



This binder of information has been compiled by Regional Tribal Operation Committee Representatives (RTOC) to assist incoming RTOC Representatives. We hope that this will help you understand how the RTOC Body works and what guides it as well as answer any questions you may have.

The items inside are subject to change over time as they are updated and new ones develop. As items are revised or changed, we hope you will update as needed.

I hope this binder serves you well.

With Respect,

Nina Hapner  
Director of Environmental Planning  
Kashia Band of Pomo Indians  
Central California Representative, December 2014

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### ***National Documents***

GAP Guidance, 2013

GAP Guidebook, 2013

National Tribal Operations Committee Reference

Guide EPA Strategic Plan, FY2018-2022

### ***Consultation Documents***

EPA Policy on Consultation and Coordination with Tribes, 2011

Executive Memorandum to Department Heads and Agencies on Tribal Consultation, 2009

Executive Order 13175 Consultation and Coordination with Tribes, 2000

EPA Indian Policy, 1984

## **Brief History of the Regional Tribal Operations Committee and the General Assistance Program Act**

The Regional Tribal Operations Committee (RTOC) in Region 9 began meeting not long after the Indian Environmental General Assistance Program Act was enacted in 1992. The first Charter for RTOC was approved on July 28, 1995. The RTOC is a working committee of Tribal and EPA personnel co-chaired by a Tribal representative and an EPA representative. EPA designates its RTOC representatives through internal mechanisms. All Tribes within Region 9 are considered members of the RTOC. Tribal representatives to the RTOC are selected through government-to-government communication, by Tribal leaders in various geographical areas within Region 9.

The RTOC's mission is to assist EPA in meeting its trust responsibility to the Tribes, provide support for the Tribal Program in the Region, strengthen Tribal environmental and public health programs, enhance responsiveness to Tribal needs, and assist with the communication and information exchange between Tribes and EPA.

The Indian Environmental General Assistance Program Act was enacted on October 4, 1992 and amended on November 24, 1993 (P.L. 103-155 Stat. 1523) to extend the authorization of the Act to fiscal year 1998. Since that time the General Assistance Program has continued to assist Indian tribal governments and tribal consortia to enhance their capacity to administer environmental programs on Indian land.

The Indian Environmental General Assistance Program Act responds to the needs identified by Indian tribes for increased Federal assistance to improve environmental protection on Indian lands. The Act authorizes the EPA to award grants, at a minimum level of \$75,000 per year, to Indian tribes to develop the necessary technical, legal and administrative infrastructure for effective environmental regulation.

The strength of the General Assistance Program (GAP) is the flexibility provided to Indian tribes to plan and develop a reservation specific approach to environmental protection, consistent with tribally-identified environmental priorities. According to estimates by the EPA, approximately 100 of the 557 Federally-recognized Indian tribes have received GAP funding since its enactment. However, the demonstrated need by Indian tribes far exceeds the existing level of funding.

The General Assistance Program strengthens public health and environmental protection for Tribes, consistent with the Federal policies of Tribal Self-Determination and Self-Governance and EPA's 1984 Indian Policy. The Federal Government recognizes that Indian tribal governments are the appropriate authority to manage environmental programs on Indian reservations. The GAP program represents an important first step in developing tribal environmental regulatory capacity to protect environmental quality on Indian reservations. With GAP grants, Indian tribes are able to develop comprehensive and integrated tribal environmental programs in the areas of:

- Solid and hazardous waste management
- Water quality
- Air quality
- Pesticide management

