



# Final Guidelines

## Drinking Water Infrastructure Grants Tribal Set-Aside Program EPA Region 10



**GUIDELINES  
DRINKING WATER INFRASTRUCTURE GRANTS (DWIG)  
TRIBAL SET-ASIDE (TSA) PROGRAM  
EPA REGION 10**

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**I. INTRODUCTION**

This document presents the guidelines that EPA Region 10 (R10) will utilize in the implementation of its new Drinking Water Infrastructure Grants (DWIG) Tribal Set-Aside (TSA) Program. This TSA program is a set-aside of funds from annual federal appropriations made to fund the State Revolving Fund (SRF), a loan fund authorized under the 1996 Amendments to the Safe Drinking Water Act (SDWA). Applicable statutory requirements of the TSA are summarized in **Appendix A** of this document.

It is important to understand that while the SRF is a loan program, the DWIG TSA program is strictly for grants to federally recognized Indian Tribes, which includes all the Alaska Native Villages. There is no requirement for 'matching' funds to be contributed by a Tribe or from other sources of supplemental project funds. Another important aspect to the R10 TSA program is that no Tribal applications are necessary in order to be considered in each year's TSA project selection process by EPA. This is explained in **Section VIII** of this document.

The national guidelines for the DWIG TSA program were developed with the assistance and advice of the EPA National Tribal Operating Committee, which included representatives from several Tribes, the Indian Health Service (IHS), and members of EPA's headquarters and regional offices. Between May 1997 and March 1998, three successive draft versions of the proposed national guidelines were distributed for review and comment to each Tribe in the United States. In October 1998, the National Guidelines for the TSA program were finalized and distributed by EPA to all Tribes and other interested parties. Two different formats of the national guidelines have also been made available to public access on the EPA internet website at:

**<http://www.epa.gov/safewater/tribes.html>**

The EPA R10 TSA guidelines herein have been purposely written to minimize repetition of the national guidelines. **Therefore, it is highly recommended that before this R10 guideline document is reviewed, the reader should first review and understand the national guidelines.** Proceeding further without being aware of the national guidelines provisions, may contribute to misunderstandings. A copy of this document, i.e. the R10 TSA final guidelines, is also available at:

**<http://www.epa.gov/r10earth/>**

## II. ALLOCATION of TSA FUNDS within R10

**A. Background on National TSA Funding:** As described at length in the national guidelines, EPA headquarters will annually advise the nine EPA regional offices administering the TSA program (EPA Region 3 has no federally-recognized Indian Tribes), of each region's share of the TSA funds. The regional allocations are calculated using a 2% baseline for each of the nine participating regions in order that at least an average sized TSA project can be funded annually by each region. To this figure is then added an amount proportional to each region's community water infrastructure needs for water systems serving Tribal populations. An EPA region's proportional needs are calculated as a % of the total national Tribal needs, giving equal weight to two separate needs surveys:

1. the Tribal portion of the EPA National Drinking Water Infrastructure Needs Survey, which is done every four years; and
2. the IHS Sanitation Deficiency System survey (SDS), which is done annually.

Using this formula process, R10's current available TSA funds for FY 1997 - 1999 have been calculated in the national guidelines. They are summarized as follows:

**TABLE 1**  
TSA Funding Allocations to EPA R10

	Total National TSA Funding	Region 10		Total Region 10 TSA
		Baseline Amt	Proportional	
FY 1997	\$19,125,000	\$382,500	\$7,011,800	\$7,394,300
FY 1998	\$10,875,000	\$217,500	\$3,987,100	\$4,204,600
FY 1999	\$11,625,000	\$232,500	\$4,326,500	\$4,559,000
Total	\$41,625,000			\$16,157,900

As might be expected, development of the regional TSA allocation procedure was not without differing input from the reviewers. An initial possibility was the use of a single national EPA project priority list similar to that used by EPA's Clean Water Act Indian Set-Aside program from its inception in 1989 until 1992. Obviously this was not adopted. Instead, a regional fund allocation process was selected that does not require projects to compete for selection amongst the different EPA regions. Subsequently, the regional TSA fund allocation process was structured to guarantee a baseline amount to each region to allow for at least one annual project, using an estimated average project cost; and only then to calculate and add TSA fund amounts that are proportional of each EPA region's needs.

**B. TSA Funds Allocation within R10:** In EPA R10, because of the great

geographic and climatic distinctions (and therefore cost and general economic conditions) between Alaska and the three other states that comprise the Pacific Northwest (PNW), it is felt very strongly that a further allotment of R10 funds is necessary for these two subregions. The process proposed is similar to that of the national allocation procedure, but it reflects what is believed to be a division based on more accurate relative needs and updated costs of a baseline project.

Accordingly, for each of the R10 subregion baseline amounts the national guidelines figure of 2% will be adjusted to 4% of the annual R10 amount since the R10 total allocation is only roughly half of the national amount. The balance of annual DWIG TSA funds for EPA R10 will then be divided between the Alaska and PNW subregions proportional to their community water system needs. These needs will be taken from the most current annual IHS SDS figures as tabulated by the Anchorage and Portland Area Offices of the IHS.

The utilization of the SDS survey data for the subregional proportional allocation, in lieu of the SDS and the EPA needs survey (as used in the national EPA TSA funds allocations), is based on the following important distinctions between the two survey methodologies:

1. The EPA needs survey is only done every four years, whereas the SDS is updated annually. The last EPA survey was dated 1995, and it was used in the current national allocation calculations for all of the FY 1997 - 1999 TSA funds.
2. The EPA needs survey data used in the allocations of TSA funds among the EPA regions represents needs for the next 20 years. In contrast, the SDS survey data reflects current needs only.

