E: Building Solid Waste, Hazardous Waste, and Underground Storage Tank Capacities

E.1 EPA’s Solid Waste, Hazardous Waste, and Underground Storage Tank Programs

GAP funding related to tribal solid and hazardous waste programs is unique in that the GAP statute provides EPA with the authority to fund both the development of program capacity as well as program implementation in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.). Agency priorities for resources applied to tribal solid waste programs will be consistent with both the GAP Guidance and the Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes (Plan). Therefore, each fiscal year regions should review GAP assistance agreement work plans for consistency with the priorities expressed in the Plan. The GAP Guidance and Plan are dynamic documents subject to further refinement as priorities and resources change.

The Resource Conservation and Recovery Act (RCRA) is the primary federal law for managing solid waste, hazardous waste, and Underground Storage Tanks (USTs). The law was originally enacted in 1976, amending the Solid Waste Disposal Act of 1965, and has been subsequently amended. The federal hazardous waste regulations under RCRA Subtitle C apply to all facilities generating and managing hazardous wastes. Under RCRA Subtitle D, EPA has established nationally applicable criteria for non-hazardous waste disposal facilities. Under RCRA Subtitle I, EPA has established criteria for the operation and closure of USTs and Leaking USTs (LUSTs). Also pursuant to RCRA, EPA promotes sustainable materials management, including pollution prevention and environmentally-sound recycling. Sustainable materials management uses a “cradle-to-cradle” approach to focus on the full life cycle of materials including how they can be reinvested and reincorporated into manufacturing, thus reducing the use of virgin materials. For more information on RCRA, visit: http://www.epa.gov/epawaste/index.htm and http://www.epa.gov/oust/tribes/index.htm

Under RCRA, EPA implementation activities include: (1) issuing permits to hazardous waste treatment, storage, and disposal facilities; (2) issuing RCRA identification numbers to facilities that handle (generate, store, treat, transport, etc.) hazardous waste; (3) conducting compliance assurance (including inspections) and enforcement at facilities subject to the hazardous waste or UST requirements; (4) accepting required notifications from regulated UST owner/operators; (5) directing corrective action activities at facilities subject to the hazardous waste or UST requirements; and (6) exercising enforcement options as necessary under RCRA, including: RCRA § 7003 (which allows EPA to

\[43\] 40 C.F.R. Parts 257 and 258.
respond to conditions at non-hazardous waste facilities which may present an imminent and substantial endangerment to health or the environment) or § 4005(c)(2).45

In 1994, Congress passed the Indian Lands Open Dump Cleanup Act of 1994 (25 U.S.C. § 3901-3908).46 The Act authorizes the Indian Health Service (IHS), in cooperation with EPA, to develop and maintain an inventory of open dumps and an assessment of the relative severity of the threat posed by each dump. The IHS uses the Web Sanitation Tracking and Reporting System (w/STARS) database to inventory sanitation infrastructure deficiencies, including open dumps in tribal areas.

EPA’s RCRA Information system (RCRAInfo) is a national program management and inventory system that maintains information on hazardous waste generators, transporters, treatment facilities, storage facilities, and disposal facilities. To access RCRAInfo, please visit http://www.epa.gov/enviro/facts/rcrainfo/index.html. EPA regional offices maintain UST inventories for each tribal land area.

Tribal governments have opportunities to partner with EPA in its RCRA activities under the Subtitle C (hazardous waste) and I (UST) programs. As appropriate, EPA regional offices can utilize Direct Implementation Tribal Cooperative Agreements (DITCAs), memoranda of agreement, program funding, or other mechanisms to provide for tribal participation in the implementation of the RCRA hazardous waste and UST programs. Examples of activities that tribal staff may be able to engage in with EPA include: (1) assisting the Agency to develop/update an inventory of facilities subject to federal compliance requirements; (2) conducting compliance assistance activities for inventoried facilities; (3) obtaining federal inspection credentials to inspect facilities on behalf of EPA; (4) assisting EPA to draft facility permits; and (5) assisting EPA to provide oversight of corrective actions.

Key sources of tribal-related program guidance include:

- “The Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes” (Date TBD)
  http://www.epa.gov/epawaste/wyl/tribal/capacityassist.htm
  http://www.epa.gov/oswer/tribal/pdfs/oswer_tribal_strategy.pdf
  http://www.epa.gov/epawaste/wyl/tribal/tribalguide.htm
  (http://yosemite.epa.gov/osw/rcra.nsf/6f3756c16d517d7185256f2a007818ee/e7661f353791ad71852573780050876f!OpenDocument)
• “Building a Tribal Solid Waste Program”
  http://www.epa.gov/region10/pdf/tribal/igapfy13/attachment_B_building_a_tribal_solid_waste_program.pdf
• “Sustainable Materials Management”
  http://www.epa.gov/epawaste/conserve/smm/index.htm
• “Report to Congress on Implementing and Enforcing the Underground Storage Tank Program in Indian Country,” August 2007.
  http://www.epa.gov/oust/fedlaws/rtc_finalblnkpgs.pdf
• RCRA Compliance Monitoring Policies and Guidance
  http://epa.gov/compliance/resources/policies/monitoring/index.html#rcra
• “Underground Storage Tank Enforcement Compendium,” May 2009
  http://www.epa.gov/oecaerth/resources/policies/federalfacilities/enforcement/civil/ust_compendium.pdf

