imposed on major sources in "dirty air" areas. GRIC's TIP will provide a mechanism for the Tribe to permit industry that would otherwise be considered a major source by establishing a "Synthetic Minor" permit program. This allows setting restrictions, such as limited hours of operation, and basing permit requirements on actual emissions rather than on potential emissions, as is currently required.

Saint Regis Mohawk Tribe (NY)

Air pollution called particulate matter includes dust, dirt, soot, smoke and liquid droplets directly emitted into the air by sources such as factories, power plants, cars, construction activities, fires, and natural windblown dust. Particles formed in the atmosphere by condensation or the transformation of emitted gases such as SO2 and VOCs are also considered particulate matter. Particles less than 2.5µ (microns) in diameter are formed primarily by combustion or secondary chemical reactions in the atmosphere whereas particles greater than 2.5µ are formed primarily by mechanical processes (construction, demolition, wind erosion). Since particles originate from a variety of mobile and stationary sources, their chemical and physical compositions vary widely depending on location and time of year.

The St. Regis Tribe implemented an air program to better understand the concentrations and pattern of particulate matter. The Tribe collected monitoring data for comparison to the national standards, and also used the data for reporting short-term concentrations and understanding diurnal and episodic behavior of fine particles. The data was also utilized by health scientists investigating exposure patterns (i.e., for asthma studies). Samples were collected continuously with TEOM (Tapered Element Oscillating Microbalance) monitors. These monitors are true "gravimetric" instruments that draw ambient air through a filter at a

constant flow rate, continuously weighing the filter and calculating near real-time (10 minute) mass concentrations. The monitors can collect particulate matter of 10µ or less, and if they are equipped with an optional Automatic Cartridge Collection Unit (ACCU), they can collect particles of 2.5µ and less.

Wampanoag Tribe of Gay Head (Aquinnah) (MA)

The Wampanoag Tribe of Gay Head (Aquinnah) also operates an air monitoring program, in partnership with the Massachusetts Department of Environmental Protection. The program employs an ozone monitor, IMPROVE sampler, and meteorological station. Massachusetts provides quality assurance audits, data entry into AQS, and technical support for the ozone monitoring, while the Tribe operates and maintains the monitoring site. EPA provided the air monitoring equipment and data logger through the Tribal Air Grant Program.

Navajo Nation (AZ, NM, UT)

On October 15, 2004, EPA Region 9 and the Navajo Nation EPA (NNEPA) entered into a Delegation of Authority Agreement. Under the Agreement, the Navajo Nation took over Title V permitting responsibilities for twelve existing major stationary air pollution sources on its reservation, while Region 9 maintained oversight of Part 71 permits for the Navajo Generating Station and the Four Corners Power Plant. Region 9 determined that the Navajo Nation met TAS eligibility requirements and waived the collection of Part 71 permit fees from sources that NNEPA was also collecting fees from under Tribal law. For more information on the Navajo Nation's Title V Operating Permit Program, please visit http://www.epa.gov/region9/air/permit/permitdelegation.html.

Manilaq Association (AK)

In collaboration with the Alaska Department of Environmental Conservation (ADEC), the Maniilaq Association has planned an air toxics monitoring program that includes evaluating indoor and outdoor concentrations of hydrocarbons, aldehydes, and toxic metals in a large community setting as well as a smaller village (300-500 people). Outdoor monitoring is scheduled to occur regularly on every 12th day in both settings. Indoor sampling is planned to occur in sets of four to five households in each setting approximately 12 times a year, with more sampling during the summer and winter months. The ADEC has enlisted Washington State University (WSU) as a partner in the monitoring program. WSU will perform the analytical services, and the data that is collected will be shared with the ADEC and the involved Maniilaq communities. The data may also be used to inform future WSU research projects.

Section 5 Case Study: Protecting Water Resources in Indian Country

The Confederated Salish and Kootenai Tribes of the Flathead Reservation

The Flathead Reservation is located on 1.2 million acres in west-central Montana and has a population of approximately 20,000. It is home to several threatened and endangered species that rely upon wetland ecosystems for food, water, and habitat. Historically, these wetlands have been threatened by farming and ranching activities on the reservation, as well as by construction and development on the reservation and on surrounding lands.

Wetlands Conservation Strategy and Plan – In 1994, the Confederated Tribes completed The Flathead Reservation Wetlands Conservation Strategy as a first step towards wetlands protection and restoration. The Strategy included the Tribes' wetlands goals and objectives, an assessment of wetland resources on the reservation, a wetland inventory QAPP, an evaluation of existing Tribal mechanisms for wetlands protection, plans for improvement, and recommendations for implementation and documentation of progress. The Tribes later developed a Wetlands Conservation Plan as a detailed road map for implementing the Strategy.

Wetlands Inventory and Assessment – As the basis for their Wetlands Conservation Strategy, the Confederated Tribes completed a broad assessment of the wetlands resources on their Reservation. The assessment included the production and digitization of National Wetland Inventory maps, acquisition and classification of aerial wetlands imagery, and completion of vegetation and water quality sampling. Such an assessment allowed the Confederated Tribes to determine meaningful wetlands goals and a plan for reaching their goals.

Nonpoint Source Management Plan – In addition to completing their Wetlands Conservation Strategy and Plan, the Confederated Tribes have developed a plan for managing NPS pollution. This plan details the implementation of best management practices at the watershed level as well as a nutrient loading study to evaluate the contribution of NPS pollution to surface waters (note that CWA Section 319 funds may not be used for the purposes of studies).

Voluntary Activities with Partners and Stakeholders – Because a significant portion of Flathead Reservation lands are owned by non-Indians, and because many government organizations have land holdings or land management responsibilities on the reservation, the Confederated Tribes recognized the importance of working with these groups to protect their surface water quality and wetlands. Coordination between Tribal wetlands and water quality staff and government agencies, private landowners, and nongovernmental organizations is extensive and frequent. For example, the Confederated Tribes partnered with the Montana Department of Transportation to implement a wetland ecosystem restoration project on the reservation. To ensure the long-term success of the project, the Confederated Tribes defined clearly stated goals and objectives, determined performance standards, created a detailed monitoring plan and schedule, and considered operation and maintenance issues. By tracking their results on the restoration project, the Confederated Tribes were better able to plan for additional surface water quality and wetlands projects.

