



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

(OW-FRL-9627-4)

Beaches Environmental Assessment and Coastal Health Act; Availability of BEACH Act Grants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: Section 406(b) of the Clean Water Act (CWA) as amended by the Beaches Environmental Assessment and Coastal Health (BEACH) Act authorizes EPA to award program development and implementation grants to eligible states, territories, tribes, and local governments to support microbiological monitoring and public notification of the potential for exposure to disease-causing microorganisms in coastal recreation waters, including the Great Lakes. EPA encourages coastal and Great Lakes states and tribes that have received BEACH Act grants in the past to apply for BEACH Act grants to implement effective and comprehensive coastal recreation water monitoring and public notification programs (“implementation grants”). EPA also encourages eligible coastal and Great Lakes tribes to apply for BEACH Act grants to develop effective and comprehensive coastal recreation water monitoring and public notification programs (“development grants”). This notice announces the availability of BEACH Act grants for fiscal year 2012 and also describes the requirements associated with the receipt of BEACH Act grants for fiscal year 2012 and future years, if funds are appropriated by Congress.

DATES: States, Erie County, Pennsylvania, and tribes that previously received BEACH Act grants must submit applications for fiscal year 2012 grants on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Other eligible

tribes should notify the relevant EPA Regional BEACH Act grant coordinator of their interest in applying for a grant on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Upon receipt of a tribe's notice of interest, EPA will establish an appropriate application deadline.

ADDRESSES: You must send your application to the appropriate EPA Regional grant coordinator listed in this notice under Section VI, Grant Coordinators.

FOR FURTHER INFORMATION CONTACT: Lars Wilcut, 1200 Pennsylvania Ave., N.W., (4305T), Washington, DC 20460. Telephone: (202) 566-0447. E-mail: wilcut.lars@epa.gov

SUPPLEMENTARY INFORMATION:

I. Background

What Are BEACH Act Grants?

The Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 amends the Clean Water Act (CWA) to better protect public health at our nation's beaches through improved water quality standards and beach monitoring and notification programs. The BEACH Act added Section 406 to the CWA to authorize EPA to award grants to develop and implement monitoring and public notification programs for coastal recreation waters. Currently, 34 states, two tribes, and one local government (Erie County, Pennsylvania) operate beach monitoring and notification programs using BEACH Act grant funds.

What Is the Statutory Authority for BEACH Act Grants and What Are the Performance Criteria?

The general statutory authority for BEACH Act grants is section 406(b) of the Clean Water Act, as amended by the BEACH Act, Pub. L. No. 106-284, 114 Stat. 970 (2000). It provides that, "(T)he Administrator may make grants to States and local governments to develop

and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public.” CWA section 406(b)(2)(A), however, limits EPA’s ability to award implementation grants only to those states and tribes that meet certain requirements (see Section II, Funding and Eligibility, below for more comprehensive information on specific requirements). One of those requirements is that the program be “consistent with the performance criteria published by the Administrator” pursuant to CWA Section 406(a). EPA’s current version of the performance criteria was published on July 19, 2002 and is titled *National Beach Guidance and Required Performance Criteria for Grants* (EPA-823-B-02-004). A notice of availability of the document was published in the *Federal Register* (67 *FR* 47540, July 19, 2002). This document can be found on EPA’s Web site at http://water.epa.gov/grants_funding/beachgrants/. Copies of the document may also be obtained by writing, calling, or e-mailing: Office of Water Resource Center, U.S. Environmental Protection Agency, Mail Code RC-4100, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. (Phone: 202-566-1731 or email: center.water-resource@epa.gov).

To What Years Does the Information in This Notice Apply?

The information in this notice, including the description of the grant requirements and conditions, apply to grants awarded in FY 2012 and subsequent years, if funds are appropriated by Congress. EPA no longer intends to publish an annual *Federal Register* notice announcing the availability of BEACH Act grants. Instead, EPA headquarters intends to send a memorandum to the regional offices to communicate the amount of funds available for BEACH Act grants and the resulting allocations using EPA’s existing allocation formula. EPA regional offices will communicate directly with the states, local government grant recipients, and any potentially

eligible tribes in their region. In subsequent years, if EPA makes any changes to grant requirements or conditions, or the allocation formula, EPA expects those changes would be communicated directly to eligible grantees through a notice in the *Federal Register* and/or other means.

