

# TAG Recipient Manual

## TAG Enforcement, Termination, and Your Right to Appeal

This section includes information about the actions that EPA can take if your group fails to follow the terms and conditions of its TAG award agreement. This section also explains the procedures available to you that must be followed if you want to appeal an EPA decision related to your TAG.

### 7.1 EPA Enforcement Actions

Your TAG award agreement is a legal document. When your group signs the TAG agreement, your group becomes legally responsible for following the terms and conditions outlined in the TAG award agreement and complying with applicable laws and regulations. In the unlikely event that your group fails to meet these obligations—for example, by not completing agreed-upon tasks or reports—EPA may take a range of actions, from withholding payments to terminating your TAG or having your group barred from receiving future federal funding.

It is very unlikely that EPA will have to take negative actions if you work closely with your EPA project officer/regional TAG coordinator and address any problems promptly. Make sure to document problems and agreed upon remedies clearly for future reference.

Most problems that arise can be resolved easily by working closely with your EPA project officer/regional TAG coordinator. He or she will contact you if there is a problem so that your group has an opportunity to address shortcomings, correct errors, or provide necessary records or reports. As long as your group corrects problems quickly and in good faith, EPA probably will not have to take any enforcement action. However, if EPA finds that your group is not complying with the TAG award agreement or is not adequately following its work plan and you fail to address these concerns, EPA can take one or more of the following actions, depending on the circumstances:

Keep a log or another record of phone conversations, emails, letters and other communications with EPA regarding potential problems, and the steps your group agrees to take to address them.

- Temporarily withhold your advance payment (if applicable) until you correct the deficiency;
- Not allow your group to receive reimbursement for all or part of the activity or action not in compliance;
- Wholly or partly suspend your group's TAG award;
- Withhold further awards (meaning funding) for the project or program;
- Take enforcement action;
- Place special conditions in your TAG award agreement; and/or
- Take other remedies that may be legally available.

EPA can withhold payments if your group does not comply with the tasks, reporting requirements, or conditions of your TAG award agreement. EPA can withhold only the amount of funding needed to ensure that your group follows the terms outlined in the TAG award agreement. You will be given reasonable notice in writing if EPA decides to take any negative action, including withholding part of your reimbursement payment.

If your group receives a letter stopping work on your TAG (referred to as a stop-work order), you must immediately stop all work or activities for 45 days. This means that you have to tell your contractors to stop work immediately. During this time, you also must make a reasonable effort to minimize any project costs. Any exceptions to the duration of the stop-work order (making it longer or shorter) must be made by mutual agreement between your group and EPA. If your group and EPA fail to resolve the problem during the stop-work period, EPA will inform you of its intent to terminate or annul the TAG award agreement. Your group has the right to appeal EPA decisions regarding your TAG through the appropriate regional official (see Section 7.3, below).

Keep in mind that EPA seldom suspends or terminates TAGs. These actions are taken only as a last resort when problems are serious and the TAG recipient group has failed to make good-faith efforts to correct them. Grant suspensions and terminations are rare for groups that work closely with their EPA project officer/regional TAG coordinator.

## 7.2 Termination

Your group can decide on its own to end the TAG before the funding period has expired. TAG recipient groups may decide to end their TAG if the organization decides to disband, loses resources (people or time) to manage the TAG, no longer needs a TAG, or for other reasons. To terminate your TAG, you must send EPA a written notification stating your reasons for ending the TAG early, as well as the date on which you would like to terminate the TAG award agreement. If a TAG is terminated before the funding period is over and there are additional funds remaining, another group may apply for a TAG at your site.

EPA also can terminate all or part of your TAG award agreement at any time if EPA determines that your group materially fails to comply with the terms and conditions of the TAG award agreement and the requirements of the TAG rule and other applicable laws or regulations.

If EPA determines that your group violated its TAG award agreement, an EPA award official will provide an opportunity for consultation before issuing a termination notice. The termination notice will include the reasons for the termination and its effective date. Your group must stop work immediately upon receiving this notice. EPA will not reimburse your group for any new expenditures or commitments your group makes after you receive the termination notice.

When you or EPA terminates your TAG early, your group still has to take the steps required for closing out your TAG. This means providing EPA with all required reports, accounting for all TAG funds, and making sure your TAG records are complete and in order (see Section 6.4, in *Section 6, Changing, Extending, or Ending Your TAG*).

## 7.3 Appeals and Disputes

Section 35.4245 of the TAG rule specifies the appeals process that must be followed when your group wishes to dispute an EPA decision regarding its TAG (see also 40 CFR 30.63 and 31.70). You must go through the following appeals process before you obtain a judicial review of the dispute in court. (The flow chart on the next page shows the appeals process):

- First, try to resolve the issue with your EPA project officer/regional TAG coordinator.
- If you and your EPA project officer/regional TAG coordinator cannot reach an agreement, you can appeal your case in writing to the EPA regional disputes decision

If your group disagrees with an EPA decision regarding your TAG, you can appeal that decision. You must follow a specific appeals process.

