



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Attestation Report

Cheyenne River Sioux Tribe Outlays Reported Under Five EPA Assistance Agreements

Report No. 2007-4-00078

September 24, 2007

Report Contributors:

Keith Reichard
Leah Nikaidoh
Lela Wong
Lawrence Gunn

Abbreviations

Agreements	V99888401, X98841901, BG98804602, RP98897001, and BG98804603
ATV	All-Terrain Vehicle
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
PPG	Performance Partnership Agreement
OIG	Office of Inspector General
OMB	Office of Management and Budget
Tribe	Cheyenne River Sioux Tribe



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We conducted this examination to determine whether the Cheyenne River Sioux Tribe (Tribe): (1) complied with the applicable laws, regulations, and special conditions of the agreements; and (2) achieved the intended result of the agreements. The U.S. Environmental Protection Agency (EPA) Region 8 requested this audit due to financial management problems it identified during an onsite review.

Background

EPA awarded five agreements to the Tribe to fund a variety of environmental activities authorized under the Comprehensive Environmental Response, Compensation, and Liability Act Sections 104(d)(1) (Superfund) and 128(a) (Brownfields); the Clean Water Act; and the Appropriations Act of 1996.

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/2007/20070924-2007-4-00078.pdf

Cheyenne River Sioux Tribe Outlays Reported Under Five EPA Assistance Agreements

What We Found

The Tribe did not comply with the financial and program management standards under Title 40 Code of Federal Regulations Parts 31 and 35, and Office of Management and Budget Circular A-87. We questioned \$3,101,827 of the \$3,736,560 outlays reported because the Tribe did not:

- Follow the labor cost documentation requirements for Federal grants;
- Compete contracts, justify sole-source procurement, or perform cost analyses;
- Demonstrate that fuel costs charged were equitably allocated;
- Account for vehicle leases properly;
- Comply with Federal procurement regulations and its internal policy when purchasing equipment;
- Compute and claim indirect costs in accordance with Federal cost principles, indirect cost rate agreements, and grant conditions; and
- Maintain documentation for recipient share of costs reported.

The Tribe's internal controls were not sufficient to ensure that outlays reported complied with Federal cost principles, regulations, and grant conditions. In some instances, the Tribe also was not able to demonstrate that it has completed all work under the agreements and has achieved the intended results of the agreements.

What We Recommend

We recommend that EPA Region 8's Regional Administrator disallow and recover the Federal share of ineligible costs of \$64,765. The Region should require the Tribe to provide sufficient documentation for the remaining \$3,037,062 questioned, and disallow and recover the Federal share of any outlays the Tribe cannot support. The Region should require the Tribe to adjust its indirect costs claimed. The Region should provide training to the Tribe on Federal regulations and grant requirements, and review the Tribe's solicitations and contracts under EPA agreements until the Tribe has adequate procedures in place. The Region should confirm that all work under the agreements have been satisfactorily completed prior to agreement closeout. The Region should maintain the Tribe's "high risk" designation until all audit issues have been resolved.



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

OFFICE OF
INSPECTOR GENERAL

September 24, 2007

MEMORANDUM

SUBJECT: Cheyenne River Sioux Tribe
Outlays Reported Under Five EPA Assistance Agreements
Report No. 2007-4-00078

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

TO: Robert E. Roberts
Regional Administrator
Region 8

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. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. EPA managers, in accordance with established audit resolution procedures, will make final determination on matters in this report.

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 \$241,026.

Action Required

In accordance with EPA Manual 2750, Chapter 3, Section 6(f), you are required to provide us your proposed management decision for resolution of the findings contained in this report before any formal resolution can be completed with the recipient. Your proposed decision is due on December 24, 2007. To expedite the resolution process, please email an electronic version of your proposed management decision to kasper.janet@epa.gov.

We have no objections to the further release of this report to the public. For your convenience, this report will be available at <http://www.epa.gov/oig>. We want to express our appreciation for the cooperation and support from your staff during our review. If you have any questions, please contact Janet Kasper, Director, Assistance Agreement Audits, at (312) 886-3059.

Table of Contents

Background	1
Independent Auditor’s Report	3
Results of Examination	5
Unsupported Labor and Fringe Benefit Costs	5
Procurements Did Not Comply with Standards	8
Fuel Costs Not Charged Based on Benefits Received.....	12
Unsupported and Unallowable Equipment Purchases	13
Unsupported Other Costs Claimed	15
Indirect Costs Not Properly Calculated and Reported.....	16
Recipient Share of Outlays Not Supported	17
Financial Status Reports Not Submitted Timely.....	18
Work Progress Needs to be Reported According to Regulations	18
Recommendations	20
Status of Recommendations and Potential Monetary Benefits	21

Schedules

1	Questioned Costs for Assistance Agreement V99888401	22
2	Questioned Costs for Assistance Agreement X98841901	23
3	Questioned Costs for Assistance Agreement BG98804602	24
4	Questioned Costs for Assistance Agreement RP98897001.....	26
5	Questioned Costs for Assistance Agreement BG98804603	28
6	Small Purchase Contract Costs Questioned by Award and Contractor	30
7	Small Purchase Equipment Costs Questioned	31

Appendices

A	Scope and Methodology	32
B	Status of Onsite Review Findings for Brownfields Agreement	33
C	Recipient Response	37
D	Distribution	45

Background

The Cheyenne River Sioux Tribe (Tribe) is a federally recognized Indian tribe located in South Dakota, with headquarters in Eagle Butte. Tribal enrollment is at approximately 14,200 individuals. The reservation covers about 1,400,000 trust acres. The Tribe provides various services to its members, and funds many of these services through Federal assistance agreements (agreement) and contracts. The U.S. Environmental Protection Agency (EPA) has awarded various agreements to the Tribe.

In May 2005, EPA Region 8 (Region) conducted an onsite review of the Tribe under its Brownfields agreement and identified significant financial issues. As a result, on August 10, 2005, the Region requested that we examine five agreements awarded to the Tribe. As part of our examination, we reviewed the issues identified in the onsite review, and assessed the status of those issues and the Tribe’s corrective actions. Our assessment is in Appendix B, *Status of Onsite Review Findings for Brownfields Agreement*.

The Region designated the Tribe as a “high risk” grantee on September 13, 2005. On October 13, 2005, the Tribe submitted a formal dispute to the “high risk” designation. As of the end of our fieldwork on June 4, 2007, the Region had not made a decision on the Tribe’s dispute of the “high risk” designation.¹

We reviewed \$3,736,560 in reported outlays under the five EPA agreements listed in Table 1. The table also provides some basic information about the authorized project periods and funds awarded under each of the agreements.

Table 1: Grant and Outlay Summary					
Assistance Agreement	Award Date	EPA Share	Recipient’s Share	Total Outlays	Financial Status Report Period
V99888401 (Superfund)	07/15/98	\$ 588,695	\$ 0	\$ 588,695	07/15/98 – 6/30/05
X98841901 (Clean Water)	05/15/01	299,347	15,755	315,102	05/15/01 – 09/30/04
BG98804602 (2001 PPG)	08/28/01	1,233,470	56,962	1,290,432	10/01/01 – 09/30/03
RP98897001 (Brownfields)	08/22/03	404,189	0	404,189	09/01/03 – 05/31/06
BG98804603 (2003 PPG)	09/11/03	1,081,235	56,907	1,138,142	10/01/03 – 09/30/05
Total		\$3,606,936	\$129,624	\$3,736,560	

Sources: The award dates were from assistance agreement documents. All other information was from the recipient’s *Financial Status Reports*.

¹ Under Title 40 Code of Federal Regulations (CFR) 31.12, a grantee may be considered “high risk” if the awarding agency determines that the grantee has financial or grants management concerns. The awarding agency can impose special conditions or restrictions on grant awards, accordingly.

EPA awarded the five assistance agreements for a variety of environmental activities authorized under the Comprehensive Environmental Response, Compensation, and Liability Act Sections 104(d)(1) (Superfund) and 128(a) (Brownfields), the Clean Water Act, and the Appropriations Act of 1996. Details follow.

Agreement V99888401: This agreement funded a Superfund Pilot Project Manager. It provides management assistance funding to enable the Tribe to coordinate data collection, human health and ecological risk assessment planning, and response activities with EPA and other Federal agencies. In the report, we refer to this agreement as the “Superfund” agreement.

Agreement X98841901: This agreement provided funds to assist the Tribe in establishing and maintaining adequate measures for the prevention and control of surface and groundwater pollution under Section 106 of the Clean Water Act. In the report, we refer to this agreement as the “Clean Water” agreement.

Agreements BG98804602 and BG98804603: These performance partnership agreements (PPGs) provided funding to the Tribe for water pollution control (Clean Water Act, Section 106), pesticides enforcement, and general assistance in implementing environmental programs (Indian General Assistance Program). In the report, we refer to these agreements as the 2001 and 2003 “PPGs.”

Agreement RP98897001: This agreement provided funding for the Tribe to develop the Brownfields program components, to timely survey and inventory sites, and to attend training to enhance the capabilities of the program. In the report, we refer to this agreement as the “Brownfields” agreement.

To assist the reader in obtaining an understanding of the report, key terms are defined below:

- | | |
|-----------------------------------|---|
| <i>Reported Outlays:</i> | Program expenses or disbursements reported by the recipient on the Federal <i>Financial Status Reports</i> . |
| <i>Questioned Outlays:</i> | Outlays that are (1) contrary to a provision of a law, regulation, agreement, or other documents governing the expenditures of funds; or (2) not supported by adequate documentation. |

Independent Auditor's Report

We have examined the total outlays the Tribe reported under the five assistance agreements awarded by EPA, as shown below:

Table 2: Outlays Reported				
Assistance Agreement	Financial Status Reports			
	Date Submitted	Period Ending	Total Outlays Reported	Federal Share of Outlays Reported
V99888401 (Superfund)	12/14/05	06/30/05	\$ 588,695	\$ 588,695
X98841901 (Clean Water)	08/24/05	09/30/04	315,102	299,347
BG98804602 (2001 PPG)	08/03/04	12/31/03	1,290,432	1,233,470
RP98897001 (Brownfields)	09/07/06	05/31/06	404,189	404,189
BG98804603 (2003 PPG)	10/03/06	06/30/05	1,138,142	1,081,235
Total			\$3,736,560	\$3,606,936

Source: All information was from the recipient's *Financial Status Reports*.

The Tribe certified that the outlays reported in the *Financial Status Reports*, Standard Form 269, were correct and for the purposes set forth in the agreements. The preparation and certification of the *Financial Status Reports* were the responsibility of the Tribe. Our responsibility is to express an opinion on the reported outlays based on our examination.

We conducted our examination in accordance with the *Government Auditing Standards* issued by the Comptroller General of the United States, and the attestation standards established by the American Institute of Certified Public Accountants. We examined, on a test basis, evidence supporting the reported outlays, and performed such other procedures, as we considered necessary under the circumstances. We believe that our examination provides a reasonable basis for our opinion.

We questioned \$3,101,827 of the \$3,736,560 in outlays reported because the Tribe did not:

- Follow the labor cost documentation requirements for Federal grants;
- Compete contracts, justify sole-source procurement, or perform cost analyses;
- Demonstrate that fuel costs charged were equitably allocated;
- Account for vehicle leases properly;
- Comply with Federal procurement regulations and its internal policy when purchasing equipment;
- Compute and claim indirect costs in accordance with Federal cost principles, indirect cost rate agreements, and assistance agreement conditions; and
- Maintain documentation for recipient share of costs reported.

