UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of
International and
Tribal Affairs

April 4, 2022

Re: Notification of Consultation and Coordination on Draft 2022 Guidance on the Award and Management of Indian Environmental General Assistance Program Assistance Agreements for Tribes and Intertribal Consortia (2022 GAP Guidance)

Dear Honorable Leader:

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with federally recognized tribes to receive input on the draft 2022 Guidance on the Award and Management of Indian Environmental General Assistance Program Assistance Agreements for Tribes and Intertribal Consortia (2022 GAP Guidance). When final, the 2022 GAP Guidance will replace the 2013 Guidance and will be effective for negotiating and awarding GAP financial assistance agreements.

In 2018, EPA consulted with Tribes to hear the full range of tribal perspectives and to identify ways to improve the 2013 GAP Guidance and/or its implementation. During tribal consultation and in related tribal engagement efforts, EPA received more than 800 comments from tribal governments, intertribal consortia, and tribal partnership groups; a summary of the comments received are located at https://www.epa.gov/tribal/gap-guidance-evaluation-phase-1-tribal-comment-summary[1]. In 2021, EPA established a GAP Revisions workgroup, including 30 tribal volunteers from across the regions and including intertribal consortia, to assist in the development of revisions to the 2013 Guidance. The GAP Revisions workgroup established draft language and/or recommendations on the tone and structure of the GAP Guidance, incorporating technical assistance, the relationship between performance management and EPA-Tribal Environmental Plans (ETEPs), and expanding flexibilities using test drives and Performance Partnership Grants (PPGs).

EPA is now initiating a tribal consultation and coordination process seeking input on draft 2022 GAP Guidance. This draft Guidance is the result of the efforts of the GAP Revision workgroup and where possible, addresses concerns and proposed revisions identified in the 2018

[1] A summary of feedback from Tribes on the 2013 GAP Guidance received between 2013 and 2017 is available to tribes on EPA's GAP website at https://www.epa.gov/tribal/summary-past-feedback-2013-gap-guidance.

GAP Guidance consultation process. EPA's response to comments received in the 2018 consultation is located here.

This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes). EPA invites you and your designated consultation representative(s) to participate in this process. EPA's anticipated timeline for the consultation and coordination period will extend from **Monday, April 4 – Tuesday, August 2, 2022**. EPA anticipates issuing final GAP Guidance effective October 1, 2022.

Enclosed is a consultation and coordination plan that includes a description of the action under consultation and the process EPA intends to follow, including a timeline for the consultation and coordination period and information on how you can provide input on this action. This information is also available on EPA's Tribal Consultation Opportunities Tracking System (TCOTS) at https://tcots.epa.gov.

The official EPA contact person for this consultation and coordination process is Lisa Berrios, Senior Advisor in the American Indian Environmental Office. Please do not hesitate to contact Ms. Berrios at berrios.lisa@epa.gov or at (202) 564-1739 should you have any questions.

I look forward to hearing from you on this important matter.

Sincerely,

JoAnn K Chase

JoAnn Chase, Director
American Indian Environmental Office
Office of International and Tribal Affairs

Attachments

cc: Jane Nishida, Assistant Administrator, Office of Internation and Tribal Affairs
Office of Regional Administrator Deputy Directors
Regional Indian Program Coordinators
Lisa Berrios, Senior Advisor, American Indian Environmental Office

Attachment 1: Consultation Plan for EPA's Draft 2022 GAP Guidance

INTRODUCTION

At the October 2017 National Tribal Operations Committee meeting, OITA committed to reviewing the effectiveness of the 2013 GAP Guidance and to identify opportunities to improve the guidance and its implementation. The goal of the evaluation was to hear the full range of tribal perspectives and identify ways to improve the GAP Guidance and/or its implementation to better achieve the purpose of GAP by assessing achievements and challenges associated with implementation of the 2013 GAP Guidance.