<b>Position Title:</b>	<b>RTOC Representative</b>	<b>Travel Required:</b>	Yes
<b>Location:</b>	EPA Region 9	<b>Length of Service:</b>	2 years
<b>Job Description</b>			
<p><b>Role and Responsibilities</b></p> <ul style="list-style-type: none"> <li>• Have the support of your Tribal Council.</li> <li>• Ability to speak with the public with confidence and be clear and concise.</li> <li>• Be willing to provide verbal engagement and representation of Tribes when discussion is occurring.</li> <li>• Be engaged and be proactive in discussions.</li> <li>• Be knowledgeable of relevant policies and procedures pertaining to RTOC and EPA.</li> <li>• Be persistent to get an answer and provide feedback to all tribes as needed.</li> <li>• Must appoint an alternate for your position in case unable to attend meetings.</li> <li>• Periodically update tribal contact lists and share with RTOC Co-Chair and tribes.</li> <li>• Assist the RTOC Co – Chair with drafting agenda</li> <li>• Be willing to assist the RTOC Co-chair with reviewing minutes and action items.</li> <li>• Assist the RTOC Co-chair with engaging tribes within the RTOC.</li> <li>• Be familiar with the RTOC Charter and attend RTOC in conformity with the Charter.</li> <li>• Disseminate information pertaining to tribal issues not only on a local basis but regional as well (requirement to maintain contact information for tribes represented and get on state, federal, local agency list serves).</li> <li>• Be prepared to serve as a workgroup lead or on various councils if necessary.</li> <li>• Be aware and informed on national and regional agency strategies and legislation that have impacts on Tribes.</li> </ul> <p><b>Qualifications</b></p> <ul style="list-style-type: none"> <li>• Tribal leaders, Tribal Officers, Tribal Staff, Tribal Member of Tribe in the Region.</li> </ul> <p><b>Preferred Skills</b></p> <ul style="list-style-type: none"> <li>• Skill in operating business computers and office machines, including windows suite (excel, word, access, power point).</li> <li>• Knowledge of applicable federal, state, county, and local laws, regulations, and requirements.</li> <li>• Ability to maintain confidentiality, when necessary.</li> <li>• Ability to work positively with the Tribal community and co-workers in a conscientious and professional manner.</li> </ul> <p><b>Additional Notes</b></p>			

# Regional Tribal Operations Committee Elected Representatives 2019-2021

Effective October 1, 2019

## **RTOC Tribal Co-Chair**

Mervin Wright Jr.

## **RTOC Tribal Co-Chair Alternate**

TBD

## **Regional Representatives**

### Northern Arizona

#### **Name**

Alvin Crook

Vacant

#### **Tribes in region:**

Fort Mojave, Havasupai, Hopi Tribe, Hualapai Tribe, Kaibab-Paiute, San Juan, Southern Paiute

### Central Arizona

#### **Name**

Brenda Pusher-Begay

Jeremy Philips

#### **Tribes in region:**

Chemehuevi, Fort McDowell, Salt River, San Carlos, Tonto Apache, White Mountain, Yavapai-Prescott,  
Yavapai Apache

### Southern Arizona

#### **Name**

Willard Antone

Marla Henry

#### **Tribes in region:**

Ak-Chin, Cocopah, Colorado River, Gila River, Pascua Yaqui, Quechan, Tohono-O'odham

### Navajo Nation

#### **Name**

Ronnie Ben

#### **Tribes in region:**

Navajo Nation

## Northern California

### Name

Roselynn Lwenya

Crystal Robinson

Vacant

### Tribes in region:

Alturas, Berry Creek, Big Lagoon, Blue Lake, Cedarville, Colusa, Elk Valley, Enterprise, Fort Bidwell, Greenville, Grindstone, Hoopa, Karuk, Mechoopda, Mooretown, Paskenta, Pit River, Quartz Valley, Redding Resighini, Rohnerville, Smith River, Susanville, Table Bluff (Wiyot), Trinidad, Yurok

## Central California

### Name

Kerry Vera

Meyo Marrufo

Emily Luscombe     **Alternate:**     Nina Hapner

### Tribes in region:

Auburn, Big Sandy, Big Valley, Buena Vista, Cahto, CA Valley Miwok, Chicken Ranch, Cloverdale, Cold Springs, Cortina, Coyote Valley, Dry Creek, Elem, Graton, Guidiville, Habematolel Pomo of Upper Lake, Hopland, Ione, Jackson, Lower Lake, Lytton, Manchester, Middletown, North Fork, Picayune, Pinoleville, Potter Valley, Redwood Valley, Robinson, Round Valley, Santa Rosa Rancheria, Scotts Valley, Sherwood Valley, Shingle Springs, Stewarts Point, Table Mountain, Tule River, Tuolumne, Wilton, Rumsey-Yocha Dehe