Regulatory Activities – In addition to undertaking voluntary surface water quality and wetlands projects, the Confederated Tribes have instituted regulatory programs to legally protect wetland resources on their reservation. The Tribes' Shoreline Protection Program administers a shoreline protection ordinance as well as an aquatic lands conservation ordinance, which governs the construction of projects on aquatic reservation lands. The Tribes are also approved for TAS to manage their CWA Section 303 Water Quality Standards Program and their CWA Section 401 Water Quality Certification Program. Under these programs, the Confederated Tribes have established water quality criteria, designated uses, and an anti-degradation policy. The Tribes additionally administer a surface water

quality management ordinance that specifies reporting requirements and enforcement mechanisms.

EPA Funding Sources – The Confederated Tribes received funding under CWA Section 104(b)(3) to develop their Wetlands Conservation Strategy and Plan. They also used CWA Section 104(b)(3) funding to conduct public education and outreach on wetlands protection issues, assess their wetlands resources, determine evaluation criteria for their wetlands protection projects, and train staff working on regulatory programs. Although the Tribe did not use other EPA funding sources, most of its activities would also have been covered under a combination of CWA Section 106, CWA Section 319, and GAP funds.

Section 6 Case Study: Managing Wastes and Underground Storage Tanks in Indian Country

Eastern Band of Cherokee Indians Transfer Station (NC)

When the federal RCRA Subtitle D landfill regulations went into effect, the Eastern Band of Cherokee Indians closed its old, non-compliant landfill and constructed a transfer station that can accept 300 tons of waste per day. The transfer station is successful because the Tribe sized and sited it properly during the planning phase and provided employees with extensive training. Before breaking ground on the facility, the Tribe explored three different disposal options, conducted a waste assessment, and investigated tipping fees at several area landfills to negotiate an agreement with a landfill in South Carolina. After the landfill was constructed, seven employees became certified transfer station managers. Source: http://www.epa.gov/osw/wycd/tribal/thirds/cherokee2.htm

The Shoshone-Bannock Tribes DITCA for Underground Storage Tanks (ID)

The Shoshone-Bannock Tribes established a Direct Implementation Tribal Cooperative (DITCA) with EPA in 2004 to develop and implement an UST program on the Reservation. A tribal employee became the first federally-credentialed tribal inspector in the nation for USTs. Ten USTs have been removed and several UST facilities have been removed since the Agreement was signed. Source: http://www.epa.gov/oust/fedlaws/rtc_finalblnkpgs.pdf

Section 7 Case Studies: Remediating Contaminated Sites and Providing Emergency Response in Indian Country

The Gila River Indian Community EPCRA Program (AZ)

The Gila River Indian Community developed an EPCRA program within its Department of Environmental Quality. The program serves as the primary staff support and contact for the Chemical Tribal Emergency Response Committee and receives federal and tribal required chemical inventory reports from facilities with hazardous substances. EPA currently uses the Gila River Indian Community Program as the model TERC for other tribes to view when developing their own programs. The Gila River Indian Community EPCRA Ordinance is available at: http://www.chemicalspill.org/tribal.html. Source: http://www.gilariver.org/index.php/departments-cols5-colw1190-colw2190-col3w190col4w190-col5w190-right0-tribal-departments/78-department-of-environmental-quality.

Section 8 Case Studies: Managing Asbestos, Lead-Based Paint, Pesticides, and Toxics in Indian Country

The Colorado River Indian Tribes Pesticide & Lead-Based Paint Baseline Assessment Programs (AZ)

The Colorado River Indian Tribe (CRIT) Pesticide Program has developed a Pesticide Tracking System which allows it to identify and track pesticide applications, as well as tribal and state pesticide certifications and permit expiration dates. Information in the tracking system is accessed on laptop computers that inspectors carry in the field. Source: http://www.epa.gov/oppfead1/Publications/tribal-brochure.pdf Under a TSCA Section 10 grant, CRIT assesses potential lead-based paint hazards at pre-1978 child-occupied facilities on this reservation. Among other accomplishments, the tribal lead risk assessor identified lead-based paint in a deteriorating condition at a childcare facility. The tribe safely removed the lead-based paint during the summer break, removing a potential source of lead exposure to tribal children.

The Confederated Salish and Kootenai Tribes Water Quality Monitoring Project (MT)

EPA and the U.S. Geological Survey awarded a grant to the Confederated Salish and Kootenai Tribes (CSKT) of Montana to begin baseline water quality monitoring of its 180,000 acres of rivers, lakes, streams, and wetlands. The data generated is intended to direct CSKT to pesticide applications that may be affecting water quality, and to help to focus outreach and inspection activities within the areas of greatest concern. Source: http://www.epa.gov/oppfead1/Publications/tribal-brochure.pdf

The Coeur D'Alene Tribe Circuit Rider (ID)

EPA Region 10 provides funding through a cooperative agreement to the Coeur d'Alene Tribe in northern Idaho to conduct non-regulatory and regulatory pesticide activities on behalf of EPA within that reservation, as well as, for five other tribes in northern Idaho and eastern Washington. The Coeur d'Alene Circuit Rider conducts inspections to assure that pesticides are sold and used properly; provides technical assistance, education, and training; and works closely with Idaho and Washington State pesticide agencies on cross-jurisdictional issues and to share training opportunities. Source: http://www.epa.gov/oppfead1/Publications/tribal-brochure.pdf

The Nunakauyarmiut Tribe Priority Toxics Issues (AK)

Using multiple CARE program grants, the villages of the Nunakauyarmiut Tribe of Toksook Bay have been able to work collaboratively to determine risks and strategies concerning environmental hazards. They are currently executing initiatives that address priority risks identified: lead-acid batteries, household batteries, fluorescent lights, Freon gas, and lead weight sinkers. These wastes are currently being discarded at open dump sites and/or subsistence camps, and potentially exposing children and adults to harmful toxics such as heavy metals, mercury, Freon gas, and lead. Through these initiatives, the Nunakauyarmiut hope to address the environmental stressors that plague the community and threaten their unique traditional lifestyle. Source: http://www.epa.gov/care/community2009.html

