



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Audit Report

Framework for Developing Tribal Capacity Needed in the Indian General Assistance Program

Report No. 08-P-0083

February 19, 2008



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Abbreviations

Act	Indian Environmental General Assistance Program Act of 1992
AIEO	American Indian Environmental Office
EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
GAO	Government Accountability Office
GPRA	Government Performance and Results Act
IGAP	Indian General Assistance Program
IGMS	Integrated Grants Management System
OGD	Office of Grants and Debarment
OIG	Office of Inspector General
PO	Project Officer
TEA	Tribal Environmental Agreement

Cover photo: EPA Tribal Portal logo (courtesy EPA)



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

The objective of our audit was to determine whether the U.S. Environmental Protection Agency's (EPA's) Indian General Assistance Program (IGAP) has been effective in developing tribal capacity to implement environmental programs. This work was included in the Office of Inspector General's (OIG's) Fiscal Year 2007 annual plan based on Agency leadership concerns regarding grant results.

Background

The Indian Environmental General Assistance Program Act of 1992 provides EPA the authority to award grants to Indian tribal governments to build capacity to administer environmental programs. Since its inception, IGAP has become a core program and the largest single source of funding for tribal environmental programs, with almost \$455 million of funding to about 500 different tribal entities since 1992.

For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2008/20080219-08-P-0083.pdf

Framework for Developing Tribal Capacity Needed in the Indian General Assistance Program

What We Found

The purpose of IGAP grants is to help tribes develop environmental programs, and over 70 percent of tribes have met at least one of EPA's strategic goals for improving human health and the environment in Indian country. However, only 12 percent of tribes are implementing Federal environmental programs.

Many tribes have not developed long-term plans that describe how they will build environmental capacity to operate their environmental programs. For tribes that do have plans and long-term goals, EPA has not tracked progress against the plans and goals. Six of 27 reviewed tribes that have received funding for more than 5 years had activities limited to outreach, training, and meetings; how the activities will lead to implementing environmental programs is unclear. This situation has occurred because EPA has not provided a framework for tribes to follow or adapt as they develop their capacity to implement environmental programs. As a result, it is not clear whether IGAP funding will result in tribes being able to operate their own environmental programs. EPA has awarded \$455 million in IGAP funds since 1992.

EPA often uses the target funding level of \$110,000 as the basis for IGAP funding instead of considering environmental capacity needs and prior progress. EPA and tribes consider IGAP funding to be essential continuing support for tribal environmental programs. When the funding is not based on tribal capacity needs or priorities, EPA cannot demonstrate that the highest human health and environmental needs are addressed.

What We Recommend

We recommend that the Assistant Administrator for Water:

- Require the American Indian Environmental Office to develop and implement an overall framework for achieving capacity, including valid performance measures for each type of tribal entity, and provide assistance to the regions for incorporating the framework into the IGAP work plans.
- Require regions to (a) negotiate with tribes to develop environmental plans that reflect intermediate and long-term goals, (b) link those plans to annual IGAP work plans, and (c) measure tribal progress in meeting plans and goals.
- Revise how IGAP funding is distributed to tribes to place more emphasis on tribes' prior progress, environmental capacity needs, and long-term goals.

EPA concurred with the recommendations and stated that the American Indian Environmental Office is committed to evaluating the IGAP program and incorporating new ways to improve the program's effectiveness.



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

OFFICE OF
INSPECTOR GENERAL

February 19, 2008

MEMORANDUM

SUBJECT: Framework for Developing Tribal Capacity Needed in the
Indian General Assistance Program
Report No. 08-P-0083

FROM: Melissa M. Heist *Melissa M. Heist*
Assistant Inspector General for Audit

TO: Benjamin Grumbles
Assistant Administrator, Office of Water

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. It represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The estimated cost of this report – calculated by multiplying the project's staff days by the applicable daily full cost billing rates in effect at the time – is \$470,169.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective action plan for agreed upon actions, including specific activities and milestone dates. We have no objections to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Janet Kasper, Director, Assistance Agreement Audits, at 312-886-3059 or kasper.janet@epa.gov.

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**Framework for Developing Tribal Capacity Needed in the
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Chapter 1

Introduction

Purpose

The objective of our audit was to determine whether the U.S. Environmental Protection Agency's (EPA's) Indian General Assistance Program (IGAP) has been effective in developing tribal capacity to implement environmental programs. In particular, we focused on the following areas:

- Funding distribution to regions and tribes
- Goals and measures used to evaluate progress under IGAP
- Effectiveness of IGAP in developing tribal environmental capacity

This work was included in Office of Inspector General's (OIG's) Fiscal Year (FY) 2007 annual plan based on Agency leadership concerns regarding grant results.

Background

The Indian Environmental General Assistance Program Act of 1992 (the Act) provides EPA the authority to award grants to Indian tribal governments to build capacity to administer environmental programs.¹ The Act also provides for technical assistance from EPA in developing multimedia programs to address environmental issues on Indian lands. Beyond capacity building, the only allowable implementation activities are for solid and hazardous waste. Since its inception 15 years ago, IGAP has become the largest single source of funding for tribal environmental programs. Since 1992, EPA has awarded \$455 million in IGAP funding; during FY 2004 through FY 2006, IGAP provided almost \$115 million of funding to about 400 different tribal entities.

Under the Act, IGAP grants can be awarded to both Indian tribal governments and intertribal consortia. The Act defines an Indian tribal government as any Indian tribe, band, nation, or other organized group or community (including any Alaska Native village or regional or village corporation) which is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians. Some tribes have jurisdiction over land and some do not. The Act defines intertribal consortia as a partnership between two or more Indian tribal governments authorized by the governing bodies of those tribes to apply for and receive IGAP assistance.

¹ Build capacity refers to the tribe developing the ability to implement and manage environmental programs.

EPA issued IGAP guidelines in 1994 to provide national policy guidance and criteria for awarding and administering IGAP grants. EPA updated the guidelines in 2000 and 2006 to address compliance with grant policies, accountability for environmental results, and consistency with program requirements. The purpose of IGAP is to establish administrative, legal, technical, and enforcement capability needed to implement an environmental protection program. Details on the legislative authority for IGAP and program goals are included in Appendix A.

