



National Environmental Performance Partnership System

FY 2014 Guidance

**Office of Congressional and Intergovernmental Relations
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**National Environmental Performance Partnership System
FY 2014 National Program Guidance**

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National Environmental Performance Partnership System FY 2014 National Program Guidance

Agency Overview to the FY 2014 NPM Guidances

The Agency overview to the NPM Guidances communicates relevant Agency-wide information and should be reviewed in conjunction with each of the FY 2014 NPM Guidances as well as other applicable requirements. The overview also includes important background information and identifies eleven cross-program areas that are essential for effective implementation of EPA's environmental programs in FY 2014. The overview is available at: <http://www.epa.gov/planandbudget/annualplan/fy2014.html>.

Introduction

EPA and states share responsibility for protecting public health and the environment. Since 1995, EPA and states have been implementing the National Environmental Performance Partnership System (NEPPS),¹ an environmental performance system designed to improve the efficiency and effectiveness of state environmental programs and EPA-state partnerships.

Several fundamental concepts underlie NEPPS. Goals, priorities, and strategies should be based on information about environmental conditions, including consideration of local conditions and respecting the need for a "level playing field" across the country. Performance should be evaluated based on results that can be achieved in the environment. By taking full advantage of the unique capacities of EPA and states and leveraging our collective resources most efficiently and effectively, we can achieve the greatest results.

Performance Partnerships – in which EPA and states and tribes set priorities, design strategies, and negotiate grant agreements together – are integral to the planning and implementation of our national environmental programs. To advance the joint planning that is central to Performance Partnerships, the Office of Congressional and Intergovernmental Relations (OCIR) is issuing this guidance to the regions in conjunction with the Agency-wide process for production and review of national program guidance through the Office of the Chief Financial Officer (OCFO).

¹ See: *Joint Commitment to Reform Oversight and Create a National Environmental Performance Partnership System* at: http://www.epa.gov/ocir/nepps/pdf/joint_commit_create_nepps.pdf.

This FY 2014 guidance² sets out overarching national areas of focus and related activities for Performance Partnerships and provides a framework for implementation of EPA's [FY 2014 Annual Plan and Budget](#) and [Strategic Plan](#)³ to advance the Agency's mission. This guidance reflects and supports EPA's commitments and objectives outlined in the Strategic Plan's Cross-Cutting Fundamental Strategies for the following: Strengthening State, Tribal and International Partnerships; Working for Environmental Justice and Children's Health; Building a Sustainable Future with Diverse Stakeholders.

National Areas of Focus and Related Activities for FY 2014

National Area of Focus I: Conduct joint strategic planning that reflects Performance Partnership principles in PPAs/PPGs or comparable EPA-state and EPA-tribal agreements and grant workplans.

Description

Again, this year many states are experiencing budget shortfalls due to a slowly recovering economy. As a result, state environmental agencies still face ongoing resource and staffing challenges to maintain core programs. Federal budgets are shrinking as well. In this climate, it is particularly important to emphasize EPA's willingness to work collaboratively with the states to develop agreements that capture achievable priorities and commitments and help address state-federal workload overall.

Both EPA and the states fulfill critical roles in protecting and improving human health and the environment. By law and through shared experience, EPA, the states and tribes must effectively collaborate in the planning and implementation of environmental programs and ensure compliance with statutory and regulatory requirements in order to be successful.

Performance Partnership Grants (PPGs), Performance Partnership Agreements (PPAs) and Tribal Environmental Agreements (TEAs) are valuable, popular and widely used NEPPS tools which are useful for joint priority setting, leveraging resources strategically, providing administrative and programmatic flexibility, as well as in-depth assessments and/or descriptions of state/tribal environmental conditions.

² This guidance is a compilation of existing policies and initiatives. It does not impose any new legally binding requirements.

³ The EPA *Strategic Plan* is currently being updated for FY 2014-2018 and will be available in February 2014 at the following website: <http://www2.epa.gov/planandbudget/strategicplan>.

Activities

1. Continue to work with states and tribes to identify opportunities and coordinate efforts to enhance worksharing, resource and workload flexibility, especially where budget reductions have negatively affected state programs.