What Activities Are Eligible for Funding under the Grants?

In fiscal year 2012 and subsequent years, EPA intends to award grants authorized under CWA section 406(b) to eligible states, tribes, and local governments to support the implementation of coastal recreation water quality monitoring and public notification programs that are consistent with EPA's required performance criteria for implementation grants. Also in fiscal year 2012 and subsequent years, EPA intends to award development grants to eligible tribes to support the development of coastal recreation water monitoring and public notification programs that would meet the eligibility requirements for implementation grants described in Section 406(b)(2)(A)(i)-(v). Activities in support of the development of monitoring and notification programs for coastal recreation waters consistent with those requirements and the implementation of programs consistent with EPA's Performance Criteria are eligible for funding under the grants. The term "coastal recreation waters" is defined in Section 502(21)(A) of the Clean Water Act to include the Great Lakes and marine coastal waters (including coastal estuaries) that are designated under CWA Section 303(c) for use for swimming, bathing, surfing, or similar water contact activities. The statute explicitly excludes from the definition "inland waters or waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea." (CWA Section 502(21)(B)).

II. Funding and Eligibility

Who Is Eligible to Apply for BEACH Act Grants?

Coastal and Great Lake states that meet the requirements of CWA section 406(b)(2)(A) are eligible for grants in the applicable fiscal year to implement monitoring and notification programs for their coastal recreation waters. The definition of the term “state” in CWA section 502 includes the District of Columbia, and current U.S. territories: the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Tribes may also be eligible for BEACH Act grants. In order to be eligible, a tribe must have coastal recreation waters adjacent to beaches or similar points of access that are used by the public, and the tribe must demonstrate that it meets the “treatment in the same manner as a state” criteria in CWA section 518(e) for the purposes of receiving a section 406 BEACH Act grant.

Are Local Governments Eligible for Funding?

CWA section 406(b)(2)(B) authorizes EPA to make a grant to a local government for implementation of a monitoring and notification program only if, after July 19, 2003, EPA determines that the state within which the local government has jurisdiction is not implementing a program that meets the requirements of CWA section 406(b), which includes a requirement that the program is consistent with the performance criteria in *National Beach Guidance and Required Performance Criteria for Grants*. EPA has awarded an implementation grant to Erie County, Pennsylvania, the local government implementing the beach monitoring and notification program for all of Pennsylvania’s coastal recreation waters. Local governments may contact their EPA Regional Office for further information about BEACH Act grants.

How May Tribes Apply for BEACH Act Development Grants, How Much Funding Is Available

for Tribes, and How Can a Tribe Demonstrate That it Meets the “Treatment in the Same Manner as a State” Criteria in CWA Section 518(e)?

Section 518(e) of the CWA authorizes EPA to award BEACH Act grants to eligible Indian tribes. For fiscal year 2012, EPA will make \$150,000 available to eligible tribes. Funding in subsequent years will depend on the total amount available, the number of tribes applying, and the amounts requested by individual tribes. In order to be eligible for a CWA section 406 development grant, a tribe must have coastal recreation waters adjacent to beaches or similar points of access that are used by the public. In addition, a tribe must demonstrate that it meets the “treatment in the same manner as a state” (TAS) criteria contained in CWA section 518(e) for purposes of receiving a CWA section 406 grant. To demonstrate TAS, the tribe must show that it: 1) is federally recognized; 2) has a governing body carrying out substantial governmental duties and powers; 3) will be exercising functions pertaining to waters within the reservation; and 4) is reasonably expected to be capable of carrying out the functions consistent with the CWA and all applicable regulations. EPA encourages those tribes with coastal recreation waters to contact their EPA Regional BEACH Act grant coordinator for further information regarding the application process as soon as possible.