The Spirit Lake Tribe Lead Baseline Assessment and Educational Outreach (ND)

EPA has funded two projects with the Spirit Lake Tribe under the Tribal Lead Grant Program: a lead outreach project and a baseline assessment of Tribal children's blood-lead

levels. The outreach grant supports comprehensive outreach to the Tribe, including several lead prevention information sessions. The baseline assessment grant supports efforts to perform blood-lead level tests of Tribal children, as well as, conduct lead risk assessments and inspections of Tribal homes and provide training to Tribal staff. Source: http://www.epa.gov/lead/pubs/grants/tribal2008-spirit.htm

USDA NRCS
United States Department of Agriculture
Natural Resources Conservation Service
Conservation Effects Assessment Project

September 2011

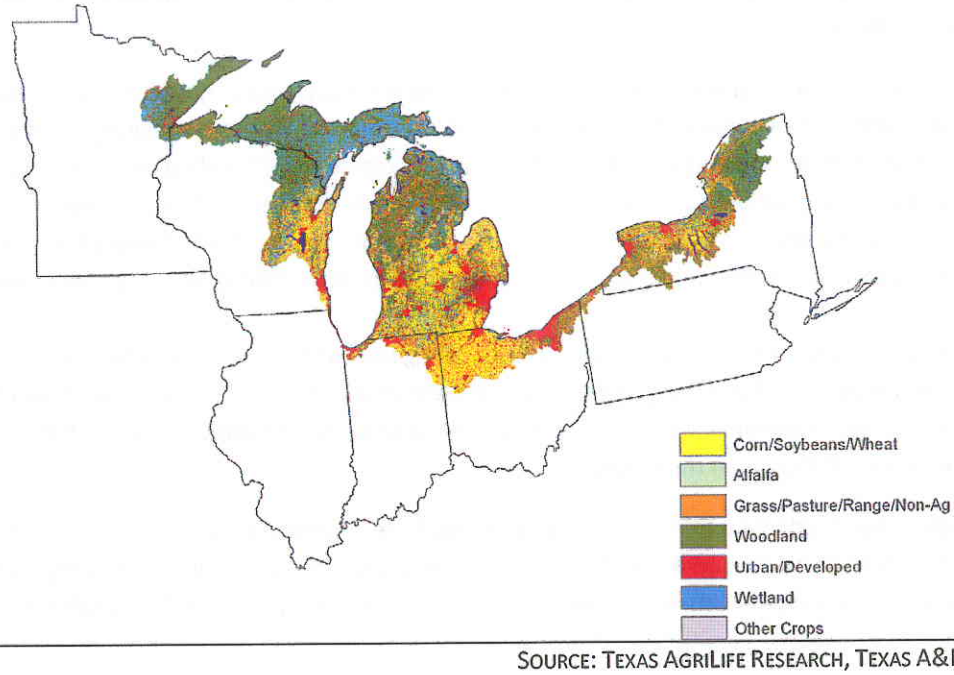
Summary of Findings

Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Great Lakes Region

The U.S. Department of Agriculture's Conservation Effects Assessment Project (CEAP) has undertaken a series of studies designed to quantify the effects of conservation practices on cultivated cropland in the conterminous 48 States. The third study in this series, on the *U.S. portion* of the Great Lakes drainage, is referred to as the Great Lakes Region. This region covers about 174,000 square miles and includes parts of eight states—nearly all of Michigan, significant parts of Wisconsin, New York, and Ohio, and small parts of Minnesota, Indiana, Illinois, and Pennsylvania. Cultivated cropland makes up 24 percent of the land area of the Great Lakes Region (fig. 1). All of the reports in the series are based on computer modeled simulations of conservation outcomes derived from the use of farming and conservation practices as reported by farmers during the period 2003 to 2006.

As with the two previously published reports in the series, CEAP modeling efforts found that farmers have reduced onsite and offsite environmental problems stemming from agricultural activities. Even so, significant additional progress can be achieved, particularly through more rigorous application of nutrient management in combination with erosion-control practices. Simulation modeling showed that conservation practices in the region have reduced edge-of-field losses of sediment, nitrogen, and phosphorus as well as loadings of these materials in rivers, streams, and the Lakes. The resource concern with the most widespread need for additional conservation treatment related to cropland in the region is nitrogen loss in subsurface flows. Additional conservation practices to address excessive phosphorus loss (sediment adsorbed and soluble) from fields are also important but the need for these practices occurs on a smaller proportion of the cropland than treatment needs for nitrogen loss.

Figure 1. *Location of and land cover in the U.S. portion of the Great Lakes drainage*



SOURCE: TEXAS AGRILIFE RESEARCH, TEXAS A&M UNIVERSITY

Study Findings

Voluntary, Incentives-Based Conservation Approaches Are Achieving Results

Farmers have reduced sediment, nutrient, and pesticide losses from farm fields through conservation practice adoption throughout the Great Lakes Region, compared to a no-practice scenario that simulates losses that would be expected if no conservation practices were in use. Although only 17 percent of the cropland in the region is classified as highly erodible land, structural practices for controlling soil erosion are in place on 26 percent of all cropped acres in the region and on 37 percent of the highly erodible cropland. Eighty-two percent of the cropland acres meet criteria for no-till (32 percent) or mulch till (50 percent), and all but 9 percent have evidence of some kind of reduced tillage on at least one crop in the rotation. Ninety-four percent have structural or management practices, or both.

Table 1 shows reductions in losses of sediment and nutrients from farm fields and reductions in loadings of sediment and nutrients to rivers, streams, and the Lakes.