The EPA-State Worksharing Task Force has published two reports that can guide regions in working with their states to identify and implement worksharing arrangements. Both can be found on OCIR's NEPPS website.⁴ The first report identifies worksharing prohibitions (relating to Superfund site remedy selection and preparation of a state's competitive grant application) and areas of caution (relating to appropriations, grants, information law, and ethics).

The second report contains guiding principles for negotiating worksharing arrangements and best practices for several common worksharing scenarios – conducting inspections, drafting permits, pursuing enforcement actions, conducting monitoring, and providing technical and financial assistance – and contains two specific regional examples in the areas of monitoring and Environmental Justice. Also included are a few additional suggestions to foster worksharing.

- In FY 2014, the Agency will continue to work with the states to evaluate alternate work planning approaches, including worksharing, in order to maintain the current levels of delivery of its environmental and public health programs.
- To ensure that attention will be directed to identifying and implementing worksharing opportunities throughout the year, the Cross-Cutting Fundamental Strategy (XCFS) on Partnership FY13 Action Plan includes the following new Key Performance Indicator (KPI):
 - *By September 2013, each Region will develop worksharing implementation targets for FY 2014 and beyond consistent with the final EPA-State Worksharing Task Force recommendations accepted by the Executive Management Council regarding best practices, EPA-provided training, and other ways to share EPA's technical expertise.*

Guidance for Implementing the Worksharing KPI

In order to develop the FY 2014 implementation targets, during the remainder of FY 2013, regions may discuss worksharing proposals using existing communication forums and approaches that fit the needs and circumstances of the regions and their respective

⁴ See: *Prohibitions, Areas of Caution, and Recommendations to Enhance Worksharing Opportunities* at: http://www.epa.gov/ocir/nepps/pdf/task_force_report_prohibitions_areas_caution.pdf and *Principles and Best Practices for Worksharing* at: http://www.epa.gov/ocir/nepps/pdf/task_force_reportbstpractices.3.26.13.pdf.

states. Forums for regions and states to identify worksharing opportunities of mutual interest might include senior leadership meetings, PPA discussions/negotiations, state program reviews, regularly scheduled calls between regional and state program managers, and others.

Since worksharing is not precisely defined, the following criteria drawn from the [*Report of the Worksharing Task Force: Prohibitions, Areas of Caution and Recommendations to Enhance Worksharing Opportunities*](#) offer a flexible approach for determining what worksharing is and is not, and may be used to help reach agreement on new worksharing arrangements.

- Worksharing is a tool that can be applied in situations where either EPA or a state can perform work deemed a priority by both.
- It is utilized to make the most effective use of resources, and often when resources are constrained for one or both parties.
- In some instances, it is contemplated as part of the joint planning process between a region and a state, and at other times, it is used to address unforeseen circumstances.
- Worksharing arrangements can include resources and expertise to conduct work (e.g., writing permits, conducting inspections, managing site cleanups, etc.) or other tangible support (e.g., technology, training, laboratory services, etc.).

Assumptions

- EPA and states use worksharing as a tool on an “as needed basis.” It is possible for a region not to establish any worksharing arrangements in a given year and this is an acceptable outcome for this KPI.
- Regions use existing communication forums (e.g., scheduled PPA kickoff meetings, regularly scheduled calls between regional and state program managers) to confirm whether a state or region has any worksharing requests. There need not be separate meetings/calls just for worksharing.
- Regions would select worksharing focus areas that have existing mechanisms for tracking such arrangements. No new/separate worksharing documents need to be drafted.
- Regions report through the XCFS #4 Team Leads. OCIR would gather information about regional worksharing arrangements and compile it as part of reporting for the worksharing KPI.
- Worksharing arrangements are crafted such that they do not require, nor do they result in, corresponding reductions in state categorical grants.

Examples of Worksharing

1. A region agrees to conduct inspections and follow-up enforcement in a state.
2. A region agrees to provide technical assistance to a state to develop NPDES permits or TMDLs.
3. A region agrees to analyze dioxin samples for a state.
4. A region agrees to collect fish for tissue analysis for a state while in the field for its own purposes.

Measure for Activity #1

If agreement is reached to continue existing worksharing arrangements or new opportunities are identified that extend beyond FY 2013, these then could become the FY 2014 worksharing implementation targets. If a region does not have any worksharing arrangements or opportunities identified for FY 2014, then that region's FY 2014 "implementation target" will be to either repeat their selected approach for identifying worksharing activities in FY 2014, or to pursue a new approach.

