

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 capacity.

For fiscal year 2004, EPA will consider funding requests up to a maximum of \$1.5 million per State or tribe. EPA will target funding of at least \$3 million for tribal response programs to ensure adequate funding for tribal response programs.

Subject to the availability of funds, EPA regional enforcement and program staff will be available to provide technical assistance to States and tribes as they apply for and carry out these grants.

**DATES:** This action is effective as of December 1, 2003. EPA expects to make non-competitive grant awards to States and tribes which apply during fiscal year 2004.

**ADDRESSES:** Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters can be located at <http://www.epa.gov/brownfields>.

**FOR FURTHER INFORMATION CONTACT:** The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566-2777.

**SUPPLEMENTARY INFORMATION:** The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, by adding section 128(a). Section 128(a) authorizes a \$50 million grant program<sup>1</sup> to establish and enhance State<sup>2</sup> and tribal<sup>3</sup> response programs. Generally, these response programs address the assessment, cleanup and redevelopment of brownfields sites and other contaminated sites. Section 128(a) grants will be awarded and administered by U.S. Environmental Protection Agency (EPA) regional offices. This document provides guidance that will enable States and tribes to apply for and use section 128(a) funds in Fiscal Year 2004.

State and tribal response programs oversee assessment and cleanup

activities at the majority of brownfield sites across the country. The depth and breadth of State and tribal response programs vary. Some focus solely on CERCLA related activities, while others are multi-faceted, for example, addressing sites regulated by 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),<sup>4</sup> Congress recognized the accomplishments of State response programs in cleaning up and redeveloping brownfield sites. Section 128(a) also provides EPA with an opportunity to strengthen its partnership with States and tribes.

Since 1997, the EPA Brownfields program has been funding State and tribal response programs including Superfund Core funding for State and tribal voluntary cleanup programs and pre-remedial site assessment funding for State- and tribal-conducted Targeted Brownfields Assessments (TBA). Both activities were financed with Superfund appropriations and funded under CERCLA section 104(d) cooperative agreement authority. Through section 128(a), Congress built upon these activities and provided EPA with expanded authority to fund other activities that build capacity for State and tribal response programs as well as authority to grant funds to States and Indian tribes to capitalize revolving loan funds and support insurance mechanisms. 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 another 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 cleanup capacity.

Subject to the availability of funds, EPA regional enforcement and program staff will be available to provide technical assistance to States and Indian tribes as they apply for and carry out section 128(a) grants.

## Eligibility for Funding

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

- Demonstrate that their response program includes, or is taking reasonable steps to include, the four elements of a response program, described below; or be a party to voluntary response program Memorandum of Agreement (MOA)<sup>5</sup> with EPA;

and

- 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).

**Note:** Failure to meet these requirement will result in a denial of funding for FY04).

With the exception of the section 128(a) funds a State or tribe uses to capitalize a Brownfields Revolving Loan Fund under CERCLA 104(k)(3), States and tribes are not required to provide matching funds for grants awarded under section 128(a).

## The Four Elements—Section 128(a)

Section 128(a) requires States or tribes to demonstrate that their response program includes, or is taking reasonable steps to include, four elements. Section 128(a) also 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:

*Timely survey and inventory of brownfield sites in State or tribal land.* States and tribes must include, or be taking reasonable steps to include, in their response programs a system or process to identify the universe of brownfield sites in their 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 brownfield sites in their State or tribal lands. Given funding limitations, EPA will negotiate work plans with States and tribes to achieve this goal efficiently, effectively and within a realistic time frame. For example, many

<sup>1</sup> The Catalogue of Federal Domestic Assistance entry for the section 128(a) State and Tribal Response Programs grant program is 66.817.

<sup>2</sup> The term "State" is defined in this document as defined in CERCLA section 101(27).

<sup>3</sup> The 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, are also eligible for funding under CERCLA 128(a).

<sup>4</sup> The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, by adding section 128(a).

<sup>5</sup> The legislative history of SBLRBRA 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 voluntary response program MOAs are automatically eligible for section 128(a) funding. A list of States that have signed CERCLA VCP MOAs with EPA can be found at [www.epa.gov/brownfields/gdc.htm#vc](http://www.epa.gov/brownfields/gdc.htm#vc).