

RESPONSE TO COMMENTS-TEMPLATE
 FY 2020-2021 NATIONAL PROGRAM GUIDANCE
Office of International and Tribal Affairs

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>The engagement and consultation process associated with this NPMG offers Tribes and EPA the opportunity to work together to refocus OITA in general, and AIEO in particular, on the most important parts of the government-to-government relationship by</p> <ul style="list-style-type: none"> • Detailing how the OITA AA, the Agency’s designated consultation official, will ensure that all offices within EPA engage in a meaningful consultation process regarding all actions that may affect Tribal interests and identifying one or more performance measures against which progress in this regard can be tracked • Describing the role of OITA/AIEO to represent the interests of Tribes in its work with various media offices to facilitate needed grant funding, technical assistance, action on requests for delegations of authority and other matters of Tribal interest and identifying one or more performance measures against which the Agency’s progress in this regard can be tracked • Recasting how OITA/AIEO will administer the GAP program to allow it to serve the purposes intended by Congress and in keeping with EPA’s 1984 Indian Policy, including <ul style="list-style-type: none"> ○ Increased flexibility in the use of GAP funds by Tribal grantees, including a broadened definition of capacity-building, exploration of ways to enable the use of GAP funds for more preliminary implementation activities to achieve environmental results. ○ Minimized administrative burdens on Tribal grantees ○ Establishing a working group with Tribal representatives to develop appropriate measures against which GAP results can be tracked <p>We respectfully request that OITA continue to engage with Tribes in an iterative process regarding these items and revise the Program Guidance to address them.</p>	<p>Alan Bacock, Region 9 RTOC Tribal Co-Chair</p>	<p>OITA NPMG</p>	<p>OITA agrees that the listed considerations are all important to the EPA-tribal relationship and EPA actions in Indian country. The NPG is designed to establish the Agency’s broad priorities and to describe the broad ways in which the Agency plans to move forward. Many of the items expressed in the comment either currently occur (and are described in much greater detail elsewhere) or are being considered by the Agency.</p> <p>This is especially true for the comments on GAP as it currently undergoing an extensive outreach and consultation process with tribes as part of the reexamination of the 2013 GAP Guidance.</p> <p>Additionally, OITA, and EPA program and regional offices, have year-round consistent iterative process interactions and consultations with tribes to meaningfully engage on the details described. This occurs, for example, though the commenter – the Region 9 RTC. Although OITA primarily engages with the NTOC’s National Tribal Caucus (NTC), OITA also engages with numerous program and regional tribal partnership groups on a consistent and regular basis.</p>	<p>N / A</p>

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<p>2018-19 OITA NPMG currently in effect states at Appendix A “OITA continues efforts to develop GAP measures that track tribes’ progress in developing and implementing environmental programs in Indian country. EPA also tracks tribal consultation and EPA direct implementation activities in Indian country and will continue to look for opportunities to track progress under the new EPA strategic plan.” We assume these statements are, at least in part, in response to the 2008 OIG GAP Report’s identification of the importance of establishing measures under GPRA against which environmental results associated with GAP could be tracked.</p> <p>It is unfortunate that the proposed 2020-21 OITA Program Guidance does not address performance measures at all. Despite the references to the Strategic Plan and Measures in Section II of the NPMG, there are no measures regarding GAP, consultation or anything else that is Tribal Program specific, nor is there any longer a reference to the future development of appropriate measures.</p> <p>Performance measures related to consultation, environmental results associated with GAP, federal delegations of authority to Tribes, EPA’s direct implementation work in Indian country, and other EPA-Tribal partnership achievements will demonstrate EPA’s commitment to these partnerships as well as compliance with GPRA.</p> <p>We and numerous other comments have previously requested that EPA establish a working group with Tribal representatives to identify appropriate measures. These requests have been ignored to date but should be granted now and confirmed in the OITA NPMG.</p>	<p style="text-align: center;">Alan Bacock, Region 9 RTOC Tribal Co- Chair</p>	<p style="text-align: center;">Section II.A</p>	<p>The EPA FY 2018 – 2022 Strategic Plan identifies strategic measures specific to Objective 2.1, Enhance Shared Accountability. OITA’s FY2020 – 2021 Draft National Program Guidance identifies OITA implementation activities applicable to this measure.</p> <p>Specific to the Indian Environmental General Assistance Program (GAP), EPA is in the process of evaluating the 2013 GAP Guidance, including program performance measures. We agree that tribal input is important to the evaluation process, including development of GAP measures that track tribes’ progress in developing and implementing environmental programs in Indian country. We are currently developing Draft Revised GAP Guidance, informed by the 2018 tribal consultation process. A 90-day tribal consultation period on the Draft Revised GAP Guidance will begin in August 2019.</p>	<p style="text-align: center;">Slight modificati on to language on page 8</p>

