



Funding Guidance for State and Tribal Response Programs Fiscal Year 2011

Section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, authorizes a noncompetitive \$50 million grant program to establish and enhance state¹ and tribal² response programs. Generally, these response programs address the assessment, cleanup, and redevelopment of brownfields sites and other sites with actual or perceived contamination. Section 128(a) cooperative agreements are awarded and administered by the U.S. Environmental Protection Agency (EPA) regional offices. This document provides guidance that will enable states and tribes to apply for and use Fiscal Year 2011 section 128(a) funds³.

Requests for funding will be accepted from December 1, 2010 through January 31, 2011. Requests received after January 31, 2011 will not be considered for FY2011 funding. Information required to be submitted with the funding request is listed in Section VIII of this guidance. States or tribes that do not submit the request in the appropriate manner may forfeit their ability to request funds. First time requestors are strongly encouraged to contact their Regional EPA Brownfields contacts, listed on the last page of this guidance, prior to submitting their funding request.

Requests submitted by the January 31, 2011 request deadline are preliminary; final cooperative agreement work plans and budgets will be negotiated with the regional offices once final allocation determinations are made. As in prior years, EPA will place special emphasis on reviewing a cooperative agreement recipient's use of prior section 128(a) funding in making allocation decisions.

States and tribes requesting funds are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number with their cooperative agreement's final package. For more information, please go to www.grants.gov.

The Catalogue of Federal Domestic Assistance entry for the section 128(a) State and Tribal Response Program cooperative agreements is 66.817. This grant program is eligible to be included in state and tribal Performance Partnership Grants, with the exception of funds used to capitalize a revolving loan fund for brownfield remediation under section 104(k)(3); or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State or Tribal response program.

¹The term "state" is defined in this document as defined in CERCLA section 101(27)

²The term "Indian tribe" is defined in this document as it is defined in CERCLA section 101(36). Intertribal consortia, as defined in the Federal Register Notice at 67 FR 67181, Nov. 4, 2002, are also eligible for funding under CERCLA section 128(a).

³ The Agency may waive any provision of this guidance that is not required by statute, regulation, Executive Order or overriding Agency policies.

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I. BACKGROUND

State and tribal response programs oversee assessment and cleanup activities at the majority of brownfields sites across the country. The depth and breadth of state and tribal response programs vary. Some focus on CERCLA related activities, while others are multi-faceted, for example, addressing sites regulated by both CERCLA and the Resource Conservation and Recovery Act (RCRA). Many state programs also offer accompanying financial incentive programs to spur cleanup and redevelopment. In passing section 128(a)⁴ Congress recognized the accomplishments of state and tribal response programs in cleaning up and redeveloping brownfields sites. Section 128(a) also provides EPA with an opportunity to strengthen its partnership with states and tribes.

The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and establish a public record. The secondary goal is to provide funding for other activities that increase the number of response actions conducted or overseen by a state or tribal response program. This funding is not intended to supplant current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response program's capacity.

Subject to the availability of funds, EPA regional personnel will be available to provide technical assistance to states and tribes as they apply for and carry out section 128(a) cooperative agreements.

II. ELIGIBILITY FOR FUNDING

To be eligible for funding under CERCLA section 128(a), a state or tribe must:

1. demonstrate that its response program includes, or is taking reasonable steps to include, the four elements of a response program, described in Section IV of this guidance; **or** be a party to voluntary response program Memorandum of Agreement (VRP MOA)⁵ with EPA;

AND

2. maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year, see CERCLA section 128(b)(1)(C).

III. MATCHING FUNDS/COST-SHARE

States and tribes are not required to provide matching funds for cooperative agreements awarded under section 128(a), with the exception of the section 128(a) funds a state or tribe uses to

⁴Section 128(a) was added to CERCLA in 2002 by the Small Business Liability Relief and Brownfields Revitalization Act (Brownfield Amendments).

⁵The legislative history of the Brownfields Amendments indicates that Congress intended to encourage states and tribes to enter into MOAs for their voluntary response programs. States or tribes that are parties to VRP MOAs and that maintain and make available a public record are automatically eligible for section 128(a) funding.

capitalize a Brownfields Revolving Loan Fund under CERCLA section 104(k)(3).

IV. THE FOUR ELEMENTS - SECTION 128(a)

Section 128(a) recipients that do not have a VRP MOA with EPA must demonstrate that their response program includes, or is taking reasonable steps to include, the four elements. Achievement of the four elements should be viewed as a priority. Section 128(a) authorizes funding for activities necessary to establish and enhance the four elements and to establish and maintain the public record requirement.

Generally, the four elements are:

1. *Timely survey and inventory of brownfields sites in state or tribal land.* EPA's goal in funding activities under this element is to enable the state or tribe to establish or enhance a system or process that will provide a reasonable estimate of the number, likely locations, and the general characteristics of brownfields sites in their state or tribal lands.

EPA recognizes the varied scope of state and tribal response programs and will not require states and tribes to develop a "list" of brownfields sites. However, at a minimum, the state or tribe should develop and/or maintain a system or process that can provide a reasonable estimate of the number, likely location, and general characteristics of brownfields sites within their state or tribal lands.