In addition, a previous limitation of the SDS has been addressed, and Department of Housing and Urban Development (HUD) and other government-financed homes on Indian lands are now represented in the SDS project ranking criteria. Utilizing the revised procedure, the R10 subregional allocations have been calculated and are presented in **Table 2** for the TSA funding for FY1997 - 1999 (see **Appendix B**). As discussed later in this document, provision is also made for limited emergency project funding in each subregion by setting aside 2% of each of the total subregional amounts. This % will be adjusted as necessary by EPA to either decrease unused reserved emergency funds or to replenish a diminished emergency project account.

**C. Allocation of Additional Non-Routine TSA Funds:** The national guidelines provide for possible periodic allocation of new and/or redistributed TSA funds amongst the nine EPA regions with Tribes. These funds may come from two sources: individual states implementing the original SRF loan program and other EPA regional offices implementing the DWIG TSA programs, where certain project funds may not have been obligated within prescribed periods of time. In either of these cases, TSA funds coming to R10 will be divided according to the most current subregional allotment formula and resulting percentages for regular annual TSA funds. If a subregion's accumulated emergency project account is ever to be reduced or eliminated in the future due to being largely

unused, these funds will remain within their respective subregional accounts.

**D. Reallocation of TSA Funds within EPA R10:** Because of the time limitations on obligating TSA project funds within two full federal fiscal years following the fiscal year in which they were made available, it is possible that certain R10 TSA funds previously reserved for specific projects may infrequently need to be reallocated in a timely fashion in order to avoid losing the funds. Should this be necessary, the R10 TSA program will attempt to reallocate the funds to the next highest ranked project within the same subregion. If this is not possible for some reason, the funds will be then placed in the other subregional account, in an effort to avoid losing the funds from R10.

### **III. TSA PROJECT RECIPIENTS**

**A. Grantees:** Under the TSA statutory and national guidelines languages, the possible grantees under the TSA program are all federally-recognized Tribes; and for Alaska projects, the State of Alaska is allowed to accept a grant on behalf of an Alaska Tribe. For this latter option, EPA R10 will only award a grant to the State of Alaska upon the written request by an Alaska Tribe for which a TSA project has been tentatively selected by EPA. (In various discussions concerning this possibility, it appears that the State of Alaska becoming a grantee may not occur often, if at all.)

As stated in the National TSA Guidelines, if a direct grant is made, the grantee will have to meet all standard EPA grant requirements, in addition to the TSA National Guidelines and the R10 guidelines contained herein. These will include EPA general grant regulations described in 40 CFR Part 31, adherence to cost principles in OMB Circular A-87, adherence to the National Environmental Policy Act (NEPA), meeting all applicable federal 'cross-cutting' requirements (see **Appendix B** of the National Guidelines), etc. When appropriate, EPA may apply the 'high risk' provisions of 40 CFR 31.12, and determine that instead of the 'grant' type of assistance agreement, the 'cooperative agreement' will be used, providing for increased EPA involvement and oversight in the project.

**B. The IHS as a Funding Recipient:** With a Tribe's written request and EPA's approval, TSA funds can also be directly transferred by EPA to the IHS which would then administer the project on behalf of a Tribe. In this case, EPA would make a 'grant of services' to the Tribe, and the TSA funds would be transferred to the IHS using a federal Interagency Agreement (IAG), signed by EPA and the IHS. The process involving the IHS has been used successfully in EPA's Clean Water Act Indian Set-Aside Program for the past 10 years to construct wastewater facilities for numerous Tribes throughout the PNW and Alaska.

**C. P.L. 93-638 Considerations:** Under this law, the Bureau of Indian Affairs and the IHS have been given authority to transfer their agency funds directly to Tribes for a specific purpose such as a construction contract or project (Title I), or to entirely assume an entire program (Title III compact). In Alaska, another '638' entity now exists--the

Alaska Native Tribal Health Consortium (ANTHC), which in 1997 under P.L. 105-83 (Sections 325 and 326), was created and is authorized to assume much of the IHS's program in Alaska, including that of IHS's sanitation facilities construction program.

While EPA does not have direct P.L. 93-638 authority, it appears that the EPA is permitted to transfer TSA funds to the IHS, with the understanding IHS will use its P.L. 93-638 authority to transfer the funds to the ANTHC, or individual Tribes in the PNW, in accordance with the intent of P.L. 105-83. Should this be allowed, EPA will only approve its use by IHS given adequate conditions that will assure TSA funds are properly utilized and accounted for through an IAG.

**D. Other Funding Recipients:** If a direct grant to a Tribe is done, the TSA funds can also be transferred by a grantee Tribe to another organization such as a municipality, or a public water system in order to administer the project on behalf of the Tribe. Again, this can only be done with prior agreement between the Tribe and the EPA; but it should be noted that as the grantee, the Tribe is still responsible for correct expenditure of the TSA funds, and following all other EPA grant requirements.

#### **IV. TYPES of TSA PROJECTS**

Almost all phases of a water infrastructure project will be allowed. These would typically be as follows:

**A. Feasibility Study &/or Facility Plan:** This work would look at a specific problem (e.g. insufficient source water, replacement of deteriorating storage tanks), identify different solutions, estimate the costs and compare the benefits, and recommend the best alternative solution that remains feasible. Frequently this kind of project also requires some preliminary engineering work.

**B. Design:** When a project is well defined as the best plan to solve a specific infrastructure problem, a detailed engineering design must be produced. This usually involves such work as soils investigations, surveying, engineering calculations, preparation of plans and specifications, and securing needed rights-of-way and permits. Appropriate contract and/or procurement documents are also needed.

Because of the significant need for prompt water infrastructure projects throughout Indian communities, EPA R10 will limit the number of projects approved for strictly engineering studies and/or design to a maximum 10% of the available subregional funds. Also, utility or water system master plans will not be eligible for TSA funding.

**C. Construction & Construction Management:** This phase can include several options, such as contracts for all or part of the work, purchase orders for direct materials procurement, on-site supervision, and force account work by a sponsoring agency.