## Eastern California

### Name

Terri Red Owl

### Tribes in region:

Utu Utu Benton, Big Pine, Bishop, Bridgeport, Fort Independence, Lone Pine, Timbisha

## Southern California

### Name

Rob Roy

Teresa Romero

Melody Sees

### Tribes in region:

Agua Caliente, Augustine, Barona, Cabazon, Cahuilla, Campo, Ewiiapaayp, Inaja, Jamul, La Jolla, La Posta, Los Coyotes, Manzanita, Mesa Grande, Morongo, Pala, Pauma, Pechanga, Ramona, Rincon, San Manuel, San Pascual, Santa Rosa Reservation, Santa Ynez, Santa Ysabel, Soboba, Sycuan, Torres Martinez, Twenty Nine Palms, Viejas

## Nevada

### Name

Clifford Banuelos  
Sherry Crutcher  
Dallas Smales  
Jill Perez  
Annette George  
Mervin Wright Jr.  
Marla Stanton

**Tribes in region:**

Battle Mountain, Duckwater, Elko Band, Ely Shoshone, Fallon, Ft. McDermitt, Goshute, Las Vegas, Lovelock, Moapa, Pyramid Lake, Reno-Sparks, Shoshone-Paiute Tribe of the Duck Valley Reservation, South Fork, Summit Lake, Te-Moak, Walker River, Washoe, Wells, Winnemucca, Yerington, Yomba

## Regional Indian Programs Steering Committee (RIPSC) Members

**U.S. Environmental Protection Agency Region 9  
75 Hawthorne Street. San Francisco, CA 94105**

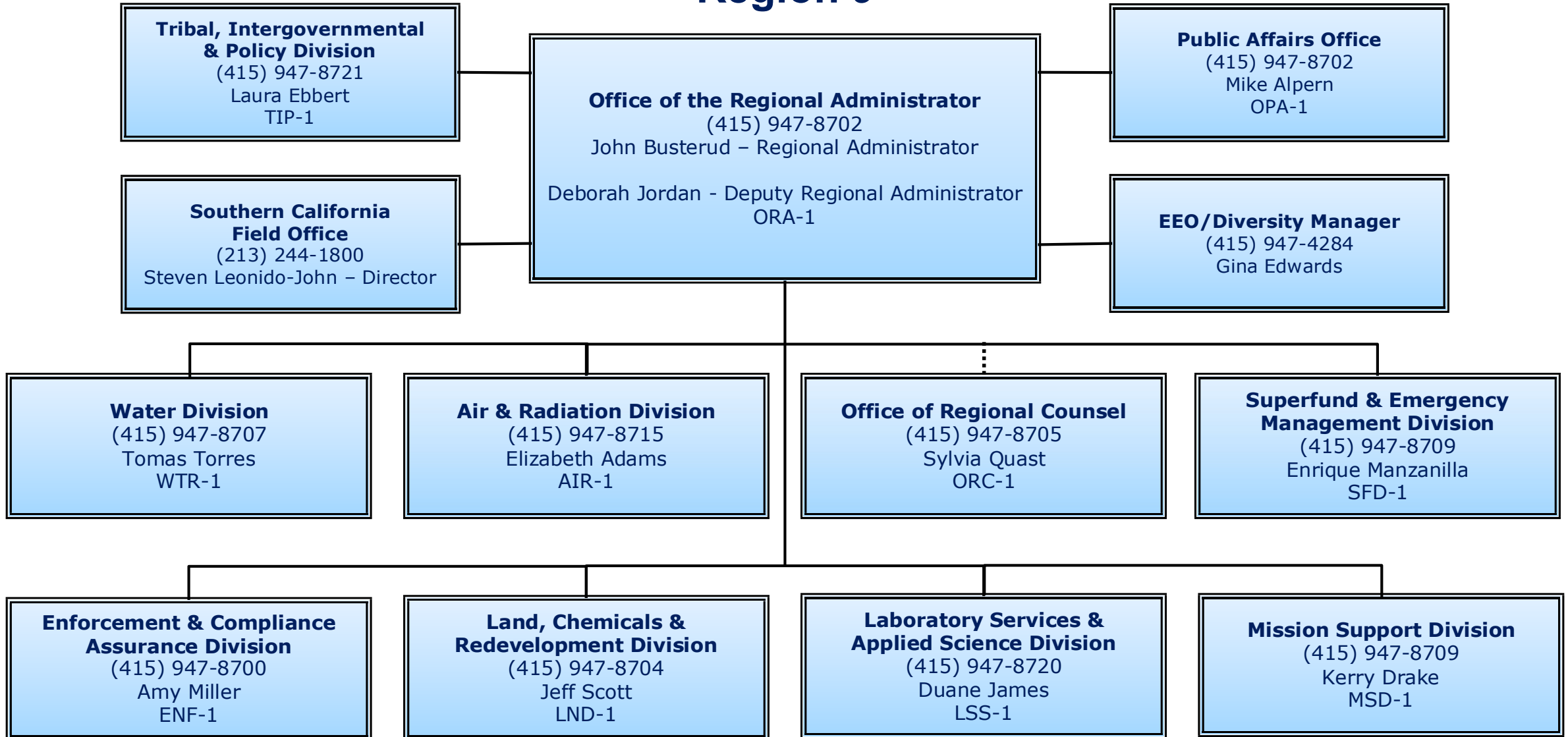
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Damian Willson Tribal Lands Cleanup Section	Superfund and Emergency Management Division	415-972-3453 willson.damian@epa.gov
Deirdre Nurre Zero Waste Section	Land, Chemical and Redevelopment Division	415-947-4290 nurre.deidre@epa.gov