Given funding limitations, EPA will negotiate work plans with states and tribes to achieve this goal efficiently and effectively, and within a realistic time frame. For example, many of EPA's Brownfields Assessment cooperative agreement recipients conduct inventories of brownfields sites in their communities or jurisdictions. EPA encourages states and tribes to work with these cooperative agreement recipients to obtain the information that they have gathered and include it in their survey and inventory.

2. *Oversight and enforcement authorities or other mechanisms and resources.* EPA's goal in funding activities under this element is to have state and tribal response programs that include oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that:
 - a. a response action will protect human health and the environment and be conducted in accordance with applicable laws; and
 - b. the necessary response activities are completed if the person conducting the response activities fails to complete the necessary response activities (this includes operation and maintenance or long-term monitoring activities).
3. *Mechanisms and resources to provide meaningful opportunities for public participation.*⁶ EPA's goal in funding activities under this element is to have states and tribes include in their response program mechanisms and resources for meaningful public participation, at the local level, including, at a minimum:

⁶States and tribes establishing this element may find useful information on public participation on EPA's community involvement web site at <http://www.epa.gov/superfund/community/policies.htm>

- a. Public access to documents and related materials that a state, tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;
 - b. Prior notice and opportunity for meaningful public comment on cleanup plans and site activity; and
 - c. A mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site — located in the community in which the person works or resides — may request that a site assessment be conducted. The appropriate state or tribal official must consider this request and appropriately respond.
4. *Mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete.* EPA’s goal in funding activities under this element is to have states and tribes include in their response program mechanisms to approve cleanup plans and to verify that response actions are complete, including a requirement for certification or similar documentation from the state, the tribe, or a licensed site professional that the response action is complete. Written approval by a state or tribal response program official of a proposed cleanup plan is an example of an approval mechanism.

V. PUBLIC RECORD REQUIREMENT

In order to be eligible for section 128(a) funding, states and tribes (including those with MOAs) must establish and maintain a public record system, described below, in order to receive funds. Specifically, under section 128(b)(1)(C), states and tribes must:

1. Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions have been completed during the previous year;
2. Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions are planned to be addressed in the next year; and
3. Identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy.

Section 128(a) funds may be used to maintain and make available a public record system that meets the requirements discussed above.

A. Distinguishing the “survey and inventory” element from the “public record”

It is important to note that the public record requirement differs from the "timely survey and inventory" element described in the “Four Elements” section above. The public record addresses sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year. In contrast, the "timely survey and inventory" element, described above, refers to a general approach to identifying brownfields sites.

B. Making the public record easily accessible

EPA's goal is to enable states and tribes to make the public record and other information, such as information from the "survey and inventory" element, easily accessible. For this reason, EPA will allow states and tribes to use section 128(a) funding to make the public record, as well as other information, such as information from the "survey and inventory" element, available to the public via the internet or other means. For example, the Agency would support funding state and tribal efforts to include detailed location information in the public record such as the street address and latitude and longitude information for each site.⁷

In an effort to reduce cooperative agreement reporting requirements and increase public access to the public record, EPA encourages states and tribes to place their public record on the internet. If a state or tribe places the public record on the internet, maintains the substantive requirements of the public record, and provides EPA with the link to that site, EPA will, for purposes of cooperative agreement funding only, deem the public record reporting requirement met.

C. Long-term maintenance of the public record

EPA encourages states and tribes to maintain public record information, including data on institutional controls, on a long term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, states or tribes may include development and operation of systems that ensure long term maintenance of the public record, including information on institutional controls, in their work plans.⁸

⁷For further information on latitude and longitude information, please see EPA's data standards web site available at http://iaspub.epa.gov/sor_internet/registry/datastds/findadatastandard/epaapproved/latitudelongitude

⁸States and tribes may find useful information on institutional controls on EPA's institutional controls web site at <http://www.epa.gov/superfund/policy/ic/index.htm>

VI. USE OF FUNDING

A. Overview

Section 128(a)(1)(B) describes the eligible uses of cooperative agreement funds by states and tribes. In general, a state or tribe may use a cooperative agreement to "establish or enhance" their response programs, including elements of the response program that include activities related to responses at brownfields sites with petroleum contamination. Eligible activities include, but are not limited to, the following:

- Develop legislation, regulations, procedures, ordinances, guidance, etc. that would establish or enhance the administrative and legal structure of their response programs;
- Establish and maintain the required public record described in Section V of this guidance;
- EPA considers activities related to maintaining and monitoring institutional controls to be eligible costs under section 128(a);
- Conduct limited site-specific activities, such as assessment or cleanup, provided such activities establish and/or enhance the response program and are tied to the four elements. In addition to the requirement per CERCLA section 128(a)(2)(C)(ii) to obtain public comment on cleanup plans and site activities, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed and solicit input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies. EPA will not provide section 128(a) funds solely for assessment or cleanup of specific brownfields sites; site specific activities must be an incidental part of an overall section 128(a) work plan that includes funding for other activities that establish or enhance the four elements;
- Capitalize a revolving loan fund (RLF) for brownfields cleanup under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and cooperative agreement terms and conditions applicable to RLFs awarded under section 104(k)(3). Requirements include a 20 percent match on the amount of section 128(a) funds used for the RLF, a prohibition on using EPA cooperative agreement funds for administrative costs relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under section 107 of CERCLA. Other prohibitions contained in CERCLA section 104(k)(4) also apply; or
- Purchase environmental insurance or develop a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a state or

tribal response program.

