

the RLF, a prohibition on using EPA grant 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;

- Purchase environmental insurance or developing a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a State or tribal response program;

- Establish and maintain the required public record described in section B above. EPA considers activities related to maintaining and monitoring institutional controls to be eligible costs under section 128(a); or

- Conduct limited site-specific activities, such as assessment or cleanup, provided such activities are secondary to the primary use of the funds, *i.e.*, to establish and enhance the response program, and are tied to the four elements.

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, procedures, 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).

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 legislative history of the provision also makes this clear:

The vast majority of contaminated sites across the nation will not be cleaned up by the Superfund program. Instead, most sites will be cleaned up under State authority.

* * * In recognition of this fact, and the need to create and improve State cleanup capacity, new [Section 128(a)] provides financial assistance to states and tribes to establish or enhance voluntary response programs.

Senate Report 107-2, March 12, 2001, p. 15.

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 USTs. Other "enhancement" uses may be allowable as well.

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. Eligible uses of funds include limited site-specific related activities such as conducting assessments or cleanups at *brownfields* sites. Site-specific activities should be secondary to the primary use of the funds, *i.e.*, to establish and enhance the response program, and tied to the elements.

Site-specific assessments and cleanups must comply with all applicable Federal and State laws and are subject to the following restrictions:

- No more than \$200,000 per site can be funded for assessments, and no more than \$200,000 per site can be funded for cleanups.

- Absent EPA approval, the recipient may not use funds awarded under this agreement to assess and clean up sites owned by the recipient.

- Assessments and cleanups cannot be conducted at sites where the recipient itself is a potentially responsible party pursuant to CERCLA section 107, except for at brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I).

- 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.

- Section 128(a) funds cannot be used for assessments or cleanups at sites that do not meet the definition of a brownfield site at CERCLA 101(39).

However, costs incurred for oversight of cleanups at other than brownfields sites may be eligible and allowable costs if such activities are included in the State's or tribe's work plan. For example, auditing of completed site

cleanups in States or tribes that 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.

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 limited 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) RLF program.

Grant Mechanism and Process for Awarding Funding

Funding authorized under CERCLA section 128(a) will be awarded through a cooperative agreement⁹ with a State or tribe. The program will be 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 grantee for section 128(a) grant program is:

The government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

40 CFR 31.3 Grantee

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

⁹ A cooperative agreement is a grant 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.