2. When negotiating PPAs and TEAs, incorporate the NEPPS principles⁵ and include all the essential elements to the extent possible. In addition, joint priorities should be clearly articulated and distinguished from state- or, tribe-specific and EPA-specific priorities.

The most effective PPAs contain several "essential elements" established by a joint EPA-state work group⁶ in 2004. These essential elements are also helpful in structuring and organizing effective TEAs. The recommended essential elements⁷ are listed below.

- A description of environmental conditions, priorities, and strategies.
- Performance measures for evaluating environmental progress.
- A process for joint evaluation on how well the PPA [or TEA] is working and an agreement to implement any needed improvements that are identified.
- A description of the structure/process for mutual accountability, including a clear definition of roles of each party in carrying out the PPA [or TEA] and an overview of how resources will be deployed to accomplish the work.
- A description of how the priorities in the PPA [or TEA] align with those in EPA's Strategic Plan, and/or the state's own strategic (or other related) plan.

⁵ See: http://www.epa.gov/ocir/nepps/pdf/joint_commit_create_nepps.pdf for a description of NEPPS principles.

⁶ State-EPA Planning Alignment/PPA Work Group, now the Partnership and Performance Work Group. See: http://www.epa.gov/ocir/nepps/policies_guidance.htm for the Work Group's findings and recommendations.

⁷ Note that these essential elements are different from the ones listed in National Area of Focus III/Activity #4 which are specific to state grant workplans.

Incorporating each of these elements still allows for a wide range of PPAs or TEAs, although it may not be feasible for some PPAs or TEAs to include all the essential elements. The essential elements may be covered at different levels of detail depending on what is appropriate for a particular state. There is also room for variation in content (e.g., PPAs or TEAs that cover all programs or just a few programs), as well as in organizational structure and format. In order to clarify the role of each party in carrying out the PPA or TEA, to the extent possible, both state and EPA commitments should be delineated.

By including the elements enumerated above, a PPA or TEA can become the unifying agreement that sets out the relationship between EPA and the state or tribe and how they expect to work together to implement the strategies for achieving the goals and objectives in the agreement. While they can be consistent with PPGs, PPAs and TEAs are not financial agreements and can cover issues and concerns of a wider range than PPGs. In some instances, states and tribes can choose to have PPAs and TEAs function as workplans.

3. Advance Performance Partnership principles through effective collaboration with states on policy and implementation issues, ensuring that requests for flexibility and innovation are addressed. Resolve any disagreements by making full use of the issue resolution process to elevate issues up to and including the highest levels (i.e., RA, AA, DA).

The NEPPS issue resolution process (which includes various informal and formal steps culminating in a final decision by the Deputy Administrator) for raising and resolving broad policy and implementation issues related to Performance Partnerships is outlined in EPA's *Best Practices Guide for Performance Partnership Grants*.⁸ This is especially appropriate in situations involving denial of a state's request for flexibility and innovation in a PPG.

4. Explain the value and benefits of PPAs, PPGs and TEAs as tools for implementing Performance Partnership principles within EPA and with states and tribes.

PPAs (which are discussed in Activity #2 above), PPGs and TEAs are valuable tools enabling states and tribes to gain greater flexibility in how they use and manage the funds they receive from EPA. PPGs and PPAs/TEAs serving as PPG workplans allow states and tribes to achieve significant administrative efficiencies, direct resources where they are needed most, implement strategies that cut across program boundaries, or try other innovative solutions to environmental problems. Appendices A and B provide lists of grant programs eligible for inclusion in state and tribal PPGs. For instance, through PPGs, states and tribes can:

⁸ A direct link to the *Guide* can be found in the Highlights box on the NEPPS home page at: <http://www.epa.gov/ocir/nepps/>.