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<p>The concept of ETEPs was introduced in the 2013 GAP Guidance specifically as a way to identify Tribal capacity development goals tied to grant work plans to facilitate the measurement of progress under GAP, and the Tribal grantees that have worked with EPA to develop ETEPs have done so specifically for this purpose. The proposed broadening of the use of ETEPs for other purposes, including the conditioning of other EPA program funding on the provisions in a Tribe’s ETEP, has not been discussed.</p> <p>This NPMG is not the right vehicle to impose new requirements on Tribal grantees, or to otherwise condition the Tribal-EPA relationship. Rather, any proposal by EPA to broaden reliance on ETEPs for purposes other than GAP should be addressed, if at all, through an entirely separate process that includes thorough and meaningful government-to-government consultation. Until that occurs, the discussion of ETEPs in this section should be revised to more accurately described how they are used specifically in conjunction with GAP.</p>	<p style="text-align: center;">Alan Bacock, Region 9 RTOC Tribal Co- Chair</p>	<p style="text-align: center;">Section II.A; Pg 4</p>	<p>EPA, in partnership with the National Tribal Operations Committee’s National Tribal Caucus (NTC), first adopted a cooperative EPA-tribal program planning strategy in 1994 to implement provisions of the 1984 EPA Indian Policy. Representatives from both governments recognized the need to fully understand each other’s priorities and environmental protection goals in order to move forward more efficiently and effectively. This approach included the tribes’ plans to implement and manage authorized environmental programs, tribal needs for federal assistance, and also included EPA’s role as the primary implementer of federal environmental protection programs - a role that continues until a tribe takes assumes the federal program.</p> <p>NTC members and tribes have consistently endorsed the joint EPA-tribal planning process concept and use similar planning approaches for over two decades. EPA-tribal governing plans, initially referred to as Tribal Environmental Plans (TEAs), are currently a key joint governance tool that benefits EPA’s direct implementation efforts and the tribes’ environmental program goals by creating alignment in programmatic work, funding decisions, and technical assistance across EPA programs, as well as by identifying tribal, EPA, and shared priorities. The agreements also clarify the respective governmental roles and responsibilities. As such, the plans become an important communication tool and a road map for future decisions.</p> <p>The EPA Strategic Plan “Objective 2.1: Enhanced Shared Accountability” specifically references</p>	<p>The comment to the draft OITA NPG was reviewed and discussed within EPA. Since the basis of the comment is considered not to be accurate, no changes were deemed necessary or made.</p>
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		<p>the role of ETEPs in the Agency’s commitment to “[i]mprove environmental protection through joint governance and compliance assistance among state, tribal, local and federal partners.” The Strategic Plan identifies ETEPs as “a joint planning document for achieving stronger environmental and human health protection in Indian country. ETEPs identify tribal, EPA, and shared priorities, and the roles and responsibilities for addressing those priorities.” The Strategic Plan, which was finalized after consultation with tribes, provides the foundation upon which the NPG is based. As a result, the draft NPGs take a similarly broad approach to the use of ETEPs and does not exclusively associate them with the Indian General Assistance Program (GAP) or GAP grant workplans; the Strategic Plan does not discuss GAP.</p> <p>The R9 RTOC’s comments include several references to ETEPs in association with the 2013 GAP Guidance, and in particular, the comment: “ETEPs are intended to inform GAP workplans and to reference in measuring performance under GAP. “Established” ETEPs contain provision specifically to serve this purpose and were not intended by the [Region 9 RTOC] Tribes that have approved ETEPs to inform any other aspect of the relationship between Tribes and EPA.”</p> <p>Confusion regarding the perception of a strictly narrow relationship between ETEPs and the GAP grants may have arisen from EPA’s decision to apply the joint planning process under a new name, ETEPs, in the 2013 Guidance to better inform the development of GAP grant workplans</p>	
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			<p>to reflect long-term goals on how the tribe will build environmental capacity to establish and operate baseline capacities for media-specific programs (e.g., ambient air quality, water quality, managing waste, and other EPA-administered statutory programs). Confusion may also have arisen from AIEO's subsequent decision to assist tribes by increasing GAP funding levels for those tribes developing ETEPs in an effort to assist the tribe with the cost of developing an ETEP. Section 4.0 of the 2013 GAP Guidance provides detailed information regarding the background, purpose and format, components and development, use and management of ETEPs.</p>	