In our opinion, due to the issues summarized above, the outlays reported in the *Financial Status Reports* do not present fairly, in all material respects, the allowable outlays incurred in accordance with the terms and conditions of the agreements and applicable laws and regulations. Details of our results are included in the **Results of Examination** section that follows.

Janet G. Kasper
Office of Inspector General
U.S. Environmental Protection Agency
June 4, 2007

Results of Examination

We questioned outlays of \$3,101,827 because the Tribe claimed ineligible and unsupported outlays for labor and fringe benefit costs, contractual services, fuel charges, equipment and vehicle purchases, indirect costs, and recipient cost share. The Tribe's internal controls were not sufficient to ensure that outlays reported complied with Federal cost principles, regulations, and grant conditions. Below is a summary of the questioned costs. **Schedules 1 through 5** provide supporting detail.

Table 3: Summary of Questioned Costs				
Assistance Agreement	Outlays Reported	Costs Questioned	Amount Due EPA	Schedule
V99888401 (Superfund)	\$ 588,695	\$554,633	\$554,633	1
X98841901 (Clean Water)	315,102	238,237	226,325	2
BG98804602 (2001 PPG)	1,290,432	1,085,603	1,036,158	3
RP98897001 (Brownfields)	404,189	287,378	287,378	4
BG98804603 (2003 PPG)	1,138,142	935,976	885,882	5
Total	\$3,736,560	\$3,101,827	\$2,990,376	

Sources: Outlays reported were from the recipient's *Financial Status Reports*. Costs questioned and amount due EPA were based on Office of Inspector General (OIG) analysis.

We issued a draft report to the Tribe on June 28, 2007. The Tribe requested and we granted an extension for the response. We received the Tribe's response on August 31, 2007. The Tribe did not comment on the recommendations. In most instances, the Tribe did not explicitly state whether it agreed with the findings. However, the Tribe did provide additional information and clarifications on some of the issues reported and status of corrective actions. We have summarized the Tribe's response in the sections below and included it verbatim in Appendix C of this report.

In response to our findings and recommendations, the Tribe met with EPA Region 8 from August 6 to August 10, 2007, to work on the issues. The Tribe has scheduled another technical assistance meeting with EPA Region 8 from September 17 to September 21, 2007, to update written policies and procedures and to resolve the issues the OIG raised.

Unsupported Labor and Fringe Benefit Costs

The recipient could not provide source documentation for its labor costs that clearly showed the projects or Federal awards the employees worked on. As a result, we questioned all labor and related fringe benefit costs as unsupported, totaling \$1,971,816.

Table 4: Labor Costs Questioned			
Assistance Agreement	Labor	Fringe Benefits	Total Questioned
V99888401 (Superfund)	\$ 358,462	\$90,356	\$ 448,818
X98841901 (Clean Water)	74,849	24,286	\$99,135
BG98804602 (2001 PPG)	513,129	132,115	645,244
RP98897001 (Brownfields)	130,163	39,881	170,044
BG98804603 (2003 PPG)	471,168	137,407	608,575
Total	\$1,547,771	\$424,045	\$1,971,816

Sources: Labor and fringe benefit costs were from the recipient's general ledger.

Claimed labor costs did not meet the documentation requirements of Office of Management and Budget (OMB) Circular A-87, Attachment B, paragraph 11(h). Under the regulation:

- Where employees are expected to work solely on a single Federal award or cost objective, the recipient can use periodic certifications to charge employee salaries and wages. These certifications will be prepared at least semiannually and will be signed by the employee or supervisory official having firsthand knowledge of the work performed by the employee, and will certify that the employee spent 100 percent of his or her time on one award or cost objective.
- Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation. The reports or equivalent documentation must be prepared and signed by the employee at least monthly to reflect an after-the-fact distribution of the actual activity of each employee and account for the total activity for which each employee is compensated.
- Budget estimates or other distribution percentages determined before the services are performed may be used for interim accounting purposes, but must be reviewed and adjusted to actual costs at least quarterly. Adjustments may be made annually if the variance is less than 10 percent.

According to the Tribe, it hired most employees to work on a single project, such as a Federal award. However, the Tribe did not use the periodic certification process for labor charging, relying instead on employee timesheets to support payroll costs. Therefore, the timesheet became the original source documentation for charging payroll costs to projects.

The Tribe's payroll documentation did not contain adequate information to ensure that the payroll department properly recorded an employee's actual time worked on individual projects. An employee's timesheet contains a variety of information – including the employee's name, identification number, department, pay period, total hours worked, leave earned or taken, and employee's signature – certifying that the number of hours worked is correct. However, the

timesheet missed a key piece of information – the project number or a description of the actual work the employee performed.

According to the Tribe, it assigns a fixed account number to each employee it hires. When the payroll department records the employee's hours from the timesheet into the payroll system, the system automatically charges all the hours and costs to the employee's fixed account number. The payroll department prepares reports that the Tribe uses to charge payroll costs to projects, based on the employee's fixed account number. However, the employees do not review or sign the payroll reports. Therefore, the payroll reports do not constitute the employee's certification that the employee worked on the project identified in the report.

The lack of project identification constitutes an internal control weakness. It is possible for an employee the Tribe hires for a specific project to assist on another project from time to time. For example, according to one program coordinator/project manager, while being paid under the Superfund agreement, he supervised the work under the Clean Water project. There was no way for the employees to record such an event on their timesheets. Thus, there was no way for the payroll department to properly allocate employees' time between their regular fixed account and other projects they might have worked on. Tribal employees said they did not comply with the requirements because they were unaware of them.

If an employee does not record the time spent on each project in a timely manner, the employee may not remember the details when asked later. For example, the Tribe charged hours for an employee for the Holloway Garage Site cleanup. When we interviewed the employee in December 2006, he said he never worked on the project. When we discussed this work with him again in April 2007, he said he was at the site but could not be certain about the date or the work he did. Having the project information (number or description) on the source documentation employees and the supervisor sign would allow verification that costs are allocable to a certain project and there is no mischarging.

Certain employees charged time to more than one agreement based on budgeted percentages and did not maintain personnel activity reports to track actual work performed. For example, the Director of the Environmental Protection Department charges 75 percent of his hours to the PPG agreements and 25 percent to the Tribe's general fund. The Director's administrative assistant split her time equally between the Brownfields and PPG grants. These employees did not track the actual projects worked on. As a result, the Tribe was not able to quarterly adjust the budget amounts to actual costs, as the OMB Circular requires.

Auditee Response

The Tribe stated that it has instituted a revised timesheet recording process as of May 6, 2007. The revised timesheet records time on a daily basis by grant number, and includes certification by the employee of time worked on each grant. The Tribe also stated that it had in place since May 2004 a Daily Time Log recorded by each employee documenting work performed and the grant for which the work was performed. As of September 1, 2007, the Tribe implemented a requirement for employees to sign and certify that the Daily Time Log is accurate.

OIG Analysis

We continue to question the labor and fringe benefit costs of \$1,971,816 as unsupported. The Tribe has not provided additional supporting documentation for the \$1,971,816. While the revised timesheet the Tribe provided in Exhibit 1 of its response seems adequate for documenting labor and fringe benefit costs incurred under each project, the Tribe did not use it during the period when it incurred the \$1,971,816. Therefore, these costs remain questioned as unsupported. While the revised timesheet appears acceptable, we did not verify the implementation of the new timesheet and are unable to opine on the adequacy of the Tribe's new timekeeping procedures.

Procurements Did Not Comply with Standards

Many of the Tribe's procurements under the agreements did not comply with Federal procurement standards and tribal policies. The Tribe:

- Awarded small purchase orders without obtaining adequate price or rate quotations, as required under Title 40 CFR 31.36(d) and 35.6565 as well as the Tribe's internal policies;
- Awarded a noncompetitive contract without documented justification, EPA approval, or cost or price analysis required under Title 40 CFR 35.6565;
- Claimed unallowable contract costs for building improvements; and
- Included labor costs as part of the claimed contractual costs.

As a result, we questioned unsupported contract costs of \$428,732 and equipment costs of \$113,792. We also questioned ineligible contract and labor costs of \$6,736 because these costs were not allowable under the assistance agreements. Details follow.

Small Purchase Orders

The Tribe did not comply with the Federal procurement requirements and its internal policies when making small purchases. The Tribe did not obtain the required price or rate quotations, so we have no assurance that the prices were fair and reasonable. As a result, we questioned contract outlays of \$410,896 and equipment outlays of \$113,792 claimed under the five agreements. Questioned costs are summarized in Table 5 by agreement. A detailed list of contract costs questioned by contractor is in **Schedule 6: Small Purchase Contract Costs Questioned by Award and Contractor**. A detailed list of questioned equipment costs is in **Schedule 7: Small Purchase Equipment Costs Questioned**.

Table 5: Small Purchases Questioned		
Assistance Agreement	Contract Costs Questioned	Equipment Costs Questioned
V99888401 (Superfund)	\$ 32,470	\$ 0
X98841901 (Clean Water)	94,034	2,677
BG98804602 (2001 PPG)	184,055	40,245
RP98897001 (Brownfields)	46,853	8,531
BG98804603 (2003 PPG)	53,484	62,339
Total	\$410,896	\$113,792

Sources: Contract and equipment costs questioned were based on OIG analysis.

According to Title 40 CFR 31.36(d) and 35.6565, the recipient may procure goods and services using one of four methods – small purchase, sealed bid, competitive bid, and noncompetitive bid. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed by the Federal Government. The threshold is currently \$100,000 for non-Superfund contracts under Title 40 CFR 31.36 and \$25,000 for Superfund contracts under Title 40 CFR 35.6565. If small purchase procedures are used, the recipient must obtain price or rate quotations from an adequate number of qualified sources.

The Tribe's internal policy for property and supply purchases requires the buyer to obtain and document bids for items with a unit cost of over \$500, or when competitive bidding is practical or advantageous to tribal programs. For items purchased with Federal or State funds, the policy also requires the Tribe to consult the granting agency and grant guidelines.

We reviewed 46 contracts and consultant agreements (contracts) awarded under the five EPA assistance agreements examined and judgmentally selected equipment transactions. We found that the Tribe did not obtain price or rate quotations from more than 1 contractor or vendor for all but 2 contracts reviewed and 21 out of 26 equipment transactions tested. We questioned costs claimed for contracts and equipment where the Tribe did not comply with Federal procurement requirements and internal policies.

Auditee Response

The Tribe did not comment on this issue.

OIG Analysis

We continue to question the contract outlays of \$410,896 and equipment outlays of \$113,792 claimed under the five agreements.

Noncompetitive Contract

According to regulations, contracts exceeding the small purchase order thresholds are to be competitively bid. The current threshold is \$25,000 for Superfund contracts. Of the contracts reviewed, one awarded under the Superfund agreement exceeded the small purchase threshold of \$25,000. The Tribe did not comply with the Federal procurement requirements when awarding the noncompetitive contract. As a result, we questioned contract outlays of \$17,836.

The Tribe noncompetitively awarded the contract under the Superfund agreement. According to the Tribe, it advertised the request for proposal. Two people responded to the advertisement. The Tribe hired one as an employee and awarded a contract to the other person. Under Title 40 CFR 35.6565, the Tribe may use noncompetitive awards under one of four circumstances. One of these circumstances notes that if after solicitation of a number of sources competition is determined inadequate, cost analysis is required. The Tribe did not have adequate competition in the award of this contract, and did not conduct the required cost or price analysis. The regulations also allow the use of a noncompetitive award if the awarding agency approves it. The Tribe stated that it obtained verbal approval from EPA for the contract, but the approval was not documented. As a result, we have no assurance that the costs are fair and reasonable.