B. Uses related to “establishing” a state or tribal response program

Under CERCLA section 128(a), "establish" includes activities necessary to build the foundation for the four elements of a state or tribal response program and the public record requirement. For example, a state or tribal response program may use section 128(a) funds to develop regulations, ordinances, procedures, and/or guidance. For more developed state or tribal response programs, “establish” may also include activities that keep their program at a level that meets the four elements and maintains a public record required as a condition of funding under CERCLA section 128(b)(1)(C).

C. Uses related to “enhancing” a state or tribal response program

Under CERCLA section 128(a), "enhance" is related to activities that add to or improve a state or tribal response program or increase the number of sites at which response actions are conducted under a state or tribal response program.

The exact "enhancement" uses that may be allowable depend upon the work plan negotiated between the EPA regional office and the state or tribe. For example, regional offices and states or tribes may agree that section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program, and improving the skills of program staff. It may also include developing better coordination and understanding of other state response programs, e.g., RCRA or Underground Storage Tanks (USTs). As another example, states and tribal response programs enhancement activities can include outreach to local communities to increase their awareness and knowledge regarding the importance of monitoring engineering and institutional controls. Other "enhancement" uses may be allowable as well.

D. Uses related to site-specific activities

States and tribes may use section 128(a) funds for activities that improve state or tribal capacity to increase the number of sites at which response actions are conducted under the state or tribal response program. The amount requested for site-specific assessments and cleanups may not exceed 50% of the total amount of funding requested.

Other eligible uses of funds for site-specific related activities (i.e., site specific but do not involve conducting actual site assessments or cleanups) include, but are not limited to, the following. EPA does not cap the amount of funding applicants may request for these activities.

- oversight of response action;
- technical assistance to federal brownfields cooperative agreement recipients;
- development and/or review of quality assurance project plans (QAPPs);
- preparation and submission of Property Profile Forms; and
- auditing site cleanups to verify the completion of the cleanup.

E. Uses related to site-specific assessment and cleanup activities

Site-specific assessment and cleanup activities should establish and/or enhance the response program and be tied to the four elements. In addition to the requirement per CERCLA section 128(a)(2)(C)(ii) to obtain public comment on cleanup plans and site activities, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed and solicit input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies. EPA will not provide section 128(a) funds solely for assessment or cleanup of specific brownfields sites; site-specific activities must be an incidental part of an overall section 128(a) work plan that includes funding for other activities that establish or enhance the four elements. Site-specific assessments and cleanups must comply with all applicable laws and are subject to the following restrictions:

- a. Section 128(a) funds can only be used for assessments or cleanups at sites that meet the definition of a brownfields site at CERCLA section 101(39).
- b. Absent EPA approval, no more than \$200,000 per site can be funded for assessments with section 128(a) funds, and no more than \$200,000 per site can be funded for cleanups with section 128(a) funds.
- c. Absent EPA approval, the state/tribe may not use funds awarded under this agreement to assess and cleanup sites owned or operated by the recipient.
- d. Assessments and cleanups cannot be conducted at sites where the state/tribe is a potentially responsible party pursuant to CERCLA section 107, except:
 - at brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or
 - when the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was on or before January 11, 2002.

Subgrants cannot be provided to entities that may be potentially responsible parties (pursuant to CERCLA section 107) at the site for which the assessment or cleanup activities are proposed to be conducted, except:

1. at brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or
2. when the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was on or before January 11, 2002.

F. Costs incurred for activities at "non-brownfields" sites

Costs incurred for activities at non-brownfields sites, e.g., oversight, may be eligible and allowable if such activities are included in the state's or tribe's work plan. For example, auditing completed site cleanups in jurisdictions where states or tribes use licensed site professionals, to verify that sites have been properly cleaned up, may be an eligible cost under section 128(a). These costs need not be incurred in connection with a brownfields site to be eligible, but must be authorized under the state's or tribe's work plan to be allowable. Other uses may be eligible and allowable as well, depending upon the work plan negotiated between the EPA regional office and the state or tribe. *However, assessment and cleanup activities may only be conducted on eligible brownfields sites, as defined in CERCLA section 101(39).*

G. Uses related to site-specific activities at petroleum brownfields sites

States and tribes may use section 128(a) funds for activities that establish and enhance their response programs, even if their response programs address petroleum contamination. Also, the costs of site-specific activities, such as site assessments or cleanup at petroleum contaminated brownfields sites, defined at CERCLA section 101(39)(D)(ii)(II), are eligible and are allowable if the activity is included in the work plan negotiated between the EPA regional office and the state or tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfields sites contaminated by petroleum to the extent allowed under CERCLA section 104(k)(3).

VII. GENERAL PROGRAMMATIC GUIDELINES FOR SECTION 128(a) GRANT FUNDING REQUESTS

Funding authorized under CERCLA section 128(a) is awarded through a cooperative agreement⁹ with a state or tribe. The program is administered under the general EPA grant and cooperative agreement regulations for states, tribes, and local governments found in the Code of Federal Regulations at 40 CFR part 31. Under these regulations, the cooperative agreement recipient for section 128(a) grant program is the government to which a cooperative agreement is awarded and which is accountable for the use of the funds provided. The cooperative agreement recipient is the entire legal entity even if only a particular component of the entity is designated in the cooperative agreement award document.