- Use funds from one program area to address a budget shortfall in another, and meet cost-share requirements by using overmatch from one program to cover the match from another.
- Hire temporary personnel, fund emergency activities such as hurricane response, address permit backlogs, and support staff training and travel. The activities must be fundable under one or more of the included grant programs.
- Fund multi-media inspections and permitting, sector compliance/enforcement initiatives, and data system improvements such as participating in the National Environmental Data Exchange Network.⁹

5. Ensure that Executive Order (EO) 13175 on Consultation with Indian Tribal Governments and the EPA May 2011 Policy on Consultation and Coordination with Indian Tribes are appropriately applied to actions or decisions developed through the NEPPS process.

EO 13175 specifies that each agency must have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. One of the primary goals of EPA's Consultation Policy is to fully implement the EO and the 1984 EPA Indian Policy, with the ultimate goal of strengthening the consultation, coordination and partnership between tribal governments and EPA. The Consultation Policy establishes national and institutional controls for consultation across EPA. EPA program and regional offices have the primary responsibility for consulting with tribes. The Consultation Policy is to be implemented using existing EPA structures to the extent possible.

6. Support state and tribal capacity by encouraging exploration of creative new ways to partner with states and tribes that will augment the progress made through NEPPS.

The regions can:

- Extend the Performance Partnership vision and goals to other agencies that receive EPA funds in order to more fully leverage EPA's resources and those of other agencies to address environmental priorities, such as agriculture and public health agencies;
- Assess the feasibility of developing other innovative, high-level joint agreements that focus on specific environmental problems (e.g., climate change, agriculture, mercury).

⁹ See: http://www.epa.gov/ocir/nepps/speeches_publications.htm for more examples of how states have used PPGs.

National Area of Focus II: The following Cross-Cutting Fundamental Strategies¹⁰ should be implemented through PPAs, PPGs and other EPA-state and EPA-tribal agreements: Working for Environmental Justice and Children's Health; Strengthening State, Tribal and International Partnerships; Building a Sustainable Future with Diverse Stakeholders.

Activities

1. Children's Health: Use the NEPPS process to leverage funds and activities to advance children's health.

Regional programs must ensure that policies, programs, activities, and standards address disproportionate risks to children. Opportunities to advance children's health issues include:

- Sponsoring joint meetings with counterparts in state environmental departments and health departments to facilitate coordinated actions to better protect children's environmental health;
- Developing region-wide strategies to focus on addressing critical children's health issues within each region.

2. Environmental Justice¹¹ (EJ): Work with states to advance environmental justice by improving environmental conditions and public health in minority, low-income, tribal, and other overburdened communities.

Regional programs should work with states and tribes to advance policies, programs and activities that address risks to minority, low-income, tribal, and other overburdened communities. Opportunities to advance EJ include:

- Developing region-wide strategies through joint meetings with state and tribal counterparts to focus on addressing critical environmental justice issues (e.g., lead poisoning, asthma, air and water pollution from CAFOs, and multiple or cumulative exposures to air pollution);
- Identifying specific state and tribal EJ needs, concerns and resources associated with specific programs;
- Collaborating, networking and partnering with states and tribes through EJ coordinators and/or appropriate program contacts to share resources;

¹⁰ EPA's Cross-Cutting Fundamental Strategies are articulated in the EPA *Strategic Plan* for FY 2014-2018 (see footnote 3 above).

¹¹ See: <http://www.epa.gov/compliance/environmentaljustice/index.html>.

- Implementing regional plans to support enhanced meaningful engagement by overburdened communities for priority EPA-issued permits; and
- Supporting community involvement through community engagement initiatives.

Regional programs should incorporate EJ considerations, and develop measurements where feasible, into their stated evaluation criteria and reflect those considerations in the terms and conditions of the grant award, as appropriate.¹² Examples of key activities that can be incorporated and evaluated to ensure integration of environmental justice principles include, but are not limited to:

- Identifying communities with EJ concerns and vulnerable populations that may be disproportionately impacted by environmental burdens and/or experiencing adverse health impacts;
- Sharing and developing resources, tools, and data, for monitoring and tracking of successes;
- Providing training within programs and tribal agreements, workplans guided by NEPPS goals and objectives that lead to an understanding of expectations and effective implementation that foster best practices;
- Identifying clear performance expectations, commitments on targeting inspections where disproportionately high and adverse human health or environmental effects have been noted; and
- Providing opportunities for enhanced public participation, consideration of limited English proficiency or immigrant, traditional or cultural needs, and ensuring early engagement, meaningful participation and information exchange.