Sovereignty and the Federal Trust Responsibility to Tribes

According to Federal Indian Law, tribes in the United States are Sovereign Nations. Sovereignty is the right or power that comes from itself and no other source that a government draws upon to govern. The courts have reasoned that because of tribes' existence since time immemorial, prior to the inception of the other U.S. sovereigns, tribes must derive their authority to govern from their own sovereignty.

The Federal Government has a trust responsibility to federally recognized tribes that arises from Indian treaties, statutes, executive orders, and the historical relations between the United States and tribes. Like other Federal agencies, EPA must act in accordance with the trust responsibility when taking actions that affect tribes. The trust responsibility provides that the Federal Government consult with and consider the interests of the tribes when taking actions that may affect tribes or their resources. EPA places high importance on its trust responsibility to tribes. Consequently, EPA desires to give tribes maximum flexibility in IGAP to determine their own environmental needs, goals, and priorities.

EPA Headquarters and Regions Have Roles in IGAP Management

EPA's American Indian Environmental Office (AIEO) under the Office of Water, the Office of Grants and Debarment (OGD), and the regions all have roles in managing IGAP:

- **AIEO** plays a significant role in EPA's overall tribal program, which includes IGAP. AIEO coordinates the Agency-wide effort to strengthen public health and environmental protection in Indian country, with a special emphasis on building capacity to administer tribal environmental programs. AIEO oversees developing and implementing the Agency's Indian Policy. AIEO also strives to ensure that all EPA Headquarters and regional offices implement their parts of the Agency's Indian Program in a manner consistent with Administration policy. The policy is to work with tribes on a government-to-government basis according to EPA's trust responsibility to protect tribal health and environments. AIEO is the National Program Manager for IGAP, and is responsible for allocating IGAP funding to regions.

- **OGD** oversees implementing EPA's long-term Grants Management Plan to ensure that these funds are used efficiently and effectively.
- **Regions** are responsible for administering IGAP grants, approving work plans, awarding grants, and monitoring progress under IGAP.

Noteworthy Achievements

IGAP has been successful in assisting tribes in addressing environmental issues on tribal lands. Over 70 percent of tribes have met at least one of EPA's strategic goals for tribes. EPA staff place high importance on IGAP for developing environmental capacity in Indian country. Representatives from tribal organizations emphasize the necessity of IGAP and the lack of other resources to support environmental work. Tribes are clearly conducting environmental work and identifying environmental issues on Indian lands. Agency staff believe IGAP is a necessary component and lays the foundation for EPA's overall tribal program. We have noted several tribal environmental success stories, such as recycling and solid waste programs, that we highlighted in a prior joint review report with the Department of the Interior OIG.²

IGAP is helping tribes to expand their sources of environmental funding. EPA requested a contractor to conduct an evaluation of IGAP. The evaluation, completed in May 2007, found that long-term IGAP recipients have received a greater percentage of their funding from non-IGAP EPA sources than more recent IGAP recipients. According to the evaluation, this supported the view that IGAP had expanded the sources of funding for tribes.

Overall, we found that IGAP grants are supported by budgets, work plans, and progress reports. The program is generally compliant with grant regulations. Although we did not focus on compliance issues during this audit, we did note certain accomplishments in IGAP grant oversight. Some regions demonstrated that they took environmental needs into consideration in funding tribes. Some regions also showed greater oversight of grant funding. During our review of grant files, we noticed examples of good grants oversight. Project Officers (POs) documented site visits, provided telephone guidance regarding IGAP activities, and compared work plans to accomplishments in order to evaluate progress. For example:

- In at least one case where a significant purchase occurred under the IGAP grant, documentation in the file showed correspondence between the PO and the tribe regarding justifying the purchase.
- In some cases, work plan comments from the PO to the tribe requested that the tribe change work plan items or provide clarification or justification. For

² EPA OIG Report No. 2007-P-00022, *Promoting Tribal Success in EPA Programs*, May 3, 2007.

example, one work plan comment requested that the tribe explain why the specific training topics were necessary because the same training from the previous 2 years had been included again.

- The grant files contained end-of-year review reports which summarized the progress made by the tribe and whether the required deliverables were completed on time.

Scope and Methodology

We performed our audit in accordance with generally accepted government auditing standards, issued by the Comptroller General of the United States. We conducted our audit field work from March to July 2007. We gathered information and conducted field work at EPA Headquarters and Regions 5, 6, 9, and 10. We collected and analyzed data for a sample of 30 IGAP grants active during FY 2006 from the four regions. See Appendix B for further details on the audit scope and methodology.

Chapter 2

Progress Toward Long-Term Goals Is Not Demonstrated

Many tribes have not developed long-term plans that describe how they will build environmental capacity to operate their environmental programs. For 8 of 30 tribes that do have plans and long-term goals, EPA has not tracked progress against the plans and goals. Six of 27 reviewed tribes that have received funding for more than 5 years had activities limited to outreach, training, and meetings; how the activities will lead to implementing environmental programs is unclear. This situation has occurred because EPA has not provided a framework for tribes to follow or adapt as they develop their capacity to implement environmental programs. EPA has awarded \$455 million in IGAP funds since 1992. It is not clear whether IGAP funding will result in tribes being able to operate their own environmental programs.

GPRA and EPA Require Consideration of Environmental Results

The 1993 Government Performance and Results Act (GPRA) requires that EPA develop strategic plans for environmental objectives and measure progress against those objectives. EPA has developed a strategic plan, orders, and policies that aim to ensure environmental results are being measured through grant agreements, work plans, and program office oversight.

EPA's 2006-2011 Strategic Plan and 2003-2008 Grants Management Plan require program offices to include consideration of environmental outcomes in grant work plans and to link activities to measurable outcomes. EPA's Environmental Results Order 5700.7 states that to the maximum extent practicable, Agency staff should:

- Link proposed assistance agreements to the Agency's Strategic Plan and GPRA;
- Ensure that outputs and outcomes are appropriately addressed in assistance agreement competitive funding announcements, work plans, and performance reports; and
- Consider how the results from completed assistance agreement projects contribute to the Agency's programmatic goals and objectives.

AIEO's IGAP guidance provides policy guidelines and criteria for IGAP grants. The 2006 guidance includes templates for work plans and reporting environmental results. These templates are intended to provide consistency in

reporting on milestones, deliverables, environmental outcomes, and outputs. They also provide a link to EPA's Strategic Plan.