Table 1. Reductions in edge-of-field losses and in loadings of sediment and nutrients from cultivated cropland through existing conservation treatment, Great Lakes Region

Pollutant	Reduction in edge-of-field losses	Reduction in loads to rivers and streams	Reduction in loads to the Lakes (all sources)
	Percent		
Sediment	47	50	12
Total Nitrogen	28	37	21
Total Phosphorus	39	36	20

Opportunities Exist to Further Reduce Sediment and Nutrient Losses from Cultivated Cropland

The need for additional conservation treatment in the region was determined by imbalances between the level of conservation practice use and the level of inherent vulnerability. Areas of sloping soils are more vulnerable to surface runoff and consequently to loss of sediment and soluble nutrients with overland flow of water; areas of level, permeable soils are generally not vulnerable to sediment loss or nutrient loss through overland flow but are more prone to nitrogen losses through subsurface pathways. Three levels of treatment need were estimated:

- **A high level of need** for conservation treatment exists where the loss of sediment and/or nutrients is greatest and where additional conservation treatment can provide the greatest reduction in agricultural pollutant loadings. *Some 2.8 million acres—19 percent of the cultivated cropland in the region—have a high level of need for additional conservation treatment.*
- **A moderate level of need** for conservation treatment exists where the loss of sediment and/or nutrients is not as great and where additional conservation treatment has less potential for reducing agricultural pollutant loadings. *Approximately 5 million acres—34 percent of the cultivated cropland in the region—have a moderate level of need for additional conservation treatment.*
- **A low level of need** for conservation treatment exists where the existing level of conservation treatment is adequate compared to the level of inherent vulnerability. Additional conservation treatment on these acres would provide little additional reduction in sediment and/or nutrient loss. *Approximately 6.9 million acres—47 percent of the cultivated cropland in the region—have a low level of need for additional conservation treatment.*

Table 2 shows potential reductions in sediment, nitrogen, and phosphorus losses and delivery to rivers and streams in the Great Lakes Region and to the Lakes themselves. Potential reductions are those that could be achieved from existing levels through implementation of suites of conservation practices on cropped acres having high or moderate levels of treatment need.

Table 2. Potential for further reductions in edge-of-field losses and in loadings of sediment and nutrients from cultivated cropland through comprehensive conservation treatment of high- and moderate treatment-need cropland, Great Lakes Region

Pollutant	Potential reduction in edge-of-field losses	Potential reduction in loads to rivers and streams	Potential reduction in loads to the Lakes (all sources)
	Percent		
Sediment	64	58	9
Total Nitrogen	31	37	16
Phosphorus	36	33	15

Comprehensive Conservation Planning and Implementation Are Essential

The resource concern with the most widespread need for additional conservation treatment related to cropland in the region is nitrogen loss in subsurface flows. Additional conservation practices are also needed to address excessive phosphorus loss (sediment adsorbed and soluble) from fields, but on a smaller proportion of the region's cropland.

About 16 percent of the cropped acres have a high need for treatment to reduce subsurface losses of nitrogen, and 29 percent have a moderate need. Twelve percent of cropped acres in the region have a moderate need for additional treatment to reduce phosphorus loss. Suites of practices that include both soil erosion control and nutrient management—appropriate rate, form, timing, *and* method of application—are required to simultaneously address soil erosion and nutrient losses in runoff and through leaching. Increased water infiltration and loss of nutrients through subsurface pathways can be unintended consequences of using structural and residue management practices to control runoff, erosion, and sedimentation without appropriate nutrient management.

Targeting Enhances Effectiveness and Efficiency

Targeting critical acres significantly improves the effectiveness of conservation practice implementation. Use of additional conservation practices on acres that have a high need for additional treatment—acres most prone to runoff or leaching and with low levels of conservation practice use—can reduce sediment and nutrient per-acre losses by about twice as much on average as treatment of acres with a moderate level of need. Even greater efficiencies can be achieved when comparing treatment of high- or moderate-need acres to low-treatment need acres.

Conservation Practice Effects on Water Quality

Reductions in field-level losses due to conservation practices, including land in long-term conserving cover, are expected to improve water quality in streams and rivers in the region. Figures 2, 3, and 4 summarize the extent to which conservation practices on cultivated cropland acres have reduced, and can further reduce, sediment, nitrogen, and phosphorus loads in the Great Lakes Region, on the basis of the model simulations. In each figure, the top map shows delivery from cultivated cropland to rivers and streams within the region and the bottom map shows delivery from all sources to the Lakes after accounting for losses and gains through instream processes. On all three figures—

- "baseline" refers to estimates of conditions based on farming and conservation practices in use during 2003–06;
- "no-practice scenario" refers to conditions that would be expected if no conservation practices were in use;
- "critical under-treated acres" refers to land with a high level of conservation treatment need, as defined on page 2;
- "all under-treated acres" refers to land with high and moderate levels of conservation treatment need, as defined on page 2; and
- "background" refers to expected levels of sediment and nutrient loadings if there were no acres were cultivated in the region. Estimates of background loadings simulate a grass and tree mix cover without any tillage or addition of nutrients or pesticides for all cultivated cropland acres in the watershed. Background loads also include loads from all other land uses—hayland, pastureland, rangeland, horticultural land, forest land, and urban land—as well as point sources.

The effects of practices in use during 2003–06 are seen by contrasting loads for the baseline conservation condition to loads for the no-practice scenario. The effects of additional conservation treatment on loads are seen by contrasting the loads for the baseline condition to either loads for treatment of acres with a *high* level of treatment need (2.84 million critical under-treated acres), or loads for treatment of all under-treated acres (7.9 million acres with either a *high* or *moderate* level of treatment need).

Sediment Loss

In figure 2, the top map shows that the use of conservation practices has reduced ***sediment loads delivered from cropland to rivers and streams*** in the region by 50 percent from conditions that would be expected without conservation practices. Application of additional conservation practices would reduce baseline sediment loads delivered to rivers and streams within the region by 25 percent by treating acres with a "high" level of treatment need. Treating ALL under-treated acres (acres with either a "high" or "moderate" need for treatment) would reduce baseline sediment loads delivered to rivers and streams within the region by 58 percent.