During construction, professional engineering services are also required to represent

the owner's interests in the work. Besides periodic inspections, this work will usually include payment processing, preparing change orders, dispute resolution, and small re-engineering tasks.

This final phase of a project will also include important start-up operations of the new water system facilities.

**D. Emergency Projects:** While the TSA program is generally intended to offer water supply infrastructure funding assistance in an orderly and project competitive process, EPA R10 does wish to offer assistance in limited situations, but excluding quick disaster relief. For this purpose, EPA will then set-aside 2% of each annual subregional allotment in order to allow some EPA participation with other agencies that typically have significant expertise, a direct mission, and much greater funds available to construct the needed water supply facilities following an emergency. The requirements for EPA participation in any emergency project are as follows:

1. The project scope must be limited to a permanent repair &/or replacement of public water system facilities in order to prevent or minimize imminent, acute, and significant public health hazards. Upgrading of lost or damaged facilities using TSA emergency funds is not intended, but will be considered on a case-by-case basis.
2. The public health hazard must be a result of an "act of God," (e.g. flooding, earthquakes, lightning, wind storms, wildfires, extreme drops of ground water tables), major industrial accidents, or terrorist acts. The damage cannot result from situations reasonably under normal control of the community or public water system, such as vandalism, arson, or poor operation or maintenance of the facilities.
3. EPA participation will be based strictly on a Tribe's support and identification of another federal agency (e.g. FEMA, BIA, IHS, Army Corps of Engineers) or the State of Alaska that would assume lead agency status; willingness of that federal agency to accept an EPA Interagency Agreement for project funds transfer (or a direct grant in the case of the State of Alaska); and that agency's ability to quickly and efficiently conduct the emergency project work.
4. The maximum EPA per project participation will be respectively \$150,000 for Alaska and \$15,000 for PNW TSA emergency projects (subject to funds availability and EPA R10 grant administration resources). Projects requested for very minimal amounts of TSA emergency funds (i.e. less than \$5,000) will not be considered.

It should be noted that if a project is needed to rebuild or replace vital PWS infrastructure after an emergency, but if insufficient EPA emergency funds are available or if other temporary facilities can be utilized for awhile, the proposed project can be easily added and ranked in the next IHS SDS list and considered for selection by EPA in the next annual round of regular TSA projects. This would then allow appropriate upgrading to be included in the proposed project scope.



## **V. PUBLIC WATER SYSTEM ELIGIBILITY**

**A. For-Profit Non-Community Water Systems:** EPA R10 wishes to note that a portion of the TSA national guidelines declares that for-profit transient non-community water systems (TNCWS) or such systems primarily serving for-profit enterprises, such as a water system serving a store, casino, or bingo hall; and for-profit non-transient non-community water systems (NTNCWS) such as a system serving a private school or private office complex) are ineligible for TSA assistance. However, for-profit community water systems remain eligible for TSA assistance.

**B. Non-Tribal Populations:** For water systems that also serve non-tribal residences (dwelling units), TSA funds can be used for facilities that are largely shared by the entire community, as long as the portion of non-tribal residences is less than 50% of the total. If the number of non-tribal residences is over 50%, a pro-rata cost contribution from the non-tribal community (or another non-TSA source) will be required to fund the entire project.

Similarly, portions of a project that would solely benefit a non-Tribal population (e.g. a new or replacement water main serving essentially a non-Tribal neighborhood), will not be eligible for TSA funds. EPA will define a 'Tribal residence,' as a housing structure inhabited on a relatively permanent basis by at least one member of a Tribe that is eligible as a TSA grantee. This person may be either an owner, lessee, or someone with a legitimate right to use the housing on a continuing basis for a minimum three more years as of the time of project consideration. If there are questions regarding such determinations relating to a project, the Tribe's views will be sought.

**C. For-Profit Water Services:** Water system facilities needed to serve commercial customers will be treated as non-Tribal populations, except that their aggregate average daily water usage must not be greater than 25% of the water system's average daily water production. Should that figure be exceeded, shared community water system costs would not be eligible for TSA funds. In addition, water system facilities that solely or largely support these establishments would not be TSA eligible costs. And under no circumstances will water system facilities that benefit industrial or agricultural water service customers be eligible for TSA assistance.

**D. Other Non-Profit, Non-Residential Water Services:** Costs to serve other non-profit water system customers, such as public schools, churches, government offices, community centers, clinics, etc. are TSA eligible expenses.

**E. Watering Point Systems:** As long as a watering point system is considered a public water system according to the SDWA definitions, it will be fully eligible for TSA funding assistance. This would also include a washeteria system, common in Alaska Native villages.

**F. On-Going Public Water System Projects:** TSA funds cannot be contributed to on-going projects, unless a subsequent phase is competitively selected on its own

merits.

**G. Communities with Serious Wastewater Disposal Problems:** If the proposed water system project will increase the volume of water provided to such a community, the project will not be eligible for TSA funds (i.e. TSA funds cannot be used if their use would make the wastewater problem worse). The only exception to this would be if the deficient sanitary conditions will be adequately addressed by others prior to the TSA project being completed. In the infrequent case that a new water system is considered for TSA funding, it will also not be approved without a concurrent adequate wastewater system being provided.

**H. Public Water Systems (PWS) Not in Compliance with the SDWA:** EPA R10 wishes to emphasize, as stated in the national guidelines, that systems not in compliance with the SDWA will not be eligible for TSA assistance, except as described in **Section VI** below. It is therefore important for TSA project eligibility, that a system adhere to necessary drinking water monitoring requirements and take all other appropriate action (e.g. resampling, necessary public notifications, effective operation and maintenance, etc.) per the SDWA and/or National Primary Drinking Water Regulations (NPDWRs).