E.2 Program Capacity Building: Planning, Developing, and Establishing Tribal Waste Management and Underground Storage Tank Program Capacity

Tribal environmental departments develop waste management program capacity through a range of planning and development activities. Section E.3 provides a non-exclusive list of tribal environmental protection program capacity indicators that EPA will use to evaluate progress under the GAP. In general, GAP funding should be used to build the applicable tribal environmental program capacities; once capacity is established, tribes may seek funding to support more complex program development and implementation while continuing to use GAP resources for ongoing capacity building activities.

EPA’s main tribal solid waste priority is the promotion of sustainable tribal waste management programs through the development and implementation of Integrated Waste Management Plans (IWMPs).

EPA will focus GAP funding on this priority. An IWMP outlines a tribe’s overall long-term approach for managing waste and serves as a roadmap for developing an effective waste management program. IWMPs also provide tribes with a way to identify waste management funding needs, investigate potential funding sources, and allocate resources accordingly. By promoting the adoption of effective cradle-to-grave regulatory oversight, IWMPs also help tribes address existing open dumps and prevent new open dumps. GAP funding should first be used to establish tribal waste management program capacities like the ones described in Section E.3; tribes may then transition to program implementation.

In addition to the GAP, Appendix V provides a list of other potential sources of EPA funding related to RCRA activities. More detailed descriptions of Agency funding resources may be found in the Plan.
The first stage in developing an IWMP is to develop the necessary expertise and skills to identify, address, and manage the solid and hazardous waste issues facing the community. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on waste management issues, and using this information to make decisions on further development of a waste management program. The specific capacities described in Section E.3 that a tribe may wish to establish with GAP funding should be based on the presence or absence of certain facilities or activities on tribal land. For example: solid waste landfills; open or unauthorized waste dumps; hazardous waste generators, transporters, or disposal facilities; transfer stations; and USTs. Tribes may use GAP funds for any activity identified in an approved work plan designed to establish an applicable capacity indicator; tribes may not need to develop all the capacities described below.

**E.3  Indicators of Tribal Waste Management and UST Program Capacity**

E.3.1 Tribe has established a staffing plan (position description and recruitment/retention/promotion plan) for who will serve as tribal waste management program coordinator(s).

E.3.2 Staff has completed appropriate training and acquired baseline knowledge and skills related to the relevant areas of RCRA (become familiar with the major goals, programs, and requirements of the RCRA; the national structure for implementing the RCRA; and the EPA regional personnel and organization).

E.3.3 Tribe has established a program to meaningfully participate in waste management programs administered by other tribal, federal, state, or local governments (including reviewing and commenting on waste disposal facility permits and applicable waste management regulations).

E.3.4 Tribe is receiving funding under the RCRA or other related EPA media specific program.

E.3.5 Tribe is conducting community education and outreach activities to assess community knowledge and interest in source reduction, alternatives for managing household hazardous waste, recycling, composting, and the use of green materials in tribal construction and to promote the use of such integrated solid waste management systems.

E.3.6 Tribe has completed a waste assessment (e.g., a waste stream characterization study of the solid and hazardous waste management practices, facilities, and issues in the community; effectiveness of current waste management system(s); waste collection and disposal options; and associated costs).

E.3.7 Tribe has a tribally-approved Integrated Waste Management Plan (IWMP).

E.3.8 Tribe has established a program to provide waste minimization, recycling, household hazardous waste collection, used oil collection, junk vehicle removal, bulk waste/appliance/electronic waste collection, and/or composting.