The bottom map shows that the use of conservation practices on cropland has reduced ***sediment loads delivered to the Lakes from all sources*** by 12 percent from conditions that would be expected without conservation practices. Application of additional conservation practices would reduce baseline sediment loads delivered to the Lakes by 4 percent by treating acres with a "high" level of treatment need. Treating ALL under-treated acres (acres with either a" high" or "moderate" need for treatment) would reduce baseline sediment loads delivered to the Lakes by 9 percent.

Nitrogen Loss

In figure 3, the top map shows that the use of conservation practices has reduced ***total nitrogen loads delivered from cropland to rivers and streams*** in the region by 37 percent from conditions that would be expected without conservation practices. Application of additional conservation practices would reduce baseline total nitrogen loads delivered to rivers and streams within the region by 18 percent by treating acres with a "high" level of treatment need. Treating ALL under-treated acres (acres with either a" high" or "moderate" need for treatment) would reduce baseline nitrogen loads delivered to rivers and streams within the basin by 37 percent.

The bottom map shows that the use of conservation practices on cropland has reduced ***total nitrogen loads delivered to the Lakes from all sources*** by 21 percent from conditions that would be expected without conservation practices. Application of additional conservation practices would reduce baseline total nitrogen loads delivered to the Lakes by 8 percent by treating acres with a "high" level of treatment need. Treating ALL under-treated acres (acres with either a "high" or "moderate" need for treatment) would reduce baseline nitrogen loads delivered to the Lakes by 16 percent.

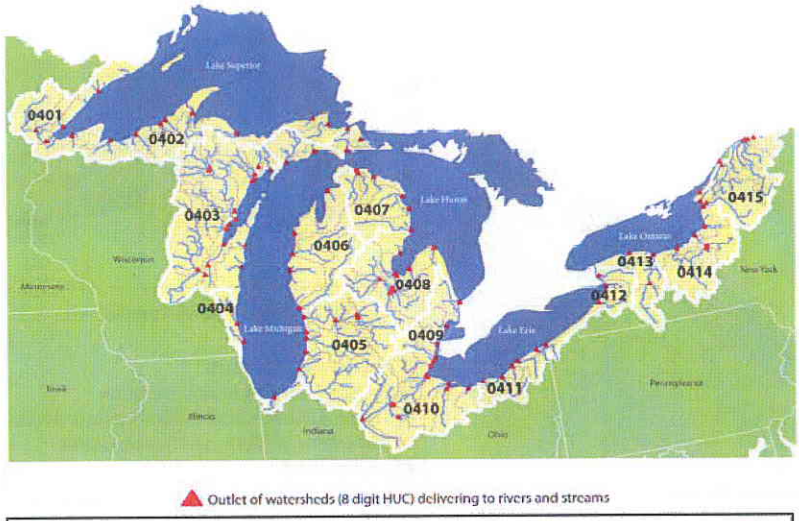
Phosphorus Loss

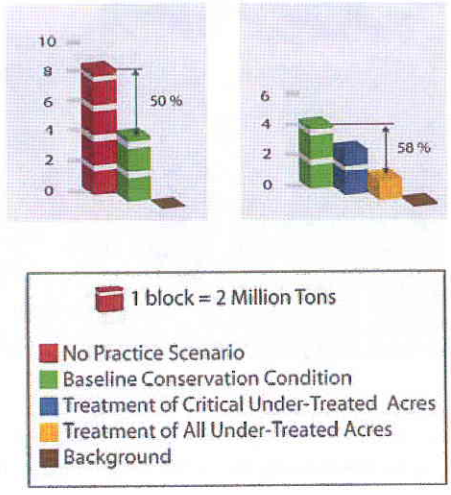
In figure 4, the top map shows that the use of conservation practices has reduced ***total phosphorus loads delivered from cropland to rivers and streams*** in the region by 36 percent from conditions that would be expected without conservation practices. Application of additional conservation practices would reduce baseline total phosphorus loads delivered to rivers and streams by 11 percent by treating acres with a "high" level of treatment need. Treating ALL under-treated acres (acres with either a "high" or "moderate" need for treatment) would reduce baseline phosphorus loads delivered to rivers and streams within the basin by 33 percent.

The bottom map shows that the use of conservation practices on cropland has reduced ***total phosphorus loads delivered to the Lakes from all sources*** by 20 percent from conditions that would be expected without conservation practices. Application of additional conservation practices would reduce baseline total phosphorus loads delivered to the Lakes by 5 percent by treating acres with a "high" level of treatment need. Treating ALL under-treated acres (acres with either a "high" or "moderate" need for treatment) would reduce baseline phosphorus loads delivered to the Lakes by 15 percent.

Figure 2. Summary of the effects of conservation practices on sediment loads in the Great Lakes Region

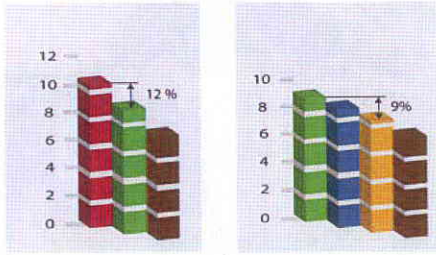
Sediment delivered from cultivated cropland to rivers and streams in the Great Lakes Basin

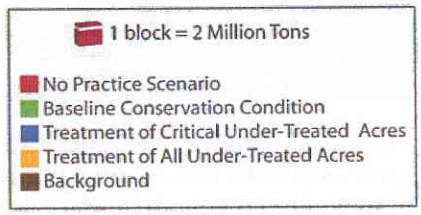




Critical under-treated acres are acres with a high need for additional treatment.
Under-treated acres have either a high or moderate need for additional treatment.

Sediment delivered to the Great Lakes (all sources-instream loads)



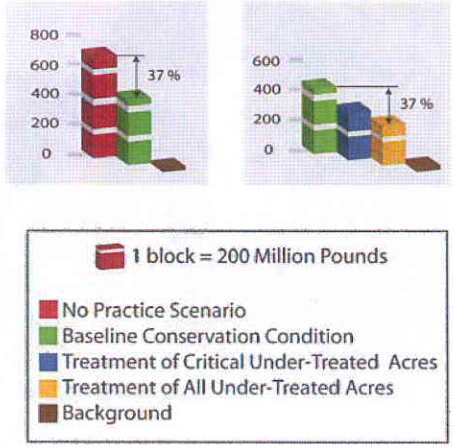


Critical under-treated acres are acres with a high need for additional treatment.
Under-treated acres have either a high or moderate need for additional treatment.