The Tribe did not maintain the required procurement documentation. Title 40 CFR 31.36(b)(9) requires grantees to maintain records sufficient to detail the significant history of their procurements. These records should include the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. The Tribe's records should have included both bidders' original proposals, the reasoning for subsequently awarding the contract noncompetitively and choosing to hire one of the bidders as an employee, the cost analysis for the awarded contract, and EPA's approval to award a contract without competition.

Auditee Response

The Tribe stated that the OIG draft was not clear on what actually occurred. The Tribe stated that it had three proposals for legal services. One bidder withdrew his proposal; another was selected, but the bidder requested an increase in pay after selection. The final proposal was accepted and the Tribe entered into a contract with the attorney. The contract was renewed for a second year. The Tribe stated that its performance reports included the contract, but EPA never raised any issue about it

The Tribe stated that it has received and reviewed EPA Region 10's guidance for tribes and tribal consortium for purchasing supplies, equipment and services under EPA grants. It fully intends to implement the guidance as written procurement procedures for the Tribe's Environmental Protection Department no later than October 1, 2007. The Tribe plans to work with EPA Region 8 during its scheduled technical assistance meeting in September 2007 to finalize written procurement procedures in time for the October 1, 2007, implementation.

OIG Analysis

We disagree with the Tribe's statement that our report is not factually accurate. When we performed our fieldwork, the Tribe told us that there were two bidders, but did not provide us any written documentation to support this statement. In its response, the Tribe told us there were three bidders, but again did not provide any documentation to support its statement. Therefore, we cannot confirm that the Tribe's response is correct. We continue to question the noncompetitive contract costs of \$17,936 as unsupported. Although the Tribe provided additional explanations, there was no documentation to show adequate competition or EPA's approval for noncompetitive award as required under Title 40 CFR 35.6565, therefore, does not meet the requirements of Title 40 CFR 31.36(b)(9).

Unallowable Contract Costs

We questioned ineligible contractual outlays of \$2,034 claimed under the 2001 PPG agreement because the costs are not allowable as direct costs under OMB Circular A-87. According to the purchase order, the cost was incurred for "walkway, steps, garage pad, ramp apron, hand rail and gravel driveway." The Tribe charged these costs directly to the EPA agreement. OMB Circular A-87, Attachment B, paragraph 15, requires the Tribe to recover fixed asset costs, such as cost of a building and its accessory structures, through depreciation or use allowance. Therefore, these costs are not allowable as a direct cost to EPA.

Auditee Response

The Tribe explained that the work was performed to construct a new storage building for Section 106 equipment under the PPG grant. According to the Tribe, it did not have sufficient building space to store the EPA-funded equipment and meet its obligation to safeguard equipment purchased with Federal funds. The Tribe stated that it contacted EPA Region 8 and received authorization to construct a new concrete pad and connection concrete from the new building to the existing Environmental Protection Department building.

OIG Analysis

We have not changed our position on the \$2,034 questioned. Costs for constructing a new building should be capitalized and recovered through depreciation or use allowance in accordance with OMB Circular A-87, Attachment B, paragraph 15.

Duplicate Labor Costs

We questioned duplicate labor costs of \$4,702 claimed under the Brownfields agreement. The Tribe incurred direct labor costs for tribal employees to conduct the Holloway Garage Site cleanup. As discussed in the **Unsupported Labor and Fringe Benefit Costs** section, all dedicated tribal employees' labor are charged to the various EPA agreements using the employees' fixed account numbers. The labor costs incurred are

part of payroll costs, which the Tribe claimed under “salaries” and “fringe benefits.” However, the Tribe also claimed these labor costs as a contractual expense. Therefore, we questioned the \$4,702 as duplicate costs claimed.

Auditee Response

The Tribe stated that it would work with EPA Region 8 to ensure the reimbursement to the grant occurs in a timely manner and submit amended financial reports on the affected grant.

OIG Analysis

We agree with the Tribe’s proposed actions.

Fuel Costs Not Charged Based on Benefits Received

The Tribe did not charge fuel costs to the agreements based on relative benefit received. As a result, the recipient did not allocate fuel charges equitably to the EPA assistance agreements, resulting in questioned travel costs of \$36,624, as summarized below.

Table 6: Fuel Charges Questioned	
Assistance Agreement	Costs Questioned
V99888401 (Superfund)	\$ 2,438
X98841901 (Clean Water)	0
BG98804602 (2001 PPG)	17,976
RP98897001 (Brownfields)	5,186
BG98804603 (2003 PPG)	11,024
Total	\$36,624

Source: Fuel charged questioned were based on OIG analysis.

Instead of refueling program vehicles at a gas station, the Tribe maintained a central fuel tank and purchased fuel in bulk. According to the Tribe, prior to October 1, 2005, it charged fuel costs to the agreements on a rotational basis when the Tribe purchased gas for the central fuel tank. The Tribe’s accounting records showed \$36,624 was charged to the various agreements for fuel prior to October 1, 2005. However, based on our review of the accounting records, it appears that the charges were made on a random, rather than rotational, basis. While the Tribe did keep some type of log for checking out vehicles, these logs were incomplete and the Tribe did not use these logs to charge fuel costs to the agreements.

According to OMB Circular A-87, Attachment A, in order for a cost to be allowable under Federal grants, it must be allocable to the grant. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

The Tribe corrected this issue as of October 1, 2005. The Tribe started to track actual fuel usage by project, and charged the agreements based on the number of gallons used. Each time the driver refuels a vehicle at the central tank, the driver initials and logs the gallons used, mileage, vehicle identification number, and applicable project. The Tribe applies the per gallon purchase price for the central tank purchase to the gallons of gas the driver used on the day the gas is used. The Tribe then allocates this computed total to the appropriate project. We believe this allocation method is adequate.

Auditee Response

The Tribe stated that it would work with EPA Region 8 during its scheduled onsite technical assistance meeting in September 2007 to review how the fuel costs were allocated between grants prior to October 1, 2005, reallocate fuel costs, and amend grant reporting documents accordingly.

OIG Analysis

We agree with the Tribe’s proposed actions.

Unsupported and Unallowable Equipment Purchases

We questioned equipment costs of \$55,961 because the Tribe did not follow Federal procurement regulations and assistance agreement requirements, as summarized below:

Table 7: Equipment Purchases Questioned			
Assistance Agreement	Mischarged and Unapproved Vehicle Costs	Improper Vehicle Lease	Total Questioned
V99888401 (Superfund)			
X98841901 (Clean Water)	\$7,760		\$ 7,760
BG98804602 (2001 PPG)			
RP98897001 (Brownfields)		\$20,975	20,975
BG98804603 (2003 PPG)		27,226	27,226
Total	\$7,760	\$48,201	\$55,961

Source: Equipment costs questioned were based on OIG analysis.

Mischarged and Unapproved Vehicle Costs

We questioned equipment costs of \$7,760 claimed under the Clean Water agreement for an all-terrain vehicle (ATV) purchase and its protection plan because the costs were incurred outside of the grant period. The project period for the Clean Water agreement ended on September 30, 2004; the purchase order for the ATV was dated October 6, 2004. The invoice was dated November 30, 2004, and was paid on December 7, 2004.

Auditee Response

The Tribe stated that it would work with EPA Region 8 to resolve the issue. The grant period for the 106 Special Project (Clean Water agreement) where the ATV was authorized to be purchased from was extended by EPA Region 8, so the purchase was within an allowable period. According to the Tribe's response, the EPA project officers approved the purchase and the time extension.

OIG Analysis

We continue to question the equipment costs of \$7,760 as ineligible costs. Although the Tribe provided in its response a progress report showing work performed in October 2004, the Tribe did not have any documentation to show that the grant was modified to extend the performance period. Neither the Tribe nor EPA provided us with a grant amendment to show that EPA extended the grant period beyond September 30, 2004. Even if EPA extended the grant period to October 2004, we do not believe that a 1-month use of the ATV would have been sufficient to justify its purchase.

Improper Vehicle Leases

The Tribe did not properly account for and claim vehicle lease costs. As a result, we questioned \$48,201 claimed, as shown in Table 7 (\$20,975 under the Brownfields agreement and \$27,226 under the 2003 PPG agreement).

The Tribe charged the total lease amounts, equal to 100 percent of the vehicles' purchase prices, to the EPA agreements within 1 week of purchase. Under Financial Accounting Standards 13, issued by the Financial Accounting Standards Board, a lease must be treated as a capital lease if it meets any one of four conditions. One of these conditions is that the present value of the lease payments exceeds 90 percent of the fair market value of the asset. Since the lease prices were 100 percent of fair market value, the leases must be accounted for as capital leases. According to OMB Circular A-87, Attachment B, paragraph 38, only expenses such as depreciation or use allowance, maintenance, and insurance are allowed under a capital lease. In essence, the total lease payment is to be charged over the life of the lease, not as a lump-sum amount at the beginning of the lease.

Further, there is no evidence that EPA approved the vehicle leased under the 2003 PPG agreement. According to OMB Circular A-87, Attachment B, paragraph 19(c), capital expenditures for equipment are allowable as a direct cost when approved by the awarding agency. Since the vehicle lease was not in the budget or scope of work of the agreement, and the Tribe did not provide any documentation that EPA subsequently approved its purchase, the leased vehicle did not meet the requirements of the Federal regulations.

Auditee Response

According to the Tribe, EPA Region 8 approved the vehicle leases and provided technical assistance to the Tribe in drafting the lease agreements. Under EPA Region 8 policies,

the Tribe cannot lease General Services Administration vehicles. Therefore, to perform the work under the EPA agreements, which require fieldwork over an area spanning 2.8 million acres, roughly the size of Connecticut, a vehicle purchase or lease is required. EPA provided assistance in drafting the lease agreement, but did not indicate this was a capital lease. The Tribe will obtain further training on this area from EPA Region 8 during its scheduled technical assistance meeting in September 2007.

OIG Analysis

We continue to question the \$48,201 equipment lease costs. The Tribe did not provide any evidence of EPA's approval of the leases. However, even if the EPA approved the leases and assisted in the drafting the agreement, the Tribe is responsible for accounting for its costs in accordance with general accepted accounting principles and the applicable laws and regulations.

Unsupported Other Costs Claimed

We questioned unsupported other costs of \$7,671 claimed under the 2003 PPG agreement because the claimed costs lacked sufficient supporting documentation. We questioned \$4,200 of repair, labor, and material costs the Tribe claimed because it did not provide us with complete supporting documentation. The Tribe charged \$4,200 to the agreement as an adjusting entry. The Tribe had not provided the original source documentation to demonstrate that the costs were allocable to the agreement and allowable under OMB Circular A-87.

We questioned vehicle insurance costs of \$3,471 because we were unable to determine whether the vehicles insured were used under the 2003 PPG. According to the invoice from the Tribe's Property and Supply Department, the \$3,471 was insurance for vehicle numbers 9847, 1860, 1036, 8545, 4577, 3368, 0355, 9135, and 6159. However, these numbers were either not on the inventory list or the vehicle descriptions on the invoice did not match the inventory list.