Are There Any Additional Eligibility Requirements and Grant Conditions Applicable to Grant Recipients?

Yes, there are additional eligibility requirements and grant conditions. First, CWA section 406(b)(2)(A) provides that EPA may only award a grant to implement a monitoring and notification program if:

- (i) the program is consistent with the performance criteria published by the Administrator

under CWA section 406(a);

(ii) the state or local government prioritizes the use of grant funds for particular coastal recreation waters based on the use of the water and the risk to human health presented by pathogens or pathogen indicators;

(iii) the state or local government makes available to the Administrator the factors used to prioritize the use of funds under clause (ii);

(iv) the state or local government provides a list of discrete areas of coastal recreation waters that are subject to the program for monitoring and notification for which the grant is provided that specifies any coastal recreation waters for which fiscal constraints will prevent consistency with the performance criteria under CWA section 406(a); and

(v) the public is provided an opportunity to review the program through a process that provides for public notice and an opportunity for comment.

Second, CWA section 406(c) requires that as a condition of receipt of a CWA section 406 grant, a state or local government program for monitoring and notification must identify:

(1) lists of coastal recreation waters in the state, including coastal recreation waters adjacent to beaches or similar points of access that are used by the public;

(2) in the case of a state program for monitoring and notification, the process by which the State may delegate to local governments responsibility for implementing the monitoring and notification program;

(3) the frequency and location of monitoring and assessment of coastal recreation waters based on--

(A) the periods of recreational use of the waters;

- (B) the nature and extent of use during certain periods;
 - (C) the proximity of the waters to known point sources and nonpoint sources of pollution; and
 - (D) any effect of storm events on the waters;
- (4) (A) the methods to be used for detecting levels of pathogens and pathogen indicators that are harmful to human health; and
- (B) the assessment procedures for identifying short-term increases in pathogens and pathogen indicators that are harmful to human health in coastal recreation waters (including increases in relation to storm events);
- (5) measures for prompt communication of the occurrence, nature, location, pollutants involved, and extent of any exceeding of, or likelihood of exceeding, applicable water quality standards for pathogens and pathogen indicators to--
- (A) the Administrator, in such form as the Administrator determines to be appropriate¹; and
 - (B) a designated official of a local government having jurisdiction over land adjoining the coastal recreation waters for which the failure to meet applicable standards is identified;
- (6) measures for the posting of signs at beaches or similar points of access, or functionally equivalent communication measures that are sufficient to give notice to the public that the coastal recreation waters are not meeting or are not expected to meet

¹EPA established in its *National Beach Guidance and Required Performance Criteria for Grants* (EPA-823-B-02-004) specific requirements and recommendations associated with measures for prompt notification to EPA and local governments (see Chapter 5).

applicable water quality standards for pathogens and pathogen indicators; and
(7) measures that inform the public of the potential risks associated with water contact activities in the coastal recreation waters that do not meet applicable water quality standards.

Third, as required by CWA section 406(b)(3)(A) and the *National Beach Guidance and Required Performance Criteria for Grants*, recipients of a CWA section 406 grant must submit to EPA a report that describes:

- (1) data collected as part of the program for monitoring and notification as described in section 406(c), and
- (2) actions taken to notify the public when water quality standards are exceeded.

Grant recipients must submit to EPA both the monitoring and notification reports for any beach season by January 31 of the year following the beach season. For the 2012 beach season, the deadline for states to submit complete and correct reports is January 31, 2013. EPA first established this report submission deadline in the *Federal Register* notice for the fiscal year 2003 grants (68 *FR* 15446, 15449 (March 31, 2003)).

Fourth, grant recipients must report to EPA, latitude, longitude and mileage data on:

- (1) the extent of beaches and similar points of public access adjacent to coastal recreation waters, and
- (2) the extent of those beaches that are monitored.

EPA first established this requirement in the *Federal Register* notice for the fiscal year 2003 grants (68 *FR* 15446, 15447 (March 31, 2003)). EPA is continuing this requirement in order to capture any changes states, tribes or local governments may make to their beach monitoring and

notification programs. States, tribes or local governments must report to EPA any changes to the extent of their beaches or similar points of access, and the extent of their beaches that are monitored.

