

Attachment
Section – 4:
Tribal Implementation Plan



Developing a Tribal Implementation Plan



For full text see EPA website:

<http://www.epa.gov/oar/tribal/tip2002/index.html>

TAS ELIGIBILITY PROCEDURAL STEPS

STEP 1: Tribe Submits an Application

STEP	DESCRIPTION	RESPONSIBILITY
1A	Pre-application discussions and technical assistance, if appropriate	Joint Tribe / EPA
1B	EPA review of pre-application materials (if requested)	Joint Tribe / EPA
1C	Tribe submits application to EPA	Joint Tribe / EPA
1D	EPA notifies the tribe of receipt of application, and as needed, requests additional information from the tribe, within 30 days of receipt of the application	EPA (Region)
1E	Tribe submits additional information, if applicable	Tribe

STEP 2: EPA Review

STEP	DESCRIPTION	RESPONSIBILITY
2A	EPA reviews application and determines if the application is complete	EPA (Region)
2B	EPA notifies all appropriate governmental entities of the application and how it identifies the reservation's boundaries, and of any assertions regarding tribal authority over non-reservation areas, within 30 days of receipt of initial, complete application	EPA (Region)
2C	EPA notifies the tribe, in writing, that the application is complete no later than when EPA provides the notification in Step 2B	EPA (Region)

STEP 3: Comment Period (if needed)

STEP	DESCRIPTION	RESPONSIBILITY
3A	Appropriate governmental entities and the public have the opportunity to comment regarding the reservation's boundaries or tribal authority over non-reservation areas; comments are generally due within 30 days	Commenter
3B	EPA provides the comments to the tribe within 30 days of the close of the comment period	EPA (Region)
3C	The tribe reviews the comments and may respond	Tribe

STEP 4: Final TAS Eligibility Decision

STEP	DESCRIPTION	RESPONSIBILITY
4A	EPA prepares decision document and response to comments	EPA (Team)
4B	EPA regional official signs decision document	EPA (Region)
4C	EPA notifies tribe of decision within 30 days of signature	EPA (Region)

**TAS ELIGIBILITY REGULATORY REQUIREMENTS AND
EXAMPLES OF SUPPORTING DOCUMENTATION**

Regulatory Provision	Examples of Documentation
<p>1. An Indian tribe must be federally recognized. 40 CFR 49.6(a). To meet this requirement, a tribe should provide a concise statement that it is recognized by the Secretary of the Interior. 40 CFR 49.7(a)(1).</p>	<p>The Secretary of the Interior publishes in the <i>Federal Register (FR)</i> a list of federally recognized Indian tribes. Applicants often submit a recent copy of the FR list to establish that the tribe has federal recognition.</p>
<p>2. The tribe has a governing body carrying out substantial governmental duties and powers. 40 CFR 49.6(b). An application should include a descriptive statement demonstrating that it is currently carrying out substantial governmental duties and powers over a defined area. 40 CFR 49.7(a)(2). The statement should:</p> <ul style="list-style-type: none"> - Describe the form of the tribal government. 40 CFR 49.7(a)(2)(i). - Describe the types of government functions currently performed by the tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain. 40 CFR 49.7(a)(2)(ii). - Identify the source of the tribal government's authority to carry out the governmental functions currently being performed. 40 CFR 49.7(a)(2)(iii). 	<p>Applications discuss the organizational structure of the tribe and identify and describe the entities that exercise the executive, legislative, and judicial functions of government.</p> <p>Applications discuss specific regulatory, legislative, executive and judicial activities the tribe undertakes, including actions to exercise its police power to protect the environment, e.g., establishing regulatory programs or carrying out permitting and enforcement activities.</p> <p>Applications identify sources of the tribal government's authority, which may include oral or written tradition, an oral or written tribal constitution, tribal ordinances, codes, by-laws, charters, and resolutions, relevant provisions of federal treaties, executive orders or statutes, etc.</p>
<p>3. The functions to be exercised by the Indian tribe pertain to the management and</p>	

protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction. 40 CFR 49.6(c). A tribe's application should include a descriptive statement of the Indian tribe's authority to regulate air quality. 40 CFR 49.7(a)(3).

- For applications covering areas within the exterior boundaries of the applicant's reservation, the statement must identify with clarity and precision the exterior boundaries of the reservation including, for example, a map and legal description of the area. 40 CFR 49.7(a)(3).

- For tribal applications covering areas outside the boundaries of the reservation, the statement should include:

- o A map or legal description of the area over which the application asserts authority. 40 CFR 49.7(a)(3)(i).

- o A statement by the applicant's legal counsel (or equivalent official) that describes the basis for the tribe's assertion of authority (including the nature of subject matter of the

EPA interprets Clean Air Act (CAA) § 301(d) as a Congressional delegation of authority to eligible federally recognized tribes for all air resources within a reservation. Thus, a tribe's application must establish the reservation's location and boundaries. Applications include maps showing the area and air resources over which the tribe asserts authority. A map may be based on an official survey by the U.S. Department of the Interior or an official map of the reservation prepared by the Bureau of Indian Affairs. A written legal description discusses with some specificity the locations of the boundaries of the reservation areas over which the tribe asserts authority.

Applications include maps showing the area and air resources over which the tribe asserts authority. A map may be based on an official survey by the U.S. Department of the Interior or an official map of the reservation prepared by the Bureau of Indian Affairs. A written legal description discusses with some specificity the locations of the boundaries of the reservation areas over which the tribe asserts authority.