Auditee Response

The Tribe stated that it has already reimbursed the EPA grant for the \$4,200 of repair, labor, and material costs. It will review the remaining costs with EPA Region 8 during its scheduled meeting in September 2007.

OIG Analysis

We continue to question the \$7,671 as unsupported costs. Although the Tribe has provided evidence to show that it has corrected its accounting records to credit the EPA program for the \$4,200 of repair, labor, and material costs, the Tribe did not provide documentation that it actually reimbursed EPA for this amount. The Tribe did not provide additional information or supporting documentation on the vehicle insurance costs of \$3,471, therefore, the amount remains questioned.

Indirect Costs Not Properly Calculated and Reported

We questioned indirect costs of \$348,803 because the Tribe did not compute and report indirect costs according to OMB Circular A-87, indirect cost rate agreements, and the terms under the Superfund agreement, as summarized below.

Table 8: Indirect Costs Questioned	
Assistance Agreement	Costs Questioned
V99888401 (Superfund)	\$ 53,071
X98841901 (Clean Water)	18,876
BG98804602 (2001 PPG)	137,019
RP98897001 (Brownfields)	31,087
BG98804603 (2003 PPG)	108,750
Total	\$348,803

Sources: Indirect costs questioned were from recipient's general ledger.

OMB Circular A-87, Attachment E, paragraph D.1.d requires indirect cost rate proposals to be developed and, when required, submitted within 6 months after the close of the government unit's fiscal year, unless an exception is approved by the cognizant Federal agency. According to the Tribe's indirect cost agreements, the indirect cost fixed carryforward rate is based on an estimate of costs that will be incurred during the period for which the rate applies. New indirect cost proposals are necessary to obtain approved indirect cost rates for future years.

The Tribe did not track the indirect cost base (i.e., direct costs incurred less capital expenditures) by fiscal year and apply the indirect cost rate for that year to the appropriate base. Instead, the Tribe took the most recently approved indirect cost rate and applied it to all claimed costs, regardless of the fiscal year under which those costs were incurred. For example, the Tribe's negotiated indirect rate for the fiscal year end September 30, 2000, was 16.8 percent. The Tribe applied this indirect rate to all direct costs incurred under the Clean Water agreement for the period May 15, 2001, through September 30, 2004.

Of the \$348,803 questioned, the Tribe charged \$53,071 to the Superfund agreement. Under General Provision No. 9 of the agreement, the Tribe will not charge nor claim for reimbursement any indirect costs until it has negotiated a current, acceptable indirect cost rate with a Federal agency. The Tribe's cognizant agency is the U.S. Department of the Interior. According to the agreement, the Tribe must submit a copy of the Indirect Cost Negotiation Agreement to EPA within 30 days after the cognizant agency accepted the indirect cost rate in order to be eligible to claim indirect costs against the agreement. The Tribe claimed indirect costs under the agreement in years when indirect cost rates had not been approved. The Department of the Interior approved the indirect cost rate agreements much later. For example, the Department of the Interior did not approve the Fiscal Years 2002 and 2003 rates until February 2006, and Fiscal Years 2004-2006 rates until April 2007.

The Tribe did not adjust its indirect costs claimed to actual costs because of the lack of current approved indirect cost rates. However, the Tribe has received approved rates for all fiscal years as of April 2007. The costs will remain questioned until the Tribe correctly recalculates the indirect costs for each year, adjusts the costs claimed to reflect the approved rates, and submits revised *Financial Status Reports* as necessary.

Auditee Response

The Tribe stated that its contracting officer and Environmental Protection Department staff met with EPA Region 8 in August 2007 to review the newly approved indirect cost rates and to work on applying those rates to EPA grant expenditures. The Tribe will work with EPA during its scheduled meeting in September 2007 to complete adjustment of EPA grant indirect cost charges and to complete amended Financial Status Reports.

OIG Analysis

We agree with the Tribe's proposed actions.

Recipient Share of Outlays Not Supported

The Tribe claimed its recipient share of assistance agreement costs without any supporting documentation. In its grant applications, the Tribe stated it intended to use in-kind contributions to satisfy its matching requirement and provided budgets showing what costs would be used as its share. According to Title 40 CFR 31.24(b)(6), costs and third party in-kind contributions counting toward satisfying a cost sharing or matching requirement must be verifiable from the records of grantees, subgrantees, or cost-type contractors. These records must show how the value placed on the third party in-kind contributions was derived.

The Tribe could not provide after-the-fact, specific cost documentation to support costs claimed. According to the Tribe's Contract Specialist, total outlay and recipient share amounts reported in the *Financial Status Reports* were simply mathematically calculated amounts based on Federal share amounts recorded in the general ledger. During our discussion with the Tribe, it indicated that the "costs" shown in its proposed budgets provided adequate recipient cost share support. However, budgeted amounts in the Tribe's proposals would not constitute actual incurred costs. Therefore, we have questioned as unsupported all claimed recipient share costs, totaling \$129,624.

Auditee Response

The Tribe did not comment on this issue.

OIG Analysis

We will continue to question the \$129,624 as unsupported.

Financial Status Reports Not Submitted Timely

The Tribe did not submit *Financial Status Reports* timely in accordance with Title 40 CFR 31.41(b). Under the regulation, final *Financial Status Reports* are due 90 days after the expiration or termination of the agreement. Of the four agreements where *Financial Status Reports* were due, the Tribe submitted final *Financial Status Reports* for three of the agreements at least 7 months after the due date, as shown in Table 9:

Table 9: Financial Status Reports				
Agreement	Expiration Date	Final Financial Status Report Due Date	Date Final Financial Status Submitted	Elapsed Months
V99888401 (Superfund)	07/15/06	10/15/06	11/13/06	1
X98841901 (Clean Water)	09/30/04	12/30/04	08/24/05	7
BG98804602 (2001 PPG)	09/30/03	12/30/03	08/03/04	7
BG98804603 (2003 PPG)	09/30/05	12/30/05	10/11/06	9

Sources: Expiration dates were from assistance agreement documents. Dates submitted were from the recipient's *Financial Status Reports*. Due dates and elapsed months were based on OIG analysis.

Auditee Response

The Tribe did not comment on this issue.

OIG Analysis

We have not changed our position on this issue.

Work Progress Needs to be Reported According to Regulations

The Tribe did not submit performance reports as required under the Federal regulations. Title 40 CFR 31.40(b) requires the recipient to submit an annual performance report within 90 days after the reporting period and a final report within 90 days after the expiration or termination of the agreement.

To evaluate whether the Tribe achieved the intended results of the agreements, we requested copies of annual and final performance reports from EPA and the Tribe. The Tribe did not submit final performance reports under these agreements. As of the end of our fieldwork, we had not received all annual performance reports. For example, we have not received performance reports for the Superfund agreement after Fiscal Year 2000. Although EPA project officers certified that they have received and accepted all deliverables required under the 2001 and 2003 PPG agreements, the annual performance reports for the general assistance portions of

these agreements do not address specific tasks. As a result, we are unable to determine whether the Tribe has completed all tasks and achieved the intended result of the agreements.

Auditee Response

The Tribe stated that it has sent the final progress reports to the OIG and provided emails as support. The Tribe was under the impression that all reports requested were provided to the OIG. The Tribe was not aware of potential insufficiency of reporting under the PPG agreements because EPA accepted all performance reports submitted without any request for additional information.

The Tribe did not violate EPA regulations with the format of the report submitted. The performance reports included significant grant activity information, but the format of the reports submitted prior to 2006 did not mirror the structure of the grant proposals, which set forth goals and objectives. Therefore, it was difficult to determine the accomplishments of the Tribe on the grant goals, objectives, and tasks. In the Tribe's view, it is EPA's responsibility to provide technical guidance or direction on report formats. EPA Region 8 changed the reporting format in 2006 and can now track progress on grant goals and objectives and more readily understood. The Tribe has requested EPA Region 8 to work with the Tribe on developing a new performance report format to assist non-EPA staff in reviewing the accomplishment under the grant.

The Tribe has had an annual evaluation on every grant every year. The EPA has not provided the Tribe with a written annual evaluation. The responsibility for documenting this event rests with EPA as it is an EPA obligation to perform annual evaluations.

OIG Analysis

We have not changed our overall position on this issue. The Tribe only provided some annual progress reports, not final progress reports. When we interviewed a Region 8 project officer regarding final progress report submission, she stated that the annual progress reports constituted the final progress reports; therefore, in her opinion, no further reporting was needed. However, since we could not relate grant tasks to actual accomplishments, as discussed above, there was no way for us to determine if, overall, the grant accomplishments were met. We concur with the Tribe's plan to work with EPA Region 8 to revise its performance report formats to better identify and track grant accomplishments. However, for grants that are already completed, we continue to recommend Region 8 confirm that all work under the agreements has been satisfactorily completed prior to closeout of the agreements.

Recommendations

We recommend that EPA Region 8's Regional Administrator:

1. Disallow and recover the Federal share of ineligible costs of \$64,765, as identified in **Schedules 1 through 5** of this report.
2. Require the Tribe to provide adequate support for the remaining \$3,037,062 questioned, and disallow and recover the Federal share of any outlays the Tribe cannot support.
3. Require the Tribe to adjust its indirect costs claimed to actual costs based on approved rates and submit revised *Financial Status Reports*.
4. Provide training or technical assistance to the Tribe to improve its compliance with timekeeping, procurement, and recipient cost share documentation and compliance.
5. Require the Tribe to establish procedures to ensure that:
 - a. Procurements are conducted in accordance with Title 40 CFR 31.36, Title 40 CFR Part 35 Subpart O, and the Tribe's internal policies;
 - b. Labor and fringe benefit costs are documented and supported in accordance with OMB Circular A-87;
 - c. Indirect costs are calculated and reported in accordance with OMB Circular A-87, indirect cost rate agreements, and grant conditions; and
 - d. Recipient's share of costs are documented in accordance with Title 40 CFR 31.24 and OMB Circular A-87.
6. Review and approve the Tribe's solicitations and contracts under EPA assistance agreements until EPA determines that the Tribe has adequate procedures to ensure compliance with all applicable Federal regulations and cost principles.
7. Confirm that all work under the agreements has been satisfactorily completed prior to closeout of the agreements, and require the Tribe to submit progress reports in accordance with Title 40 CFR 31.40(b).
8. Maintain the Tribe's "high risk" designation until all issues identified in this report and Region 8's onsite review (addressed in Appendix B of the report) have been resolved.