**I. Creation of New PWSs:** EPA recently published a final policy revision (Federal register Vol. 63, No. 21, Nov. 3, 1998. pp. 59299-59300) that now allows for creation of new PWSs, but only under very limited circumstances. In short, creation of a new system under the Drinking Water SRF program (which includes the DWIG TSA program) will be allowed to consolidate individual or small water systems as the best cost-effective solution to seriously contaminated wells or surface water sources, or to address other serious technical, financial, or managerial capacity problems.

## **VI. WATER SYSTEM CAPACITY REQUIREMENTS**

**A. General:** "Capacity" relative to this program is defined as the technical, financial, and managerial capability of a water system to consistently deliver sufficient quantity and quality of water to dependably meet the water demands of the system's customers. As such, capacity has many different aspects but it is usually broken down into three main categories: technical, financial, and managerial.

Per the 1996 Amendments to the SDWA, TSA National Guidelines have made it clear that PWSs without necessary capacity are not eligible for TSA assistance, with the following two exceptions:

1. TSA assistance can be provided if the assistance will enable a PWS to come into full compliance with the NPDWRs (e.g. necessary filtration treatment facilities); or
2. if the PWS agrees to make the necessary improvements to raise its capacity to assure future compliance; and if EPA has well-founded

expectations that the changes will be accomplished as agreed upon and on schedule.

**B. Managerial Capacity Requirements:** The PWS must meet at a minimum the managerial capacity requirements for TSA assistance, as shown in **bold** below. For any requirement not met at the time of the grant award, the EPA will set an appropriate schedule for their implementation by the PWS during the project. Additional goals are listed which the PWS should strive to achieve.

- 1. Documentation exists that identifies the PWS's ownership, mission, organization, authority to charge fees (if user fees are necessary), and positions (e.g. board of directors, manager, supervisors, staff). This could be in the form of Tribal resolutions; articles of incorporation; Tribal, state, or federal charters, etc.**
- 2. Documentation exists that adequately describes the system's management procedures, authority to hire and fire employees, and clear lines of supervision and direction.**
- 3. The PWS must not be in violation of the National Primary Drinking Water Regulations (NPDWRs), including all sampling and reporting requirements. (See exceptions in VI. A. above.)**
4. Written safety plans for repair and operational work, and an emergency plan to address the more likely emergency scenarios.
5. Knowledge of all applicable PWS requirements, such as the NPDWRs (including appropriate state delegated program requirements), OSHA, public utility laws (if applicable) etc.
6. Periods of inadequate or no water being supplied be kept to absolute minimums reflecting only unforeseen emergencies, and unavoidable and scheduled down times for flushing or routine repairs.

**C. Financial Capacity Requirements:** The PWS must meet at a minimum the financial capacity requirements for TSA assistance, as shown in **bold** below. For any requirement not met at the time of the grant award, the EPA will set an appropriate schedule for their implementation by the PWS during the project. Additional goals are listed which the PWS should strive to achieve.

- 1. The system and the grantee Tribe must be financially current with the Internal Revenue Service or any other governmental agency in order to avoid any direct levies on any TSA grant funds, such as those eventually placed in a project force-account fund.**

2. Documentation showing clear identification of authorized revenue sources (e.g. service fees, general Tribal or municipal budget, municipal subsidies, etc.).
3. Written procedures for charging and collecting user fees (if applicable) or other sources of revenue, and procedures for disconnection due to non-payment.
4. Written procedures for ordering, receiving, and paying for parts, supplies, power, repairs, etc.
5. An annual operating budget showing projected revenue and expenses.
6. Evidence that all accounts receivable and accounts payable are continuously maintained, and the annual budget is updated with current adjustments as necessary. Also that all accounts are not more than 45 days in arrears.
7. Adequate liability insurance.

**D. Technical Capacity Requirements:** The PWS must meet at a minimum the technical capacity requirements shown in **bold** below. For any requirements not met at the time of the grant award, the EPA will set an appropriate schedule for their implementation by the PWS during the project. Additional goals are listed which the PWS should strive to achieve.

1. **As-built plans and equipment data sheets on file.**
2. **Sufficient supplies, tools, and spare parts on hand to maintain and operate vital system components (e.g. fuel/heating oil; disinfection chemicals; hand and specialized tools for minor repairs; spare parts such as repair clamps, commonly used seals or gaskets, etc.).**
3. **Written plan of operations with a preventative maintenance schedule.**
4. **Operators:**
  - a. **At least one system operator being available on a 24-hour basis, and at least one backup operator identified for emergency assistance.**
  - b. All system operators should be adequately trained for system operation and maintenance, and otherwise able to perform all routine operator tasks.

- c. For systems over 100 service connections, the lead operator position should be a paid position, whether full- or part-time.
- d. Per the National TSA guidelines, when the EPA has finalized its operator certification program for Tribes, operators of any Tribal PWS should be in compliance with this standard.
- e. For those PWSs that may be under state drinking water program jurisdiction, operators should meet applicable state operator training &/or certification requirements (in lieu of d. above).

## **VII. ELIGIBLE TSA INFRASTRUCTURE ITEMS**

**A. Specific Infrastructure Items:** The EPA TSA national guidelines describe the overall approach to eligibility for broadly described categories of water system facilities; but it is felt that more specifics are needed at this point in the development of a working TSA program. Accordingly, the following are presented for item-specific TSA eligibility:

- 1. **Water Sources:** e.g. wells, surface water intakes, rain/snow catchment systems (e.g. 'tundra ponds')
- 2. **Treatment Facilities:** e.g. disinfection, filtration, fluoridation, nitrate removal, necessary softening and pH adjustment
- 3. **Transmission Lines**
- 4. **Storage Facilities:** ground based, elevated, and pressurized
- 5. **Pumping Systems:** raw water, treatment-related, boosters
- 6. **Distribution Facilities:** piping, including valving, & mainline metering units; boilers/heat exchange units and circulating pumps for arctic water systems; also appropriate water hauling equipment
- 7. **Water Service Connections:** e.g. water main connections, pit-orifices, water meters, curb stops
- 8. **Control Systems:** e.g. common time or pressure based units, telemetry systems, and appropriate SCADA systems
- 9. **Hydrants:** when also used for distribution system flushing
- 10. **General Facility Related Improvements:** e.g. access roads, fencing, power line extensions, soil/slope stabilization, structures (pump houses, treatment buildings, washeterias), utilidors, and boardwalks