From April to August 2018, OITA participated in more than 15 meetings with tribal environmental professionals to discuss the evaluation and gather valuable tribal input about how to improve the 2013 GAP Guidance. OITA also initiated tribal consultation with tribal leaders to inform future improvements. The consultation opportunity began June 1, 2018 and closed August 31, 2018. Forty tribal governments, intertribal consortia, and tribal partnership groups submitted written comments during this period. OITA gathered and categorized over 800 tribal comments received during consultation and coordination engagements in 2018. Themes include:

- EPA needs to follow-through on national performance tracking and reporting without shifting burden to tribes
- Improve clarity and national consistency; minimize administrative workload
- Increase flexibility so that tribes can focus on what is most important to them; do not treat all tribes the same
- Do not impose restrictions on GAP funds that are not required by the GAP Act; interpret the Act broadly
- Rescind the 2013 GAP Guidance and use the 2006 GAP Guidance as a starting point for revisions/improvements
- Provide GAP funding for program implementation beyond waste programs
- Remove burdensome documentation requirements for intertribal consortia
- Clarify the connection between the GAP Guidance and Performance Partnership Grants (PPGs)

Early in 2019, OITA launched an internal GAP Guidance Evaluation (GGE) Workgroup with members from across EPA headquarters offices and regions to review tribal input and consider initial recommendations. In 2021, EPA established the GAP Revisions workgroup, including 30 tribal volunteers from across the regions and including intertribal consortia, to assist in the development of revisions to the 2013 Guidance. The GAP Revisions workgroup established draft language and/or recommendations on the tone and structure of the GAP Guidance, incorporating technical assistance, the relationship between performance management and EPA-Tribal Environmental Plans (ETEPs), and expanding flexibilities using test drives and PPGs. Additionally, OITA/AIEO has been actively engaging with the National Tribal Caucus throughout the evaluation. The "EPA-NTC GAP Workgroup" meets regularly by conference

call. The six members include three NTC representatives, one AIEO representative, and two EPA regional representatives.

The purpose of this consultation is to receive input from tribal governments on the draft 2022 GAP Guidance.

QUESTIONS TO CONSIDER

Tribes are welcome to comment on any aspect of EPA's 2022 Draft GAP Guidance. Specific aspects of the Guidance that the Agency would appreciate input on include the following:

1. The Draft GAP Guidance seeks to achieve greater clarity and accessibility to the public. Does the structure, tone, and the use of graphics improve the readability of the guidance? What additional improvements are needed so that the concepts, terms, and requirements of both EPA and GAP award recipients are easily understood?

2. As part of this consultation and coordination opportunity, EPA is providing revised capacity indicators for review, discussion, and input. The revised capacity indicators will replace the existing capacity indicators in the 2013 GAP Guidance, Appendix 1, Guidebook for Building Tribal Environmental Program Capacity. Some of the revised capacity indicators are new and others are carried forward from Appendix 1. Specifically, EPA is seeking input on whether the revised capacity indicators appropriately reflect the significant milestones that can be achieved along the pathway of developing tribal environmental program capacity? The revised capacity indicators are available here.

3. During the 2018 consultation on revisions to the 2013 GAP Guidance, EPA received comments that the capacity indicators included in Appendix 1, Guidebook for Building Tribal Environmental Program Capacity, were beneficial in providing a roadmap for tribal consideration when developing environmental programs. To maintain this utility, EPA proposes to repackage the capacity indicators in Appendix 1 as a technical assistance resource. A sample chapter of the resource is here. EPA is seeking input on the usefulness of this type of document for tribal environmental program development. What additional types of information would be useful?

4. In the Draft GAP Guidance, test drives are designed to support the capacity development of environmental programs the Tribe is seeking to administer through delegation, authorization, or approval or under tribal laws and regulations. Does the Draft GAP Guidance provide sufficient information to determine whether a program might be eligible for a test drive and does it clarify how to apply for this flexibility? If you are a Tribe who has received program delegation, authorization, or approval, did you test drive the program prior to implementation? If yes, please provide examples and whether the test drive was beneficial to program development. If not, do you think a test drive for evaluation purposes would have been useful to your program development? Overall, what other information would be helpful to know about program evaluation through test drives?

CONSULTATION TIMELINE AND OUTREACH ACTIVITIES

Tribal governments may submit written comments on the Guidance through August 2, 2022. AIEO requests that Tribes consider the consultation questions in their responses, in addition to any other feedback. Tribes may submit written comments via email to Lisa Berrios at berrios.lisa@epa.gov.