E.3.9 Tribe has established co-management roles through an intergovernmental agreement with a municipal government (e.g., Memorandum of Understanding or other mechanism) regarding landfill management where both governments have a stake.
E.3.10 Tribe has completed a solid waste facility plan/feasibility study.
E.3.11 Tribe has completed an open dump inventory and submitted to EPA and IHS for inclusion in the w/STARS database (including: GPS location; estimated size/volume; contents/type of waste; estimated distance to nearest homes, surface water and groundwater; estimated project costs; and site name).
E.3.12 Sites included in the open dump inventory have a health hazard ranking score.
E.3.13 Tribe has coordinated with EPA to ensure accuracy of EPA’s regulated hazardous waste facility inventory and operating status.
E.3.14 Tribe has coordinated with EPA to ensure accuracy of EPA’s regulated UST & LUST facility inventory and operating status.
E.3.15 Tribe has established capacity to provide information to EPA that may be used to conduct compliance monitoring inspections or in a RCRA § 3008, § 7003, § 4005(c)(2), or § 9006 enforcement action.
E.3.16 Tribe has established a program to assist EPA with implementing the federal RCRA program(s) (e.g., assisting the Agency to conduct compliance assistance activities for regulated entities, obtaining federal inspection credentials to inspect regulated entities, and assisting EPA to draft permits for regulated entities).
E.3.17 Tribe has enacted waste management and/or UST laws, codes, and/or regulations with effective compliance assurance and enforcement mechanisms (including anti-littering provisions and protocols to address small-scale dumping/burning activities; siting/operating requirements for USTs that are at least as stringent as the federal program).
E.3.18 Tribe has established a compliance monitoring and enforcement strategy for the tribe’s solid and hazardous waste management laws, codes, and/or regulations.
E.3.19 Tribe has established mechanisms to assure a financially sustainable waste management program, including financing for trash collection services (e.g., fee for service, tribal government funding of trash collection services, or other cost recovery systems).
E.3.20 Tribal staff is leading circuit rider, train the trainer, and peer-match programs.

E.4 Program Implementation: Tribal Waste Management and UST Program Implementation

Once a tribe has established a waste management program that is generally consistent with the applicable indicators described above, GAP funds may be used for the following implementation activities in order of priority: (a) program administration; (b) compliance and enforcement; (c) solid waste management, resource recovery, and resource conservation support; and (d) cleanup and closure.

(a) Tribal Waste Management Program Administration. Program administration generally includes all administrative oversight functions to ensure proper program implementation (e.g., financial management, human resources management, program performance evaluation, scheduling). Program administration and oversight do not generally include the costs of facility operation and maintenance or general
government services normally provided to the general public, such as fire and police.\textsuperscript{47} Under GAP, this restriction on government services includes trash collection, transportation, backhaul, and disposal services which are generally outside the scope of programs administered by the EPA.\textsuperscript{48} In limited circumstances, EPA may exercise discretion and grant an exception to this restriction on government services by approving the use of GAP funds for waste management services for up to two years for a grant recipient that has established a waste management program consistent with Sections E.2 and E.3 above. An applicant seeking approval to use GAP funds for waste management services under this exception must demonstrate that no other resources for such services are currently available and document the actions they will take during the approved grant period to establish sustainable funding for collection, transportation, backhaul and/or disposal services. Regional offices will evaluate requests to use GAP resources for solid waste services and will submit the request to the AIEO Director and their justification for a recommended approval or non-approval of the request. AIEO will make the determination on the recommendation within 30 days and in consultation with Office of Solid Waste and Emergency Response (OSWER).

(b) Tribal Compliance and Enforcement Programs. Tribes are not eligible for authorization to administer a RCRA Subtitle C hazardous waste or Subtitle I UST program, nor may tribal programs be approved by EPA under RCRA Subtitle D. However, under EPA policy and consistent with EPA’s role as a regulatory agency, GAP may fund implementation activities associated with tribal waste management laws, codes, and/or regulations, such as compliance assurance (including inspections) and enforcement consistent with the extent of their authorities. In addition, GAP may fund tribes to support compliance with federal requirements, including: (1) compliance assurance (including inspections) under tribal authority at non-hazardous waste disposal facilities to help verify that such facilities are in compliance with 40 C.F.R. Part 257 and/or Part 258; (2) compliance assistance and inspections to help verify that hazardous waste generators are in compliance with 40 C.F.R. Parts 261 and/or 262; or (3) compliance assurance (including inspections) to help verify that hazardous waste transporters are in compliance with 49 C.F.R. Parts 172, 173, 178, and 179. In accordance with a tribally approved IWMP, tribes may also use GAP funds to conduct community outreach and education programs on solid waste, hazardous waste, source reduction and diversion, and USTs.