Legal counsel statements identify and discuss the legal basis for the tribe's assertions of authority over areas covered by the application, with special attention to showing the tribe has jurisdiction over nonmember

<p>asserted regulatory authority) which may include a copy of documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions that support the tribe's assertion of authority. 40 CFR 49.7(a)(3)(ii).</p>	<p>activities, if applicable.</p>
<p>4. The tribe is reasonable expected to be capable of effectively administering the CAA program for which the tribe is seeking approval. 40 CFR 49.6(d). The application should include:</p> <ul style="list-style-type: none"> - A narrative statement describing the capability of the applicant to administer effectively the CAA program for which the tribe is seeking approval. The narrative statement must demonstrate the applicant's capability consistent with the applicable provisions of the CAA and implementing regulations. 40 CFR 49.7(a)(4). <p>And, if requested by the Regional Administrator, the statement may include:</p> <ul style="list-style-type: none"> - A description of the Indian tribe's previous management experience which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, et seq.), the Indian Mineral Development Act (25 U.S.C. 2101, et seq.), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a). 40 CFR 49.7(a)(4)(i). - A list of existing environmental or public health programs administered by the tribal governing body and a copy of related tribal laws, policies, and regulations. 40 CFR 49.7(a)(4)(ii) 	<p>Examples of the recommended content of this narrative are listed below:</p> <p>In addition to experience with the federal programs listed in the regulation, tribal applications may also discuss the tribe's previous management experience with its own tribal programs. This discussion need not address environmental program management experience, which is included in the next heading.</p> <p>Applications describe a tribal air, water, or waste management program, or any other environmental or public health programs administered by the tribe, as well as tribal experience with resource management.</p>

<ul style="list-style-type: none"> - A description of the entity (or entities) that exercise the executive, legislative, and judicial functions of the tribal government. 40 CFR 49.7(a)(4)(iii). - A description of the existing, or proposed, agency of the Indian tribe that will assume primary responsibility for administering a Clean Air Act program (including a description of the relationship between the existing or proposed agency and its regulated entities). 40 CFR 49.7(a)(4)(iv). - A description of the technical and administrative capabilities of the staff to administer and manage an effective air quality program or a plan which proposes how the tribe will acquire administrative and technical expertise. The plan should address how the tribe will obtain the funds to acquire the administrative and technical expertise. 40 CFR 49.7(a)(4)(v). 	<p>Relevant documents include copies or summaries of tribal laws and regulations governing the described program(s). A tribe is not required to have experience in administering environmental programs, but a tribe with such experience may wish to provide such information.</p> <p>Applications describe the tribal governmental system. This information may overlap with or duplicate information about the tribal governmental structure and functions discussed under 40 CFR 49.7(a)(2) above, and a tribe may refer to, rather than repeat, that information.</p> <p>Applications describe the tribe's environmental management program.</p> <p>Applications describe the qualifications of tribal staff, including resumes. Position descriptions are also useful documentation, since individual staff may change in future years. Or an application may include a plan that describes how the tribe will acquire the needed expertise to operate an effective program and how it will obtain the funds required to develop technical and administrative expertise.</p>
<p>5. Additional information required by EPA that, in EPA's judgment, is necessary to support a tribal application. 40 CFR 49.7(a)(7).</p>	<p>Additional documentation from a tribe when needed to clarify or supplement the application.</p>

**Tribal Implementation Plan (TIP) Completeness Checklist
(Based on 40 CFR 51, Appendix V*)**

STATUS	ITEM	COMMENT
	Procedural or Preparation for TIP Application	
	Determine, through discussions at the tribal and EPA level, whether a TIP is appropriate for the tribe to pursue (e.g., what are resource and jurisdictional impacts).	
	Plan and coordinate for pre-formal submission meetings and letter reviews; and collaborate on expectations to move the application along in the process.	
	Submit DRAFT TIP application package to EPA regional office for initial response before submitting formal application.	
	Administrative	
	A formal letter of submittal from the tribal leader or delegated tribal official requesting EPA approval.	
	Evidence that the tribe has adopted the plan in the tribal code or body of regulations, including date of adoption.	
	Evidence that the tribe has the necessary legal authority.	
	A copy of the TIP (or TIP element) adopted.	
	Evidence that the tribe followed procedural requirements of the tribe's laws in adopting the TIP.	
	Evidence that public notice was given, including the date of publication of such notice.	
	Certification that public hearing(s) were held consistent with the public hearing requirements in 40 CFR 51.102.	
	Compilation of public comments and the tribe's response.	
	Technical	
	Identification of regulated pollutants affected by the TIP.	
	Where appropriate, identification of affected sources locations, including the attainment/nonattainment designations.	
	Quantification of the changes in the plan's allowable and actual emissions from the affected sources, where appropriate.	
	Demonstration that the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved, where appropriate.	
	Modeling information which supports the TIP, including input data, output data, and models used, where appropriate, where appropriate	
	Evidence, where necessary, that emission limitations are based on continuous emission reduction technology.	
	Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels.	
	Compliance/enforcement strategies, including how compliance will be determined in practice for civil enforcement and a Memorandum of Understanding with EPA for criminal enforcement.	
	Other information required by any applicable EPA policies or an explanation of why such justifications are not necessary.	

[See http://edocket.access.gpo.gov/cfr_2008/julqtr/pdf/40cfr51AppV.pdf]