Tribal governments may request one-on-one consultation meetings with EPA. EPA will work to accommodate these requests to the greatest extent possible. If you are interested in requesting consultation with the Agency, please contact Lisa Berrios (contact information above) to make arrangements prior to the close of consultation.

OITA has also scheduled several coordination opportunities for Tribes to provide verbal comments during this consultation and coordination process. The table below outlines opportunities for Tribes to receive information, ask questions and provide comments on this action. All consultation and coordination information is also available on EPA's tribal portal website: https://tcots.epa.gov. Regions and Tribes may also consider inviting OITA to participate in meetings between April and August to provide additional engagement opportunities for discussing the draft Guidance.

Coordination Activities and Timeline	Date
CONSULTATION & COORDINATION PROCESS BEGINS - Consultation notification letter emailed	Monday, April 4, 2022
National Notification Call to National Tribal Caucus - Provides NTC representatives with an overview of the consultation scope, process, & timeline	Monday, April 4, 2022 2:00-4:00 EDT
National Notification Call to Tribal Leaders - Provides Tribes with an overview of the consultation scope, process, & timeline Conference call line: (202)991-0477 Conference call code: 292 282 927# Webinar access via computer on mobile app: Click here to join the meeting	Wednesday, April 20, 2022 2:00 PM – 3:30 PM EDT
Facilitated Discussion: Overview of the draft 2022 GAP Guidance - Provides Tribes with an opportunity to ask questions and provide comments Conference call line: (202)991-0477 Conference call code: 614 770 08# Webinar access via computer on mobile app: Click here to join the meeting	Tuesday, April 26, 2022 2:30 PM – 4:00 PM EDT
Facilitated Discussion: The Scope of GAP - Provides Tribes with an opportunity to ask questions and provide comments Conference call line: (202)991-0477	Wednesday, May 11, 2022 3:00 PM – 4:30 PM EDT

Conference call code: 898 649 979# Webinar access via computer on mobile app: Click here to join the meeting	
Facilitated Discussion: Performance Management, ETEPs and Indicators - Provides Tribes with an opportunity to ask questions and provide comments Conference call line: (202)991-0477 Conference call code: 109 662 846# Webinar access via computer on mobile app: Click here to join the meeting	Thursday, May 26, 2022 2:00 PM – 3:30 PM EDT
Facilitated Discussion: GAP Flexibilities - Provides Tribes with an opportunity to ask questions and provide comments Conference call line: (202)991-0477 Conference call code: 849 833 387# Webinar access via computer on mobile app: Click here to join the meeting	Wednesday, June 15, 2022 3:30 PM – 5:00 PM EDT
Facilitated Discussion: Intertribal Consortia and GAP - Provides Tribes with an opportunity to ask questions and provide comments Conference call line: (202)991-0477 Conference call code: 455 231 020# Webinar access via computer on mobile app: Click here to join the meeting	Thursday, June 23, 2022 1:30 PM – 3:00 PM EDT
Informational Webinar for intertribal consortia - Provides intertribal consortia with an overview and an opportunity to ask questions and provide feedback Conference call line: (202)991-0477 Conference call code: 731 868 885# Webinar access via computer on mobile app: Click here to join the meeting	Tuesday, July 12, 2021 3:00 PM – 4:30 PM EDT
Facilitated Discussion: Overview of the draft 2022 GAP Guidance - Provides Tribes with an opportunity to ask questions and provide comments Conference call line: (202)991-0477 Conference call code: 212 023 556# Webinar access via computer on mobile app: Click here to join the meeting	Monday, July 25, 2022 3:30 PM – 5:00 PM EDT
Consultation Process Ends and Tribal Comments Due	Tuesday, August 2, 2022
Official Agency Point-of-Contact: **Lisa Berrios, Senior Advisor** Phone: 202-564-1739 Email: berrios.lisa@epa.gov	

Attachment 2: Executive Summary of Changes
Attachment 3: Draft 2022 GAP Guidance
Attachment 4: Indicators
Attachment 5: Technical Assistance Pathways (excerpt)