

PROPOSED ADVICE AND RECOMMENDATIONS ON IMPLEMENTATION OF THE EPA POLICY ON ENVIRONMENTAL JUSTICE FOR TRIBES AND INDIGENOUS PEOPLES



SEPTEMBER 2014

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL
A Federal Advisory Committee to the U.S. Environmental Protection Agency

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DISCLAIMER

This Report and recommendations have been written as part of the activities of the National Environmental Justice Advisory Council, a public advisory committee providing independent advice and recommendations on the issue of environmental justice to the Administrator and other officials of the United States Environmental Protection Agency (EPA or the Agency). In addition, the materials, opinions, findings, recommendations, and conclusions expressed herein, and in any study or other source referenced herein, should not be construed as adopted or endorsed by any organization with which any Work Group member is affiliated.

This report has not been reviewed for approval by EPA, and hence, its contents and recommendations do not necessarily represent the views and the policies of the Agency, nor of other agencies in the Executive Branch of the Federal government.

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September 15, 2014

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

The National Environmental Justice Advisory Council (NEJAC) is pleased to transmit the following recommendations to you in response to the Agency's charge of October 5, 2011. In that charge, EPA asked the NEJAC to provide advice and recommendations on the following: 1) How the Agency can most effectively address the environmental justice issues in Indian country, including in Alaska and Hawaii and those facing indigenous peoples both on and off reservations, which were completed in January 2013; 2) the Working Draft of the EPA environmental justice policy on working with tribes and indigenous peoples, which were completed in January 2013; and 3) how EPA can effectively implement the Agency's environmental justice policy on working with tribes and indigenous peoples. This report contains advice and recommendations about how EPA can effectively implement some of the key principles in its policy on environmental justice for working with tribes and indigenous peoples.

Key recommendations include:

- EPA should adopt the Indigenous notion of Traditional Ecological Knowledge and Wisdom (TEKW) to inform EPA policy, making explicit reference to a "holistic" approach.
- EPA's Regional Offices should promote the EPA Tribal/Indigenous EJ Policy to enhance tribal government and program-level awareness and solicit feedback from tribal representation regarding implementation effectiveness and/or issues pertaining to EJ.
- EPA's National Program Manager (NPM) guidance should state goals and targets for the EPA Tribal/Indigenous EJ Policy as headquarters and regional offices continue implementation efforts on a government-to-government basis with tribal leadership.
- Elevate tribal government leaders, tribal or indigenous elders, and other community identified leader to increase tribal government and indigenous peoples' visibility through collaboration/co-management/joint learning between tribes, federal agencies, states and non-profit organizations working within tribal or indigenous communities.
- EPA should increase funding for the Environmental Justice Collaborative Problem-Solving Cooperative Agreement Program (EJCPS) so that tribal-specific programs can be increased.

- EPA should help other federal agencies and interagency work groups develop an understanding and comprehension of EJ as it pertains to federally recognized tribal governments and indigenous peoples, recognizing the relationship to each other, distinction from each other, and necessity for separate engagement and responsibilities to each.
- Each of the 10 EPA regions should establish a working position for an EJ Liaison that can help outreach and share information that is relevant to tribal nations and EJ communities/indigenous peoples within their jurisdiction who may be impacted by an EPA decision or proposal.

Once again, thank you for this opportunity to provide recommendations for enhancing environmental justice in EPA's programs, particularly the tribal program and Agency's work with indigenous peoples.

Sincerely,



cc:

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Proposed Advice and Recommendations on Implementation of the EPA Policy on Environmental Justice for Tribes and Indigenous Peoples

The National Environmental Justice Advisory Council (NEJAC) is pleased to submit the following recommendations in response to the EPA charge of October 5, 2011. Specifically, the EPA charged the NEJAC with providing advice and recommendations on how the Agency can effectively work with tribes and indigenous peoples to address their environmental justice concerns, which was fulfilled with the completion of the NEJAC report in January 2013. The NEJAC previously provided comments on the Working Draft of the *EPA Policy on Environmental Justice for Tribes and Indigenous Peoples* in January 2013. The final EPA request was for advice and recommendations on the implementation of four key principles in the Agency's Policy, which is provided in this report:

- 1) Integration of Traditional Ecological Knowledge and Wisdom
- 2) Working with Tribal Governments on the Implementation of Environmental Justice
- 3) Coordination and Collaboration on Addressing Environmental Justice in Tribal Areas, and
- 4) Working with Indigenous Peoples, Communities, and Individuals to Address Environmental Justice.