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<p>OITA/AIEO doesn't implement any media-specific programs; nor does it, to our understanding, have the authority to grant TAS, or to enter a DITCA for a media-specific purpose. As a result, the reason for the discussion under the heading of Implementation of Federal Environmental Programs in Indian Country is unclear. A more effective use of this space would be to include a description of how OITA/AIEO represents Tribal interests in its work with EPA media offices to facilitate funding and technical assistance where needed, grants of TAS, negotiation of DITCAS, etc., and to ensure appropriate program implementation activities.</p>	<p>Alan Bacock, Region 9 RTOC Tribal Co-Chair</p>	<p>Section II.A; Pg 4-5</p>	<p>EPA is currently developing Draft Revised General Assistance Program (GAP) Guidance, informed by the 2018 tribal consultation process. A 90-day tribal consultation period on the Draft Revised GAP Guidance will begin in August 2019, and final GAP Guidance will be effective October 2020. Until that time, the scope and provisions of the 2013 GAP Guidance will remain in effect. Any changes resulting from the GAP Guidance Evaluation will be reflecting in future OITA Program Guidance.</p> <p>In addition, as noted in the OITA Program Guidance, tribes that receive GAP funds through Performance Partnership Grants may take advantage of a range of flexibilities available through the National Environmental Performance Partnership System (NEPPS). For more information, see the NEPPS National Program Guidance for FY2020-2021.</p>	<p>The comment to the draft OITA NPG was reviewed and discussed within EPA. Since the basis of the comment is considered not to be accurate, no changes were deemed necessary or made.</p>

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<p>This section narrowly focuses on the use of GAP to promote capacity building to implement federal environmental programs administered by EPA. This narrow focus on the use of GAP funding is inappropriate given the language of the statute itself, as summarized by the OIG in Appendix B its 2008 report: “The law does not limit grant funds only to developing regulatory programs that may be delegated.”</p> <p>The concept of increased flexibility in the use of GAP funds, reflected in the GAP legislative history and recommended in previous OIG Reports from 2007, should be institutionalized so that all writings that describe the purposes of GAP, including the OITA Program Guidance in general and the “guiding principles” in particular, describe in much broader terms the uses and benefits of GAP beyond preparing a tribal environmental program to receive delegated authority to implement a federal program.</p> <p>We would be happy to work with you to develop a more appropriate set of “guiding principles” and other language to include in this section.</p>	<p style="text-align: center;">Alan Bacock, Region 9 RTOC Tribal Co- Chair</p>	<p style="text-align: center;">Section II.A; Pg 7-8</p>		

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<p>The beginning of the second paragraph of this section references OITA’s coordination across EPA programs “to ensure effective delivery of EPA tribal capacity building programs” also gives short shrift to the purposes for other EPA funding programs. The reference in the same paragraph to ETEPs reflecting goals associated with other EPA media-specific programs is inappropriate for the reasons described above.</p> <p>We suggest deleting this paragraph in its entirety. The first sentence should be replaced with “OITA coordinate across EPA’s national programs to ensure effective delivery of funding and technical assistance to support Tribal environmental programs, as well as to facilitate the processing of Tribal requests for TAS and ensuring that EPA’s direct implementation activities are appropriate” and re-located either somewhere in the earlier section titled “Administration of the EPA Tribal Program” or at the beginning of the section titled “Implementation of Federal Environmental Programs in Indian Country”.</p>	<p style="text-align: center;">Alan Bacock, Region 9 RTOC Tribal Co- Chair</p>	<p style="text-align: center;">Section III; Pg 8</p>		