**B. System Start-Up Equipment and Services:** Assuring proper initial start-up of the new facilities is considered vital for long-term viability of the system, protection of the public health, and compliance with the SDWA. Accordingly, reasonable project expenses necessary to provide appropriate tools and equipment for operation and maintenance of the facilities, limited chemical supplies for start-up, and appropriate on-site training of the operators and certain other utility staff will be considered eligible cost items inherent to a successful TSA project.

**C. Prorated Facilities Costs:** It's expected that TSA eligible items frequently will also serve other purposes, e.g. utilidors, boardwalks, washeteria structures, power line extensions. The TSA eligibility in such circumstances will then have be reduced to a level proportional to the value of the specific item to the PWS relative to the item's total value for all other uses in the community.

**Examples:** 1) An Alaskan utilidor is planned for a new water distribution line and also a vacuum sewer main. The TSA portion of the cost should be 50%.

2) For a washeteria structure with a total of 4,000 square feet ('SF') that includes 1,200 SF of community meeting rooms, and the sanitation services (i.e. toilets, sinks, showers, laundry) occupy 1,000 SF, then the TSA eligible cost for the structure would only be 57% (i.e. 4,000 SF less 1,200 SF, less  $\frac{1}{2}$  of the 1,000 SF attributable to the to the wastewater functions = 2,300 SF, then divided by 4,000 SF = .57). 3) For an Alaskan village using both a water and wastewater haul system, the necessary boardwalk would be 50% TSA eligible, as would be the common haul vehicle.

**D. Water Service Lines and Interior Water Plumbing:** These kinds of facilities will be TSA eligible items if, and only if, they are owned by the public water system and the system is entirely responsible for their operation and maintenance. The provision of interior water plumbing (excluding pumphouse, pumping station, or water treatment piping, etc.) with TSA funds is expected to only apply to washeteria piping and appropriate fixtures.

**E. Purchase of Heavy Construction Equipment:** The cost of any heavy construction equipment purchased to support any project construction efforts, or as operation and/or maintenance equipment, will not be TSA eligible.

## **VIII. PROJECT IDENTIFICATION, RANKING, AND SELECTION**

**A. Identification of Standard TSA Infrastructure Projects:** As previously described, the IHS's SDS is updated annually nationwide by IHS's environmental health staff, with input and participation by the Tribes and the regional non-profit corporations providing health care under P.L. 93-638. Results of the annual SDS lists by each IHS administrative area (i.e. the Alaska Area Native Health Service [AANHS], and the Portland Area IHS, [PAIHS]) have been used since 1990 to select sanitation projects for IHS funding

and construction; and the EPA Clean Water Act Indian Set-Aside grant program has also used the SDS priority lists exclusively since 1995 to select its annual projects.

In February 1998, EPA R10 was a signator to a final report entitled Rural Sanitation 2005 Action Plan, a planning study sponsored by the Governor of Alaska's Council on Rural Sanitation. Amongst many recommendations in the plan's final document for improved sanitary services to rural Alaskan communities, was the recommendation that all participating government agencies should "...combine/coordinate the priority list processes..." for Alaskan sanitation projects, which would include the DWIG TSA program. Other participants in the Council's study and resulting recommendations were representatives of the Rural Alaska Sanitation Coalition, the Tanana Chiefs Council, the Alaska Native Health Board, representatives from the federal U.S. Dept. of Agriculture's Rural Development program, and numerous State of Alaska agencies involved with rural Alaskan community development issues.

For these reasons, the EPA R10 TSA program will utilize the most recent SDS lists of the AANHS and the PAIHS for identifying projects for annual ranking of projects in Alaska and the PNW states, respectively. Therefore, no Tribal applications for proposed projects are needed in order to compete in each year's TSA selection process.

**B. EPA Project Compliance Factor:** Because of a clear mandate imposed by statute to also use the DWIG TSA funds to "...facilitate compliance with the national primary drinking water regulations..." in addition to promoting public health protection, recognition of PWSs compliance problems will also be employed in the project ranking process. For projects in Alaska, the AANHS has committed to customizing their SDS scoring system to reflect EPA's compliance concerns, starting in FY2000; therefore in the FY 1999 EPA TSA project selection, the current AANHS SDS process will be used. Starting with the FY2000 TSA selection process, the EPA will research and furnish the AANHS a list of known compliance problems prior to their annual SDS process.

For PNW projects where the PAIHS SDS ranking process is not expected to be altered, compliance problems will be addressed using a separate compliance factor that is computed by EPA R10 and added to the overall SDS scores to arrive at a final TSA project priority list. (For any reason a proposed SDS project's scope does not address the compliance issue(s) identified in the EPA compliance factor, EPA reserves the right to increase the proposed project cost in order to provide the needed compliance infrastructure.)

For the EPA compliance factor to be used in the PNW, a scoring sheet is presented in **Appendix C**, and is explained as follows:

1. EPA will annually review and evaluate available data bases reflecting compliance with the National Primary Drinking Water Regulations ('NPDWRs') for PWSs eligible for TSA assistance.
2. Up to two maximum contaminant level (MCL) exceedences &/or other violations of the SDWA's NPDWRs can be rated for any PWS. (Continuing or repeated

violations of the same MCL or another NPDWRs standard are not addressed as separate items, but are scored appropriately in the 'exposure' portion of the matrix.)