The NEJAC intends that this report speak to the EPA's implementation of its *Policy on Environmental Justice for Tribes and Indigenous Peoples* to work collaboratively to address the environmental and public health concerns of indigenous peoples in tribal area throughout the United States (US), US territories, US commonwealths, and other areas of US interest.

For the purposes of this report, the term "indigenous peoples" is an inclusive term that encompasses Native Americans/American Indians, Alaska Natives, Native Hawaiians, native Pacific Islanders and other indigenous communities. While it is important to recognize the important historical and legal distinctions among the various terminologies (e.g. "American Indian" has historically been used when referencing members of federally-recognized tribes), "indigenous" has become the policy term of choice, particularly since the ratification of the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). The UN accepted definition for "Indigenous communities, peoples and nations" is "those which, having a historical continuity with pre-invasion and precolonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systemsⁱ. Members of the IPWG maintain that it is particularly important to emphasize inclusivity, fair treatment and the meaningful involvement of all Indigenous peoples in the vigorous pursuit of environmental justice. It is the intent of this report that the following recommendations honor the extant knowledge of Indigenous peoples throughout the U.S. in the hope that the journey toward true environmental justice can benefit all people for generations to follow.

For the purposes of this report, the term "tribal areas" is Indian country as defined at 18 U.S.C. § 1151 to mean: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same, and/or includes Alaska Native Villages, who are federally recognized tribes and have rights and interests, and Native Hawaiian communities, native Pacific Islanders and other areas of interest to tribes and indigenous communities.

I. INTEGRATION OF TRADITIONAL ECOLOGICAL KNOWLEDGE AND WISDOM

Current EPA Policy includes the following principle pertaining to Traditional Ecological Knowledge:

The EPA encourages, as appropriate and to the extent practicable and permitted by law, the integration of Traditional Ecological Knowledge into the Agency's environmental science, policy, and decision-making processes, to understand and address environmental justice concerns and facilitate program implementation

FINDINGS:

A Definition of Tribal Ecological Knowledge

Indigenous peoples have a historical continuity, knowledge and relationship with the land, air, rivers and sea, which pre-dates the establishment of the United States. Traditional Ecological Knowledge and Wisdom (TEKW) is a term that recognizes the accumulated Indigenous knowledge and understanding of place in relation to the world in both an ecological and spiritual sense. The rediscovery by scientists of ecosystem-like concepts among traditional peoples has been important for the appreciation of Indigenous knowledge in the science of ecology. In traditional knowledge, the unit of nature is often defined in terms of a geographical boundary, such as a watershed, and all of the abiotic components, plants, animals, and humans within this unit are considered to be interlinked. Ecosystems are viewed as unpredictable, uncontrollable, and full of surprises, requiring wisdom for responding to ecosystem change. However, the language of TEKW is different from scientific language. The language of traditional ecology usually includes metaphorical imagery and spiritual expression, differing from scientific language in context, motive, and conceptual framework.¹ Consider, for example, the Native Hawaiian perspective below.

Native Hawaiian Perspective. Native Hawaiians are intimately connected to the island world that surrounds them. Few outsiders can understand the true depth and meaning of this ancient relationship. The ancestors arrived with great knowledge of the natural world, and this deepened and grew as Hawaiians settled the islands and flourished over the centuries. Even during times of dramatic social change, *kānaka maoli* (refers to the indigenous Polynesian people of the Hawaiian Islands or their descendants) drew upon the wisdom of the ancestors to care for and make good use of the land and sea. The history of the Hawaiian people living in one of the most isolated group of islands on the planet is one defined by wisdom, strength, and generational knowledge. The chart below highlights the inherent differences between a "Euro-American" and Native-Hawaiian relationships to their natural surroundings².

Topic	Euro-American Perspective	Native Hawaiian Perspective
Predominant Purpose for Using Living Marine Resources	Commerce, Recreation, Consumption	Cultural Traditions, Consumption and Sharing, Recreation, Commerce
Years of Fisheries Data Collection	< 100	> 1,000
Relation to the Land	Ownership	Stewardship
Normative Fishing Ethic	Take what you can	Take what you need
Management Horizons	Present and future (few generations)	Past, present, future (many generations)
Rules and Regulations	Rigid	Adaptive

¹ Hindelang M., 2006, Berkes et al., 2000.

² Final Report, `Aha Kiole Advisory Committee Best Practices and structure for the management of natural and cultural resources in Hawai'i, Page 32.