The 2006 guidance also includes a logic model that provides an outline of the resources, activities, outputs, and intended short-term, intermediate, and long-term outcomes of IGAP grants. The logic model identifies that the short-term outcomes from IGAP grants include increased understanding of the process needed to develop environmental programs. Intermediate outcomes include increased tribal capabilities in legal, enforcement, technical, communication, and administrative areas. Long-term outcomes include established capacity to plan, develop, implement, manage and sustain tribal environmental programs. According to the logic model, the ultimate result should be improved environmental and public health conditions in Indian country. See Appendix C for the complete IGAP logic model.

Progress Toward Capacity Goals Is Not Demonstrated

Many tribes have not developed long-term plans that describe how they will build environmental capacity to operate their environmental programs. Through IGAP, EPA's focus has been on short-term activities and outputs in the annual work plans, such as training and outreach, rather than long-term environmental results as described in the IGAP logic model. For 8 of 30 tribes in our sample that did have long-term plans, EPA was not tracking progress against goals. For example:

- A tribe with 1,200 members has been receiving IGAP funding for 10 years. The tribe has developed a Tribal Environmental Agreement (TEA) that states environmental objectives and intended environmental results over time. However, EPA has not been tracking progress against the objectives stated in the TEA.
- A tribe with 4,000 members has been receiving IGAP funding for 8 years. The tribe has a TEA that identifies funding needs for FY 2007 to 2009. However, EPA has not been tracking progress for the TEA objectives.
- A tribe with 150 members has been receiving IGAP funding for 9 years. EPA required the tribe to complete an environmental plan in 2001, but the plan was not subsequently tracked.

Some Tribes' Activities Limited Mostly to Training, Meetings, and Outreach

When tribes do not have long-term goals or plans with milestone dates, EPA is not assured that the activities will lead to the tribe having the capacity to implement environmental programs. AIEO contracted an independent evaluation of IGAP in order to determine how effective IGAP has been in building tribal environmental capacity. According to the evaluation, long-term IGAP recipients

have not achieved a greater number of indicators of environmental capacity than more recent IGAP recipients. We found that 27 of 30 tribes reviewed have received IGAP grants for at least 5 years. Of those 27 tribes, 6 were still performing activities limited mostly to outreach, training, meetings, and assessments. It was not clear how the tribes would achieve the capacity to implement environmental programs. For example:

- One tribe, according to its 2006 work plan, was primarily conducting outreach, training, and meetings after 9 years of IGAP funding. The tribe has identified areas in which to develop programs. However, it is not clear how the tribe is going to get the funding and develop the capacity to implement the environmental programs.
- Another tribe has established little more than an environmental presence after 9 years of IGAP funding. The tribe's work plan primarily consisted of meetings, data collections, studies, and research. Since the tribe has no land, eligibility for implementing an EPA-delegable program is unlikely.
- A tribe with 63 acres has received IGAP funds over the last 6 years, but has shown little progress in establishing long-term goals that would lead toward achieving capacity. The tribe's work plan indicates that it primarily conducts environmental outreach and training. The tribe has not identified any long-range goals or significant environmental issues to address.

EPA Has Not Provided Tribes a Framework Linked to Work Plans

EPA has not provided a framework for tribes to follow or adapt on the path toward capacity to administer environmental programs. In the past, the Agency advocated the use of TEAs that point tribes toward long-term goals. However, the TEAs were not consistently implemented nationally and did not specify milestones. As an alternative to TEAs, one region worked with tribes to develop environmental plans, but did not track their progress or link them to annual work plans.

In 1994, EPA developed TEAs to, among other purposes:

- Provide an understanding of tribal environmental need;
- Identify the areas under which each tribe intends to assume program responsibility; and
- Build environmental capacity in order for tribes to operate programs in the long term.

Using TEAs presented two major problems. First, EPA never implemented these agreements on a national basis, partly because many tribes viewed these agreements negatively. According to EPA staff, they reminded tribal members of historical treaties that had negative results. Second, the TEAs did not capture

milestones because EPA media-specific program offices were reluctant to make specific funding or timeframe commitments. As a result, tribes understood that TEAs do not result in any additional environmental program funding.

According to Office of Management and Budget Circular A-123, effective internal control provides assurance that significant weaknesses in the design or operation of internal control that could adversely affect the Agency's ability to meet its objectives would be prevented or detected in a timely manner. An effective internal control for IGAP would be establishing a framework that considers all possible outcomes for the program. The framework would include measurable goals that can be tracked and for which tribes can be held accountable. AIEO recently initiated a framework by developing the logic model, but it does not address which outcomes are appropriate for various recipient types. For example, consortia and tribes without jurisdiction over land cannot achieve many of the long-term goals in the logic model.

EPA could incorporate TEAs into an overall framework for achieving capacity. With beneficial changes to the process and the agreements themselves, these documents can serve as a useful IGAP management tool. They can also provide each tribe with its own unique roadmap, or plan, for achieving environmental capacity.

Without Plan for Achieving Capacity, Eligibility of Activities May Not Be Clear

Agency guidance identifies what activities are eligible for funding under IGAP. For some grants, no clear linkage exists showing how the activities will lead to establishing an environmental program. We found that even the tribes which had made efforts at environmental planning had not updated their plans as activities were completed, had not tracked progress toward plan goals, and did not link annual work plans to tribal environmental plans. Without established plans linking the work plan activities to long-term goals, it was not clear whether the activities were eligible or appropriate for funding under IGAP. IGAP guidance specifies that eligible activities include those conducted for planning, developing, or establishing an environmental protection program. See Appendix D for a general list of eligible activities outlined in the guidance.

For some tribes, it was not clear whether the work plan activities conducted fell within the IGAP guidance list of eligible activities. For example:

- One consortium has received IGAP over the last 9 years, and it was not clear whether some of its work plan activities were eligible according to the guidelines. One objective that may not be eligible or appropriate for IGAP funding is a project for eco-tourism development. The consortium assisted a tribe by developing a business plan, seeking other grants in the area of eco-tourism, and developing a tourism Website. The work plan mentions

expanding and diversifying the local economy. In our opinion, this activity is more related to economic development than environmental capacity building.

- One tribe has received IGAP funds for 2 years, and it was not clear whether some of its activities were eligible, such as testing for global warming. The tribe's global warming activities included taking and recording the temperature four times a week. Since this is a global issue and the tribe is a seasonal fish camp of about 40 members, it is unclear how random temperature taking for a limited duration each year will lead to a meaningful environmental program. In our opinion, these activities do not appear to be contributing to capacity development. The tribe did not have a plan for how the global warming activities would build capacity to implement an environmental program.