3. Drinking water quality scenarios with concentrations clearly trending towards MCLs exceedence (or other violations beyond control of the PWS) within a year, can also be scored.

4. No score will be given if violations are the result of PWS's acts of omission or commission, such as a system's failure to promptly and correctly perform necessary sampling, failure to properly use and maintain water treatment equipment, etc. Historical compliance data will also be carefully considered to evaluate validity of any recent sudden increases in MCL violations, etc.

5. Scoring will be commensurate with severity of health risk present or imminent, and available evidence of the duration and degree of violations.

**C. Selection Process for Standard TSA Infrastructure Projects:** When annual TSA funds allotments are announced, EPA will obtain the latest SDS lists from the AANHS and PAIHS offices. At this point, IHS SDS projects on each SDS list that clearly do not qualify for TSA funds (i.e. wastewater and solid waste projects, and some water projects that are for primarily individual water facilities such as wells or service lines) would be removed from further TSA consideration.

After EPA TSA compliance factor scores are assigned for identified projects, those points will be added to the SDS numerical rankings for proposed PNW projects. The project list will then be re-ranked and a working TSA project priority list will be created for PNW projects based on total scores. The PNW list will start at the highest numerically ranked project and will proceed in order of descending scores.

The working TSA project priority list for Alaska projects will be almost identical to the AANHS SDS list, less those projects that clearly do not qualify for TSA assistance. This EPA list will similarly start at the highest ranked SDS project and would extend down numerically. For both lists, if any projects have equal final scores, EPA project listing precedence will be determined by the lowest unit price per residence using the IHS total project community water cost, the lowest unit price per residence using the IHS total project community water and wastewater cost, and highest IHS health impact SDS score, in that order if necessary.

EPA TSA staff will then confer with the two IHS area offices to determine IHS's planned project funding, including other agencies that contribute to projects through IHS. From this coordination process, tentative TSA project selections for each subregion can be made. (It's expected that selection of the annual EPA wastewater Indian Set-Aside projects for R10 may also be concurrent and involved in this process.)

The TSA project selection process is expected to be dynamic and should be able to derive considerable benefit from the more flexible overall IHS program which allows funding of water service lines and interior house plumbing, which are not TSA eligible



items. This coordinated project selection process will also promote a much better approach to a Tribal community's overall sanitation needs, and will be in accordance with recommendations of the Rural Sanitation 2005 Action Plan for Alaska projects.

After preliminary identification of new projects is made by the IHS and EPA, annual TSA project priority lists for Alaska and the PNW will be finalized for each subregion. These lists will extend down below the last new TSA project, to a level represented approximately by a cumulative 50% of the current available TSA funding. These lists will then be used to reserve any new TSA funds that might become available towards new TSA projects, before the next annual selection process.

When EPA R10 informs a Tribe of its tentative selection for TSA assistance, EPA will require the Tribe's cooperation in EPA's evaluation of the PWS's financial, technical, and managerial capacity (see **Section VI**) and other relevant criteria, such as acceptable wastewater facilities (see **Section V, G.**), absence of large system leaks or other preventable large water losses (see **Section IX, F.**), confirmation of water quality problems, etc. The evaluation may be made directly by EPA or via some other organization satisfactory to EPA R10, such as the IHS. Should the PWS lack the minimum necessary capacity for a TSA project, the Tribe and the subject PWS will also be notified of the identified shortcomings and necessary improvements will be scheduled by EPA. As previously stated, the minimum PWS capacity must be either present, or guaranteed by the Tribe to be in-place within an EPA designated time, with EPA having well-founded expectation that the PWS capacity improvements will be met on schedule.

If investigations do not confirm suspected water quality problems, any non-compliance consideration in the ranking may be readjusted as appropriate and the project re-ranked.

In the event that only partial TSA funding can be offered to a Tribe because the project includes vital, but non-TSA eligible items, EPA will reserve the funds, but will withhold obligating TSA funds until firm commitments are made for funding the balance of the project costs. Unless these required non-TSA funds are obtained and the TSA funds can be obligated within 12 months to complete the entire project's funding, the previous reservation of TSA funds will be canceled and the funds will be added to the new year's TSA funds for new project selection. At the end of a year's TSA project selection process, if insufficient funds remain to fully fund the entire TSA eligible amount of the last project's cost, the remaining funds may be reserved as above, at EPA's discretion.

During the TSA selection process, EPA reserves the right to pass over highly ranked projects that are clearly not ready to proceed (e.g. significant known rights-of-way or water rights problems), although the requested TSA funds can be reserved for up to 12 months at EPA's discretion should a timely resolution be possible. EPA may also increase or decrease the anticipated TSA project costs prior to award based on updated estimates or changes in previously anticipated project contributions from other sources. However, no funding changes will be made due to significant changes in project scope prior to award, unless due to NPDWR compliance previously unforeseen in the IHS's SDS process. And for all TSA projects, no further TSA funding will be allowed once funds have been awarded.

**D. Alaska Selection Considerations for FY 1999:** Because of timing considerations, and the large amount of TSA funds made available from three funding cycles, the first TSA selection process for Alaska (FY 1999) will only include FY 1997-1998 funds (total \$10,515,900). The FY 1999 funds will be added to the FY 2000 funds, and projects selected for Alaska will be done in the FY 2000 cycle when the AANHS SDS process is expected to include compliance considerations.

**E. Emergency TSA Projects:** EPA will consider at any time a direct application from individual Tribes to help fund emergency assistance through the TSA program. (See Section IV, D. for emergency project eligibility criteria.) To apply, a written request must be sent to the EPA TSA program. It must be signed by the Tribal chairperson, and in addition it must contain a written report on the situation, with the minimum following information:

1. cause and nature of the emergency;
2. discussion of remedial options considered & cost estimates;
3. tentative plans for the recommended option with appropriate maps, photos, and drawings;
4. list of involved emergency response contacts and phone numbers (e.g. FEMA, National Guard, IHS);
5. contacts and phone numbers of the public water system affected and a designated Tribal lead person; and
6. identification of the proposed lead federal agency, or the State of Alaska for the work.