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
1	20	Disallow and recover the Federal share of ineligible costs of \$64,765, as identified in Schedules 1 through 5 of this report.	U	EPA Region 8 Regional Administrator	TBD	\$ 65	
2	20	Require the Tribe to provide adequate support for the remaining \$3,037,062 questioned, and disallow and recover the Federal share of any outlays the Tribe cannot support.	U	EPA Region 8 Regional Administrator	TBD	\$3,037	
3	20	Require the Tribe to adjust its indirect costs claimed to actual costs based on approved rates and submit revised <i>Financial Status Reports</i> .	U	EPA Region 8 Regional Administrator	TBD		
4	20	Provide training or technical assistance to the Tribe to improve its compliance with timekeeping, procurement, and recipient cost share documentation and compliance.	U	EPA Region 8 Regional Administrator	TBD		
5	20	Require the Tribe to establish procedures to ensure that: <ul style="list-style-type: none"> a. Procurements are conducted in accordance with Title 40 CFR 31.36, Title 40 CFR Part 35 Subpart O, and the Tribe's internal policies; b. Labor and fringe benefit costs are documented and supported in accordance with OMB Circular A-87; c. Indirect costs are calculated and reported in accordance with OMB Circular A-87, indirect cost rate agreements, and grant conditions; and d. Recipient's share of costs are documented in accordance with Title 40 CFR 31.24 and OMB Circular A-87. 	U	EPA Region 8 Regional Administrator	TBD		
6	20	Review and approve the Tribe's solicitations and contracts under EPA assistance agreements until EPA determines that the Tribe has adequate procedures to ensure compliance with all applicable Federal regulations and cost principles.	U	EPA Region 8 Regional Administrator	TBD		
7	20	Confirm that all work under the agreements has been satisfactorily completed prior to closeout of the agreements, and require the Tribe to submit progress reports in accordance with Title 40 CFR 31.40(b).	U	EPA Region 8 Regional Administrator	TBD		
8	20	Maintain the Tribe's "high risk" designation until all issues identified in this report and Region 8's onsite review (addressed in Appendix B of the report) have been resolved.	U	EPA Region 8 Regional Administrator	TBD		

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

Schedules

Schedule 1 Questioned Costs for Assistance Agreement V99888401 (Superfund)

Cost Category	Outlays Reported	Costs Questioned			Note
		Ineligible	Unsupported	Total	
Salaries	\$358,462		\$358,462	\$358,462	1
Fringe Benefits	90,356		90,356	90,356	1
Contract	62,858		50,306	50,306	2
Travel	28,646		2,438	2,438	3
Supplies	1,640		0	0	
Equipment	0		0	0	
Other	34,111		0	0	
Indirect Costs	53,071		53,071	53,071	4
Amount Not Claimed Due to Budget Ceiling	(40,449)		0	0	
Recipient Share	0		0	0	
Total Costs	\$588,695	\$0	\$554,633	\$554,633	
Amount Due EPA	\$554,633				

Sources: Outlays reported were from the recipient's *Financial Status Reports* and general ledger. Costs questioned were based on OIG analyses.

Note 1: See discussion under **Unsupported Labor and Fringe Benefit Costs** in the **Results of Examination** section.

Note 2: See discussion under **Procurements Did Not Comply with Standards** in the **Results of Examination** section.

Note 3: See discussion under **Fuel Costs Not Charged Based on Benefits Received** in the **Results of Examination** section.

Note 4: See discussion under **Indirect Costs Not Properly Calculated and Reported** in the **Results of Examination** section.

Schedule 2
Questioned Costs for Assistance Agreement X98841901
(Clean Water)

Cost Category	Outlays Reported	Costs Questioned			Note
		Ineligible	Unsupported	Total	
Salaries	\$74,849		\$74,849	\$74,849	1
Fringe Benefits	24,286		24,286	24,286	1
Contract	150,228		94,034	94,034	2
Travel	1,480			0	
Supplies	2,450			0	
Equipment	22,120	\$7,760	2,677	10,437	3
Other	5,058			0	
Indirect Costs	18,876		18,876	18,876	4
Recipient Share	15,755		15,755	15,755	5
Total Costs	\$315,102	\$7,760	\$230,477	\$238,237	
Less: Questioned Costs	(238,237)				
Adjusted Total Outlays	\$76,865				
Recipient Share (5%)	3,843				
Revised Federal Share	\$73,022				
EPA Payments	299,347				
Amount Due EPA	\$226,325				

Sources: Outlays reported were from the recipient's *Financial Status Reports* and general ledger. Costs questioned were based on OIG analyses.

Note 1: See discussion under **Unsupported Labor and Fringe Benefit Costs** in the **Results of Examination** section.

Note 2: See discussion under **Procurements Did Not Comply with Standards** in the **Results of Examination** section.

Note 3: Equipment outlays of \$10,438 questioned consist of:

- a. Costs of \$7,760 associated with an ATV purchase and its protection plan. See discussion under **Unsupported and Unallowable Equipment Purchases – Mischarged and Unapproved Vehicle Costs** in the **Results of Examination** section.
- b. Costs of \$2,677 for purchase of a printer. See discussion under **Procurements Did Not Comply with Standards – Small Purchase Orders** in the **Results of Examination** section.

Note 4: See discussion under **Indirect Costs Not Properly Calculated and Reported** in the **Results of Examination** section.

Note 5: See discussion under **Recipient Share of Outlays Not Supported** in the **Results of Examination** section.

Schedule 3
Questioned Costs for Assistance Agreement BG98804602
(2001 PPG)

Cost Category	Outlays Reported	Costs Questioned			Note
		Ineligible	Unsupported	Total	
Salaries	\$513,129		\$513,129	\$513,129	1
Fringe Benefits	132,115		132,115	132,115	1
Contract	182,737	\$2,034	180,703	182,737	2
Travel	69,451		17,369	17,369	3
Supplies	22,388		0	0	
Equipment	83,757		40,245	40,245	4
Other	90,806		3,959	3,959	5
Indirect Costs	137,019		137,019	137,019	6
Unreconciled Overpayment	2,068	2,068		2,068	7
Recipient Share	56,962		56,962	56,962	8
Total Costs	\$1,290,432	\$4,102	\$1,081,501	\$1,085,603	
Less: Questioned Costs	(1,085,603)				
Adjusted Total Outlays	\$204,829				
Recipient Share (3.67%)	7,517				
Revised Federal Share	\$197,312				
EPA Payments	1,233,470				
Amount Due EPA	\$1,036,158				

Sources: Outlays reported were from the recipient's *Financial Status Reports* and general ledger. Costs questioned were based on OIG analyses.

Note 1: See discussion under **Unsupported Labor and Fringe Benefit Costs** in the **Results of Examination** section.

Note 2: Contract outlays of \$182,737 questioned consist of:

- a. Costs of \$180,703 paid under contracts not procured in accordance with Federal procurement regulations, as outlined under Title 40 CFR 31.36. See discussion under **Procurements Did Not Comply with Standards – Small Purchase Orders** in the **Results of Examination** section.
- b. Costs of \$2,034 for building improvements are unallowable under OMB Circular A-87, Attachment B, paragraphs 15 and 28. See discussion under **Procurements Did Not Comply with Standards – Unallowable Contract Costs** in the **Results of Examination** section.

Note 3: See discussion under **Fuel Costs Not Charged Based on Benefits Received** in the **Results of Examination** section.

Note 4: See discussion under **Procurements Did Not Comply with Standards – Small Purchase Orders** in the **Results of Examination** section.

Note 5: Other outlays of \$3,959 questioned consist of:

- a) Attorney fees of \$3,352 paid under a contract for legal consulting. We questioned the costs because the contract was not procured in accordance with the Federal procurement regulations established under Title 40 CFR 31.36. See discussion under **Procurements Did Not Comply with Standards – Small Purchase Orders** in the **Results of Examination** section
- b) Fuel charges of \$607. See discussion under **Fuel Costs Not Charged Based on Benefits Received** in the **Results of Examination** section.

Note 6: See discussion under **Indirect Costs Not Properly Calculated and Reported** in the **Results of Examination** section.

Note 7: We questioned \$2,068 of ineligible claimed costs in excess of costs incurred. We performed a reconciliation of costs claimed in the recipient's final *Financial Status Report* to the recipient's general ledger. We identified \$2,068 in costs the recipient claimed that were not recorded in the general ledger.

Note 8: See discussion under **Recipient Share of Outlays Not Supported** in the **Results of Examination** section.

Schedule 4
Questioned Costs for Assistance Agreement RP98897001
(Brownfields)

Cost Category	Outlays Reported	Costs Questioned			Note
		Ineligible	Unsupported	Total	
Salaries	\$130,163		\$130,163	\$130,163	1
Fringe Benefits	39,881		39,881	39,881	1
Contract	91,860	\$4,702	33,773	38,475	2
Travel	33,217		7,416	7,416	3
Supplies	8,306		0	0	
Equipment	20,702		8,531	8,531	4
Other	48,973	20,975	10,850	31,825	5
Indirect Costs	31,087		31,087	31,087	6
Recipient Share	0		0	0	
Total Costs	\$404,189	\$25,677	\$261,701	\$287,378	
Amount Due EPA	\$287,378				

Sources: Outlays reported were from the recipient's *Financial Status Reports* and general ledger. Costs questioned were based on OIG analyses.

Note 1: See discussion under **Unsupported Labor and Fringe Benefit Costs** in the **Results of Examination** section.

Note 2: Contract outlays of \$38,475 questioned consist of:

- a. Costs of \$33,773 paid under contracts not procured in accordance with Federal procurement regulations, as outlined under Title 40 CFR 31.36. See discussion under **Procurements Did Not Comply with Standards – Small Purchase Orders** in the **Results of Examination** section.

Of the \$33,773 questioned, \$5,250 paid to a contractor for the Holloway Garage Site cleanup also did not comply with Title 40 CFR 31.36(b)(2). According to the regulation, the grantee will maintain a contract administration system that ensures that the contractor performs in accordance with the terms, conditions, and specifications of the contracts or purchase orders. The Tribe did not have contracts for the work performed by contractor. Therefore, the Tribe was unable to ensure that the contractor performed in accordance with the terms, conditions, and specifications of the contracts.

Auditee Response

The Tribe stated that it entered into a verbal agreement with the contractor because it was an emergency. The EPA authorized the Tribe to make payments on this expenditure after the fact. The Tribe certified to the EPA that the work requested was satisfactorily completed, and EPA accepted the work. A written contract entered into after the fact would not be legally binding on the contractor.

OIG Analysis

We did not change our position on the \$5,250 questioned. Although EPA authorized the cleanup, and the Tribe is allowed to entered into verbal agreement in an emergency situation, in order to comply with the requirements of Title 40 CFR 31.36(b)(2), the Tribe and the contractor should have signed the contract after the fact to documented what was verbally agreed upon. This would allow the Tribe to ensure that the contractors performed in accordance with the contract terms.

- b. Labor costs of \$4,702. See discussion under **Procurements Did Not Comply with Standards - Duplicate Labor Costs** in the **Results of Examination** section.

Note 3: Travel outlays of \$7,416 questioned consist of:

- a. Fuel charges of \$5,186. See discussion under **Fuel Costs Not Charged Based on Benefits Received** in the **Results of Examination** section.
- b. Travel costs of \$2,230 paid to a contractor. See discussion under **Procurements Did Not Comply with Standards – Small Purchase Orders** in the **Results of Examination** section.

Note 4: See discussion under **Procurements Did Not Comply with Standards – Small Purchase Orders** in the **Results of Examination** section.

Note 5: Other outlays of \$31,825 questioned consist of:

- a. A vehicle lease of \$20,975 not properly accounted for and claimed. See discussion under **Unsupported and Unallowable Equipment Purchases – Improper Vehicle Leases** in the **Results of Examination** section.
- b. Contract costs of \$10,850. We questioned the costs because the contracts were not awarded in accordance with the requirements of Title 40 CFR 31.36. See discussion under **Procurements Did Not Comply with Standards – Small Purchase Orders** in the **Results of Examination** section.

Note 6: See discussion under **Indirect Costs Not Properly Calculated and Reported** in the **Results of Examination** section.