Conclusion

The link between the \$455 million in IGAP funds awarded since 1992 on the ability of tribes as a whole to administer their own environmental programs is not clear when evaluating program performance. EPA has not provided a framework for tribes to follow or adapt on the path toward capacity to administer environmental programs. None of the 30 tribes we reviewed had environmental plans with milestones and long-term goals that were tracked, even though almost half of the tribes had been participating for at least 10 years. If tribes do not have workable plans with milestones, they may not proceed in a clear direction. Consequently, for some of the activities pursued with IGAP funds, it was not clear how the activities will lead to establishing an environmental program. Further, without plans linking the activities to long-term goals, it was not clear whether the activities were eligible or appropriate for funding under IGAP.

Recommendations

We recommend that the Assistant Administrator for Water:

- 2-1 Require AIEO to develop and implement an overall framework for achieving capacity, including valid performance measures for each type of tribal entity, and provide assistance to the regions for incorporating the framework into the IGAP work plans.
- 2-2 Require regions to:
 - a. Negotiate with tribes to develop environmental plans that reflect intermediate and long-term goals.
 - b. Link those plans to annual IGAP work plans.
 - c. Measure tribal progress in meeting plans and goals.

Agency Response and OIG Comment

In response to the draft report, EPA stated that AIEO is committed to evaluating the IGAP program and incorporating new ways to improve the program's effectiveness without compromising the flexibility provided to tribes. EPA stated that relating IGAP funding to long-term and interim goals against which progress can be measured is very important and AIEO plans to address the issue. Since the negotiating goals, measuring and assessing progress against those goals, and evaluating funding requests are inextricably linked, EPA must address the issues in an overall programmatic response.

The Agency concurred with our recommendations and plans to implement them during FY 2008 and FY 2009 through developing a comprehensive IGAP framework document that includes negotiation of tribal plans with long-term and interim goals and a method of measuring progress. The IGAP framework will be implemented in FY 2010.

The planned actions will address the recommendations. In responding to the final report, the Agency needs to identify specific activities and milestone dates for implementing the corrective action. The Agency's complete response is in Appendix G.

Chapter 3

Need Not Always a Determining Factor in IGAP Funding Decisions

EPA often uses the target funding level of \$110,000 as the basis for IGAP funding instead of considering environmental capacity needs and prior progress. EPA and tribes expect IGAP funding will be available as essential continuing support for tribal environmental programs. Not all tribes require the target level of funding each year. Many tribes with highly developed environmental programs still rely on IGAP to maintain their environmental presence and pursue other Federal grants. EPA needs to revise how it distributes IGAP funding in order to place more emphasis on tribes' prior progress, environmental capacity needs, and long-term goals.

EPA Goal is to Help Every Tribe Establish an Environmental Presence

EPA's objective for tribes, according to the 2006-2011 EPA Strategic Plan, is to

...protect human health and the environment on tribal lands by assisting federally recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

EPA considers IGAP to be a major component for achieving this objective. Although the Act does not require that EPA provide funding to all tribes, the Strategic Plan states that EPA's "goal is to help every federally recognized tribe establish an environmental presence."

The Act provides grants to Indian tribal governments to build capacity to administer environmental programs. The Act requires that each grant awarded for a fiscal year shall be no less than \$75,000. The Act does not specify how EPA is to distribute IGAP funds and does not require funding for all tribes. However, EPA believes the statutory minimum is not sufficient to run an environmental program. Therefore, EPA developed a target funding level of \$110,000 for IGAP based on its estimate of what it would take to sustain a basic program.

Many Tribes Are Awarded the Target Level of Funding

In some regions, many tribes are routinely awarded the target amount of \$110,000 per year regardless of population, land area, or environmental issues. For two of four regions we visited, as many as 60 percent of tribes received within \$5,000 of

the annual target amount. Nine of the 30 reviewed tribes were funded within \$5,000 of the annual target amount, for IGAP grants that were open during 2006. Thus, small and large tribes both received similar funding amounts. For example:

- A small, landless fish camp of 40 seasonal residents has received \$110,000 in IGAP funding each year since the start of the project period in FY 2005. The tribe has achieved some success in establishing a solid waste program but has not identified issues in other areas.
- In contrast, a tribe with 1,200 members and 16,000 acres has also received about \$110,000 per year in GAP funding. The tribe has also been awarded approximately \$2 million in EPA media-specific funding to address environmental issues such as clean water, clean air, and emergency response. The tribe has demonstrated the capacity to plan, develop, implement, and manage environmental programs.

Some Tribes Are Not Developing Capacity in New Areas

We found 9 tribes of the 30 reviewed had made progress in some areas, but work plans had not documented new environmental issues to address, despite receiving IGAP funding for several years. These tribes continued to receive IGAP funding with similar activities from year to year; it was difficult to determine what the tribe was trying to accomplish or what environmental issues it was addressing. For example:

- One tribe with approximately 4,000 members and 500,000 acres has received IGAP funding since 1994. The tribe has also been awarded about \$990,000 in funding from EPA media-specific programs. The tribe provides some oversight and technical assistance for specific remediation projects using IGAP. For the current grant, work plan activities do not vary much from year to year.
- A tribe with 6 acres has received funding for 6 years for its 63 members, and has not identified environmental issues except for land that has yet to be acquired. Work plans showed the same expenses and activities from year to year. The tribe does not appear to be developing or finding new issues to address.

Well-Developed Programs Continue to Use IGAP

Tribes that have had success in developing capacity still rely on IGAP to sustain and maintain their environmental presence because of challenges in obtaining funding. Even the largest and most developed tribes in the Nation still rely on IGAP funding. For example:

- A tribe with over 3,000 members has been receiving IGAP funding for 14 years and has achieved Treatment in the Same Manner as State for Clean Air Act Title V and Clean Water Act Section 303. Despite demonstrating capacity in air and water media, the tribe continues to use IGAP to perform activities such as programmatic and administrative functions and tribal outreach.
- A tribe with 5,000 members on 544,000 acres has received IGAP funding for 11 years and has achieved Treatment in the Same Manner as State for Clean Air Act Title V. Tribal staff is highly capable and the program is well-developed. The tribe continues to use IGAP to maintain existing programs and to perform additional assessments, meetings, and training.