### **Regional Indian Programs Steering Committee (RIPSC) Members**

Ivan Lieben, Attorney-Advisor	Office of Regional Counsel	415-972-3914 lieben.ivan@epa.gov
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# Environmental Protection Agency

## Region 9



## Workgroup Leads (Summer 2020)

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<b>Tribal Co-Chair Alternate</b>	Clifford Banuelos	<a href="mailto:cbanuelos@itcn.org">cbanuelos@itcn.org</a>	775-687-9483
<b>AIR Workgroup</b>			
Tribal Lead	Willard Antone III	<a href="mailto:Willard.Antonelli@gric.nsn.us">Willard.Antonelli@gric.nsn.us</a>	520-562-2779
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<b>BUDGET Workgroup</b>			
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EPA Lead	Raven Austin	<a href="mailto:austin.raven@epa.gov">austin.raven@epa.gov</a>	415-407-6700
<b>CHARTER Workgroup</b>			
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EPA Lead	Jeremy Bauer	<a href="mailto:bauer.jeremy@epa.gov">bauer.jeremy@epa.gov</a>	415-972-3206
<b>CONFERENCE PLANNING</b>			
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<b>CONSULTATION Workgroup</b>			
Tribal Lead	Kelcey Stricker	<a href="mailto:kstricker@pechanga-nsn.gov">kstricker@pechanga-nsn.gov</a>	o: 951.770.6153 c: 951.240.9918
EPA Lead (Delegate)	Laura Ebbert (Jeremy Bauer)	<a href="mailto:ebbert.laura@epa.gov">ebbert.laura@epa.gov</a> ( <a href="mailto:bauer.jeremy@epa.gov">bauer.jeremy@epa.gov</a> )	415-947-3561 (619-235-4787)
<b>DRINKING WATER/WASTEWATER Workgroup</b>			
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<b>EMERGENCY RESPONSE /PLANNING Workgroup</b>			
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EPA Lead	Pam Overman	<a href="mailto:Overman.pamela@epa.gov">Overman.pamela@epa.gov</a>	415-972-3781
<b>GAP Workgroup</b>			
Tribal Lead	Kerri Vera/Teresa Romero		
EPA Lead	Jeremy Bauer	<a href="mailto:bauer.jeremy@epa.gov">bauer.jeremy@epa.gov</a>	415-972-3206
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EPA Lead	Patti Tenbrook	<a href="mailto:tenbrook.patti@epa.gov">tenbrook.patti@epa.gov</a>	415-947-4223
<b>QUALITY ASSURANCE Workgroup</b>			
Tribal Lead	VACANT		
EPA Lead	Audrey L Johnson	<a href="mailto:Johnson.AudreyL@epa.gov">Johnson.AudreyL@epa.gov</a>	415-972-3431
<b>SOLID WASTE Workgroup</b>			