In order to identify barriers that may impede or limit the development of effective partnerships with states and tribes, regions are urged to take advantage of the opportunities mentioned above to ensure that the most vulnerable of populations/areas receive appropriate resources and adequate attention. To the extent applicable, the Agency:

- Will pilot and share best practices and resources with states and tribes in order to bridge gaps, maintain transparency, provide support and partnerships where there are limited resources;
- Encourage states and tribes to share appropriate tools, guidance, traditional knowledge and good neighbor practices that will contribute to improved public health in minority, low-income and other overburdened communities.

¹² See: Plan EJ 2014 Legal Tools, p. 92, Section B at: <http://www.epa.gov/environmentaljustice/resources/policy/plan-ej-2014/ej-legal-tools.pdf>.

3. Strategically use the NEPPS process to organize and articulate mutual compliance and enforcement (C/E) priorities, and ensure they are aligned with commitments in PPGs and other categorical grant workplans.

The annual planning process with states for C/E is an integral part of EPA-state planning, and should reflect the shared accountability of EPA and states in protecting the environment and public health. Historically, C/E has not been consistently included in the NEPPS planning process. EPA-state C/E commitments were often developed through a different process and memorialized in separate agreements or workplans. During the last 5-10 years, a number of regions and states have included C/E plans and priorities in strategic PPAs and linked them to commitments in PPGs and individual state grant agreements. Therefore, as a best practice, regions are encouraged to organize and articulate C/E priorities and commitments through the NEPPS process to achieve more comprehensive, integrated and flexible work planning, especially during this time of scarce resources and state budgetary constraints. For example:

- Enforcement topics should be incorporated into the overall programmatic discussions about priorities, resources and annual commitments in developing PPGs, categorical grant workplans, and PPAs serving as grant workplans.
- National, regional and state enforcement priorities should be discussed with the goal of identifying the most significant sources and the most serious violations.
- Regions and states should consider all available options for addressing the most important work within the available resources, including worksharing, innovative approaches, as well as traditional compliance and enforcement tools.
- Grant workplans should include a clear identification of performance expectations, commitments on targeting, inspection coverage based on the various media Compliance Monitoring Strategies and the flexibilities within each, and the need for timely and appropriate enforcement on the most serious violations at significant sources.
- Annual commitments should also include corrective actions that have been identified in programmatic reviews as well as the State Review Framework.
- EPA and states should discuss and identify new approaches for monitoring compliance and addressing less serious violations that do not directly impact the environment or public health.

4. The regions are encouraged to advance the principles of sustainability through ongoing partnerships with the states and tribes, using existing resources and integrating them into PPAs, PPGs and other categorical grant workplans, as appropriate.

It is EPA's goal to consider and apply sustainability principles to Agency programs and functions on a regular basis and collaborate closely with stakeholders to the same end. To

achieve this goal, EPA will routinely consider the following principles in decisions and actions, as appropriate:

1. Conserve, protect, restore and improve the supply and quality of natural resources and environmental media (energy, water, materials, ecosystems, land, and air) over the long term.
2. Align and integrate programs, tools, incentives and indicators to achieve as many positive outcomes as possible in environmental, economic and social systems.
3. Consider the full life cycles of multiple resources, processes and pollutants in order to prevent problems and pollution and to create a sustainable future.

National Area of Focus III: Foster programmatically sound and fiscally responsible PPG management practices.

Activities

1. Ensure that state and tribal PPGs are managed in a manner that is consistent with the budget, workplan and progress reporting requirements of 40 CFR 35, Subparts A and B.

Recent concerns have been raised by PPG recipients about requests from EPA for additional budget information and progress reporting for individual grants included in a PPG that are inconsistent with the workplan and funding requirements of 40 CFR 35. The ability of a state or tribe to combine up to 18 grants in a single PPG provides administrative benefits that include streamlined paperwork and accounting procedures. It is important to note that once grants are combined in a PPG, funds do not have to be tracked by the original program source. In general, 40 CFR Part 35 only requires one budget, financial status report and a negotiated workplan that incorporates commitments for each workplan component funded by the PPG. For most grants included in a PPG, an annual performance report is required, but for some grants a semi-annual performance report is required. However, regions may require more frequent performance reports (not to exceed quarterly reporting) only where agreed to by a state or tribe or where there are performance issues, such as Agency concerns with the timely and appropriate expenditure of funds.