EPA and Tribes Expect IGAP to Provide Essential Continuing Support

EPA and tribes expect that IGAP funding will be available as essential continuing support for tribal environmental programs. The Agency allocates funding to the regions according to the 1997 funding formula. The regional share of the IGAP allocation is based on the number of federally recognized tribes, the tribal population, and the tribal acres in each region. The Agency also calculates a ceiling amount for each region consisting of the number of tribes per region multiplied by \$110,000. Refer to Appendix E for details on the funding formula.

The regions have discretion as they use the funding allocations to determine funding for individual tribes. Generally, regions believe that \$110,000 is the minimum funding necessary for establishing an environmental presence. That amount provides a presence by funding one-and-a-quarter positions as well as office costs, training, travel, equipment, and indirect costs. EPA believes it is important for each tribe to have an environmental staff person in an office. That person is then available to answer the phone and have a “seat at the table” to address environmental concerns.

According to Agency staff, tribes rely upon IGAP because it is a consistent and reliable source of funding, and the only tool available to build environmental capacity. It is the largest single source of funding for tribal environmental programs EPA awarded, as shown in Appendix F. A 2007 OIG report recommended that EPA work with tribes to identify economic resources and funding alternatives.³

Funding May Not Be Provided for Highest Priorities

The Agency uses the \$110,000 cap in its allocation to the regions in an effort to equitably fund all tribes. This is despite the fact that the number of tribes participating in IGAP has increased significantly since 1997, and tribes have

³ EPA OIG report No. 2007-P-00022, *Promoting Tribal Success in EPA Programs*, May 3, 2007.

differing land bases, populations, and environmental needs. The expectation of a target level of funding for all tribes has resulted in tribes with well-developed programs continuing to get funding each year. Meanwhile, tribes with less-developed programs may need more than \$110,000 per year. EPA Headquarters uses tribal population and land area to estimate need when allocating funding to the regions. However, regions do not consistently allocate funding based on the needs of individual tribes. When the funding is not based on tribal capacity needs or priorities, EPA cannot demonstrate that the highest human health and environmental needs are addressed.

Recommendation

We recommend that the Assistant Administrator for Water:

- 3-1 Revise how IGAP funding is distributed to tribes in order to place more emphasis on tribes' prior progress, environmental capacity needs, and long-term goals.

Agency Response and OIG Comment

In response to the draft report, EPA stated that adjustments to the funding formula, allocations, distributions, and award decisions will be developed in FY 2010 and implemented in FY 2011.

The planned actions will address the recommendation. In responding to the final report, the Agency needs to identify specific activities and milestone dates for implementing the corrective action. The Agency's complete response is in Appendix G.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
2-1	9	Require AIEO to develop and implement an overall framework for achieving capacity, including valid performance measures for each type of tribal entity, and provide assistance to the regions for incorporating the framework into the IGAP work plans.	O	Assistant Administrator for Water	FY 2010		
2-2	9	Require regions to: a. Negotiate with tribes to develop environmental plans that reflect intermediate and long-term goals. b. Link those plans to annual IGAP work plans. c. Measure tribal progress in meeting plans and goals.	O	Assistant Administrator for Water	FY 2010		
3-1	14	Revise how IGAP funding is distributed to tribes in order to place more emphasis on tribes' prior progress, environmental capacity needs, and long-term goals.	O	Assistant Administrator for Water	FY 2011		

¹ O = recommendation is open with agreed-to corrective actions pending
 C = recommendation is closed with all agreed-to actions completed
 U = recommendation is undecided with resolution efforts in progress

IGAP Legislative Authority and EPA Strategic Goals

Legislative Authority

The Indian Environmental General Assistance Program Act of 1992 (Act) provides the legal authority for EPA to award IGAP grants and specifies what can be funded through the grants. We relied upon the language in the law when evaluating how EPA and tribes were using IGAP funds. The purpose of the Act, as it relates to grants, is to:

Provide general assistance grants to Indian tribal governments and intertribal consortia to build capacity to administer environmental regulatory programs that may be delegated by the Environmental Protection Agency on Indian lands.

The law does not limit grant funds only to developing regulatory programs that may be delegated. Grant funds may cover:

...the costs of planning, developing, and establishing environmental protection programs consistent with other applicable provisions of law providing for enforcement of such laws by Indian tribes on Indian lands.

...planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency and specified in the assistance agreement.

While much of the Act focuses on developing the capacity to implement programs, the Act does allow IGAP funds to be used for implementing solid and hazardous waste programs on Indian lands.

EPA Strategic Goals

One of EPA's objectives in the 2006-2011 Strategic Plan is to improve human health and the environment in Indian country, as shown below.

1. By 2011, increase the percentage of tribes implementing Federal environmental programs in Indian country to 9 percent (FY 2005 baseline: 5 percent of 572 tribes).
2. By 2011, increase the percentage of tribes conducting EPA approved environmental monitoring and assessment activities in Indian country to 26 percent (FY 2005 baseline: 20 percent of 572 tribes).
3. By 2011, increase the percentage of tribes with an environmental program to 67 percent (FY 2005 baseline: 54 percent of 572 tribes).

Details on Scope, Methodology, and Prior Audit Coverage

Scope and Methodology

We conducted field work in Headquarters and Regions 5, 6, 9, and 10. We interviewed AIEO and OGD staff in Headquarters and tribal program staff in the four regions. Interviews of AIEO staff consisted of questions related to the following areas: background of IGAP grants, IGAP grant funding, goals and measures, and capacity. Interviews of OGD staff consisted of questions related to management activities for IGAP grants. Interviews of regional staff consisted of questions related to the following areas: IGAP grant funding, goals and measures, and capacity. We also interviewed three tribal umbrella organizations to obtain their perspectives of IGAP and its effectiveness in achieving tribal capacity. We reviewed various guidance documents and reports relevant to our objective, and financial records provided by AIEO.

We used data from EPA's Integrated Grants Management System (IGMS) to determine the universe of tribal IGAP recipients, to gather background information, and to prepare for grant file reviews. We did not test the controls over IGMS to ensure its validity and reliability, as the information it contained was not significant to our conclusions. Specifically, we analyzed the IGMS data to:

- Determine the universe of IGAP grantees,
- Determine how much IGAP funding a tribe has received,
- Determine how long a tribe has received IGAP grants,
- Extract and analyze IGAP grants active in FY 2006, and
- Select a representative sample of 30 IGAP grants active during FY 2006 from the four regions.