Figure 3. Summary of the effects of conservation practices on total nitrogen loads in the Great Lakes Region

Nitrogen delivered from cultivated cropland to rivers and streams in the Great Lakes Basin

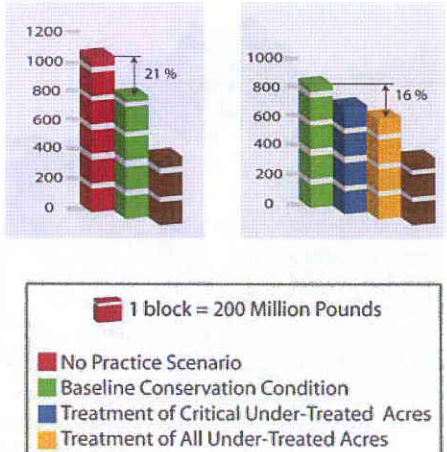
▲ Outlet of watersheds (8 digit HUC) delivering to rivers and streams



Critical under-treated acres are acres with a high need for additional treatment.
Under-treated acres have either a high or moderate need for additional treatment.

Nitrogen delivered to the Great Lakes (all sources-instream loads)

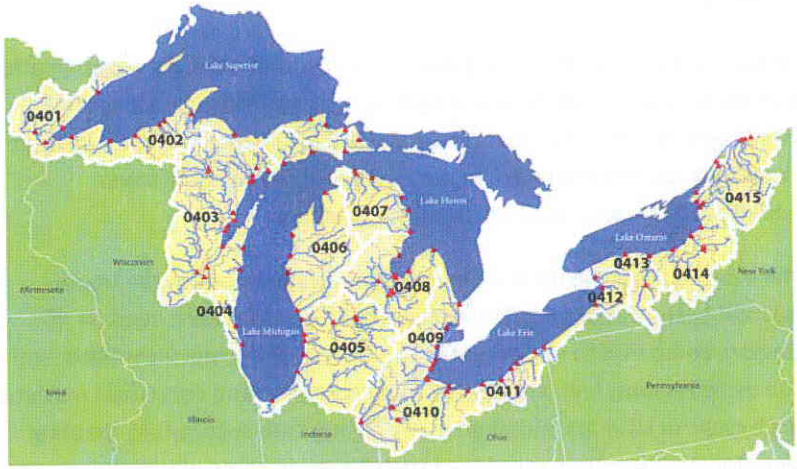
▲ Outlet of watersheds (8 digit HUC) delivering directly into the Lakes



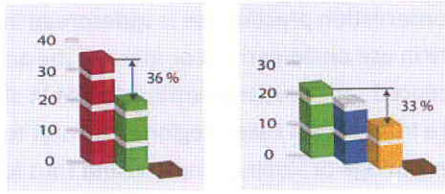
Critical under-treated acres are acres with a high need for additional treatment.
Under-treated acres have either a high or moderate need for additional treatment.

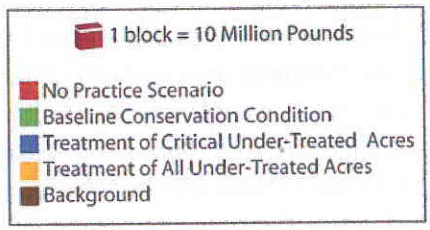
Figure 4. *Summary of the effects of conservation practices on total phosphorus loads in the Great Lakes Region*

Phosphorus delivered from cultivated cropland to rivers and streams in the Great Lakes Basin



▲ Outlet of watersheds (8 digit HUC) delivering to rivers and streams

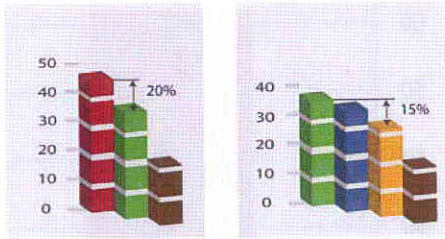


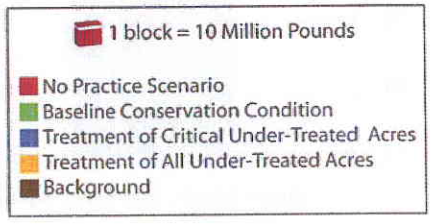


Critical under-treated acres are acres with a high need for additional treatment.
Under-treated acres have either a high or moderate need for additional treatment.

Phosphorus delivered to the Great Lakes (all sources-instream loads)

▲ Outlet of watersheds (8 digit HUC) delivering directly into the Lakes





Critical under-treated acres are acres with a high need for additional treatment.
Under-treated acres have either a high or moderate need for additional treatment.

Regional Comparisons

The differences in findings among the three regional studies completed so far—Upper Mississippi River Basin, Chesapeake Bay Region, and Great Lakes Region—are more in degree than in kind. Table 2 compares several factors across the three regions. By most measures, the inherent vulnerability factors for sediment and nutrient losses are less severe in the Great Lakes Region than in the other two.

Conservation practice use is widespread in all three regions. Structural or tillage practices used alone or in combination are in use on 94 percent or more of the acres in all regions, and farmers' use of structural and tillage practices has reduced sediment and nutrient losses in all three regions. The lower percentage of structural erosion control practice use in the Great Lakes Region is due not to a lessened conservation ethic in the region but to the much lower percentage of sloping cropland and thus less need for terraces and other structural practices.

Reducing the loss of nitrogen through subsurface pathways is the most extensive conservation need in the Upper Mississippi and the Chesapeake as well as the Great Lakes. Controlling these losses is a high treatment need on 45 percent of cropped acres in the Great Lakes Region, compared to 47 percent in the Upper Mississippi River Basin and 62 percent in the Chesapeake Bay Region. In all three regions, few farmers are using complete and consistent nutrient application *rate, form, timing,* and *method* on all crops in all years, although many farmers are successfully meeting one or more of these criteria. Although conservation practice use has reduced such losses, in some places the effectiveness of erosion-control practices in reducing runoff and erosion has encouraged soil infiltration of water and soluble nutrients.