A. One application per state or tribe

Subject to the availability of funds, EPA regional offices will negotiate and enter into section 128(a) cooperative agreements with eligible and interested states or tribes. EPA will accept only one application from each eligible state or tribe.

B. Define the state or tribal response program

States and tribes must define in their work plan the "section 128(a) response program(s)"

⁹A cooperative agreement is an assistance agreement to a state or a tribe that includes substantial involvement of EPA regional enforcement and program staff during performance of activities described in the cooperative agreement work plan. Examples of this involvement include technical assistance and collaboration on program development and site-specific activities.

to which the funds will be applied, and may designate a component of the state or tribe that will be EPA's primary point of contact for negotiations on their proposed work plan. When EPA funds the section 128(a) cooperative agreement, states and tribes may distribute these funds among the appropriate state and tribal agencies that are part of the section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

C. Separate cooperative agreements for the capitalization of RLFs using Section 128(a) funds

If a portion of the section 128(a) grant funds requested will be used to capitalize a revolving loan fund for cleanup, pursuant to section 104(k)(3), two separate cooperative agreements must be awarded, i.e., one for the RLF and one for non-RLF uses. States and tribes may, however, submit one initial request for funding, delineating the RLF as a proposed use. Section 128(a) funds used to capitalize an RLF are not eligible for inclusion into a Performance Partnership Grant (PPG).

D. Authority to manage a revolving loan fund program

If a state or tribe chooses to use its section 128(a) funds to capitalize a revolving loan fund program, the state or tribe must have the authority to manage the program, e.g., issue loans. If the agency/department listed as the point of contact for the section 128(a) cooperative agreement does not have this authority, it must be able to demonstrate that another state or tribal agency does have the authority to manage the RLF and is willing to do so.

E. Section 128(a) cooperative agreements can be part of a Performance Partnership Grant (PPG)

States and tribes may include section 128(a) cooperative agreements in their PPG 69 Fed. Reg. 51,756 (2004). Section 128(a) funds used to capitalize an RLF or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program are not eligible for inclusion in the PPG.

F. Project period

EPA regional offices will determine the project period for each cooperative agreement. These may be for multiple years depending on the regional office's cooperative agreement policies. Each cooperative agreement must have an annual budget period tied to an annual work plan.

G. Demonstrating the four elements

As part of the annual work plan negotiation process, states or tribes that do not have VRP MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described in Section IV. EPA will not fund, in future years, state or tribal response program annual work plans if EPA determines that these requirements are not met or reasonable progress is not being made. EPA may base this determination on the information the state or tribe provides to support its work plan, or on

EPA's review of the state or tribal response program.

H. Establishing and maintaining the public record

Prior to funding a state's or tribe's annual work plan, EPA regional offices will verify and document that a public record, as described in Section V and below, exists and is being maintained.¹⁰ Specifically:

- States or tribes that received initial funding prior to FY10: Requests for FY11 funds will not be accepted from states or tribes that fail to demonstrate, by the January 31, 2011 request deadline, that they established and are maintaining a public record. (*Note*, this would potentially impact any state or tribe that had a term and condition placed on their FY10 cooperative agreement that prohibited drawdown of FY10 funds prior to meeting public record requirement). States or tribes in this situation will not be prevented from drawing down their prior year funds, once the public record requirement is met, but will be restricted from applying for FY11 funding.
- States or Tribes that received initial funding in FY10: By the time of the actual FY11 award, the state or tribe must demonstrate that they established and maintained the public record (those states and tribes that do not meet this requirement will have a term and condition placed on their FY11 cooperative agreement that prevents the drawdown of FY11 funds until the public record requirement is met).
- Recipients receiving funds for the first time in FY11: These recipients have one year to meet this requirement and may utilize the section 128(a) cooperative agreement funds to do so.

I. Demonstration of significant utilization of prior years' funding

During the allocation process, EPA headquarters places significant emphasis on the utilization of prior years' funding. Unused funds from prior years will be considered in the allocation process. Existing balances in EPA's Financial Data Warehouse could support an allocation amount below a grantee's request for funding. If a grantee wishes to avoid an allocation reduction, when submitting a request for FY11 funds, include a detailed explanation and justification of funds that remain in EPA's Financial Data Warehouse from prior years (that are related to response program activities or brownfield related activities).

EPA Regional staff will review EPA's Financial Database Warehouse to identify the amount of remaining prior year(s) funds. The cooperative agreement recipient should work, as early as possible, with both their own finance department, and with their Regional Project Officer to reconcile any discrepancy between the amount of unspent funds showing in EPA's system, and the amount reflected in the recipient's records. The recipient should obtain concurrence from the Region on the amount of unspent funds

¹⁰ For purposes of cooperative agreement funding, the state's or tribe's public record applies to that state's or tribe's response program(s) that utilized the section 128(a) funding.