In selecting the sample to review, we considered:

- The dollar amount of the awards for IGAP grants active during FY 2006 and the dollar amount of awards since the inception of IGAP. Generally, we selected tribes with high dollar awards, as well as those reflecting a range of dollar values.
- The amount of time the tribe has been receiving IGAP. We wanted to include tribes that have been receiving IGAP grants for an extended period, as well as tribes that may have only recently begun receiving IGAP funding.
- The number of grants awarded from EPA programs other than IGAP.

Grants selected included a range of award amounts and project periods. We also tried to include grantees that had a significant number of EPA grants from other environmental programs. The

following shows a breakout of our sample of 30 IGAP grants from the four regions, out of a total of 476 active grants during FY 2006:

- 4 grants selected from Region 5
- 8 grants selected from Region 6
- 8 grants selected from Region 9
- 10 grants selected from Region 10

We reviewed grant documents for our sample online and requested needed hard copy grant files from the four regions. We reviewed and analyzed work plans, progress reports, and other relevant documents. We consulted with the grant POs as necessary regarding any questions that arose based on our grant file reviews. Because we selected judgmental samples of grants from the four regions, we are not projecting the results to the universe of IGAP grants. Our findings and conclusions were based on review and evaluation of grant file documentation and discussion with EPA staff.

We obtained an understanding of management controls for the 5.3 Reporting System and analyzed data from the system regarding results. (The 5.3 Reporting System is a tool for reporting on progress toward meeting commitments under EPA's 2003-2008 Strategic Plan. Objective 5.3 is to build tribal capacity.) We discussed the 5.3 Reporting System with AIEO to understand the controls over the system. We tested the reliability of the data as part of our grant file reviews. We verified data posted to the system with information from the grant files and discussion with the POs. We assessed the reliability of the system in accordance with Government Accountability Office (GAO) guidance, GAO 03-273G, *Assessing the Reliability of Computer-Processed Data*, dated October 2002. We did not note any material weaknesses in internal controls related to data in the 5.3 Reporting System, and consider the data to be sufficiently reliable for the purposes of this audit.

Prior Audit Coverage

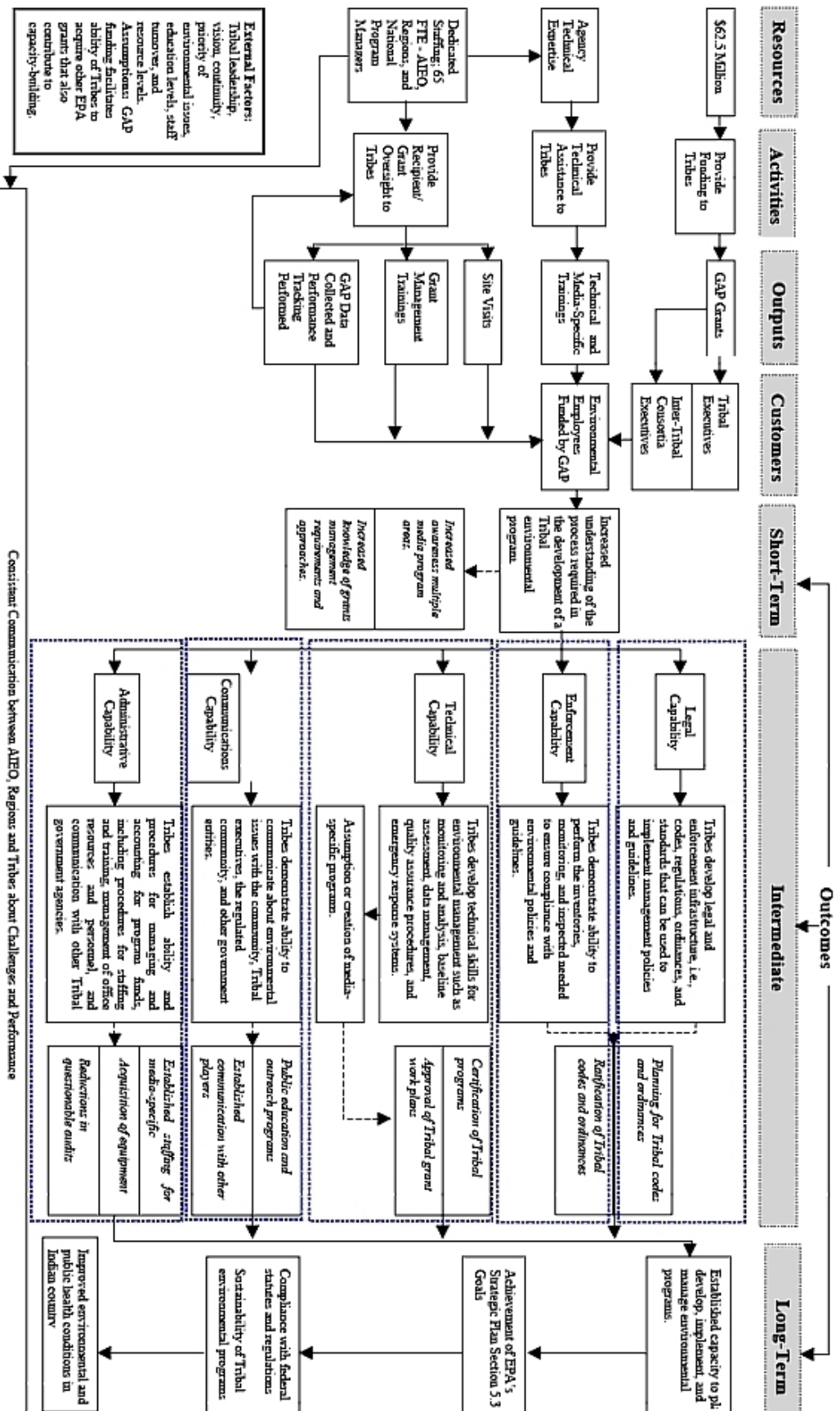
We reviewed the prior EPA OIG and GAO reports listed below that were relevant to our audit for background purposes. For those reports that were significant within the context of our audit objectives, we performed followup as necessary.