One prime example of government working with and acknowledging the TEKW of Indigenous peoples occurred in 2010 when the Western Pacific Regional Fishery Management Council (the Western Pacific Council) convened Ho'ohanohano I Nā Kūpuna "*Honor our Ancestors*" Puwalu (the Puwalu series) to enable Native Hawaiians and others to participate in the management of marine resources in an increasingly meaningful way. This is in keeping with the Council's holistic approach to fisheries management, which incorporates ecological principles, traditional ecological knowledge and wisdom, and community involvement in natural resource deliberations and decision-making processes.³

RECOMMENDATIONS:

1. Adopt the Indigenous notion of Traditional Ecological Knowledge and Wisdom (TEKW) to inform EPA policy, making explicit reference to a "holistic" approach.

Justification: The current definition of TEK cited by EPA and created by a UN representative does not include the notion of wisdom or the term "holistic." Yet, in section 4b of the policy it states: The EPA works to understand Traditional Ecological Knowledge and its role in protecting public health and the environment, and to understand community definitions of health and the environment.

2. Create a "TEK" and "TEKW" tab on EPA's main website as part of the Agency's "A-Z Index" (<http://www2.epa.gov/home/az-index>).

Justification: TEKW needs to have its own tab since keyword searches for "TEK" on EPA's website pulls over 900 documents, however there are not many references to TEKW. The NEJAC requests "TEKW" be a separate but linked tab since the NEJAC expects more references to occur as others develop an understanding of how "wisdom" is a key aspect of TEK.

3. The EPA should develop and implement organizational policies ensuring compliance with the Native American Languages Act of 1990 and serving as operational guidance for internal and external communications, briefings, informative sessions, and collaborative dialogue with indigenous peoples and communities.

Justification: The Native American Languages Act of 1990 (P.L. 101-477) Section 104 (6) states: "It is the policy of the United States to fully recognize the inherent right of Indian Tribes and other Native American governing bodies, States, territories, and possessions of the United States to take action on, and give official status to, their Native American languages for the purpose of conducting their own business. . ."

4. Refer to the National EPA-Tribal Science Council (TSC) Tribal Science Priority - Final June 2011 report, *Integration of Traditional Ecological Knowledge (TEK) in Environmental Science, Policy and Decision-Making*. The 2011 Report proposes the following implementation strategies: (a) Increase funding for tribes and indigenous peoples TEK activities; (b) Expand tribes and indigenous peoples eligibility to build and implement TEK activities under existing EPA programs (such as language fluency); (c) Increase tribes and indigenous peoples ability to use EPA resources for both TEK and western science; (d) Coordinate with tribes and indigenous peoples to develop TEK awareness, understanding and applicability training for EPA personnel; (e) Develop accountability within EPA for tribes' and indigenous peoples' interests in the protection of the environment and human health in aboriginal territories; (f) Support tribes and indigenous peoples to host student internships in which tribal and indigenous youth can bring their science/TEK training and education to bear on critical tribes and indigenous peoples environmental justice issues; (g) Develop an EPA web presence for TEK; (h) Develop science training and educational opportunities that incorporate TEK in cooperation with

³ Final Report, `Aha Kiole Advisory Committee Best Practices and structure for the management of natural and cultural resources in Hawai'i.

tribes and indigenous peoples and provide online instruction to all levels of education; and, (i) Actively promote the importance of TEK in peer-reviewed literature through EPA representation on technical membership consortia.⁴

It is further suggested that the "Tribal & American Indian/Alaska Native" reference include "Indigenous Peoples" for the purposes of the NEJAC recommendations.

Justification: All proposals and measures are appropriate for this policy.

5. EPA should consult with the U.S. Fish and Wildlife Service (FWS) in reviewing TEK tools for engaging Tribes and Native Hawaiians in a proactive public engagement process.

<http://www.fws.gov/nativeamerican/tek.html>

Justification: FWS has already established a robust and workable website for public use that clearly defines the extensive nature and importance of Indigenous Traditional Ecological Knowledge and Wisdom.