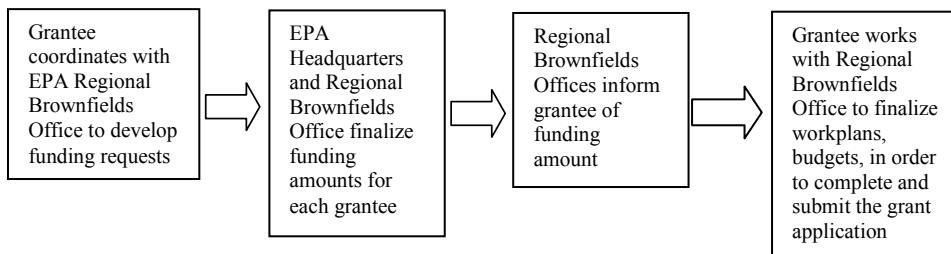
requiring justification by the deadline for this request for funding.

J. Explanation of proposed activity/task that would require an increase from the FY10 funding amount

Due to the limited amount of funding available, recipients must demonstrate the environmental benefits of undertaking the proposed activity/task and how that activity/task supports the four elements of a response program in addition to highlighting any activities in local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies. Refer to Section VIII for information to be submitted with funding request.

K. Allocation system and process for distribution of funds

EPA regional offices will work with interested states and tribes to develop their preliminary work plans and funding requests. Final cooperative agreement work plans and budgets will be negotiated with the regional office once final allocation determinations are made. Please refer to process flow chart below:



For Fiscal Year 2011, EPA will consider funding requests up to a maximum of \$1.3 million per state or tribe. This limit may be changed in future years based on appropriation amounts and demand for funding. Please note the CERCLA 128(a) annual program's budget has remained static while demand for funding continues to increase every year¹¹. Therefore, in most instances the FY11 state and tribal individual funding amounts will not meet the FY10 funding amounts. Requests for increases over the FY10 funding amount will be considered only after allocations are made to cover basic core support to programs of all eligible requestors.

After the January 31, 2011 request deadline, regional offices will submit summaries of state and tribal requests to EPA headquarters. Before submitting requests to EPA headquarters, regional offices may take into account additional factors when determining recommended allocation amounts. Such factors include, but are not limited to, the depth and breadth of the state or tribal program; scope of the perceived need for the funding, e.g., size of state or tribal jurisdiction or the proposed work plan balanced against capacity of the program, amount of prior funding, funds remaining from prior years, etc.

¹¹ FY10 EPA received \$67.1 Million in requests for funding from States and Tribes under CERCLA 128(a). The FY10 enacted budget was \$49.5 Million. The resulting budget shortfall was approximately \$17 Million.

After receipt of the regional recommendations, EPA headquarters will consolidate requests and allocate funds accordingly.

VIII. INFORMATION TO BE SUBMITTED WITH THE FUNDING REQUEST

A. Demonstration of significant utilization of prior years' funding

States and tribes requesting section 128(a) FY11 funds must submit the following information, as applicable, to their regional brownfield contact on or before January 31, 2011 (regions may request additional information, as needed):

1. For those states and tribes with prior Targeted Brownfields Assessment funding awarded under CERCLA section 104(d), provide, by agreement number, the amount of funds that have not been requested for reimbursement (i.e., those funds that remain in EPA's Financial Data Warehouse). EPA will take into account these funds in the allocation process. A cooperative agreement recipient can choose to provide a justification to EPA that explains why the underused funds should not be considered in the current request for funding.
2. For those states and tribes that received FY08 or prior section 128(a) funds, you must provide the amount of FY03, FY04, FY05, FY06, FY07 and/or FY08 funds that have not been requested for reimbursement (i.e., those funds that remain in EPA's Financial Data Warehouse). EPA will take into account these funds in the allocation process.

B. Summary of planned use of FY11 funding

All states and tribes requesting FY11 funds must submit a summary of the planned use of the funds with associated dollar amounts. Please provide the request in the following format below:

Funding Use	FY10 Awarded	FY11 Requested	Summary of Intended Use (EXAMPLE USES)
<p>Establish or enhance the four elements:</p> <ol style="list-style-type: none"> 1. Timely survey and inventory of brownfields sites; 2. Oversight and enforcement authorities or other mechanisms; 3. Mechanisms and resources to provide meaningful opportunities for public participation; 4. Mechanisms or approval of a cleanup plan and verification and certification that cleanup is complete. 	<p>\$XX,XXX</p>	<p>\$XX,XXX</p>	<ol style="list-style-type: none"> 1. Examples: <ul style="list-style-type: none"> • inventory and prioritize brownfields sites 2. Examples: <ul style="list-style-type: none"> • develop/enhance ordinances, regulations, procedures for response programs 3. Examples: <ul style="list-style-type: none"> • develop a community involvement process • fund an outreach coordinator • issue public notices of site activities • develop a process to seek public input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies to prioritize sites to be addressed 4. Examples: <ul style="list-style-type: none"> • review cleanup plans and verify completed actions