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EPA Lead	Dierdre Nurre	<a href="mailto:nurre.deirdre@epa.gov">nurre.deirdre@epa.gov</a>	415-947-4290
<b>CLEAN WATER Workgroup</b>			
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<b>CA Issues Workgroup</b>			
Tribal Lead	Sarah Ryan	<a href="mailto:sryan@big-valley.net">sryan@big-valley.net</a>	707-263-3924 x132
<b>National Partnership Groups</b>			
<b>NATIONAL TRIBAL CAUCUS</b>			
<b>Arizona Representative</b>	Alvin Crook	<a href="mailto:acrook87@yahoo.com">acrook87@yahoo.com</a>	
<b>California Representative</b>	Meyo Marrufo	<a href="mailto:epa@guidiville.net">epa@guidiville.net</a>	
<b>Nevada Representative</b>	Annette George	<a href="mailto:hrtwarrior_1017@yahoo.com">hrtwarrior_1017@yahoo.com</a>	
<b>Navajo Nation Representative</b>	Ronnie Ben	<a href="mailto:ronnieben@navajo-nsn.gov">ronnieben@navajo-nsn.gov</a>	
<b>FEDERAL INFRASTRUCTURE TASK FORCE</b>			
EPA Lead	Jenny Stephenson	<a href="mailto:stephenson.jenny@epa.gov">stephenson.jenny@epa.gov</a>	415-972-3429
Tribal Representative	VACANT		
<b>NATIONAL TRIBAL WATER COUNCIL</b>			
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Tribal Representative	VACANT		
<b>NATIONAL TRIBAL TOXICS COMMITTEE</b>			
Tribal Representative	VACANT		
<b>NATIONAL TRIBAL PESTICIDES PROGRAM COUNCIL</b>			
Tribal Representative	Nina Hapner	<a href="mailto:nina@stewartspoint.org">nina@stewartspoint.org</a>	707-591-0583
<b>NATIONAL TRIBAL SCIENCE COUNCIL</b>			
R9 Tribal Representative	Shasta Gaughen	<a href="mailto:sgaughen@palatribe.com">sgaughen@palatribe.com</a>	7608913515
<b>NATIONAL TRIBAL AIR ASSOCIATION</b>			
Tribal Chair/R9 Tribal Representative	Wilfred Nabahe	<a href="mailto:wilfred.nabahe@crit-nsn.gov">wilfred.nabahe@crit-nsn.gov</a>	928-662-4336
<b>E-ENTERPRISE LEADERSHIP COUNCIL</b>			
R9 Tribal Representative	Lisa Gover	<a href="mailto:lgover@campo-nsn.gov">lgover@campo-nsn.gov</a>	(619) 378-5072

# Work Group Meeting Summary

**RTOC Work Group Name:** \_\_\_\_\_

**Work Group Co-Leads:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Place/Location:** \_\_\_\_\_

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<b>Participants:</b>	
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<b>Notes:</b>	
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# Work Group Meeting Summary

Action Item	Who	When

Next Steps:	
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# U.S. EPA, Region 9 Tribal Section Project Officer List