II. WORKING WITH TRIBAL GOVERNMENTS ON IMPLEMENTATION OF ENVIRONMENTAL JUSTICE

The federal government maintains a unique trust relationship with federally-recognized Tribal Governments. Federal Indian Trust Responsibility is a legal obligation held by the United States to protect assets held by Indian tribes, individual Indians, or Indians with trust allotments. The EPA remains committed to fulfilling the core elements of federal Indian trust responsibility consistent with the Agency's mission and strategic direction. The EPA 1984 Indian Policy includes the following six principles that pertain to working with tribal governments to address environmental justice concerns:

- The EPA recognizes that the 1984 EPA Indian Policy is the foundation for coordination and collaboration with federally recognized tribes to protect the environment and human health in Indian country. The EPA works with federally recognized tribes as sovereigns, partners, and co-regulators, with jurisdiction over their own lands and concerns.
- The EPA works with federally recognized tribes, on a government-to-government basis, to support the integration of environmental justice into tribal environmental and human health programs
- The EPA recognizes tribal governments as the primary parties for setting standards, making environmental policy decisions, and managing programs in Indian country, consistent with the Agency's standards and regulations
- The EPA encourages tribes to participate in the direct implementation of the Agency's environmental justice program, including both the planning and implementation of EPA's public participation activities and review opportunities, and administrative review processes.
- The EPA provides advice and recommendations to tribal governments recognizing the diversity among the tribes, on how they can create and implement environmental justice programs, including procedures designed to ensure fair treatment and meaningful involvement

⁴ Potential measures of success for each of these recommendation are increased numbers of: (a) TEK programs, policies or activities developed by EPA in support of tribes and indigenous peoples interests; (b) EPA representatives trained in TEK; (c) TEK-related presentations, research studies, and success stories shared at community, professional, academic, government, and inter-government meetings and conferences; (d) Funding available for tribes and indigenous peoples for TEK activities; (e) Tribal and indigenous traditional foods mapped, assessed and protected; (f) TEK-related articles published in peer-reviewed literature; (g) Tribes and indigenous peoples, students, and agencies participating in TEK programs and internships; and, (h) EPA consultations that consider TEK with affected tribes and indigenous peoples communities (as assessed through surveys, outreach, and feedback)

- The EPA, through its Indian Environmental General Assistance Program, ⁵helps tribal governments build capacity to establish public participation, community involvement, education, and communication systems to engage community members to understand their environmental and public health concerns, educate the public on human health and environmental protection issues important to the tribe, and be responsive to concerns raised.

FINDINGS:

The EPA rightfully recognizes tribal governments as the primary party responsible for making policy decisions affecting Indian country. While this section focuses exclusively on the federal responsibility to work with Tribal Governments, the IPWG recognizes that the most effective policies are more broadly inclusive of Indigenous peoples in both content and process (See Section IV p. 12). The EPA embraces this principle through the implementation of policies and directives associated with Executive Order 13175. In addition, the EPA issued the 1994 Tribal Operations Action Memorandum creating the American Indian Environmental Office (AIEO), the EPA/Tribal Operations Committee (NTOC), and clear operational priorities for strengthening the EPA Tribal operations. The EPA continues implementing the principles associated with Executive Order 13175 and the 1984 Indian Policy through ongoing government-to-government relationships with federally recognized tribal governments. These relationships foster continuing dialogue regarding Agency policies, programs, and practices through venues including the Regional Tribal Operations Committees and the National Tribal Operations Committee, and could be expanded to engage tribal leadership in other venues, such as the National Congress of American Indians, the Great Plains Tribal Chairpersons Association, and the United South and Eastern Tribes, Inc.

RECOMMENDATIONS:

- 6. EPA's Regional Offices should promote the EPA Tribal/Indigenous EJ Policy to enhance tribal government and program-level awareness and solicit feedback from tribal representation regarding implementation effectiveness and/or issues pertaining to EJ.**
- 7. The EPA National Program Manager (NPM) guidance should state goals and targets for the EPA Tribal/Indigenous EJ Policy as headquarters and regional offices continue implementation efforts on a government-to-government basis with tribal leadership.**

Justification: The EPA already publishes a five-year strategic plan used by Agency management as a tool guiding operations. Annual performance objectives are captured in the NPM guidance detailing program-specific guidance related to national and regional efforts.

- 8. The EPA Annual Commitment System (ACS) should include EPA Tribal/Indigenous EJ Policy targets to promote implementation efficiencies and performance indicators. These indicators should support ongoing Indian Policy principles as related to EJ.**

Justification: The EPA NPM guidance already includes ACS planning targets indicating annual commitment performance and results.