(c) Activities to Support Solid Waste Management, Resource Recovery, and Resource Conservation. Consistent with RCRA § 4008, activities funded under

\textsuperscript{48} “Any general assistance under this section shall be expended for the purpose of planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency and specified in the assistance agreement. Purposes and programs authorized under this section shall include the development and implementation of solid and hazardous waste programs for Indian lands. […] Such programs and general assistance shall be carried out in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).” Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(f).
GAP may include: facility planning and feasibility studies; expert consultation; surveys and analysis of market needs; marketing of recovered resources; technology assessments; legal expenses; construction feasibility studies; source separation projects; and fiscal or economic investigations or studies but shall not include any other element of construction, or any acquisition of land or interest in land, or any subsidy for the price of recovered resources.\textsuperscript{49} Activities that are part of a sustainable waste management program designed to increase waste source reduction, recycling, composting, and sustainable materials management are also allowable under GAP. Under EPA policy, the operation and maintenance of solid waste facilities and trash collection services are not deemed to be eligible for GAP funding; however, program administration and oversight as described in paragraph (a) above may be eligible. Further, the purchase, repair, upgrade, and replacement of resource recovery, resource conservation, and source separation supplies and equipment (e.g., vehicles, scales, containers, crushers, shredders, sheds, fencing, and signage) may be eligible for GAP funding. Similarly, the construction, repair, upgrade, and replacement of source separation facilities (e.g., transfer stations, recycling centers, compost facilities, household hazardous waste collection facilities, bulk waste/appliance/electronic waste collection facilities; construction and demolition debris facilities, used oil collection stations, and other similar facilities) may also be funded under GAP.

\textbf{(d) Cleanup and Closure Activities.} Unauthorized dumping of solid waste is typically a symptom of inadequate access to, or citizen participation in, integrated and sustainable waste minimization, recycling, collection, and disposal programs. As a result, funding cleanup activities prior to establishing and implementing an effective program seldom results in lasting changes to a community’s waste disposal practices. While GAP funds may be used to implement solid and hazardous waste programs consistent with the GAP statute,\textsuperscript{50} including cleanup activities, GAP will remain focused on supporting tribal government efforts to develop a sustainable program designed to address and prevent new, or recurring, unauthorized dumping on tribal lands. IHS is the primary federal agency responsible for identifying, assessing and funding open dump cleanups and closures.\textsuperscript{51}

Regional offices will evaluate requests to use GAP resources for cleanup activities described below in Section E.4(d)(i-iii) and will submit the request to the AIEO Director with supporting documentation, including assurance that the tribe has adequate administrative controls to oversee the cleanup, and their justification for a recommended approval or non-approval of the request. AIEO will make the determination on the recommendation within 30 days and in consultation with the appropriate EPA program office(s) (e.g., the Office of Solid Waste and Emergency Response, the Office of Enforcement and Compliance Assurance, and the Office of General Counsel).

\textsuperscript{49} 42 U.S.C. § 6948(a)(2)(A).
\textsuperscript{50} The Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(f).
\textsuperscript{51} Consistent with the Indian Lands Open Dump Cleanup Act of 1994, EPA works cooperatively with the IHS to develop the inventory and evaluate open dumps, as requested. 25 U.S.C. §3904.
(i) Cleanup and Closure Activities for Established Tribal Programs
Cleanup or closure activities may be eligible for funding under GAP after the tribe has established a program and demonstrated the following program capacity indicators: E.3.5, E.3.6, E.3.7, E.3.8, E.3.17, and E.3.18. EPA decisions on funding cleanup and closure activities should be consistent with the tribal waste program priorities as defined in the Plan. If funded, cleanup and closure work should include documentation on the amount of waste removed/recycled, the types of wastes removed, and the disposition of the waste.

(ii) Cleanup and Closure Activities for Tribal Programs under Development
Cleanup or closure activities may be eligible for funding under GAP when the tribe has demonstrated that they are substantially pursuing tangible elements of the following actions towards building a sustainable waste management program:
- Conducting a characterization study of the waste streams a tribe generates and an assessment of current waste management practices.
- Conducting solid waste facility planning and feasibility studies.
- Developing an IWMP for approval by the tribe’s governing body.
- Developing waste management laws, codes, ordinances, or regulations within the scope of their authority.
- Developing and implementing a compliance monitoring and enforcement program and/or other mechanisms to identify and respond to illegal dumping activity.
- Conducting community outreach and/or environmental education on waste management programs.

(iii) Cleanup and Closure Activities Where No Tribal Program is being Developed
Where a tribe does not have an established program as described above, or is not substantially pursuing tangible elements of the above actions, EPA will not prioritize providing financial assistance, including GAP funds, for the cleanup or closure activities unless the open or unauthorized dump presents an imminent and substantial endangerment to human health or the environment. Where this standard is met, AIEO will as part of their approval process, consult with OSWER and OECA. This is consistent with the coordinated approach described in the Plan and will ensure proper EPA involvement and oversight of cleanups where there is an imminent and substantial endangerment to human health and the environment.

52 To help protect human health and the environment, EPA may consider approving GAP funding for cleanup activities for tribes with limited jurisdiction that have not developed E.3.17 and E.3.18, on a case-by-case basis.
53 This standard is consistent with RCRA §7003 (42 U.S.C. § 6973) and is applied here as a matter of policy to guide the use of GAP resources for open dump cleanup and closure actions.