- **EPA OIG Report No. 2001-M-000018, *Grants Management, Region 10's General Assistance Program, July 17, 2001.*** OIG found that improvements are needed in evaluating costs in applications to ensure: they are allowable, allocable, and reasonable; that work plans meet eligibility requirements; and that post-award monitoring activities are adequate. The OIG recommended that the Region 10 Regional Administrator ensure that POs with IGAP assistance agreement responsibilities approve for award only those work plans that include outputs and milestones for all work activities.
- **Joint EPA-Department of the Interior Report, *Tribal Successes: Protecting the Environment and Natural Resources, May 2007.*** This report highlighted the diversity of innovative tribal practices that will serve as models of success to other tribes in implementing natural resource and environmental programs. The report notes that successful

implementation of environmental and natural resource projects directly results from innovative practices that overcome barriers such as resource limitations, administrative and managerial requirements, legal and regulatory issues, and communication and relationships.

- **EPA OIG Report No. 2007-P-00022, *Promoting Tribal Success in EPA Programs*, May 3, 2007.** OIG found tribes have made progress in overcoming barriers to successful management of environmental programs. Innovation is the key for tribes to maximize the effectiveness of their programs. The 14 tribes visited provided examples of innovative practices, including collaboration and partnerships, education and outreach, and expanding resources. OIG recommended that EPA help tribes in the above three areas to further assist tribes build on successful practices.

IGAP Logic Model



Source: IGAP 2006 Grant Administration Guidance

Eligible Activities Under IGAP

AIEO's *Guidelines on the Award and Management of General Assistance Agreements for Indian Tribes*, dated March 9, 2000, provide a general list of eligible activities. Activities have to be for planning, developing, or establishing an environmental protection program. See below for a list of eligible activities.

Develop an administrative system to include:

- Proposals for other environmental grants.
- Procedures for accounting, auditing, evaluating, reviewing, and reporting in compliance with Federal regulations.
- Computer systems and Internet service for grant management.
- Procurement procedures in compliance with Federal regulations.

Develop technical capability to manage environmental programs, including:

- Identifying and performing a baseline assessment of sources of pollution.
- Developing quality assurance and quality control systems including Quality Assurance Project Plans. (Implementing a Quality Assurance Project Plan is not fundable under IGAP, except when a Quality Assurance Project Plan is required to carry out activities approved in the IGAP grant work plan.)
- Developing adequate sampling and laboratory capabilities, including purchasing equipment.
- Developing computer systems and providing Internet service for comparing and evaluating environmental data.
- Developing qualifications and training needs for environmental management personnel. (Training may be for conducting inspections, environmental assessments, and monitoring and National Environmental Policy Act analyses.)
- Developing integrated approaches to environmental protection and natural resource management, such as developing Integrated Resource Management Plans
- Developing legal infrastructure (codes, regulations, ordinances, etc).
- Developing enforcement programs.
- Developing a communications plan.
- Developing materials, information, and plans for environmental education/public outreach.
- Identifying multi-jurisdictional opportunities.

Other activities:

- Construction: Generally not allowable but may be approved by the National Program Manager, AIEO, on a case-by-case basis. For example, the tribe may need office facilities to work.
- Vehicle purchase: IGAP funds may be used to lease or purchase a vehicle. The grantee must provide justification in the work plan. After lease or purchase of vehicle, the grantee must

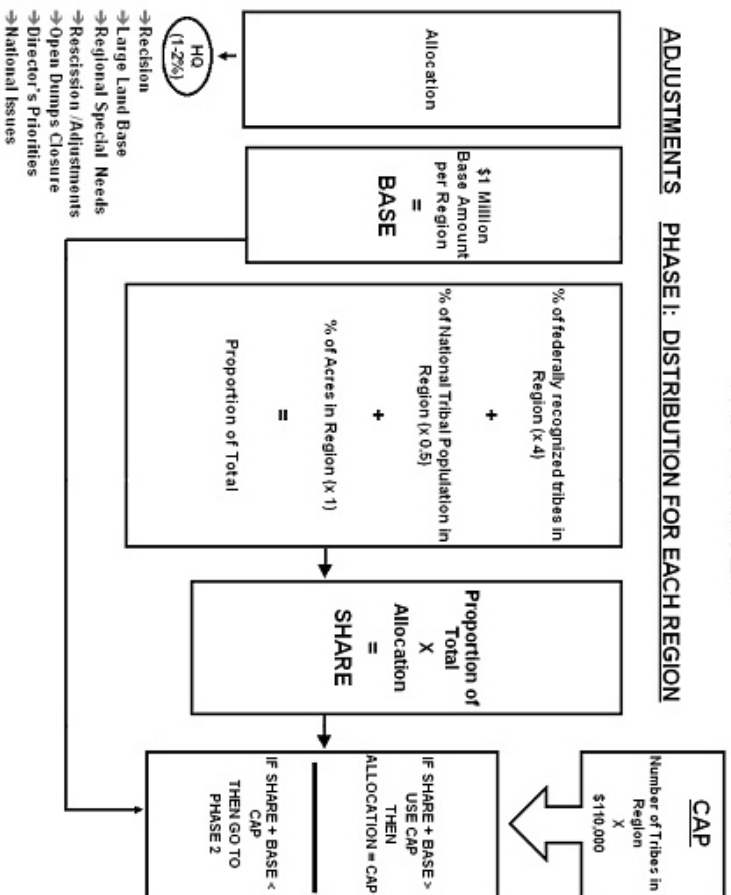
keep usage records to ensure it is reasonable and necessary to carry out the IGAP grant activities.

- Geographic Information Systems: Allowable but use for surveying a commercial purchase of land or in support of current litigation are not activities that are allowable.
- Implementing solid waste and hazardous waste programs: These were not previously allowable, but the Final Rule (codified at Title 40, Code of Federal Regulations, section 35.545, January 2001) allows implementation activities.
- Planning, designing, and constructing a wastewater treatment facility or drinking water facility: Not Allowable.
- Developing programs to manage and oversee wastewater treatment or drinking water facilities: Allowable.
- Planning, developing, or establishing environmental programs not regulated by EPA: Allowable in accordance with Federal regulations.
- Baseline environmental assessments and monitoring: Allowable if necessary to plan, develop or establish a tribal environmental program. Not allowable if done for the principal purpose of solving a particular problem at a particular place.
- Developing a system of permitting or licensing fees: Allowable.
- Preparing program eligibility application packages: Allowable.
- Conducting demonstration projects: Allowable if purpose is to plan, develop, or establish a tribal environmental program.