- 9. EPA, through its partnerships with tribal governments, as well as internal system reviews, needs to provide venues for annual implementation evaluation of the EPA Tribal/Indigenous EJ Policy.**

Justification: The EPA Annual Performance Plan, the EPA Action Plan, the Tribal Chairpersons Associations, Regional Tribal Operations Committee(s), National Tribal Operation(s) Committee, and the National

⁵ This term refers to the Indian General Assistance Program Act of 1992 (42 U.S.C. 4368b), which provides general assistance grants and technical assistance to Indian tribal governments and intertribal consortia.

Environmental Justice Advisory Council represent key information sources to provide comprehensive review and evaluation of EPA implementation efficiency and effectiveness of its policy.

10. Enhance EPA Regional environmental justice offices to support tribal capacity to implement environmental justice and address indigenous environmental justice concerns by:

- a. Designating a specific EPA Regional Tribal EJ Liaison to ensure that existing regional EPA Tribal Liaisons and regional EJ Liaisons coordinate and collaborate on tribal and indigenous environmental justice concerns, and understand tribal culture and diversity.
- b. Improving communication with tribes on environmental justice (i.e. conference calls with tribal staff and/or leaders, meetings, site visits)
- c. Assisting in fostering dialogue among tribes, states, local governments, and businesses especially when issues arise in the implementation of EPA's tribal/indigenous EJ policy.
- d. Integrating the Policy throughout various other EPA programs that work with and/or affect tribes.

11. Establish Regional Tribal EJ Working Groups to further support tribes in implementing environmental justice that:

- a. Include representatives from tribes and EPA
- b. Develop a listserv to coordinate regular conference calls and share information and resources
- c. Work with tribes to develop and periodically update Regional Implementation Plans to implement environmental justice in Indigenous communities:
 - i. Example: ["EPA Region 5 Regional Implementation Plan to Promote Meaningful Engagement of Overburdened Communities in Permitting Activities"](#)
 - ii. Also include regional plans and procedures to implement [EPA Policy on Consultation and Coordination with Indian Tribes](#) if they don't already exist in each region.

12. Develop national coordination & communication, and establish regional collaboration on environmental justice by:

- a. Establishing a national Tribal EJ Working Group or Caucus consisting of both EPA and tribal representatives
- b. Coordinating the sharing of information and implementation plans across Regions
- c. Highlighting successful case studies of collaboration and implementation on EJ
- d. Developing a Tribal Environmental Justice Internship/Leadership Program to:
 - i. Inspire, engage, and build experience of youth, students and future tribal leaders to implement EJ
 - ii. Develop interns to serve as a bridge between communities, tribal government and the EPA
 - iii. Work with interns to develop important research and writing to help implement EPA's tribal/indigenous EJ policy and provide recommendations for enhancements (i.e. such as above recommendation of collecting successful case studies)
- e. Improve access, organization and awareness of available resources for tribes to implement EJ
 - i. Develop a tutorial/web training for both EPA and tribes on environmental justice and how to implement the EPA Policy on environmental justice
 - ii. Host webinars and trainings collaboratively with tribes on EJ
 - iii. Promote tribal government/program awareness of already available resources such as the NEJAC report ["Meaningful Involvement and Fair Treatment by Tribal Environmental Regulatory Programs"](#)
 - iv. Provide relevant environmental justice related educational materials and tools for tribes on a well-organized and user-friendly online database(s)
- f. Support sovereign tribal regulatory authority
 - i. Assist tribes in developing and implementing their own regulatory programs (i.e. TAS)
 - ii. Develop, maintain and increase grant programs that support the capacity of tribal environmental programs to address environmental justice issues; prioritize applicants with community involvement and environmental justice implementation objectives

III. COORDINATION AND COLLABORATION ON ENVIRONMENTAL JUSTICE IN TRIBAL AREAS⁶

The EPA Policy includes the following four principles relevant to coordination and collaboration among governmental agencies and other environmental justice stakeholders:

- The EPA encourages and helps facilitate discussions among and between all governmental and non-governmental parties, and all entities and individuals with an interest in environmental justice issues affecting tribes and indigenous peoples.
- The EPA encourages other federal agencies and other governments to incorporate environmental justice principles into their decision-making and actions regarding tribes and indigenous peoples.
- The EPA also encourages non-governmental individuals and entities to incorporate environmental justice concerns in their decision-making and activities regarding tribes and indigenous peoples.
- The EPA collaborates and cooperates with other federal agencies to address tribes' and indigenous peoples' environmental justice issues and leverage the Agency's resources to better communicate, share information, and collaborate in order to address these issues.

FINDINGS:

At EPA, meaningful involvement means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.