Schedule 5
Questioned Costs for Assistance Agreement BG98804603
(2003 PPG)

Cost Category	Outlays Reported	Costs Questioned			Note
		Ineligible	Unsupported	Total	
Salaries	\$471,168		\$471,168	\$471,168	1
Fringe Benefits	137,407		137,407	137,407	1
Contract	52,164		52,164	52,164	2
Travel	73,395		11,024	11,024	3
Supplies	24,931		0	0	
Equipment	130,679	\$27,226	62,339	89,565	4
Other	82,839		8,991	8,991	5
Indirect Costs	108,750		108,750	108,750	6
Amount Not Claimed Due to Budget Ceiling	(98)				
Recipient Share	56,907		56,907	56,907	7
Total Costs	\$1,138,142	\$27,226	\$908,750	\$935,976	
Less: Questioned Costs	(935,976)				
Adjusted Total Outlays	\$202,166				
Recipient Share (3.37%)	6,813				
Revised Federal Share	\$195,353				
EPA Payments	1,081,235				
Amount Due EPA	\$885,882				

Sources: Outlays reported were from the recipient's *Financial Status Reports* and general ledger. Costs questioned were based on OIG analyses.

Note 1: See discussion under **Unsupported Labor and Fringe Benefit Costs** in the **Results of Examination** section.

Note 2: See discussion under **Procurements Did Not Comply with Standards – Small Purchase Orders** in the **Results of Examination** section.

Note 3: See discussion under **Fuel Costs Not Charged Based on Benefits Received** in the **Results of Examination** section.

Note 4: Equipment outlays of \$89,565 questioned consist of:

- a. A vehicle lease of \$27,226 not properly accounted for and claimed. See discussion under **Unsupported and Unallowable Equipment Purchases – Improper Vehicle Leases** in the **Results of Examination** section.
- b. Equipment purchases of \$62,339. The amount was questioned because the Tribe did not comply with the procurement regulations of Title 40 CFR 31.36(d)(1) and the Tribe's internal policy for property and supply purchases. See discussion under

Procurements Did Not Comply with Standards – *Small Purchase Orders* in the **Results of Examination** section.

Note 5: Other outlays of \$8,991 questioned consist of:

- a. Contract outlay of \$1,320 paid to Energy Laboratories. We questioned the amount because the contract was not procured in accordance with the Federal procurement regulations outlined in Title 40 CFR 31.36. See discussion under **Procurements Did Not Comply with Standards – *Small Purchase Orders*** in the **Results of Examination** section.
- b. Repair/Labor/Material of \$4,200 and vehicle insurance costs of \$3,471. We questioned the amounts because the Tribe has not provided us with adequate supporting documentation. See discussion under **Unsupported Other Costs Claimed** in the **Results of Examination** section.

Note 6: See discussion under **Indirect Costs Not Properly Calculated and Reported** in the **Results of Examination** section.

Note 7: See discussions under **Recipient Share of Outlays Not Supported** in the **Results of Examination** section.

Schedule 6
Small Purchase Contract Costs Questioned
by Award and Contractor

Contractor	V99888401 (Superfund)	X98841901 (Clean Water)	BG98804602 (2001 PPG)	RP98897001 (Brownfields)	BG98804603 (2003 PPG)	Total
Contractual						
Cherokee Data Fusions				\$ 1,705		\$ 1,705
Energy Laboratory		\$ 780	\$ 45,959	2,818	\$16,679	66,236
Erickson Environmental			8,536		8,206	16,742
Farlee Trenching				5,250		5,250
First Priority		79,174				79,174
Gunderson, Palmer, Goodsell & Nelson/Pam Snyder			95,453		4,325	99,778
IECIS Group	\$ 5,000					5,000
Inter-Mountain					1,574	1,574
Jerry Peacock			600			600
Mark Peacock		12,800	13,000		10,000	35,800
Matrix Consulting Group				24,000		24,000
Plateau Ecosystems	38,898	1,280	17,155		11,380	68,713
Amount Not Claimed Due to Budget Ceiling	(11,428)					(11,428)
Sub-Total Contractual	\$32,470	\$94,034	\$180,703	\$33,773	\$52,164	\$393,144
Other						
Energy Laboratory					1,320	1,320
Farlee Trenching				5,850		5,850
Gunderson, Palmer, Goodsell & Nelson/Pam Snyder			3,352			3,352
Patti Gourneau				5,000		5,000
Sub-Total Other	\$0	\$0	\$3,352	\$10,850	\$1,320	\$15,522
Travel						
Cherokee Data Fusions				2,230		2,230
Sub-Total Travel	\$0	\$0	\$0	\$2,230	\$0	\$2,230
Grand Total	\$32,470	\$94,034	\$184,055	\$46,853	\$53,484	\$410,896

Sources: Contract costs questioned were based on OIG analyses.

Schedule 7 Small Purchase Equipment Costs Questioned

Date	Vendor	Description	Amount Questioned				Total
			X98841901 (Clean Water)	BG98804602 (2001 PPG)	RP9889701 (Brownfields)	BG98804603 (2003 PPG)	
03/30/04	Best Business Products	Canon image runner copier	\$2,677		\$2,677	\$5,355	\$10,709
09/05/02	Cole-Palmer Company	Four holder water purifier		\$3,035			3,035
09/05/02	Cole-Palmer Company	Supplies		4,098			4,098
09/24/02	CRST Telephone Sales & Services	Supplies		9,146			9,146
05/07/02	Dakota 2000	Dimension 4400 series	Note 1	2,186			2,186
05/07/02	Dakota 2000	Dimension 4400 series	Note 1	2,186			2,186
06/06/03	Dakota 2000	Dell Inspirion Notebook		2,959			2,959
06/26/03	Dakota 2000	Dimension 4550 series		2,345			2,345
3/31/04	Dakota 2000	Computer system			5,854		5,854
05/19/04	Dakota 2000	Computer system				3,496	3,496
09/30/04	Dakota 2000	Computer system				2,661	2,661
11/19/04	Dakota 2000	camera, computer				7,354	7,354
12/07/04	Dakota 2000	Tower, Surge, etc				4,478	4,478
03/01/05	Dakota 2000	Time center desktop				2,485	2,485
04/19/05	Dakota 2000	Computer system				3,481	3,481
09/30/03	Fischer Scientific Company	Office Equipment		7,161			7,161
09/30/03	JV	JV 03-163		4,874			4,874
12/07/04	Pierre Sports Center	Winterizing boat/trailer				4,033	4,033
09/22/04	Rice Honda/Suzuki	'04 Honda ATV & '05 snow				6,839	6,839
11/12/04	Tech Sale, Inc.	P.O. 54655				22,157	22,157
06/26/03	YSI Environmental	Multi Parameter Display		2,255			2,255
		Totals	\$2,677	\$40,245	\$8,531	\$62,339	\$113,792

Sources: Equipment costs questioned were based on OIG analyses.

Note 1: The Tribe received two bids for these purchases but purchased the equipment with higher bid without any justification.

Scope and Methodology

We performed our examination in accordance with the generally accepted government auditing standards issued by the Comptroller General of the United States, and the attestation standards established by the American Institute of Certified Public Accountants. We also followed the guidelines and procedures established in the OIG's "Project Management Handbook."

We conducted this examination to express an opinion on the reported outlays, and determine whether the Tribe complied with all applicable laws and regulations, as well as with any special requirements under the agreements. We conducted our fieldwork from September 27, 2006, through June 4, 2007.

In conducting our examination, we performed procedures as detailed below:

- We interviewed EPA personnel, and reviewed grant and project files to obtain background information on the Tribe and the agreements.
- We interviewed tribal personnel to understand the accounting system and the applicable internal controls as they relate to the reported outlays.
- We reviewed the recipient's internal controls specifically related to our objectives.
- We performed tests of the internal controls to determine whether they were in place and operating effectively.
- We reviewed EPA Region 8's report on the onsite review conducted at the Tribe in May 2005 and the single audit reports for Fiscal Years 2002, 2003, and 2004, to identify issues that might impact our examination.
- We performed followup procedures to determine the status of the issues identified in the onsite review and their impact on our examination. See Appendix B, ***Status of Onsite Review Findings for Brownfields Agreement***, for more details.
- We determined that no prior OIG audit reports were issued that required audit followup.
- We examined the reported outlays on a test basis to determine whether the outlays are allowable and properly supported in accordance with the terms of the agreements and Federal regulations and cost principles.
- We sought to determine whether the Tribe performed all tasks and provided all deliverables required under the agreement.

Status of Onsite Review Findings for Brownfields Agreement

As part of our examination, we reviewed Region 8's report on the onsite review of the Brownfields agreement that it conducted at the Tribe in May 2005 to identify issues that might affect our examination. We then performed followup procedures to determine whether the Tribe had corrected the issues. We found the following for the various issues noted by the Region.

Issue 1

What the Region 8 Review Found. The Tribe did not award its contracts in accordance with the Federal procurement regulations of Title 40 CFR 31.36 and its internal policies and procedures. Specifically, the Tribe awarded sole source contracts without proper justification and documentation. The Tribe also awarded sole source contracts to related parties without EPA project officer approval.

What the OIG Audit Found. Our examination of 46 contracts and consulting agreements showed that the Tribe awarded sole source contracts without justification, documentation, and EPA approval. This situation continues to be a problem because the Tribe has not amended its written procurement policies and procedures for the Environmental Protection Department to comply with Federal procurement regulations for sole source contracts. We questioned all costs claimed under these sole source contracts. See discussions under **Procurements Did Not Comply with Standards** in the **Results of Examination** section.

The Tribe noted in its draft report response that it incurred the questioned costs prior to 2006. According to the Tribe, questioned costs continue to be a problem because the Tribe has not amended its procurement policies or procedures for sole source contracts to meet Federal regulations.

Our examination did not identify any evidence of the Tribe awarding contracts to related parties.

Issue 2

What the Region 8 Review Found. Tribal employees accrued labor hours and received payment for work performed at the Holloway Garage Site as a contractor employee in addition to their normal wages. The Tribe billed \$58,088 for cleanup costs paid to "CRST Enterprise." The amount included work performed by tribal employees and equipment rentals. The three main concerns associated with the payment were:

- a. "CRST Enterprise" was a company owned by a tribal employee.
- b. Tribal employees received payment as a contractor for the hours billed as part of the \$58,088 in addition to their normal wages.
- c. Cleanup was conducted without EPA's approval.

What the OIG Audit Found. During our examination, we confirmed that "CRST Enterprises" is in the Tribe's chart of accounts. It is the Tribe's enterprise fund, not a separate business owned by tribal employees. Costs for all tribal-administered general programs, such as insurance and retirement benefits, are paid to "CRST Enterprise." Tribal employees did not receive extra pay for the time spent on the cleanup. Weekend hours worked were recorded as compensatory time.

Based on the documentation provided to us, the Tribe started the cleanup prior to EPA's approval due to an emergency. However, EPA later retroactively approved the cleanup. We noted that labor costs claimed were already included under "salaries" and "fringe benefits"; therefore, we questioned the costs duplicated under the Holloway Garage Site cleanup costs. See discussions under **Procurements Did Not Comply with Standards – Duplicate Labor Costs** in the **Results of Examination** section.

Issue 3

What the Region 8 Review Found. The Region had questions as to whether the security panels purchased for the Holloway Garage Site were ever put to their intended use. Also, the panels were not tagged in the Tribe's physical inventory records. The Region was also concerned that the Tribe purchased more panels than needed for the site.