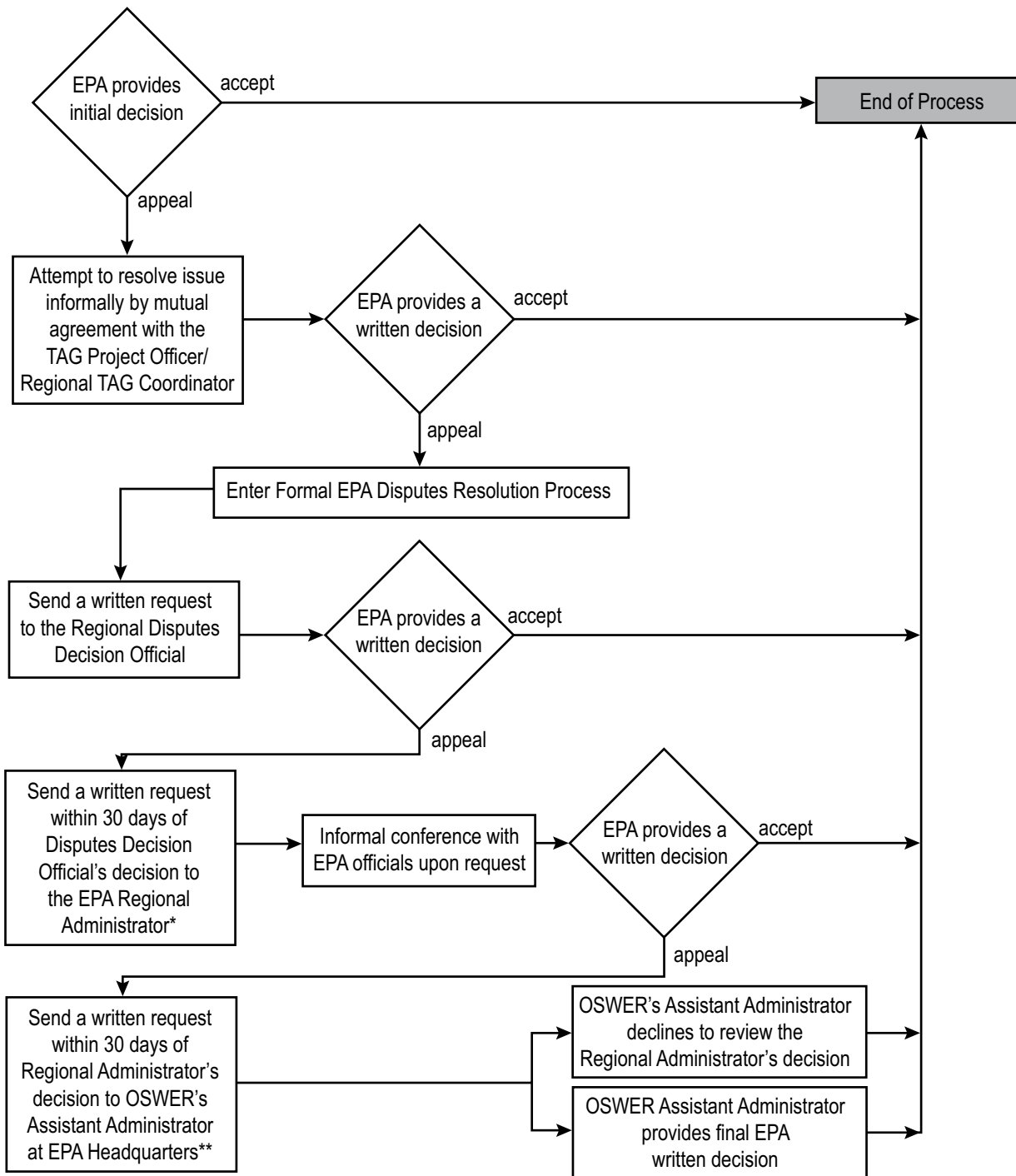
official for the TAG program, who will provide a written decision. (The disputes decision official is a person who works in the regional office that is designated by the award official to resolve disputes

concerning assistance agreements, or awards.) This decision is considered final unless you request, in writing, that the EPA regional administrator review the dispute decision official's determination. further review by the EPA regional administrator.

- To request review of your appeal by the EPA regional administrator, you must send a written request to the Regional Administrator's office via registered mail, return receipt requested, within 30 calendar days of the date of the receiving the regional disputes decision official's letter. You are entitled to an informal conference with EPA officials and a written decision from the regional administrator. The request for review Your request must include:
  - A copy of the regional disputes decision official's final decision;
  - A statement of the dollar amount in dispute;
  - A description of the issues involved; and
  - A concise statement of the objections to the regional disputes decision official's final decision.
- You are entitled to an informal conference with EPA officials and a written decision from the regional administrator. Disputants may be represented by counsel and may submit documentary evidence and briefs for inclusion in the record.
- If you are not satisfied with the regional administrator's decision, your group may request, in writing, a review of the regional administrator's decision by EPA's assistant administrator for the Office of Solid Waste and Emergency Response (OSWER) at EPA headquarters in Washington, D.C., within 30 calendar days of the regional administrator's decision.
- Your request must be sent to the EPA OSWER assistant administrator by registered mail, return receipt requested, and must include:
  - A copy of the regional administrator's decision; and
  - A concise statement of the objections to the decision.

The OSWER assistant administrator can decide to let the regional administrator's decision stand, or can agree to review the decision. If the assistant administrator decides not to review the regional administrator's decision, the assistant administrator will advise the disputant(s) in writing that the regional administrator's decision remains the final agency action. If the assistant administrator for OSWER decides to review the regional administrator's decision, his or her review generally will be limited to the written record on which the regional administrator's decision was based. The assistant administrator may allow you to submit briefs in support of your petition for review and may provide an opportunity for an informal conference to clarify technical or legal issues. After reviewing the regional administrator's decision, the assistant administrator will issue a written decision that will then become the final EPA action. Review by the Assistant Administrator may not be requested for certain actions (see 40 CFR 31.70(l)).

## Process for Appealing EPA Decisions



**\*Your request must include:**

- a copy of the regional disputes decision official's final decision;
- a statement of the dollar amount in dispute;
- a description of the issues involved, and
- a concise statement of the objections to the regional disputes decision official's final decision.

**\*\* Your request must include:**

- a copy of the regional administrator's final decision;
- a concise statement of the objections to the regional disputes decision official's final decision