

## Environmental Protection Agency

## § 35.575

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 categorized 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 Consortiums 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 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.