Funding Use	FY10 Awarded	FY11 Requested	Summary of Intended Use (EXAMPLE USES)
Establish and maintain the public record	\$XX,XXX	\$XX,XXX	<ul style="list-style-type: none"> • maintain public record • create web site for public record • disseminate public information on how to access the public record
Enhance the response program	\$XX,XXX	\$XX,XXX	<ul style="list-style-type: none"> • provide oversight of site assessments and cleanups • attend training and conferences on brownfields cleanup technologies & other brownfields topics • update and enhance program management activities • negotiate/oversee contracts for response programs • enhance program management & tracking systems • prepare Property Profile Forms/input data into ACRES database
Site-specific activities <i>(amount requested should be incidental to the workplan, e.g., less than half of the total funding requested see Section VI.D for more information on what activities should be considered when calculating site specific activities)</i>	\$XX,XXX	\$XX,XXX	<ul style="list-style-type: none"> • perform site assessments and cleanups • develop QAPPs • prepare Property Profile Forms/input data into ACRES database for these sites

Funding Use	FY10 Awarded	FY11 Requested	Summary of Intended Use (EXAMPLE USES)
Environmental insurance	\$XX,XXX	\$XX,XXX	<ul style="list-style-type: none"> review potential uses of environmental insurance
Revolving loan fund	\$XX,XXX	\$XX,XXX	<ul style="list-style-type: none"> create a cleanup revolving loan fund
Total funding	\$XXX,XXX	\$XXX,XXX	Performance Partnership Grant? Yes <input type="checkbox"/> No <input type="checkbox"/>

C. Explanation of proposed activity/task that would require an increase from the FY10 funding amount

For those states and tribes requesting amounts above their FY10 allocation, a *separate* explanation must be provided using the format below or the explanation can be made in a narrative form. The request should clearly demonstrate the environmental benefits of the proposed activity/task and how it directly supports the establishment and enhancement of the four elements of a response program. Requests for increases over the FY10 funding amount will be considered only after allocations are made to cover basic core support to programs of all eligible requestors. Please note the CERCLA 128(a) annual program's budget has remained static while demand for funding continues to increase every year¹². Therefore, in most instances the FY11 state and tribal individual funding amounts will not meet the FY10 funding amounts. Increases in funding are unlikely.

Explanation of Request(s) for Funding ABOVE FY10 Award	Amount	One Time ¹³ Request or Recurring?	Explanation/Anticipated Outcome
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¹² FY10 EPA received \$67.1 Million in requests for funding from States and Tribes under CERCLA 128(a). The FY10 enacted budget was \$49.5 Million. The resulting budget shortfall was approximately \$17 Million.

¹³ A one time request is not likely to repeat whereas a recurring charge is likely to periodically occur again.

Explanation of Request(s) for Funding ABOVE FY10 Award	Amount	One Time¹³ Request or Recurring?	Explanation/Anticipated Outcome
Site-specific Activities <i>(amount requested should be incidental to the workplan, e.g., less than half of the total funding requested)</i>	\$XX,XXX	One Time <input type="checkbox"/> Recurring <input type="checkbox"/>	Explanation of environmental benefits: Anticipated Outcome:
Environmental Insurance	\$XX,XXX	One Time <input type="checkbox"/> Recurring <input type="checkbox"/>	Explanation of environmental benefits: Anticipated Outcome:
Revolving Loan Fund	\$XX,XXX	One Time <input type="checkbox"/> Recurring <input type="checkbox"/>	Explanation of environmental benefits: Anticipated Outcome:
Total Increase Requested	\$XX,XXX		

D. Reporting of Program Activity Levels

States and tribes must report, by January 31, 2011, a summary of the *previous federal fiscal year's* work (October 1, 2009 through September 30, 2010). The following information must be submitted to your regional project officer (if no activity occurred in the particular category, indicate a "N/A"):

- Number of properties enrolled in the response program supported by the CERCLA section 128(a) funding.
- Number of properties that received a "No Further Action" (NFA) documentation or a Certificate of Completion (COC) or equivalent, AND have all required institutional controls in place.
- Number of properties that received an NFA or COC or equivalent and do NOT have all required institutional controls in place.
- Total number of acres associated with properties in the second bullet above.
- (OPTIONAL) Number of properties where assistance was provided, but the

property was NOT enrolled in the response program.

IX. TERMS AND REPORTING

Cooperative agreements for state and tribal response programs will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement including technical assistance and collaboration on program development and site-specific activities. Each of the subsections below summarizes the basic terms and conditions and related reporting that will be required if a cooperative agreement with EPA is awarded.

A. Progress reports

In accordance with 40 CFR 31.40, state and tribes must provide progress reports as provided in the terms and conditions of the cooperative agreement negotiated with EPA regional offices. State and tribal costs for complying with reporting requirements are an eligible expense under the section 128(a) cooperative agreement. As a minimum, state or tribal progress reports must include both a narrative discussion and performance data relating to the state's or tribe's accomplishments and environmental outputs associated with the approved budget and workplan and should provide an accounting of section 128(a) funding. If applicable, the state or tribe must include information on activities related to establishing or enhancing the four elements of the state's or tribe's response program. All recipients must provide information relating to establishing or, if already established, maintaining the public record. Depending upon the activities included in the state's or tribe's work plan, an EPA regional office may request that a progress report include:

1. *Reporting environmental insurance.* Recipients with work plans that include funding for *environmental insurance* must report:
 - Number and description of insurance policies purchased (*e.g.*, type of coverage provided; dollar limits of coverage; any buffers or deductibles; category and identity of insured persons; premium; first dollar or umbrella; site specific or blanket; occurrence or claims made, etc.)
 - The number of sites covered by the insurance
 - The amount of funds spent on environmental insurance (*e.g.*, amount dedicated to insurance program, or to insurance premiums)
 - The amount of claims paid by insurers to policy holders
2. *Reporting for site-specific assessment or cleanup activities.* Recipients with work plans that include funding for *brownfields site assessment or cleanup* must input information required by the OMB-approved Property Profile Form -into the Assessment Cleanup and Redevelopment Exchange System (ACRES) database for each site assessment and cleanup. In addition, recipients must report how they provide the affected community with prior notice and opportunity for meaningful participation as per CERCLA Section 128(a)(2)(C)(ii) on proposed cleanup plans and site

activities. For example, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed and solicit input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies.