2. Implement Grants Policy Issuance 12-06: Timely Obligation, Award and Expenditure of EPA Grant Funds.

*Grants Policy Issuance (GPI) 12-06: Timely Obligation, Award and Expenditure of EPA Grant Funds*¹³ was developed by a state-EPA workgroup and became effective on October 1, 2012. The GPI is designed to promote timely and efficient award/utilization of grant funds. Major provisions include:

¹³ See:

http://www.epa.gov/ogd/grants/final_gpi_12_06_streamlining_state_grant_and_expediting_outlays.pdf.

- A goal to obligate all grant funds in the first year of availability;
- A new evaluation factor and provisions for anticipatory announcements for grant competitions;
- State grant streamlining principles and requirements for negotiating outlay strategies;
- Additional limits on project period extensions; and
- CWA Section 319-specific and SRF-specific streamlining reforms.

The GPI also includes language on streamlining the grants process through the use of standard funding recommendation templates and states, in part:

- *Regional Program Offices are expected to use standard Funding Recommendations (FRs) developed by OGD and NPMs. These FRs will pre-populate key fields, reducing the time for data entry by Project Officers. Once the FR is created for the grant through the template, the Project Officer may make any necessary project-specific changes. The OGD Director will issue implementing guidance to Regional Project Officers on the standard FR system.*

A PPG Funding Recommendation Template has been finalized and activated, and must be filled out for PPGs developed after October 1, 2012. OCIR, as the NPM for PPGs, has streamlined the responses to two questions and included additional guidance directly within the PPG Funding Recommendation Template in order to assist PPG project officers.

3. Implement Grants Policy Issuance 09-01: Burden Reduction for State Grants.

*Grants Policy Issuance (GPI) 09-01: Burden Reduction for State Grants*¹⁴ codifies and summarizes actions EPA has taken to address major grant-related issues identified under the Agency's State Reporting Burden Reduction Initiative. Section C. 2, in particular, applies to the reporting frequency of each program included in a PPG. Regions are encouraged to incorporate adopted burden reduction efforts as widely as possible. EPA is working on a similar policy for assistance agreements with tribal governments and consortia.

4. Implement Grants Policy Issuance 11-03: State Grant Workplans and Progress Reports; project officers must enter workplans and progress reports in the State Grant IT Application (SGITA) database.

*Grants Policy Issuance (GPI) 11-03: State Grant Workplans and Progress Reports*¹⁵ is designed to: 1) enhance accountability for achieving grant performance objectives; 2) ensure that state grants are aligned with the EPA Strategic Plan; and 3) provide for more

¹⁴ See: http://intranet.epa.gov/OGD/policy/GPI_09-01_final.pdf.

¹⁵ See: http://www.epa.gov/ogd/grants/final_grants_policy_issuance_11_03_State_Grant_Workplans.pdf.

consistent performance reporting. To achieve these objectives, the GPI requires that workplans and associated progress reports prominently display three *Essential Elements*: the EPA Strategic Plan Goal; the EPA Strategic Plan Objective; and Workplan Commitments plus time frame. The GPI applies to the fourteen state grant programs and in no way supersedes existing workplan requirements in 40 CFR Part 35 Subpart A. The effective date of the GPI is October 1, 2012.

To further transparency, the GPI established the State Grant IT Application (SGITA)¹⁶ database to electronically store workplans and progress reports. It is the responsibility of the EPA Project Officer to enter the workplans and progress reports into the database.

5. Implement Grants Policy Issuance 11-01: Managing Unliquidated Obligations and Ensuring Progress under EPA Assistance Agreements.¹⁷

Grants Policy Issuance (GPI) 11-01: Managing Unliquidated Obligations and Ensuring Progress under EPA Assistance Agreements became effective in FY 2011 and addresses the Office of Inspector General's (OIG) concerns about the necessity of internal controls to identify and deobligate unneeded assistance agreement funds, or to prevent unwarranted accumulations of unliquidated obligations (ULOs). The policy also addresses the Agency's responsibilities under the Federal Managers' Financial Integrity Act (FMFIA) and *EPA Order 5700.6 A2 CHG 2, Policy on Compliance, Review and Monitoring* by including provisions that highlight the need for timely project/program completion and monitoring of unliquidated obligations. The policy includes limits on project periods, development of indicators to assess the effectiveness of funds utilization, requirements for workplan milestones and delivery dates, and "sufficient progress" terms and conditions.