Upon receipt of all necessary information from the Tribe, EPA TSA staff will review the request, make inquiries as needed, and determine if the proposed emergency project meets TSA emergency project eligibility. The Tribe will be promptly notified by EPA whether or not the proposed work appears fundable, and further arrangements will be commenced as appropriate. As described previously, TSA funds for an emergency project will only be awarded via an IAG document to another federal agency (or a grant to the state of Alaska) taking the lead role in the emergency response, although a grant of services document will still be required for each Tribe.

For these projects, applicants are cautioned that EPA approval is also contingent upon availability of TSA funds set-aside for possible emergency projects in their respective subregion, i.e. Alaska or the PNW. In addition, applicants should be aware that use of eventually approved emergency TSA grant funds to pay for costs incurred prior to the IAG award, will not be allowed.

For approved TSA emergency projects, requirements for meeting EPA standards of technical, financial, and managerial water system capacity (see **Section VI**) will not be

mandatory, but are strongly encouraged and will be actively promoted during the project.

**F. Annual TSA Project Selection Notice:** After each round of tentative TSA project selections are made and funds are reserved, a TSA status report will be prepared, and a copy of this report will be sent to each Tribe in EPA Region 10 for informational purposes.

## **IX. OTHER TSA PROGRAM DETAILS**

**A. Allowable Duration for Project Funds Obligation:** Because the TSA National Guidelines have set very specific deadlines for obligation of project funds, EPA R10 needs to carefully monitor a potential project's development and set deadlines with Tribes for finalizing funding documents and their supporting documentation in order to avoid losing TSA funds to other EPA regions. To do this, EPA will allow a maximum 12 months for obligation of the TSA grant funds, beginning from the date a Tribe is tentatively by selected by EPA for a TSA project. This deadline should provide sufficient time to reallocate and successfully obligate funds to the next highest ranked TSA project in the same R10 subregion, if necessary.

For funds in subregional emergency project accounts, EPA R10 will as necessary, periodically reallocate any unobligated funds that may be in danger of being lost. In such cases, they will be offered to the next highest ranked project in the same subregion's most current TSA priority list. The emergency fund account will be replenished as soon as possible thereafter.

**B. Total Project Duration:** EPA will allow a maximum of five years for the project to be constructed and put into use. This period will commence upon obligation of the TSA project funds. Tribes with projects clearly in danger of stalling, will be notified as necessary by EPA of needed progress prior to any adverse grant actions, such as cancellation.

**C. Construction Rights-of-Way:** Obtaining rights-of-way, easements, etc. for water infrastructure projects can vary considerably in complexity and cost. In an effort to provide for the most cost-effective use of limited R10 TSA funds, project rights-of-way must be provided at no cost to EPA TSA project funding. However, surveying and document preparation costs will be considered as eligible TSA items.

**D. Alaska Construction by Force Account:** The process of using local Tribal labor in the Tribe's employment for construction of sanitation projects in rural Alaskan Tribal villages has been well-established; and it has been found to be very cost-efficient, important in building community involvement in the new facilities, and helping to augment a community's income. Because of this, force account approaches for Alaska projects will be considered by EPA as the standard procurement method for moderate- to low-skilled, but labor-intensive construction work. As with other sanitation projects using force account labor, direct technical supervision and other portions of the work requiring highly

specialized equipment and skills would typically not use force account labor. The standard for these arrangements will be what the Alaska Area Native Health Service (IHS) has utilized for many years in their village projects, with the exception that heavy construction equipment purchases are not eligible with TSA funds (also see **Section VII. E.**).

**E. Project Design Criteria:** The TSA program is predicated on current needs, and therefore care must be taken to keep engineering design capacities due to growth anticipation, in proper perspective. EPA does not wish to make any hard rules at this time about this matter, but to alert those designing the facilities that any extra capacity to support growth must be reasonable and supportable. For facilities in general, a 20-year design life is anticipated. Any incremental increase in facilities capacity needed to meet required fire-flows (e.g. storage tank size) will not be TSA cost-eligible.

**F. Water Conservation:** Proposed TSA projects primarily needed to increase water delivery (volume) will be carefully evaluated to ensure that the need isn't based on unusually large system leaks or other losses that proper water utility practices should be able to prevent. If investigation confirms that the need for increased system capacities is caused by these kinds of losses, the project will not be eligible for TSA funds.

**G. TSA Program Changes:** As with most new programs, some adjustments will be necessary over time. EPA R10 will implement minor changes as needed; however, if substantial change in such things as subregional funds allocation, eligibility, or the selection process is proposed, informational letters will be sent to all R10 Tribes requesting their review and comments in advance. Resulting changes to the TSA program will be promptly communicated to each Tribe in the region.

## **X. TSA PROGRAM CONTACTS**

### **A. Project Officer for Alaska TSA Projects:**

Dennis Wagner  
EPA Alaska Operations Office  
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### **B. TSA Program Manager & Project Officer for Pacific Northwest TSA Projects:**

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## APPENDIX A

**SAFE DRINKING WATER ACT AMENDMENTS**  
**& Section 1452 -- REVOLVING LOAN FUNDS**  
**SUBSECTIONS ADDRESSING INDIAN TRIBES & ALASKA NATIVE VILLAGES:**

Section 1452(i) Indian Tribes.--

(1) In general.--1 & ½ percent (1.5%) of the amounts appropriated annually to carry out this section may be used by the Administrator to make grants to Indian Tribes and Alaska Native villages that have not otherwise received either grants from the Administrator under this section or assistance from State loan funds established under this section. The grants may only be used for expenditures by tribes and villages **for public water system expenditures referred to in subsection (a)(2).** (*emphasis added -- see section (a)(2) below*)

(2) Use of funds.--Funds reserved pursuant to paragraph (1) shall be used to address the most significant threats to public health associated with public water systems that serve Indian Tribes, as determined by the Administrator in consultation with the Director of the Indian Health Service and Indian Tribes.