Current as of July 23, 2020

## Tribes located in Arizona

Ak-Chin	DC
Cocopah	JH
Colorado River Indian Tribes	DC
Fort McDowell	DC
Fort Mojave	DC
Gila River	DC
Havasupai	NA
Hopi	NA
Hualapai	NA
Kaibab	PO
Navajo Nation	NA
Pascua Yaqui	MA
Salt River	DC
San Carlos	VS
San Juan S. Paiute	NA
Tohono O'odham	MA
Tonto Apache	PO
White Mountain	PO
Yavapai Apache	VS
Yavapai Prescott	PO

## Tribes located in California

Chicken Ranch	WC
Cloverdale	MA
Cold Springs	WC
Colusa	WC
Cortina	MA
Coyote Valley	MA
Dry Creek	MA
Elem	JS
Elk Valley	NA
Enterprise	DC
Ewiiapaayp	JES
Fort Bidwell	TW
Ft Independence	JES
Graton	NA
Greenville	DC
Grindstone	DC
Guidiville	MA
Hoopa	TW
Hopland	MA
Inaja & Cosmit	JES
Ione	GP
Jackson	GP
Jamul	MA
Karuk	TW
Kashia	NA
La Jolla	PO
La Posta	JES
Lone Pine	JES
Los Coyotes	JES
Lower Lake	NA
Lytton	MA
Manchester	MA
Manzanita	JES
Mechoopda	DC
Mesa Grande	JES
Middletown	NA
Mooretown	DC
Morongo	PO
North Fork	WC
Pala	CJ
Paskenta	DC
Pauma	CJ
Pechanga	CJ
Picayune	WC
Pinoleville	MA
Pit River	TW

## Tribes located in California

Potter Valley	JS
Quartz Valley	TW
Quechan	JH
Ramona	CJ
Redding	DC
Redwood Valley	MA
Resighini	TW
Rincon	PO
Robinson	NA
Round Valley	MA
San Manuel	CJ
San Pasqual	PO
Santa Rosa Rancheria	JH
Santa Rosa Reservation	CJ
Santa Ynez	JH
Santa Ysabel	JES
Scotts Valley	JS
Sherwood Valley	MA
Shingle Springs	GP
Soboba	VS
Susanville	DC
Sycuan	JES
Table Mountain	WC
Tejon Tribe	JH
Timbisha	JES
Tolowa Dee-ni' Nation	NA
Torres Martinez	WC
Trinidad	TW
Tule River	JH
Tuolumne	WC
29 Palms	PO
Upper Lake	JS
Viejas	MA
Wilton	GP
Wiyot	DC
Yocha DeHe	WC
Yurok	TW

## Tribes located in Nevada

Battle Mountain Band	GP
Duck Valley	GP
Duckwater	WC
Elko Band	GP
Ely	WC
Fallon	VS
Fort McDermitt	GP
Goshute	WC
Las Vegas	PO
Lovelock	VS
Moapa	PO
Pyramid Lake	NA
Reno Sparks	VS
South Fork Band	GP
Summit Lake	VS
Te-Moak Tribe	GP
Walker River	VS
Washoe	NA
Wells Band	GP
Winnemucca	GP
Yerington	VS
Yomba	WC

## Tribes located in California

Agua Caliente	PO
Alturas	TW
Auburn	GP
Augustine	PO
Barona	JES
Bear River	DC
Benton	VS
Berry Creek	DC
Big Lagoon	NA
Big Pine	JES
Big Sandy	WC
Big Valley	JS
Bishop	JES
Blue Lake	TW
Bridgeport	VS
Buena Vista	GP
CA Valley Miwok	GP
Cabazon	PO
Cahto	JS
Cahuilla	VS
Campo	DC
Capitan Grande	JES
Cedarville	TW
Chemehuevi	DC

## Tribal Branch Roster

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<b>JS:</b> Jeanette Sasek	415-947-4115
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<b>MA:</b> Marisol Anaya	415-972-3874
<b>NA:</b> Nico Anderson	415-972-3865
<b>PO:</b> Pam Overman	415-972-3781
<b>TW:</b> Tim Wilhite	530-841-4577
<b>VS:</b> Veronica Swann	415-972-3699
<b>WC:</b> Willard Chin	415-972-3797