3. *Reporting for other site-specific activities.* Recipients with work plans that include funding for *other site-specific related activities* must include a description of the site-specific activities and the number of sites at which the activity was conducted. For example:
 - Number and frequency of oversight audits of licensed site professional certified cleanups
 - Number and frequency of state/tribal oversight audits conducted
 - Number of sites where staff conducted audits, provided technical assistance, or conducted other oversight activities
 - Number of staff conducting oversight audits, providing technical assistance, or conducting other oversight activities
4. *Reporting for RLF uses.* Recipients with work plans that include funding for revolving loan fund (RLF) must include the information required by the terms and conditions for progress reporting under CERCLA section 104(k)(3) RLF cooperative agreements.
5. *Reporting for Non-MOA states and tribes.* All recipients without a VRP MOA must report activities related to establishing or enhancing the four elements of the state's or tribe's response program. For each element state/tribes must report how they are maintaining the element or how they are taking reasonable steps to establish or enhance the element as negotiated in individual state/tribal work plans. For example, pursuant to CERCLA section 128(a)(2)(B), reports on the oversight and enforcement authorities/mechanisms element may include:
 - a narrative description and copies of applicable documents developed or under development to enable the response program to conduct enforcement and oversight at sites. For example:
 - legal authorities and mechanisms (e.g., statutes, regulations, orders, agreements);
 - policies and procedures to implement legal authorities; and other mechanisms;
 - a description of the resources and staff allocated/to be allocated to the response program to conduct oversight and enforcement at sites as a result of the cooperative agreement;

- a narrative description of how these authorities or other mechanisms, and resources, are adequate to ensure that:
 - a response action will protect human health and the environment; and be conducted in accordance with applicable federal and state law; and if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed; and
- a narrative description and copy of appropriate documents demonstrating the exercise of oversight and enforcement authorities by the response program at a brownfields site.

The regional offices may also request other information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan.

EPA regions may allow states or tribes to provide performance data in appropriate electronic format.

The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of CERCLA section 128(a) funding to states and tribes.

B. Reporting of program activity levels

States and tribes must report, by January 31, 2011, a summary of the *previous federal fiscal year's* work (October 1, 2009 through September 30, 2010). The following information must be submitted to your regional project officer (if no activity occurred in the particular category, indicate a "N/A"):

- Number of properties enrolled in the response program supported by the CERCLA section 128(a) funding.
- Number of properties that received a "No Further Action" (NFA) documentation or a Certificate of Completion (COC) or equivalent, AND have all required institutional controls in place.
- Number of properties that received an NFA or COC or equivalent and do NOT have all required institutional controls in place.
- Total number of acres associated with properties in the second bullet above.
- (OPTIONAL) Number of properties where assistance was provided, but the property was NOT enrolled in the response program.

Where applicable, EPA may require states/tribes to report specific performance measures related to the four elements which can be aggregated for national reporting to Congress.

For example:

1. Timely Survey & Inventory - Estimated number of brownfields sites in the state or on tribal land.
2. Oversight & Enforcement Authorities/Mechanisms - Number of active cleanups and percentage that received oversight; percentage of active cleanups not in compliance with the cleanup workplan and that received communications from recipient regarding non-compliance.
3. Public Participation - Percentage of sites in the response program where public meetings/notices were conducted regarding the cleanup plan and/or other site activities; number of requests and responses to site assessment requests.
4. Cleanup Approval/Certification Mechanisms - Total number of "no further action" letters or total number of certificate of completions.

(NOTE: where applicable, this reporting requirement may include activities not funded with CERCLA Section 128(a) monies, because this information may be used by EPA to evaluate whether recipients without MOAs have met or are taking reasonable steps to meet the four elements of a response program pursuant to CERCLA Section 128(a)(2).

C. Reporting of public record

All recipients must report, as specified in the terms and conditions of their cooperative agreement, information related to establishing or, if already established, maintaining the public record, described above. States and tribes can refer to an already existing public record, e.g., website or other public database to meet the public record requirement. Recipients reporting may only be required to demonstrate that the public record a) exists and is up-to-date b) is adequate. A public record may include the following information:

A list of sites at which response actions have been completed including:

- Date the response action was completed
- Site name
- Name of owner at time of cleanup, if known
- Location of the site (street address, and latitude and longitude)
- Whether an institutional control is in place
- Explain the type of institutional control in place (e.g., deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.)
- Nature of the contamination at the site (e.g., hazardous substances, contaminants, or pollutants, petroleum contamination, etc.)
- Size of the site in acres

A list of sites planned to be addressed by the state or tribal response program including:

- Site name and the name of owner at time of cleanup, if known
- Location of the site (street address, and latitude and longitude)
- To the extent known, whether an institutional control is in place
- Explain the type of the institutional control in place (*e.g.*, deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.)
- To the extent known, the nature of the contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc.)
- Size of the site in acres

D. Award administration information

1. *Subaward and executive compensation reporting*

Applicants must ensure that they have the necessary processes and systems in place to comply with the subaward and executive total compensation reporting requirements established under OMB guidance at 2 CFR Part 170, unless they qualify for an exception from the requirements, should they be selected for funding.