EPA's environmental justice program supports Indigenous peoples processes that increase relationship building, trust and mutual support through knowledge, skills and resource sharing. The EPA OEJ has developed a Collaborative Problem Solving Cooperative Agreement Program that provides a systematic approach towards identifying and addressing local environmental and public health challenges. The Model is intended to assist disproportionately affected communities in developing proactive, strategic, and visionary approaches to address their environmental justice issues and achieve community health and sustainability.

In tribal communities in the United States, environmental mitigation is significantly behind that of non-tribal communities (U.S. EPA 2004), one reason is that the system of federal environmental and Indian law is insufficient to protect indigenous communities from environmental contamination. Exposures to environmental contamination also impact the TEKW and cultural capital necessary for the reproduction of cultural knowledge as well as reproduction of the social body. Such knowledge is necessary for the reproduction of *in sui generis* ("of its own kind/genus") communities in an environmental justice framework as defined by tribal communities themselves. The experience of the St. Regis Mohawk Tribe serves as one example of how current EPA policies are insufficient for protecting Indigenous communities from environmental contamination.

Continued environmental monitoring and research involving collaborative partnerships among scientific researchers, community members, and health care providers is needed to determine the continuing impacts of this contamination and to develop approaches for remediation and policy interventions. Specifically, environmental justice and reproductive justice leaders of the Akwesasne Task Force on the Environment published *Holistic Risk-Based Environmental Decision Making: A Native Perspective (2002)* that

⁶ References for this section include: Indigenous Peoples of North America: Environmental Exposures and Reproductive Justice Hoover et. al. 2012 <http://ehp.niehs.nih.gov/1205422/> and Broadening Participation in Community Problem Solving: A Multidisciplinary Model to Support Collaborative Practice and Research, Lasker and Weiss, Vol. 80, No.1, March 2003.

sought "...to promote health, justice, and equity (through) long-term investments...in community-based research, including efforts that develop specialized strategies for communication and community participation. This requires movement away from the hierarchic nature of the current expert-based risk assessment approach to one that includes collaboration, partnership, and respect for flexible, multidisciplinary approaches."

St. Regis Mohawk Tribe (Akwesasne) Perspectives and Experience. A chief concern of the St. Regis Mohawk Tribe is the discharge of PCBs into their local environment because PCBs are so persistent, cancer-causing and take a very long time to break down in the environment. PCBs have found their way into the local food chain by infiltrating river sediments, contaminating small organisms which are then eaten by larger and larger predators until they are eventually are consumed by humans. Research has shown that PCBs are found in human tissue and breast milk which is then passed on to infants in the prenatal environment and breastfeeding relationship.

As a remedy, the EPA has implemented Option Six which only calls for partially dredging parts of the river shore and capping a portion of the river bottom with layers of sand and silt (and in some instances, gravel and armor stone). According to Ken Jock, Director of the Tribe's Environment Division, "The EPA has never sufficiently explained or justified the proposed capping remedy." Nor has the intervention been successful. The Tribal Council supports Remedial Option Number 10, which calls for dredging of the river bottom to completely remove the contaminants.

Option Six is just one instance in a long history of the EPA's "poor stewardship in protecting our environment." Tribal Chief Paul Thompson notes the General Motor's partial clean-up and the Reynolds partial clean-up alongside the Alcoa partial clean-up stating: "(It) is still our land and the EPA should be using our standards for clean-up, not what the Alcoa scientists say should be done."

RECOMMENDATIONS:

The recommendations focus on implementing: (1) the critical characteristics of shared leadership and management as articulated by the Community Health Governance Model into EPA coordination and collaboration with the Tribes and indigenous peoples; and, (2) building historical memory within, among and across agencies is an important step in developing greater coordination and collaboration.

- 13. Elevate tribal government leaders, tribal or indigenous elders, and other community identified leader to increase tribal government and indigenous peoples visibility through collaboration/co-management/joint learning between tribes, federal agencies, states and non-profit organizations working within tribal or indigenous communities.**
- 14. Strengthen capacity of tribes and indigenous peoples to use principles of coordination and collaboration to transform and strengthen Community Health Governance, which broadens community involvement in the work of government.**
- 15. Increase funding for the Environmental Justice Collaborative Problem-Solving Cooperative Agreement Program (EJCPS) so that tribal-specific programs can be increased.**
- 16. Promote the EJCPS among Tribes and initiate a tribal-specific Environmental Justice Collaborative Problem-Solving Cooperative Agreement Program (EJCPS), creating joint learning opportunities where appropriate. Tribes and multiple federal agencies should also develop a Regional Climate Change Task Force to develop climate change policy and priorities.**