Given the tight budget climate, effective management of ULOs is a high priority for the Agency and OGD will be working closely with the states to implement the ULO reforms. It is important for the regions to implement GPI-11-01 for effective management of grant ULOs.

Regions and states should also ensure that PPG funds are efficiently utilized to accomplish priority environmental activities identified in grant workplans. The PPG NPM, OCIR, in coordination with the media program NPMs, Regional Program Offices and OGD, has developed a PPG-specific "sufficient progress" term and condition to be included in new assistance agreements awarded on or after December 1, 2010. The PPG-specific term and condition states that:

- *EPA may terminate the assistance agreement for failure to make sufficient progress so as to reasonably ensure completion of the project within the project*

¹⁶ See: <https://ofmext.epa.gov/apex/sgita/f?p=SGITA:Home>.

¹⁷ See: http://intranet.epa.gov/OGD/policy/gpi_11_01_12_02_10_final.pdf.

period, including any extensions. EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.

6. Ensure compliance with Title VI of the Civil Rights Act of 1964 in the implementation of state grants.

It is a priority of the Agency to ensure compliance with Title VI of the Civil Rights Act of 1964.¹⁸ This statute prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP) by entities receiving federal financial assistance. All recipients of EPA financial assistance have an affirmative obligation to implement effective Title VI compliance programs and ensure that their actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral.

- As required by implementing EPA regulations at 40 C.F.R. Part 7, EPA applicants must complete EPA Form 4700-4 to demonstrate compliance with Title VI and other non-discrimination statutes and regulations.¹⁹ The regulations also impose specific obligations on grant recipients, including providing compliance information, establishing grievance procedures, designating a Title VI Coordinator, and providing notices of non-discrimination.²⁰
- Title VI requires EPA financial assistance recipients to provide meaningful access to LEP individuals. To implement that requirement, and consistent with Executive Order 13166,²¹ the Office of Civil Rights (OCR) issued guidance to recipients entitled, *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.*²²
- The regions should encourage the states to consider enhanced public participation. To help states develop public involvement programs, OCR published a Title VI Public

¹⁸ See: <http://www.epa.gov/civilrights/t6lawrg.htm>.

¹⁹ See: http://www.epa.gov/ogd/forms/adobe/4700-4_sec.pdf.

²⁰ See: <http://www.epa.gov/civilrights/docs/40p0007.pdf>.

²¹ See: <http://www.epa.gov/civilrights/docs/eo13166.pdf>.

²² See: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf.

Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs.²³

- EPA continues to develop a more robust Title VI compliance program, which will likely include revisions to Form 4700-4 (pre-award assurances) and amendments to EPA's Title VI regulations to strengthen post-award reviews. Until then, recipients should be prepared to show that they are implementing effective compliance programs or to otherwise demonstrate compliance with Title VI obligations.

²³ See: <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>.

APPENDIX A
GRANT PROGRAMS ELIGIBLE FOR STATE PPGs

Grant Program	Required State Match
Air Pollution Control – CAA 105	Greater of MOE or 40%**
Radon Assessment and Mitigation – TSCA 306	50%
Water Pollution Control – CWA 106	MOE
Water Nonpoint Source Implementation – CWA 319	40%
Wetlands Development Grants Program – CWA 104(b)3 (<i>competitive</i>)	25%
Public Water System Supervision – SDWA 1443(a)	25%
Underground Injection Control – SDWA 1443(b)	25%
Hazardous Waste Management – SWDA 3011(a)	25%
Brownfields Response – CERCLA 128(a)*	0%
Pesticides Program Implementation – FIFRA 23(a)1	0%
Lead-Based Paint Activities – TSCA 404(g)	0%
Toxic Substances Compliance Monitoring – TSCA	25%
Pesticides Cooperative Enforcement – FIFRA 23(a)1	0%
Environmental Information Exchange Network* – Authority in EPA Appropriations Acts	0%
Pollution Prevention Initiatives – PPA 6605 (<i>competitive</i>)	50%
Pesticide Applicator Certification and Training	50%
State Underground Storage Tanks	25%

*Program added to list of grants eligible for PPGs after publication of the Part 35 rule.