IGAP Funding Formula

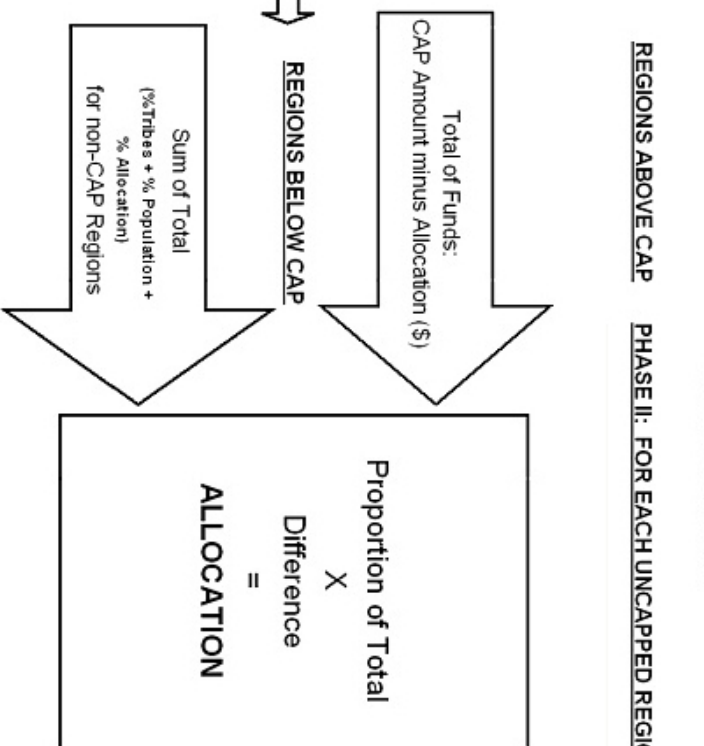
GAP FORMULA

ADJUSTMENTS PHASE I: DISTRIBUTION FOR EACH REGION



GAP FORMULA

REGIONS ABOVE CAP PHASE II: FOR EACH UNCAPPED REGION



Source: EPA AIEO

EPA Grant Funds for Tribal Programs

Even if tribes develop capability to manage well-established environmental programs, the continuing funding needed to maintain and implement environmental programs is limited and not guaranteed. EPA provides media-specific funding to tribes through 31 grant programs. However, tribes face many challenges in accessing these funds. Tribes often are not able to meet the minimum requirements, such as Treatment in the Same Manner as State delegation, to be eligible for funds. Tribes may also have difficulty in providing the required matching funds. IGAP is the largest tribal grant program funded by EPA, and the 2007 allocation provided \$56.7 million to 436 tribes. The next largest programs are Clean Water Act Section 106 and Clean Air Section 103, as shown in Table 4.1.

Table 4-1: EPA Fiscal Year 2007 Program Funding for Tribes

Program Name	Amount	Number of Tribes	Percentage of Funds
IGAP	\$56,654,000	436	40
Water Pollution Control (106)	\$23,197,906	163	16
Air 103 Grants (Evaluation/ Monitoring)	\$14,139,556	83	10
NPS Implementation	\$9,822,263	77	7
Superfund Cooperative Agreement	\$5,802,899	25	4
Environmental Network Grants	\$5,215,383	38	4
Targeted Watershed Initiative (104(b)3)	\$5,018,520	6	4
Water Infrastructure	\$4,503,477	9	3
Brownfields	\$4,060,637	18	3
Air Pollution Control Program Support	\$3,811,865	15	3
SDW Management	\$2,538,590	34	2
UST Program	\$2,459,229	21	2
Pesticide Program Development	\$2,114,074	15	1
Wetlands Protection Grants	\$1,786,017	19	1
Total	\$141,124,416		

Source: AIEO

Agency Response

JAN 15 2008

MEMORANDUM

SUBJECT: Response to the Office of Inspector General Draft Report “Framework for Developing Tribal Capacity Needed in Indian General Assistance Program” (Assignment No. 2007-539)

FROM: Benjamin H. Grumbles
Assistant Administrator

TO: Bill A. Roderick
Deputy Inspector General

We appreciate the attention and effort that the Office of Inspector General (OIG) has brought to the Indian General Assistance Program (GAP). As you know, GAP is the cornerstone program in EPA’s efforts to develop environmental protection programs across Indian country. We continue to be committed to evaluating the GAP program and incorporating new ways to improve the program’s effectiveness without compromising the flexibility provided to tribes when established by Congress.

We believe the draft report’s findings correctly identify several areas that have received continuing emphasis by EPA’s American Indian Environmental Office (AIEO) and the EPA tribal program. The critical importance of relating GAP funding to long-term and interim goals against which progress can be measured is a shared concern that we plan to address. The negotiation of goals by tribes and EPA, the measurement and assessment of progress against those goals, and EPA’s evaluation of funding requests are all inextricably linked. As a result, it is essential that these issues be addressed in an overall programmatic response, rather than as isolated actions.

Effectively steering a foundational program such as GAP through any significant change will require a considerable time and resource commitment from both EPA headquarters and regional offices. And, of course, it will be necessary to uphold all Agency tribal consultation obligations as we move forward. The attached outline of our plan to move forward in improving the GAP program will address our mutual goals in an integrated, consultative fashion. I look forward to reporting progress on these efforts.

Attachment

cc: Carol Jorgensen, Director, AIEO
Janet Kasper, Director, Assistance Agreement Audits, OIG

GAP IMPROVEMENT PLAN OUTLINE

- FY 08/09:
Develop comprehensive GAP framework document anticipated to include the following components:
 - Standardized online workplan process and documentation
 - Method to ensure negotiation of tribal plans with long-term and interim goals,
 - Method to allow measurement of tribal progress toward meeting plan goals,
 - Revision of the 2000 GAP Guidelines to comport with the framework,
 - Approach to assist tribes in environmental planning.

- FY 10:
Implement revised GAP Guidance program aspects.
Develop adjustments to funding formula, allocations, distributions, and award decisions as appropriate based on the revised GAP Guidance.

- FY 11 et seq:
Institute provisions of revised GAP Guidance as a basis for program activities and award decisions.

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