- 17. Assist Tribes, Indigenous peoples and non-profit organizations working within Tribes to gain greater understanding of how the Executive Order on interagency coordination on tribal affairs (dated June 26, 2013) pertains to existing interagency working groups.**
- 18. Develop a bibliography of the most important reports pertaining to environmental justice issues of concern to tribes and indigenous peoples, generated between the years 2000-2013.**
- 19. Develop a document based on the reports that indicates which recommendations have been implemented, which might no longer be relevant, and which remain relevant but thus far not addressed.**
- 20. Build broader understanding across agencies of the distinctions between federally recognized tribes and other Indigenous entities.**
- 21. Build broader understanding of how issues of environmental justice are inter-related to other issues and policies such as the Native American Graves Protection and Repatriation Act (NAGPRA), the recent UN Declaration on the Rights of Indigenous Peoples, the American Indian Religious Freedom Act (AIRFA), health disparities, climate change, and reproductive health/justice concerns which all impact how environmental justice issues are approached. For example:**
 - a. Reproductive Justice is an environmental justice concern that requires coordinated efforts to address the reproductive health impacts of industrial toxic waste on present and coming generations.
 - b. Agencies should attend regional and national conferences and meetings on these EJ-related issues to broaden their understanding of these environmental justice issues. [e.g. Patterns of Native Health Day workshop and symposium, April 2014.]
 - c. Climate change impacts are seen as environmental justice concerns, and are of significant concern to tribes and indigenous peoples. EPA Region 10 Tribal Leaders Summit, August 31, 2010, created a *Region 10 Inter-Agency - Tribal Visions for Action* document which contains many good action items for addressing tribal and indigenous climate impacts.
- 22. EPA should develop a matrix of currently existing federal interagency collaborative mechanisms that includes the Federal Interagency Working Group on Environmental Justice (IWG EJ) and the Interagency Working Group on Indian Affairs (July 26, 2013).**
- 23. EPA should work with HHS and other federal agencies to integrate Environmental Health and Justice (EH/J) and Reproductive Health and Justice (RH/J) concerns because of the reproductive health impacts of exposures to industrial toxic waste on present and coming generations.**
- 24. EPA should help other federal agencies and interagency work groups develop an understanding and comprehension of environmental justice as it pertains to federally recognized tribal governments and indigenous peoples, recognizing the relationship to each other, distinction from each other, and necessity for separate engagement and responsibilities to each.**
- 25. EPA should assist in fostering dialogue and collaboration among tribes, states, local governments, businesses, community-based organizations, etc. to promote environmental justice and sustainability (which may likely include issues of sovereignty, jurisdiction, land ownership, environmental and public health concerns, etc. that will arise in the implementation of EPA's EJ Policy).**

26. EPA should develop a website that can be easily referenced and updated with a compendium of how each agency is working to address tribal and indigenous peoples environmental justice issues. Currently, www.EPA.gov is a vast, complex site to navigate and needs a design a portal that brings consilience to the varied subject areas for tribes. For example, the links to the tribal eco-ambassador program below should link to the Smithsonian Living Earth Festival You Tube video of the Eco-Ambassador presentation at the NMAI. It should be available at www.EPA.gov for tribal leaders and members.⁷

IV. WORKING WITH INDIGENOUS PEOPLES AND COMMUNITIES

EPA Policy includes two principles relevant to the Agency's work with Indigenous peoples and communities to address their environmental and human health concerns:

- The EPA engages in open communication with indigenous peoples and provides for meaningful involvement and fair treatment in its decision-making processes that may impact their communities.
- The EPA responds to the environmental justice concerns of tribal members, as citizens of the United States, as well as the environmental justice concerns of others residing in Indian country, recognizing the need to be responsible to the environmental justice concerns of individual tribal members.

Findings:

In many instances, Indigenous peoples do not have the economic means to access information outside of their communities and often live in remote locations which make it difficult for them to become engaged or learn about what is being proposed (by government or outside entities) for their community. Understanding the socio-economic background of these communities can help EPA identify solutions to building effective communication and collaboration pathways with indigenous peoples. This section focuses on the importance of working with Indigenous peoples and communities in addition to federally recognized tribes. In addition to their sovereign rights as members of federally recognized tribes, tribal members are also enfranchised citizen of the United States, and are afforded all the protections, rights and responsibilities provided by citizenship. As a government agency, the EPA has the responsibility to protect the rights of tribal members and indigenous individuals in Indian country, which at times may require them to weigh and negotiate tribal sovereignty with and against civil rights and liberties.