**MOE = Maintenance of Effort level

APPENDIX B
GRANT PROGRAMS ELIGIBLE FOR TRIBAL PPGs

EPA Program	Maximum Match Percent	Minimum Match Percent
Indian Environmental General Assistance Program (GAP)	0	0
Air Pollution Control - CAA 105 – Not TAS Eligible TAS Eligible	40 10 (after 2-years)	40 5*
Water Pollution Control - CWA 106 & 518	5	5*
Wetland Development 104(b)(3)	25	25
Nonpoint Source Management - CWA 319(h) & 518(f)	40	10
Pesticide Cooperative Enforcement Sect. 23(a)(1)	0	0
Pesticide Applicator Certification & Training - Sect. 23(a)(2)	50	50
Pesticide Program Implementation Sect. 23(a)(1)	0	0
Pollution Prevention – Sect. 6605	50	50
Public Water System Supervision Sect.1443(a) & Sect. 1451	25	10
Underground Water Source Protection – Sect. 1443(a)	25	10
Lead-based Paint Program – Sect.404(g)	0	0
Indoor Radon – Sect. 306	40 – 2 nd Year 50 – 3 rd Year	25 – 1 st Year
Toxic Substances Compliance Monitoring – Sect. 28	25	25
Hazardous Waste Management Program – Public Law 105-276	0	0
Underground Storage Tanks Program – Public Law 105-276	0	0
Tribal Response Program – CERCLA Sect 128(a)	0	0

*The rules that control EPA grants to Tribes, including PPGs, are codified under 40 CFR Part 35 B. For both the Tribal Air Rules and the Performance Partnership Grant Rule, Tribes are required to provide a cost share. Tribal match would be established at 5 percent for the first two years of a grant, which then would be increased to 10 percent contingent upon a Tribe's ability to meet socio-economic criteria. The cost share could also be waived at EPA's discretion, or reduced based on socio-economic criteria (see 40 CFR Parts 35.536 and 35.515).

**For these programs, the Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing that fiscal circumstances within the Tribe or within the member Tribes of the Intertribal Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship.

**APPENDIX C
KEY CONTACTS**

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**APPENDIX D
EXPLANATION OF CHANGES BETWEEN FY 2013 AND FY 2014**

Office of Congressional and Intergovernmental Relations

Change from FY 2013 Guidance Document		Reason for Change	Affected Pages and Sections
National Area of Focus I	Deleted former Objective 3 on EPA-state business process improvements (e.g., LEAN, Kaizen, VSM) which was in Goal I (now National Area of Focus I).	Unnecessary to include language on business process improvements in NEPPS Guidance as these initiatives are taking place through other EPA mechanisms.	Objective 3 on p. 9 in FY 2013 Guidance
National Area of Focus I	Added Activity #1 with performance measure and guidance on worksharing.	Change is in response to a new KPI in the FY 2013 Action Plan for Strategy 4 to identify and implement worksharing implementation targets.	-- Activity #1 on p. 5 -- Performance measure for Activity #1 on p. 6
National Area of Focus I	Added Activity #5 on implementing EO 13175 and EPA's Policy on Consultation and Coordination with Indian Tribes	Change is in response to comments from OITA/AIEO.	Activity #5 on p. 9
National Area of Focus II	Added Activity #4 on advancing the principles of sustainability.	Change is in response to one of the Administrator's priorities and a forthcoming (Spring 2013) Agency initiative: the <i>EPA Sustainability Action Plan</i> .	Activity #4 on p. 13
National Area of Focus III	Added Activity #2 on implementing GPI 12-06.	Change is in response to GPI 12-06 which became effective 10/1/2012.	Activity #2 on p. 14
National Area of Focus III	In Activity #4, added State Grant IT Application database requirement for project officers.	Change is in response to GPI 11-03 which became effective 10/1/2012.	Activity #4 on p. 15

Program-Specific Guidance	N/A	N/A	N/A
Annual Commitment Measures	N/A	N/A	N/A
Tracking Process	N/A	N/A	N/A
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