Figure 5. *Extent of high- and moderate-treatment-need cropland in the Upper Mississippi River Basin, Chesapeake Bay Region, and Great Lakes Region*

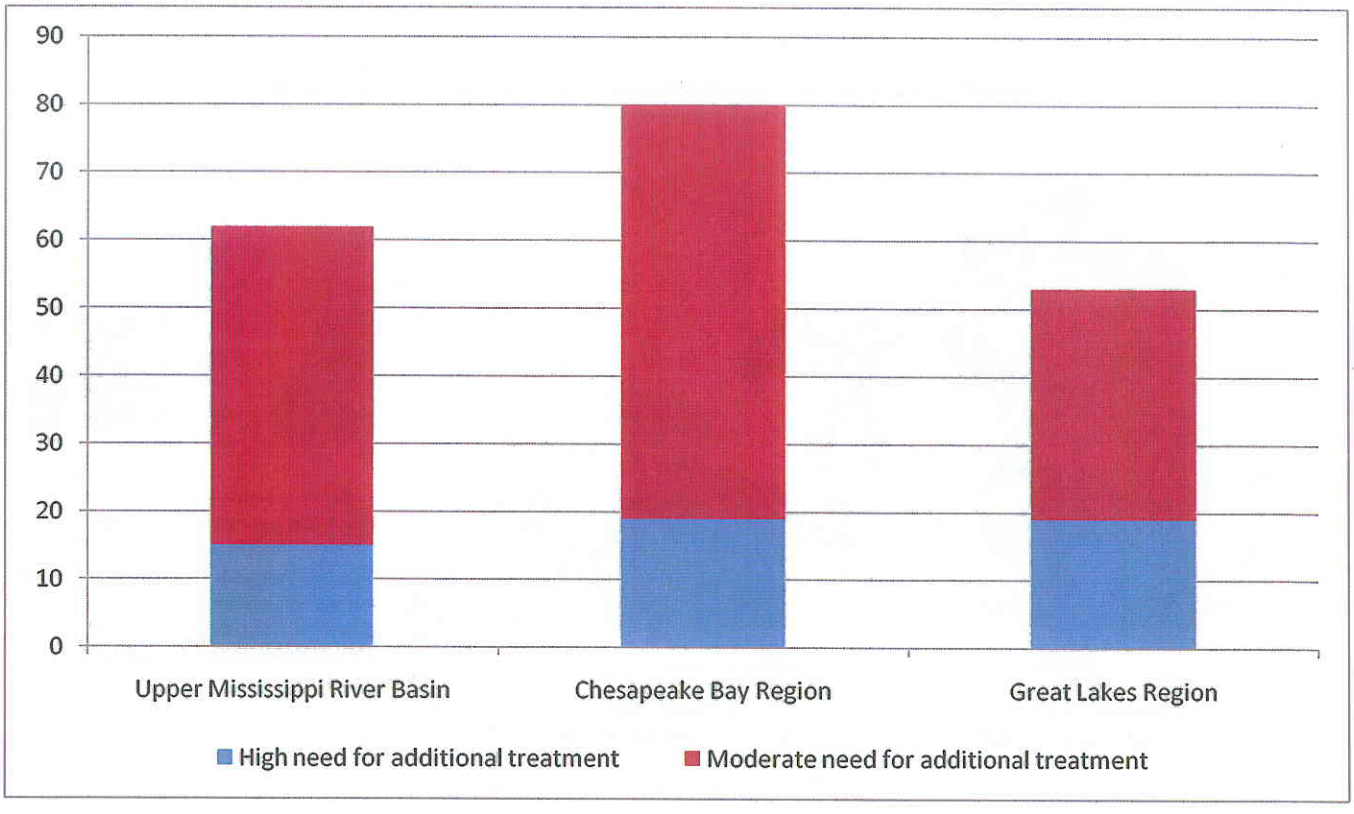


Table 3. Comparison of conservation factors in the Upper Mississippi River Basin, Chesapeake Bay Region, and Great Lakes Region

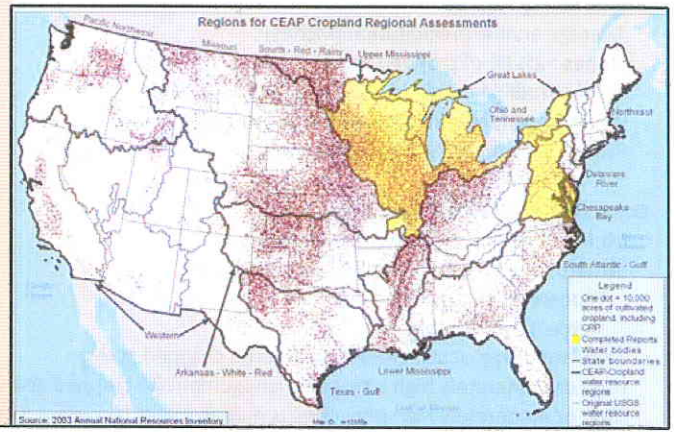
Factor	Upper Mississippi River Basin	Chesapeake Bay Region	Great Lakes Region
Basin Overview			
Total acres (million acres excluding water)	118.2	42.7	73.3
Acres of cultivated cropland (million acres)	63.5	4.6	17.8
Percent cultivated cropland (excluding water)	54	11	24
Percent urban land (excluding water)	8	9	10
Vulnerability Factors			
Average annual precipitation (inches)	34	42	34
Slopes >2% (% of cropped acres)	42	60	34
Highly erodible cropland (% of cropped acres)	18	44	17
Prone to surface water runoff (% of cropped acres)	13	23	6
Prone to leaching (% of cropped acres)	9	46	30
Conservation Practice Use (2003–06)			
Mulch till or no-till (% cropped acres)	91	88	82
Structural practices for water erosion control:			
Percent of all cropped acres	45	46	26
Percent of HEL cropland	72	63	37
Reduced tillage or structural practices (% cropped acres)	96	96	94
High or moderately high nitrogen management (% cropped acres)	41	38	45
High or moderately high phosphorus management (% cropped acres)	54	38	47
Sediment and nutrient losses, baseline* (average annual)			
Wind erosion (tons/acre)	0.23	0.27	0.85
Sediment (tons/acre)	0.9	1.2	0.6
Nitrogen (surface) (pounds/acre)	9	9	6
Nitrogen (subsurface) (pounds/acre)	19	33	26
Phosphorus lost to surface water (pounds/acre)	2.7	3.7	2.1
Edge-of-Field Reductions Due to Conservation Practice Use (2003-06)			
Sediment (% reduction)	61	55	47
Nitrogen (surface) (% reduction)	45	42	43
Nitrogen (subsurface) (% reduction)	9	31	30
Total Phosphorus (% reduction)	44	40	39
Conservation treatment needs			
Most extensive need:	Subsurface nitrogen loss	Subsurface nitrogen loss	Subsurface nitrogen loss
Treatment need for one or more resource concerns:			
Cropland with high need (% of cropped acres)	15	19	19
Cropland with moderate need (% of cropped acres)	45	61	34
High or moderate need (% of cropped acres)	60	80	53
High or moderate need by resource concern:			
Wind erosion (% of cropped acres)	0	0	2
Sediment loss due to water erosion (% of cropped acres)	10	24	6
Nitrogen loss with surface water (% of cropped acres)	24	24	6
Nitrogen loss in subsurface flows (% of cropped acres)	47	62	45
Phosphorus loss (% of cropped acres)	22	51	12