RECOMMENDATIONS:

Engaging Indigenous peoples when EPA is making decisions and proposals

27. To help build EPA's knowledge and cultural competency of indigenous peoples and their organizations, EPA offices should be informed about: the tribal nations' territories, ancestral and cultural territories, land mass, population, identifying each communities' economy, decision making processes (local and nationwide), governance, infrastructure, community-based/grassroots (EJ) organizations, language usage, and cultural holidays.

28. On a yearly basis, EPA should create community presentations that explain EPA's role within tribal nations' territories. Presentations should include background information and an

⁷ EPA's tribal eco-ambassador page is not all that comprehensive at this moment, <http://www.epa.gov/ecoambassador/tribal/>. The link to the 2011-2012 eco-ambassador report with the Fort Peck findings from the first year (pages 14-17) can be found at <http://epa.gov/tp/pdf/2011-2012tribal-ecoambassadors-report.pdf>. Similarly, consider the link to the Fort Peck Clinical Trial, including the Smithsonian Living Earth Festival You Tube video is <http://www.foodingredient.info/fortpeckclinicaltrial.html>.

overview of various laws such as NEPA, Clean Air Act, Clean Water Air, Endangered Species Act, etc., as well as other EPA policies and programs that pertain to the respective location and terrain of tribal nations. Presentations should also include the known upcoming decisions that may impact tribal nations and community health.

29. As EPA is creating policy, laws or making decisions that impact a tribal nation, tribal communities, and Indigenous peoples (in addition to notifying and working with the respective tribal environmental offices and tribal leadership), EPA should:

- a. Inform Indigenous communities whose lands, air, water and health may be impacted by the EPA decision or action.
- b. Send an EPA representative to local Indigenous communities, chapters, and environmental justice organizations to explain EPA's upcoming proposals, EPA laws and process/timeline of how they determine to make a decision, and the deciding factors.
- c. Depending on the territory, provide adequate translation, take questions, and comments from the public to be better informed.
- d. As EPA is creating proposals and/or decisions in the English language, equally translate EPA proposals in the relevant Indigenous speaking community's language that EPA's decision or proposal will impact.
- e. Thoroughly explain the pros and cons of each proposal, and the long-term environmental and health implications of EPA's decision.
- f. Make presentations accessible to the public so that Indigenous peoples can listen and ask questions to be adequately informed to provide input.
- g. Ensure translations of the proposals are made by Indigenous translators, in-person, by radio, and by video.
- h. Make available a public recorder to tape, record or transcribe Indigenous peoples' comments and input.

30. As EPA is consulting with Indigenous peoples, they should also consult with local leaders within those "tribal nations" whose lands, air, water or health may be impacted by EPA's decision. EPA should also give that particular nation a forum or forums to consult with tribal members.

31. EPA and the tribal environmental programs should work together to engage all indigenous peoples whose land, air, water and health will be impacted by any EPA decisions or proposals.

32. EPA and tribal environmental programs should utilize a culturally appropriate process, like the Traditional Ecological framework, to engage indigenous peoples and communities to begin identifying helpful lines of communication and collaboration that work best for EPA and indigenous peoples.

33. Each of the 10 EPA regions should establish a working position for an Environmental Justice Indigenous Liaison that can help outreach and share information that is relevant to tribal nations and environmental justice communities/indigenous peoples within their jurisdiction who may be impacted by an EPA decision or proposal.

34. EPA and tribal EPA should provide legal and technical support for indigenous peoples to better understand EPA decisions, policies and laws especially if an EPA decision or proposal impact indigenous peoples land, water, air, health and human rights.

35. When EPA is making a decision regarding an industry that is currently going under review for compliance through the Clean Air and Clean Water acts or other laws, they should review the past and current health impacts the industry has had on public health. If a health study is not

available then EPA should provide grants to support health researchers to conduct an assessment.

ⁱ United Nations, Department of Economic and Social Affairs, Division for Social Policy and Development, Workshop on Data Collection and Disaggregation for Indigenous Peoples, New York, January 19-21, 2004, [The Concept of Indigenous Peoples](#), Background paper prepared by the Secretariat of the Permanent Forum on Indigenous Issues, PFI/2004/WS.1/3.