How Much Funding Is Available?

For fiscal year 2012, the total available for BEACH Act grants is expected to be \$9,864,000. EPA expects to award all but \$150,000 to eligible states and local governments for implementation grants. EPA intends to award the remaining \$150,000 to eligible tribes.

How Will the Funding for States Be Allocated?

For fiscal year 2012 and subsequent years, EPA expects to award grants to 34 eligible states and one local government (Erie County, PA) based on a grant allocation formula that combines the formula that the Agency originally developed in 2002 and first announced in the Federal Register on March 31, 2003 (the “base allocation formula”) (*see* 68 *FR* 15446) with a supplemental allocation formula introduced with the fiscal year 2010 grants (*see* 75 *FR* 1373, January 11, 2010). The base allocation formula considers three factors: (1) the length of the beach season; (2) shoreline miles; and (3) coastal county population. EPA is reviewing the latest coastal county population information from the 2010 census to determine which of several datasets is the most appropriate to use in the allocation formula for future years. For fiscal year 2012 grants, EPA continued to use coastal county population from the 2000 Census in its allocation formula.

How Does EPA Expect to Allocate 2012 BEACH Act Grant Funds?

For 2012, the total available for BEACH Act grants is expected to be \$9,864,000. EPA has set aside \$150,000 for eligible tribes, leaving \$9,714,000 for grants to states and territories.

Assuming 34 states and Erie County, Pennsylvania apply and meet the statutory eligibility requirements for implementation grants (and have met the statutory grant conditions applicable to previously awarded section 406 grants), the distribution of the funds for fiscal year 2012 is expected to be:

For the state or territory of:	The year 2012 allocation is expected to be:
Alabama	\$262,000
Alaska	\$150,000
American Samoa	\$302,000
California	\$506,000
Connecticut	\$222,000
Delaware	\$210,000
Florida	\$516,000
Georgia	\$284,000
Guam	\$302,000
Hawaii	\$322,000
Illinois	\$241,000
Indiana	\$205,000
Louisiana	\$316,000
Maine	\$252,000
Maryland	\$266,000
Massachusetts	\$252,000
Michigan	\$274,000
Minnesota	\$204,000
Mississippi	\$257,000
New Hampshire	\$204,000
New Jersey	\$274,000
New York	\$341,000
North Carolina	\$300,000
Northern Marianas	\$303,000

Ohio	\$222,000
Oregon	\$227,000
Pennsylvania (Erie County)	\$221,000
Puerto Rico	\$327,000
Rhode Island	\$212,000
South Carolina	\$294,000
Texas	\$379,000
U.S. Virgin Islands	\$303,000
Virginia	\$273,000
Washington	\$267,000
Wisconsin	\$224,000

What If a State Does Not Apply or Does Not Qualify for Funding?

EPA expects that 34 eligible states and one local government (Erie County, Pennsylvania) will apply for a grant in fiscal year 2012. If fewer than the previously eligible entities apply for the allocated amount in a given year, or if any applicant fails to meet the statutory eligibility requirements (or the statutory conditions applicable to previously awarded section 406 grants), EPA will allocate available grant funds to previously eligible states and local governments in the following order:

1) States and local governments that have already been awarded grants that continue to meet the eligibility requirements for implementation grants and that have met the statutory conditions applicable to previously awarded section 406 grants will be awarded the full amount of funds allocated to the state under the formula described above.

2) EPA may award program implementation grants to additional local governments in states that the Agency determines no longer meet the requirements for implementation grants.

3) Consistent with CWA section 406(h), EPA will use grant funds to conduct a beach monitoring and notification program in the case of a state that has no program for monitoring and notification that is consistent with EPA's grant performance criteria.

What If a Grantee Cannot Use All of Its Allocation?

If a grant recipient cannot use all of its allocation, the Regional Administrator may award the unused funds to any eligible coastal or Great Lake grant recipient in the Region for the continued development or implementation of its coastal recreation water monitoring and notification program. If, after re-allocation, there are still unused funds within the Region, EPA Headquarters will redistribute these funds to any eligible coastal or Great Lake BEACH Act grant recipient according to the supplemental formula described above.