What the OIG Audit Found. The Holloway Garage Site cleanup occurred in 2004. We can no longer verify whether the panels were actually put to their intended use at the time. The unit price of the panels was \$6.25. According to OMB Circular A-87, Attachment B, paragraph 19(d), items with an acquisition cost of less than \$5,000 are considered supplies; therefore, inventory tagging is not required. We noted that the Tribe sold half of the panels to a non-EPA project at the initial purchase price a month later and credited the EPA agreement for the proceeds. No further action is necessary.

Issue 4

What the Region 8 Review Found. The Tribe was unable to provide copies of actual contracts to Region 8 during the onsite review.

What the OIG Audit Found. This did not appear to be an issue based on the work performed under our audit. The Tribe provided us with all contracts requested, with the exception of the contracts awarded to Farlee Trenching for the Holloway Garage Site cleanup. The Tribe explained that the cleanup was due to an emergency and therefore it did not have any written contracts.

Issue 5

What the Region 8 Review Found. The Tribe had not demonstrated that the Brownfields cleanup conducted at the Holloway Garage property has been verified/certified complete.

What the OIG Audit Found. During our fieldwork, we could not obtain a reasonable assurance that the Tribe had completed all of the tasks outlined in the agreements. See **Work Progress Needs to be Reported According to Regulations** in the **Results of Examination** section in the report. The Tribe stated that EPA Region 8 has now certified the Holloway Garage Site cleanup to be complete.

Issue 6

What the Region 8 Review Found. The Tribe's method for allocating fuel usage was not adequate.

What the OIG Audit Found. Our review determined that prior to October 1, 2005, the Tribe did not properly allocate fuel charges based upon actual usage. See discussions under **Fuel Costs Not Charged Based on Benefits Received** in the **Results of Examination** section.

Issue 7

What the Region 8 Review Found. The Tribe used the Brownfields grant funds to pay for General Assistance grant activities.

What the OIG Audit Found. We found the two instances identified in the onsite review where training costs for General Assistance (2003 PPG agreement) employees were charged to the Brownfields agreement. These errors occurred because the General Assistance employees attended the training with one or more Brownfields employees. The General Assistance agreement was supposed to reimburse the Brownfields agreement, but the reimbursement never occurred. The Tribe stated that it will work with EPA Region 8 during its September 2007 meeting to ensure that reconciliation and modification is timely performed

Issue 8

What the Region 8 Review Found. The Tribe did not reconcile bank accounts timely.

What the OIG Audit Found. We did not follow up on the Tribe's bank account reconciliation. However, we confirmed that the Tribe did not overdraw from the EPA agreements by comparing the final *Financial Status Report* amounts to EPA's Financial Data Warehouse data. We also performed data analyses to identify potential fraudulent transactions. We noted no issues.

Issue 9

What the Region 8 Review Found. Physical inventory records were not reconciled to perpetual inventory records.

What the OIG Audit Found. We performed a physical inventory to obtain a reasonable assurance the Tribe tagged and safeguarded the large dollar items purchased under the EPA agreements. We found that all of the items inventoried were physically at the Tribe and that most items were either tagged or have a vehicle identification number. However, the Tribe's inventory was not updated. For example, the two vehicles included in our samples were not in the inventory list provided to us. We brought this issue to the Tribe's attention during our fieldwork. The Tribe agreed to update its inventory.

Issue 10

What the Region 8 Review Found. The Tribe did not submit Federal *Financial Status Reports* in a timely manner.

What the OIG Audit Found. We found that the Tribe continued to submit *Financial Status Reports* untimely. See discussions under **Financial Status Reports Not Submitted Timely** in the **Results of Examination** section.

Issue 11

What the Region 8 Review Found. The Tribe did not have a current indirect cost rate agreement.

What the OIG Audit Found. As of April 2007, the Tribe was current with its indirect cost rate agreements. See discussions under **Indirect Costs Not Properly Calculated and Reported** in the **Results of Examination** section.

Issue 12

What the Region 8 Review Found. The Tribe's personnel procedures and property, equipment, and procurement procedures were outdated.

What the OIG Audit Found. The Tribe has not updated its property, equipment, and procurement procedures. According to the Tribe, as of the date of completion of fieldwork, it was updating them.

Recipient Response

Ms. Lela Wong
EPA –OIG-Office of Audit
75 Hawthorne St., 7th Floor
San Francisco, CA 94105
Mail Code: IGA-1

August 29, 2007

Dear Ms. Wong:

Enclosed you will find the Cheyenne River Sioux Tribe's Comments on the Draft Attestation Report "Cheyenne River Sioux Tribe Outlays Reported Under Five EPA Assistance Agreements". Thank you for providing the Tribe with the opportunity to comment on the report. The Tribe appreciates the opportunity provided and looks forward to working with you and with EPA Region 8 to resolve the outstanding issues identified in the OIG Report. Pursuant to the Tribe's request for an extension of time to submit comments filed with Washington, D.C., the Tribe was granted an extension of time until August 31, 2007 to submit comments.

Please feel free to contact me with any questions or additional information needed at your convenience.

Sincerely,

Joseph Brings Plenty, Chairman
Cheyenne River Sioux Tribe

**COMMENTS OF THE CHEYENNE RIVER SIOUX TRIBE ON EPA
ATTESTATION REPORT “CHEYENNE RIVER SIOUX TRIBE OUTLAYS
REPORTED UNDER FIVE EPA ASSISTANCE AGREEMENTS”**

Submitted on August 29, 2007

The Cheyenne River Sioux Tribe would like to express it’s appreciation for the opportunity to comment on the EPA OIG Attestation Report. These comments are organized chronologically in accordance with format of the “Draft OIG Report” the Tribe received on July 5, 2007. The heading of the section commented on, the page number in the Draft Report, and the actual language the Tribe requests to be modified are provided as referents. In some instances, additional supporting documentation is attached and referenced in these comments as “**Exhibit ____**”.

Comment 1: At a Glance Summary – “What We Found”

The Tribe requests that the final sentence in this section be amended by inserting the phrase “In some instances” before the words “The Tribe was not able to demonstrate that it has completed all work under the agreements...”. The Draft OIG Report on page 15 that not all reports were received by the OIG. All Performance Reports required by Region 8 EPA have been submitted without any information from Region 8 indicating a need for further reporting. The Tribe would prefer to see a statement added to this statement or a revision of this statement based on our Comments on Comment 11.

Comment 2: Results of Examination: Unsupported Labor and Fringe Benefit Costs – pp. 7.

The Tribe requests an amendment to Paragraph 1, sentence 2 “There is currently no way for employees to record such an event on their timesheets.” In response to this issue, which was raised with the Tribe in May 2005, the Tribe has instituted a revised timesheet recording process as of Pay Period 17 in Fiscal Year 2007 covering May 6, 2007 through May 19, 2007. The revised timesheet, which was developed in consultation with OIG Staff, records time on a daily basis by grant number, and includes certification by the employee of time worked on each grant. **See Exhibit 1.** Thus, this sentence should properly reflect this adjustment, and the remainder of the paragraph be adjusted accordingly to denote that the problem has been addressed to ensure that time is properly recorded for employees performing work on more than one grant. In addition, the CRST EPD Department has had in place since May 2004 a Daily Time Log recorded by each employee documenting work performed and the grant for which the work was performed to accomplish two purposes. First, to document Labor Costs. And second, to assist the Grant Program Managers in verifying Work Accomplished under each Grant administered by CRST EPD. **See Exhibit 2.** The EPD Department has committed to add a signature line on the daily logs for employees to certify that the Log is accurate. This should assist the CRST EPD Program Managers in completing Performance Reports for each grant in a timely manner.

The Tribe would also request the addition of a Paragraph at the end of this section, which would read as follows:

“The Tribal Contracting Officer and CRST EPD Staff met with Region 8 Personnel in Denver, Colorado on August 7-10, 2007 to work on this issue. In addition, the Tribe requested Technical Assistance from EPA Region 8 to make program procedure and policy modifications and to review OIG reported questioned costs. Region 8 EPA has scheduled on-site technical assistance for September 17-21, 2007 with Mr. Paul Felz to finalize review of Questioned costs for Labor and Fringe Benefits. The CRST EPD Department has also implemented as of September 1, 2007 a Daily Time log with certifying signature of each employee documenting work performed and the Grant for which the work was performed to document labor costs.”

Comment 3: Results of Examination: Procurements Did Not Comply With Standards – Non-Competitive Contract pp. 8.

Paragraph 2 on pp. 9 concludes that the Tribe did not provide documentation of EPA Approval of the Non-Competitive Award of one contract. Factually, the OIG Draft on page 9 is not clear on what actually occurred. The Tribe had three proposals for legal services on this issue submitted. One proposer withdrew their proposal. Another was selected but requested an increase in pay after selection. The final proposal was accepted and the Tribe entered into a contract with the attorney under which EPD used a portion of its grant funds to fund the contract and the Tribe provided additional funds for the contract. The Attorney contract was renewed for a second year as well. Attached hereto as **Exhibit 3** is the documentation of this transaction. The Tribe received approval received from EPA Region 8 Project Officer _____. **Exhibit 3** is documentation of the approval of the contract approval by EPA Region 8. This should resolve the findings with respect to this particular contract. The Tribe would request removal of references to this contract in this section of the report. If this information is still insufficient to remove the finding, the Tribe commits to work with Mr. Paul Felz during our Technical Assistance review September 17-21, 2007 to resolve this issue.

In addition, the CRST EPD has reviewed EPA Region 10 “Purchasing Supplies, Equipment and Services Under EPA Grants” Guidance attached hereto as **Exhibit 4** and fully intends to implement this guidance in writing as “Procedures for Procurement Applicable to EPD Purchases” no later than October 1, 2007. The Tribe has scheduled on-site Technical Assistance with EPA Region 8 for September 17-21, 2007 to finalize Procurement Procedures in writing in time to apply these procedures as of October 1, 2007.

The Tribe would also request that the following paragraph be added to this Section of the Draft Report at the end of this section:

“The Tribal Contracting Officer and CRST EPD Staff met with Region 8 Personnel in Denver, Colorado on August 6-10, 2007 to work on this issue. In addition, the Tribe requested Technical Assistance from EPA Region 8 to make program procedure and policy modifications and to review OIG reported questioned costs. Region 8 EPA has

scheduled on-site technical assistance for September 17-21, 2007 to finalize amended procurement procedures applicable to the CRST EPD.”

Comment 4: Results of Examination: Procurements Did Not Comply With Standards - Unallowable Contract Costs – pp. 9

The OIG description of what occurred is not factually correct. The OIG concludes that this work was an improvement to an existing building and falls under maintenance and repair. In fact, the work was performed to construct a new storage building. For Section 106 equipment under the PPG grant. The EPD Department did not have sufficient building space to store the EPA funded equipment and meet its obligation to safeguard equipment purchased with federal funds. As a result, the EPD Department contacted EPA Region 8 Project Officer Randy Brown prior to expenditure and received authorization to construct a new concrete pad and connection concrete from the new building to the existing EPD building, and was an eligible cost under the PGG grant. Thus, this was new construction and not repair or maintenance of an existing building as concluded by the OIG. Any supporting documentation required can be made available to the OIG.