*"baseline" refers to estimates of conditions based on farming and conservation practices in use during 2003–06.

River Basin Cropland Modeling Study Reports The U.S. Department of Agriculture initiated the Conservation Effects Assessment Project (CEAP) in 2003 to determine the effects and effectiveness of soil and water conservation practices on agricultural lands. The CEAP report *Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Great Lakes Region* is the third is a series of studies covering the major river basins and water resource regions of the contiguous 48 United States. It was designed to quantify the effects of conservation practices commonly used on cultivated cropland in the Chesapeake Bay Watershed, evaluate the need for additional conservation treatment in the region, and estimate the potential gains that could be attained with additional conservation treatment. This series is a cooperative effort among USDA's Natural Resources Conservation Service and Agricultural Research Service, Texas AgriLife Research of Texas A&M University, and the University of Massachusetts.

Upper Mississippi River Basin (released June 2010)
Chesapeake Bay Region (released March 2011)
Great Lakes Region (released September 2011)
Ohio-Tennessee River Basin
Missouri River Basin
Arkansas-White-Red River Basins
Lower Mississippi River Basin
Delaware River Watershed
Northeast Region
South Atlantic-Gulf Region
Texas Gulf Water Resource Region
Souris-Red-Rainy Water Resource Regions
Pacific Northwest and Western Water Resource Regions

Expect release of these reports through early 2012.



Methodology Used for the Cropland Assessments
A simulation model was used to estimate the effects of conservation practices that were in use during the period 2003 to 2006, but does not capture practices implemented since then. The NRCS National Resources Inventory, a statistical survey of conditions and trends in soil, water, and related resources on U.S. non-Federal land, provided the statistical framework. Information on farming activities and conservation practices was obtained from a farmer survey. Using those data, conservation practice effects were evaluated in terms of—

- reductions in losses of sediment, nutrients, and pesticides from farm fields;
- enhancement of soil quality through increases in soil organic carbon in the field; and
- reductions in instream loads of sediment, nutrients, and pesticides in the region's rivers and streams.

The physical process models used in this study are mathematical representations of the real world designed to estimate complex and varying environmental events and conditions. To estimate the effects of conservation practices, model simulation results were used to make *relative comparisons* between two model runs—one that includes conservation practices and one that excludes conservation practices. All other aspects of the input data and the model parameters were held constant. Model results are scientifically defensible to the level of 4-digit hydrologic unit code (HUC) (subregion) watersheds.

Difference between these two scenarios represents the benefits of the accumulation of conservation practices currently in place on the landscape.

The assessment includes conservation practices in use regardless of how or why they came to be in use. It is not restricted to only those practices associated with Federal conservation programs; the assessment also includes the conservation efforts of States, independent organizations, and individual landowners and farm operators.

To view or download a PDF version of the full report, visit the CEAP Web site at http://www.nrcs.usda.gov, and follow links to Technical Resources / Natural Resources Assessment / CEAP.

R5TOC Tribal Caucus Meeting

AGENDA

Tues., November 29, 2011

8:30am – 3:30pm

Oneida, WI
(Norbert Hill Center:
2nd Floor Conf. Room)

- 8:00am – Continental Breakfast
- 8:30am - Call to Order
- 8:35am - Roll Call
- 8:40am - Approval of Previous Meeting Minutes
- 8:45am - Priority Development
  - facilitated session on strategy
  - Identify
- 10:45am – Break
- 11:00am – Ceded Territories
- 12:00 noon – Lunch (On Your Own)
- 1:15pm – GAP Guidebook
  - Invited - Luke Jones
- 1:45pm – Grants Consistency Workgroup Status Update
- 2:00pm – NTOC Update
  - Invited – Monica Hedstrom
- 2:30pm – Reinvigoration Item(s)
- Next Meeting Date
- Adjournment

Tribe	EQIP	WHIP
Bad River	$0.00	$0.00
FCPC	$73,589.45	$0.00
Ho-Chunk	$0.00	$0.00
LCO	$30,000.00	$5,000.00
LDF	$63,508.00	$5,770.00
Menom	$0.00	$1,260.00
Mole Lake	$107,520.00	$6,000.00
Oneida	$35,250.15	$2,784.00
Red Cliff	?	?
St Croix	$38,472.00	$0.00
Stockbridge	$17,058.80	$0.00
	$365,398.40	$20,814.00