

Environmental Protection Agency

§ 35.575

for planning, developing, and establishing environmental protection programs and to develop and implement solid and hazardous waste programs for Tribes.

§ 35.548 Award limitations.

(a) Each grant awarded under the General Assistance Program shall be not less than \$75,000. This limitation does not apply to additional funds that may become available for award to the same Tribe or Intertribal Consortium.

(b) The Regional Administrator shall not award a grant to a single Tribe or Intertribal Consortium of more than 10 percent of the total annual funds appropriated under the Act.

(c) The project period of a General Assistance Program award may not exceed four years.

(d) No award under this program shall result in reduction of total EPA grants for environmental programs to the recipient.

AIR POLLUTION CONTROL (SECTION 105)

§ 35.570 Purpose.

(a) *Purpose of section.* Sections 35.570 through 35.578 govern air pollution control grants to Tribes (as defined in section 302(r) of the Clean Air Act (CAA)) authorized under sections 105 and 301(d) of the Act and Intertribal Consortia.

(b) *Purpose of program.* Air pollution control grants are awarded to develop and administer programs that prevent and control air pollution or implement national air quality standards for air resources within the exterior boundaries of the reservation or other areas within the Tribe's jurisdiction.

(c) *Associated program regulations.* Refer to 40 CFR parts 49, 50, 51, 52, 58, 60, 61, 62, and 81 for associated program regulations.

§ 35.572 Definitions.

In addition to the definitions in § 35.502, the following definitions apply to the Clean Air Act's section 105 grant program:

Nonrecurrent expenditures are those expenditures which are shown by the recipient to be of a nonrepetitive, unusual, or singular nature such as would not reasonably be expected to recur in the foreseeable future. Costs cat-

egorized as nonrecurrent must be approved in the grant agreement or an amendment thereto.

Recurrent expenditures are those expenses associated with the activities of a continuing environmental program. All expenditures are considered recurrent unless justified by the applicant as nonrecurrent and approved as such in the grant award or an amendment thereto.

§ 35.573 Eligible Tribe.

(a) A Tribe is eligible to receive section 105 financial assistance under §§ 35.570 through 35.578 if it has demonstrated eligibility to be treated as a State under 40 CFR 49.6. An Intertribal Consortium consisting of Tribes that have demonstrated eligibility to be treated as States under 40 CFR 49.6 is also eligible for financial assistance.

(b) Tribes that have not made a demonstration under 40 CFR 49.6 and Intertribal Consortia consisting of Tribes that have not demonstrated eligibility to be treated as States under 40 CFR 49.6 are eligible for financial assistance under sections 105 and 302(b)(5) of the Clean Air Act.

§ 35.575 Maximum federal share.

(a) For Tribes and Intertribal Consortia eligible under § 35.573(a), the Regional Administrator may provide financial assistance in an amount up to 95 percent of the approved costs of planning, developing, establishing, or improving an air pollution control program, and up to 95 percent of the approved costs of maintaining that program. After two years from the date of each Tribe's or Intertribal Consortium's initial grant award, the Regional Administrator will reduce the maximum federal share to 90 percent if the Regional Administrator determines that the Tribe or each member of the Intertribal Consortium meets certain economic indicators that would provide an objective assessment of the Tribe's or each of the Intertribal Consortia member's ability to increase its share. For a Tribe or Intertribal Consortium eligible under § 35.573(a), the Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction

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of the Regional Administrator 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.

(b) For Tribes and Intertribal Consortia eligible under §35.573(b), the Regional Administrator may provide financial assistance in an amount up to 60 percent of the approved costs of planning, developing, establishing, or improving an air pollution control program, and up to 60 percent of the approved costs of maintaining that program.

(c) Revenue collected under a Tribal Title V operating permit program may not be used to meet the cost share requirements of this section.

§ 35.576 Maintenance of effort.

(a) For Tribes and Intertribal Consortia that are eligible for financial assistance under §35.573(b) of this subpart, the Tribe or each of the Intertribal Consortium's members must expend annually, for recurrent Section 105 program expenditures, an amount of non-federal funds at least equal to such expenditures during the preceding fiscal year.

(1) In order to award grants in a timely manner each fiscal year, the Regional Administrator shall compare a Tribe's or each of the Intertribal Consortium's member's proposed expenditure level, as detailed in the grant application, to its expenditure level in the second preceding fiscal year. When expenditure data for the preceding fiscal year is complete, the Regional Administrator shall use this information to determine the Tribe's or Intertribal Consortium's compliance with its maintenance of effort requirement.

(2) If expenditure data for the preceding fiscal year shows that a Tribe or Intertribal Consortium did not meet the requirements of paragraph (a) of this section, the Regional Administrator will take action to recover the grant funds for that year.

(3) The Regional Administrator may grant an exception to §35.576(a) if, after notice and opportunity for a public hearing, the Regional Administrator determines that a reduction in expendi-

tures is attributable to a non-selective reduction of all the Tribe's or each of the Intertribal Consortium's member's programs.

(b) For Tribes and Intertribal Consortia that are eligible under §35.573(b), the Regional Administrator will not award Section 105 funds unless the applicant provides assurance that the grant will not supplant non-federal funds that would otherwise be available for maintaining the Section 105 program.

§ 35.578 Award limitation.

The Regional Administrator will not disapprove an application for, or terminate or annul an award of, financial assistance under §35.573 without prior notice and opportunity for a public hearing within the appropriate jurisdiction or, where more than one area is affected, within one of the affected areas within the jurisdiction

WATER POLLUTION CONTROL (SECTIONS 106 AND 518)

§ 35.580 Purpose.

(a) *Purpose of section.* Sections 35.580 through 35.588 govern water pollution control grants to eligible Tribes and Intertribal Consortia (as defined in §35.502) authorized under sections 106 and 518 of the Clean Water Act.

(b) *Purpose of program.* Water pollution control grants are awarded to assist Tribes and Intertribal Consortia in administering programs for the prevention, reduction, and elimination of water pollution, including programs for the development and implementation of ground-water protection strategies.

(c) *Associated program requirements.* Program requirements for water quality planning and management activities are provided in 40 CFR part 130.

§ 35.582 Definitions.

Federal Indian reservation. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.