Comment 5: Results of Examination: Procurements Did Not Comply With Standards – Duplicate Labor Costs – pp. 9

The Tribe will work with Mr. Paul Felz to ensure the reimbursement to the Grant occurs. In this instance, which was an emergency procurement of services and labor due to the collapse of a garage roof exposing the public to asbestos in friable form, and the subsequent discovery of underground storage tanks that delayed removal of the hazardous material, the EPD Department determined it would be most efficient and best practice until all Region 8 reviews of expenditures were completed, to bill all costs including labor costs to the Enterprise account and then to the Brownsfields grant. The labor and costs were eligible for payment under more than one grant. The EPD Department fully intended to complete the Budget Modification to reimburse the grant for labor expenses but it was not completed by the staff assigned to complete that transaction at that time. The Tribe is fully committed to completing this modification and reimbursement in a timely manner and submitting amended financial reports on the affected grant.

Comment 6: Fuel Costs Not Charged Based on Benefits Received

The Tribe will work with EPA Region 8 during our scheduled on-site Technical Assistance September 17-21, 2007 to review how the fuel costs were allocated between grants prior to October 1, 2007 and to reallocate grant funds to fuel costs on a rotational or actual basis and amend grant reporting documents accordingly to alleviate the questioned costs in this instance. The Tribe appreciates the OIG’s recognition in its Attestation Report that the Tribe has corrected this accounting issue.

Comment 7: Unsupported and Unallowable Equipment Purchases – Mischarged and Unapproved Vehicle Costs – pp. 11.

The Tribe will work with Mr. Paul Felz, EPA Region 8 on September 17, 2007 to resolve this issue. The Grant period for the 106 SPECIAL PROJECT, where the ATV was authorized to be purchased from was extended by EPA Region 8, so the purchase was within an allowable time period. The EPA Project Officers approving the purchase was Doug Lofstad and Randy Brown. **Exhibit 5** includes the Grant agreement under which equipment purchase as needed was authorized (See Budget Summary tabbed appropriately), and the extension of time.

Comment 8: Unsupported and Unallowable Equipment Purchases – Improper Vehicle Leases – pp. 12.

These vehicle leases were approved by Region 8 Project Officer Joyce Brame, who provided the Tribe technical assistance in drafting the Lease agreements. Under EPA Region 8 policies, the Tribe cannot lease GSA vehicles and therefore, to perform the work under these grants which requires field work over an area spanning 2.8 million acres, roughly the size of Connecticut, a vehicle purchase or lease is required. EPA Region 8 provided the EPD with guidance on the lease drafting, but did not indicate this was a capital lease. The Tribe will conduct further training with EPA Region 8 Paul Felz during its Technical Assistance meeting September 17-21, 2007 on this issue.

Comment 9: Unsupported Other Costs Claimed – pp. 12.

The Tribe has scheduled with Paul Felz EPA Region 8 to review the costs listed in this section. The \$4,200 questioned was already reimbursed to the grant. The attached documentation demonstrates this has been remedied. **Exhibit 5.**

Comment 10: Indirect Costs Not Properly Calculated – pp. 14

The Tribe requests the insertion of an additional Paragraph to this section on Page 14 to read as follows:

“The Tribal Contracting Officer and CRST EPD staff met with EPA Region 8 on August 6-10, 2007 to review the newly approved DOI Indirect Cost rates, which were approved by DOI in 2007 and to work on applying those rates to EPA Grant Expenditures. The Tribe has also scheduled On – Site Technical assistance for the week of September 17, 2007 to complete adjustment of EPA Grant Indirect Cost charges and to complete amended *Financial Status Reports*.”

Comment 11: Work Progress Needs to Be Reported According to Regulations

Attached hereto as **Exhibit 6** you will find Final Performance Reports for all 5 EPA Grants for the Time periods set forth in Table 1 of the Draft Attestation Report. The CRST EPD Department was under the impression that all reports requested were provided to the OIG and requests respectfully that the OIG review these additional reports prior to finalizing the Draft Attestation Report. The Final Progress reports were emailed to Ms. Lela Wong by Dave Nelson, EPD Director. We would request adjustment after review of these records, and would request the following sentence be added to this section:

“EPA Region 8 has accepted all Progress reports submitted. The Tribe’s Performance reports included significant grant activity information, but the format of the Reporting did not mirror the structure of the grant proposals which set forth goals, objectives and tasks. Therefore, it is difficult to determine the accomplishments of the Tribe on the grant goals objectives and tasks. The Tribe has requested EPA Region 8 to work with the Tribe on developing a new Performance Report format to assist non-EPA Staff in reviewing the accomplishments under the grants. The Tribe was not aware of potential insufficiency of reporting under the PPG Agreements because all Performance reports submitted have been accepted by Region 8 EPA without any request for additional information.”

EPA regulations were not violated with the format of the reports submitted. The Tribe would respectfully request therefore, that the conclusions reached regarding the format of reports submitted reflect that the issue is the format of the performance report not linking up with the format of the grant itself which lists goals objectives and tasks. This is really an issue, in the Tribe’s view, of EPA Region 8 responsibility to provide technical guidance or direction on the format of the reports requested. The Tribe has had an annual evaluation on every grant every year, contrary to what is reported in the OIG report. The EPA Region 8 Staff have not provided the tribe with a written annual evaluation. The responsibility for documenting this event rests with EPA Region 8 as it is an EPA Region 8 obligation to perform annual evaluations. The Tribe therefore respectfully requests that the OIG report be amended to reflect the responsible party for the evaluation documentation is not the Tribe, but EPA Region 8.

Comment 12: Schedule 4: Questioned Costs for Assistance Agreement RP98897001 (Brownfields) - Note 2a – pp. 21

The \$5,250 paid to a contractor for Holloway garage was entered into as a verbal agreement based on an emergency as explained by the Tribe. The Tribe was authorized after the fact to make payment on this expenditure by the EPA because of the emergency nature of the situation, as explained in **Exhibit 8**. Under Tribal law, a verbal contract is binding upon both parties. The Email from EPD Director to Region 8 Dan Hofferma documents the labor that was requested on an emergency basis. **See Exhibit 8**. The EPD Director has certified to EPA that the work requested was satisfactorily completed, and the work was accepted by Region 8 Project Officer _____. A written contract entered into after the fact would not be legally binding on the contractor in any event. Given the emergency nature of the situation, the Tribe is requesting approval of this expenditure be allowed by the OIG as it was allowed by Region 8 EPA after review of documents submitted by the Tribe. At a minimum the Tribe would request that the OIG Report reflect that this expenditure was made based on an emergency.

Comment 13: Appendix B: Status of On-Site Review Findings for Brownfields Agreement – Issue 1 – pp. 28

The Tribe requests that the wording of the paragraph under “What the OIG Audit Found” be amended. The comment that the Tribe requests to be amended is that “This continues to be a problem because the Tribe does not understand the Federal procurement

regulations for sole source contracts.” This comment is too general in nature to be accurate. In addition, the OIG only reviewed Tribal Procurements under EPA Grants – the sentence actually makes an incredibly broad comment on the Tribe in general which in addition to being inaccurate, casts doubt on other tribal federal grants unnecessarily. The Tribe would request this sentence be stricken and instead, a sentence stating “This continues to be a problem as the Tribe has not yet amended its Procurement Policies or the Environmental Protection Department Procurement Procedures to accord with Federal procurement regulations for sole source contracts. The Tribe has scheduled on-site technical assistance with Region 8 EPA for the week of September 17, 2007 to complete written Procurement Procedures.” In addition, in reviewing the schedules of questioned costs, it appears to the Tribe that all questioned costs were prior to 2006. If this is the case, the Tribe would request that a sentence be added indicating this.

Comment 14: Appendix B: Status of On-Site Review Findings for Brownfields Agreement – Issue 3 – pp. 29

The Tribe requests that the wording of the paragraph under “What the OIG Audit Found” be amended. The Tribe would request the additional of a conclusion from OIG that this issue has been resolved or remedied. Under other sections, the OIG concludes whether additional action is needed. The Tribe would request the same in this section.

Comment 15: Appendix B: Status of On-Site Review Findings for Brownfields Agreement – Issue 4 – pp. 29

The Tribe requests that the wording of the paragraph under “What the OIG Audit Found” be amended. The Tribe would request the additional of a conclusion from OIG that this issue has been resolved or remedied. Under other sections, the OIG concludes whether additional action is needed. The Tribe would request the same in this section.

Comment 15: Appendix B: Status of On-Site Review Findings for Brownfields Agreement – Issue 5 – pp. 29

The Tribe requests that the wording of the OIG Summary of “What the Region 8 Review Found” be amended. The Onsite Review Document provided to the Tribe by the Region 8 EPA Office has the appropriate wording and is included as **Exhibit 7**. The OIG language summarizing the Region 8 report states, “Region 8 observed the Tribe was inexperienced in the Holloway Garage Site cleanup, and had difficulty removing tanks from the site. The Tribe was unable to complete work at the site.” However, the EPA Region 8 “On- Site Review Document on page 19 states, “CRST has not demonstrated that the Brownfield[s] cleanup conducted at the Holloway Garage property has been verified/Certified complete.” This is the appropriate language to quote in the OIG Attestation report. The Tribe has never received any documents from EPA Region 8 concluding what the OIG Attestation Report states that Region 8 EPA concluded. In addition, the Holloway Garage Site cleanup has now been certified completed by EPA. As explained in the Tribe’s response to the Region 8 on site review on Page 3 under “Issue 5”, which is included herein as **Exhibit 8**, the issue with the Holloway Garage site cleanup was not an issue of Tribal failures. The Tribe performed its due diligence and inventoried the site. The inventory did not reveal any evidence of underground storage

tanks, which are subject to additional federal laws and regulations and are governed not by the EPA Brownfields regulations only, but also by the EPA LUST Program laws and regulations. When the roof collapsed on the site causing an immediate health hazard, emergency action was taken. In performing emergency actions to secure public health, the Tribe discovered evidence of an underground storage tank and immediately implemented required LUST procedures. The Tribe respectfully requests, therefore that the wording of the OIG summary of what EPA Region 8 Found be amended to reflect Region 8 EPA's own language in reporting to the Tribe from the conclusions in the Region 8 EPA report at Page 19 (**Exhibit 7**).

The Tribe requests that the wording of the paragraph under "What the OIG Audit Found" be amended. This Issue in the EPA Region 8 review was related only to the Brownsfield grant Goals and Objectives. The OIG Report references other grants not include din the EPA Region 8 review. The OIG Report already addresses issues with other grants in the section entitled "**Progress Needs to Be Reported According to Regulations.**" The OIG is in possession of every progress report on the Brownsfield grant and has not indicated anywhere in the OIG Report that those Performance Reports were insufficient to address this Issue. In addition, the Tribe requests that OIG review Exhibits 7 and 8 again which document the original issue and the Tribe's additional submissions to demonstrate that all Brownsfield Grant work was completed satisfactorily. As stated in Comment 11, *infra*, the Tribe has attached all PPG Program Progress reports. Therefore, the Tribe would respectfully request that this reference to other non-Brownsfield grants be removed and the conclusion specific to Brownsfield grants be made based on the documentation provided.

Comment 16: Appendix B: Status of On-Site Review Findings for Brownfields Agreement – Issue 7 – pp. 30

The Tribe will work with Paul Felz from EPA Region 8 to ensure that this reconciliation and modification is timely performed from September 17-21, 2007.

Distribution

EPA

Regional Administrator, Region 8
Director, Grants, Audit and Procurement Program Office, Region 8
Regional Audit Followup Coordinator, Region 8
Regional Public Affairs Office, Region 8
Agency Followup Official (the CFO)
Agency Followup Coordinator
Director, Grants and Interagency Agreement Management Division
Acting Inspector General

Auditee

Chairman
Treasurer