How Will the Funding for Tribes Be Allocated?

EPA expects to apportion the funds set aside for tribal grants evenly among all eligible tribes that apply for funding.

Does EPA Require Matching Funds?

Recipients do not have to provide matching funds for BEACH Act grants. EPA may establish a match requirement in the future based on a review of state program activity and funding levels.

III. Eligible Activities

Recipients of implementation grants may use funds for activities to support implementing a beach monitoring and notification program that is consistent with the required performance criteria for grants specified in the document, *National Beach Guidance and Required*

Performance Criteria for Grants (EPA-823-B-02-004). Recipients of development grants may use the funds to develop a beach monitoring and notification program consistent with the performance criteria.

IV. Selection Process

EPA Regional Offices will award CWA section 406 grants through a non-competitive process. EPA expects to award grants to all eligible state, tribal, and local government applicants that meet the applicable requirements described in this notice.

Who Has the Authority to Award BEACH Act Grants?

The Administrator has delegated the authority to award BEACH Act grants to the Regional Administrators.

V. Application Procedure

What Is the Catalog of Federal Domestic Assistance (CFDA) Number for the BEACH Monitoring and Notification Program Implementation Grants?

The number assigned to the BEACH Act grants is 66.472, Program Code CU.

Can BEACH Act Grant Funds Be Included in a Performance Partnership Grant?

BEACH Act grants cannot be included in a Performance Partnership Grant.

What Is the Application Process?

Your application package should contain completed:

- EPA SF-424 Application for Federal Assistance, and
- Program Summary.

In order for EPA to determine that a state or local government is eligible for an implementation grant, the applicant must submit documentation with its application to demonstrate that its program is consistent with the performance criteria. The Program Summary must contain sufficient technical detail for EPA to confirm that a program meets the statutory eligibility requirements and statutory grant conditions for previously awarded CWA section 406 grants listed in Section II (Funding and Eligibility) of this notice. The Program Summary must also describe how the state or local government used BEACH Act grant funds to develop and implement the beach monitoring and notification program, and how the program is consistent with the nine performance criteria in *National Beach Guidance and Required Performance Criteria for Grants* (EPA-823-B-02-004) which is found at http://water.epa.gov/grants_funding/beachgrants/guidance_index.cfm. The Program Summary should also describe the state or local program's objectives for the grant year, along with target dates and milestones for timely project completion.

States, Erie County, and tribes that have previously been awarded BEACH Act grants must submit application packages to the appropriate EPA Regional Office by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. EPA will make an award after the Agency reviews the documentation and confirms that the program meets the applicable requirements. The Office of Management and Budget has authorized EPA to collect this information (BEACH Act Grant Information Collection Request, OMB control number 2040-0244). Please contact the appropriate EPA Regional Office for a complete application

package. See Section VI for a list of EPA Regional Grant Coordinators or visit the EPA Beaches Web site at http://water.epa.gov/type/oceb/beaches/whereyoulive_state.cfm.

What Should a Tribe's Notice of Interest Contain?

The Notice of Interest should include the tribe's name and the name and telephone number of a contact person.

Are Quality Assurance and Quality Control (QA/QC) Required for Application?

Yes. Three specific QA/QC requirements must be met to comply with EPA's performance criteria for grants:

1) Applicants must submit documentation that describes the quality system implemented by the state, territory, tribe, or local government. Documentation may be in the form of a Quality Management Plan or equivalent documentation.

2) Applicants must submit a quality assurance project plan (QAPP) or equivalent documentation.

3) Applicants are responsible for submitting documentation of the quality system and QAPP for review and approval by the EPA Quality Assurance Officer or his designee before they take primary or secondary environmental measurements. More information about the required QA/QC procedures is available in Chapter Four and Appendix H of *National Beach Guidance and Required Performance Criteria for Grants* (EPA-823-B-02-004).