2. *Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Requirements*

Unless exempt from these requirements under OMB guidance at 2 CFR Part 25 (*e.g.*, individuals), applicants must:

- a. Be registered in the CCR prior to submitting an application or proposal under this announcement. CCR information can be found at <https://www.bpn.gov/ccr/>
- b. Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or proposal under consideration by an agency, and
- c. Provide its DUNS number in each application or proposal it submits to the agency. Applicants can receive a DUNS number, at no cost, by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711, or visiting the D&B website at: <http://www.dnb.com>.

If an applicant fails to comply with these requirements, it will, should it be selected for award, affect their ability to receive the award.

3. *Use of funds*

An applicant that receives an award under this announcement is expected to manage assistance agreement funds efficiently and effectively and make sufficient

progress towards completing the project activities described in the work-plan in a timely manner. The assistance agreement will include terms/conditions implementing this requirement.

REGIONAL STATE AND TRIBAL BROWNFIELDS CONTACTS

REGION	STATE	TRIBAL
1 CT, ME, MA, NH, RI, VT	James Byrne 5 Post Office Square, Suite 100 (OSRR07-2) Boston, MA 02109-3912 Phone (617) 918-1389 Fax (617) 918-1291	AmyJean McKeown 5 Post Office Square, Suite 100 (OSRR07-2) Boston, MA 02109-3912 Phone (617) 918-1248 Fax (617) 918-1291
2 NJ, NY, PR, VI	John Struble 290 Broadway, 18th Floor New York, NY 10007 Phone (212) 637-4291 Fax (212) 637-4211	John Struble 290 Broadway, 18th Floor New York, NY 10007 Phone (212) 637-4291 Fax (212) 637-4211
3 DE, DC, MD, PA, VA, WV	Janice Bartel 1650 Arch Street (3HS51) Philadelphia, Pennsylvania 19103 Phone (215) 814-5394 Fax (215) 814-3274	
4 AL, FL, GA, KY, MS, NC, SC, TN	Philip Vorsatz 61 Forsyth Street, S.W., 10TH FL (9T25) Atlanta, GA 30303-8960 Phone (404) 562-8789 Fax (404) 562-8788	Philip Vorsatz 61 Forsyth Street, S.W., 10TH FL (9T25) Atlanta, GA 30303-8960 Phone (404) 562-8789 Fax (404) 562-8788
5 IL, IN, MI, MN, OH, WI	Jan Pels 77 West Jackson Boulevard (SE-7J) Chicago, Illinois 60604-3507 Phone (312) 886-3009 Fax (312) 692-2161	Jane Neumann 77 West Jackson Boulevard (SE-4J) Chicago, Illinois 60604-3507 Phone (312) 353-0123 Fax (312) 697-2649
6 AR, LA, NM, OK, TX	Amber Perry 1445 Ross Avenue, Suite 1200 (6SF) Dallas, Texas 75202-2733 Phone (214) 665-3172 Fax (214) 665-6660	Amber Perry 1445 Ross Avenue, Suite 1200 (6SF) Dallas, Texas 75202-2733 Phone (214) 665-3172 Fax (214) 665-6660
7 IA, KS, MO, NE	Susan Klein 901 N. 5th Street (SUPRSTAR) Kansas City, Kansas 66101 Phone (913) 551-7786 Fax (913) 551-9786	Susan Klein 901 N. 5th Street (SUPRSTAR) Kansas City, Kansas 66101 Phone (913) 551-7786 Fax (913) 551-9798
8 CO, MT, ND, SD, UT, WY	Dan Hefferman 1595 Wynkoop Street (EPR-B) Denver, CO 80202-1129 Phone (303) 312-7074 Fax (303) 312-6065	Barbara Benoy 1595 Wynkoop Street (8EPR-SA) Denver, CO 80202-1129 Phone (303) 312-6760 Fax (303) 312-6962
9 AZ, CA, HI, NV, AS, GU	Eugenia Chow 75 Hawthorne St. (SFD-6-1) San Francisco, California 94105 Phone (415) 972-3160 Fax (415) 947-3520	Glenn Kistner 75 Hawthorne St. (SFD-6-1) San Francisco, California 94105 Phone (415) 972-3004 Fax (415) 947-3520
10 AK, ID, OR, WA	Deborah Burgess 300 Desmond Dr., SE, Suite 102 (WOO) Lacey, Washington 98503 Phone (360) 753-9079 Fax (360) 753-8080	Deborah Burgess 300 Desmond Dr., SE, Suite 102 (WOO) Lacey, Washington 98503 Phone (360) 753-9079 Fax (360) 753-8080