(3) Alaska native villages.--In the case of a grant for a project under this subsection in an Alaska Native village, the Administrator is also authorized to make grants to the State of Alaska for the benefit of Native villages. An amount not to exceed 4 percent of the grant amount may be used by the State of Alaska for project management.

(4) Needs assessment.--The Administrator, in consultation with the Director of the Indian Health Service and Indian Tribes, shall, in accordance with a schedule that is consistent with the needs surveys conducted pursuant to subsection (h), prepare surveys and assess the needs of drinking water treatment facilities to serve Indian Tribes, including an evaluation of the public water systems that pose the most significant threats to public health.

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*The highlighted sections of section (a)(2) apply to Tribal projects:*

**Section 1452(a)(2) Use of funds** -- Except as otherwise authorized by this title, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and nonprofit noncommunity water systems, other than systems owned by Federal agencies. **Financial assistance under this section may be used by a public water system only for expenditures (not including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 1412 or otherwise significantly further the health protection objectives of this title. The funds may also be used to provide loans to a system referred to in section 1401(4)(B) for the purpose of providing the treatment described in section 1401(4)(B)(i)(III). The funds shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this paragraph and the purchase is from a willing seller.** Of the amount credited to any State loan fund established under this section in any fiscal year, 15 percent shall be available solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.

## APPENDIX B

**TABLE 2**  
**R10 Subregional Allotments (FY 1997 - 1999)**

(A)	(B)	(C)	(D)	(E)	(F)	(G)
R10 TSA	Reserved Base *	Current SDS Needs (& % of Total Needs)	Proportional Funding	Total Funding	Emergency Project Reserve **	Total Available Subregional funds
Annual Funds	(A x 4%)		[(A - 2B) x C%]	(B + D)	(E x 2%)	(E - F)
FY 1997: \$7,394,300						
Alaska	\$295,800	\$286,800,000 (94.2%)	\$6,408,100	\$6,703,900	\$134,100	\$6,569,800
PNW	\$295,800	\$17,585,400 (5.8%)	\$394,600	\$690,400	\$13,800	\$676,600
FY 1998: \$4,204,600						
Alaska	\$168,200	\$286,800,000 (94.2%)	\$3,643,800	\$3,812,000	\$76,200	\$3,735,800
PNW	\$168,200	\$17,585,400 (5.8%)	\$224,400	\$392,600	\$7,900	\$384,700
FY 1999: \$4,559,000						
Alaska	\$182,400	\$286,800,000 (94.2%)	\$3,950,900	\$4,133,300	\$82,700	\$4,050,600
PNW	\$182,400	\$17,585,400 (5.8%)	\$243,300	\$425,700	\$8,500	\$417,200
TOTAL (FY 1997-99)						
\$16,157,900						
				Subtotals:		
				Alaska	\$293,000	\$14,356,200
				PNW	\$30,200	\$1,478,500
				Subtotals:	\$323,200	\$15,834,700
				TOTAL	\$16,157,900	

**Notes:**

\* all amounts rounded to the nearest \$100

\*\* 2% figure may be changed by EPA as needed

## APPENDIX C

## NPDWRs Compliance Factor Score Sheet R10 TSA Project Ranking Process

Year of TSA Project Consideration: FY - \_\_\_\_\_

PWS Name: \_\_\_\_\_

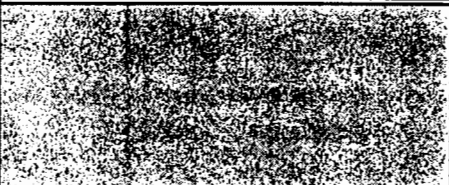
Location: \_\_\_\_\_

ID #: \_\_\_\_\_

### Summary of NPDWRs Non-Compliance Items (MCL exceedences, etc.)

Item #1:

Item #2:

NPDW Regulations Non-Compliance Scores				
Health Risk	Score Range	Violation #1	Violation #2	Applicable NPDW Regulations
<u>Exposure</u> > 3 years ↓ 1 year <	3 pts. ↓ 1 pts.			Microbiological Surface Water Treatment Rule Inorganics (includes nitrate) Lead and Copper Rule VOCs/SOCs Radiological
<u>Concentration</u> > 3xMCL ↓ at MCL	3 pts. ↓ 1 pts.			
Subtotal (6 pts. max.)				
TOTAL (12 pts. max.)				

# FINAL DOCUMENTATION PAGE

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## Final Guidelines

Drinking Water Infrastructure Grants, Tribal Set-Aside Program, EPA Region 10

Geoff Keeler

Drinking Water Unit, Office of Water, Region 10  
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EPA Region 10

EPA 910-B-99-003

None

This document contains the EPA Region 10 guidance for operating the Safe Drinking Water Act's (SDWA) Tribal Set-Aside (TSA) grant program. The TSA grant program is funded at a national level by 1.5% of the annual appropriations for the State Revolving Loan Fund (SRF) established under the 1996 amendments to the SDWA. The R10 guidelines supplement the National TSA guidelines that were published in October 1998, and establish the specific procedures for the following in EPA Region 10: 1) reallocating the R10 annual funds between the Tribes in Alaska and the Tribes in the Pacific Northwest states of Idaho, Oregon, and Washington; 2) specific water system, project, and infrastructure item eligibility; 3) water system capacity requirements; and 4) annual TSA project identification, ranking, and selection.

SDWA, Tribal grant program, Tribal set-aside, TSA, drinking water, water infrastructure, EPA R10

21

NA

NA

NA

Unlimited