Are There Reporting Requirements?

Recipients must submit annual performance reports and financial reports as required in 40 CFR Part 31, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (40 CFR 31.40 and 31.41). As required by Section 31.40, the annual performance report includes a comparison of actual accomplishments to the objectives established for the year and the reason for any slippage if established objectives were not met. It should also describe how the grant funds were used to implement the program to meet the performance criteria listed in *National Beach Guidance and Required Performance Criteria for Grants* (EPA-823-B-02-004). The annual performance report required under 40 CFR 31.40 is due no later than 90 days after the grant year ends.

Recipients must also submit annual monitoring and notification reports. The contents of these reports are described in the *National Beach Guidance and Required Performance Criteria for Grants* (EPA-823-B-02-004). Sections 2.2.3 and 4.3 of the document contain the performance criterion requiring an annual monitoring report, and sections 2.2.8 and 5.4 contain the performance criterion requiring an annual notification report. These annual monitoring and notification reports required to be submitted by States to EPA under CWA section 406(b)(3)(A) and by all grant recipients under the *National Beach Guidance and Required Performance Criteria for Grants*, include data collected as part of a monitoring and notification program. As a condition of award of an implementation grant, EPA requires that the monitoring report and the

notification report for any beach season be submitted not later than January 31 of the year following the beach season. (See Section II, Funding and Eligibility, above.)

What Regulations and OMB Cost Circular Apply to the Award and Administration of These Grants?

The regulations at 40 CFR Part 31 govern the award and administration of grants to states, tribes, local governments, and territories under CWA section 406(b). Allowable costs will be determined according to the cost principles outlined in 2 CFR Part 225.

VI. Grant Coordinators

Headquarters – Washington, DC

Lars Wilcut, USEPA, 1200 Pennsylvania Ave. NW - 4305, Washington DC 20460; T: 202-566-0447; F: 202-566-0409; wilcut.lars@epa.gov.

Region 1 - Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island

Caitlyn Whittle, USEPA Region 1, 5 Post Office Square Suite 100 (OEP06–1), Boston, MA 02109-3912; T: 617-918-1748; F: 617-918-0748; whittle.caitlyn@epa.gov.

Region 2 - New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Helen Grebe, USEPA Region 2, 2890 Woodbridge Ave. MS220, Edison, NJ 08837-3679; T: 732-321-6797; F: 732-321-6616; grebe.helen@epa.gov.

Region 3 - Delaware, Maryland, Pennsylvania, Virginia

Denise Hakowski, USEPA Region 3, 1650 Arch Street 3WP30, Philadelphia, PA 19103-2029; T: 215-814-5726; F: 215-814-2318; hakowski.denise@epa.gov.

Region 4 - Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina

Joel Hansel, USEPA Region 4, 61 Forsyth St. 15th Floor, Atlanta, GA 30303-3415; T: 404-562-9274; F: 404-562-9224; hansel.joel@epa.gov.

Region 5 - Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Holly Wirick, USEPA Region 5, 77 West Jackson Blvd. WT-16J, Chicago, IL 60604-3507; T: 312-353-6704; F: 312-886-0168; wirick.holiday@epa.gov.

Region 6 - Louisiana, Texas

Daniel Reid, USEPA Region 6, 1445 Ross Ave. 6WQ-EA, Dallas, TX 75202-2733; T: 214-665-6536; F: 214-665-6689; reid.daniel@epa.gov.

Region 9 - American Samoa, Commonwealth of the Northern Mariana Islands, California, Guam, Hawaii

Terry Fleming, USEPA Region 9, 75 Hawthorne St. WTR-2, San Francisco, CA 94105; T: 415-972-3462; F: 415-947-3537; fleming.terrence@epa.gov.

Region 10 - Alaska, Oregon, Washington

Rob Pedersen, USEPA Region 10, 120 Sixth Ave. OW-134, Seattle, WA 98101; T: 206-553-1646; F: 206-553-0165; pedersen.rob@epa.gov.

Dated: January 30, 2012

Nancy K. Stoner,

Acting Assistant Administrator for Water.

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