**Manager:** Jeremy Bauer 415-972-3054

## Consortia

ITCA	VS
ITCN	VS
Klamath Basin Coalition	TW
NAEPC	MA
Owens Valley	JES
Upper Snake River	GP

# **U.S. EPA REGION 9 REGIONAL TRIBAL OPERATIONS COMMITTEE CHARTER**

(July 28, 1995, As Amended June 11, 1996; September 2, 1998; February 2, 2000; July 25, 2001; October 26, 2004; February 7, 2005; April 24, 2007; May 13, 2015; and, October 24, 2016)

The Regional Tribal Operations Committee (RTOC) is the Regional counterpart to the Tribal Operations Committee (TOC). The RTOC does not replace direct Tribal to EPA relationships, nor does it constitute a forum for consultation between the federal government and Tribes. The RTOC recognizes and respects the existing Tribal jurisdiction, cultural, political and social continuity of Tribes.

## **Mission**

### **The RTOC's mission is to:**

- Assist EPA in meeting its trust responsibility to the Tribes;
- Provide support for the Tribal Program in the Region;
- Strengthen Tribal environmental and public health programs;
- Enhance responsiveness to Tribal needs;
- Assist with the communication and information exchange between Tribes, the TOC and EPA

## **Goals**

### **The RTOC's goals are to:**

- Enhance government-to-government relationships between all Tribes and EPA.
- Promote and strengthen the inherent ability and continuing efforts of Tribes to manage programs to provide environmental and public health protection.
- Assist EPA in meeting the principles of the EPA Indian Policy of 1984.<sup>1</sup>
- Foster and encourage a partnership, promote understanding, and bridge gaps between Tribal and EPA government cultures, and build relationships to improve environmental and public health protection on Indian lands.
- Demonstrate leadership in Tribal government and federal agency relations by developing strategies and recommendations for Regional resources and operating policies, based on Tribal and EPA experiences.

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<sup>1</sup> EPA Indian Policy of 1984

## Scope

To further the above listed goals, the RTOC will focus on three key areas:

**(1) Policy and Management of EPA Indian Programs.** The RTOC will review and make recommendations on the development of Regional strategies for all Indian Program activities. It will advise on Regional policies and priorities and make recommendations on the deployment of Regional resources for Tribal Program activities.<sup>2</sup> It also will provide input on how national budget and resources should be allocated.

- The RTOC will review and make recommendations on Regional program activities that impact the environment of Indian lands, including Agency initiatives that may impact Region 9 Tribal Program operations.
- The RTOC will review and make recommendations on the development, modification, and implementation of Agency policies.
- The RTOC will help identify a process for assessing the environmental problems and needs of Tribes, and filling information gaps.<sup>3</sup>
- The RTOC will identify and promote opportunities for the training, education, recruitment, and hiring of American Indians and Alaskan natives in careers of environmental and public health protection.<sup>4</sup>

**(2) Coordination/Communication among Tribes, EPA, and other Agencies.** The RTOC will serve as a communication forum for Tribal activities, ensuring effective, two-way communication between the Tribes in the Region and EPA. It will coordinate with other federal agencies and establish and strengthen communication among Tribes to disseminate information and ideas and solicit feedback. RTOC facilitates direct communication between and among tribes and EPA both individually and collectively. Protocols will be developed to achieve this. RTOC members, both from tribes and from the EPA, support the concept of an environmental presence at each Tribe.

As a coordinating body, the RTOC will provide a mechanism to identify issues, elevate them to the appropriate level, and coordinate program activities to increase effectiveness. The RTOC will provide a direct linkage to the TOC, in order to facilitate effective communication between the Tribes, Region 9, the TOC, and the American Indian Environmental Office.

In order to maintain the integrity and strength of the RTOC as an advisory body, any documents or letters (including drafts) developed for the RTOC Co-Chair signature, or as designated by the Tribal Caucus must be reviewed and vetted by the Tribal Caucus electronically or in person before being sent.

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<sup>2</sup> The RTOC as a body will not participate in individual application review and awards of EPA grants or contracts.

<sup>3</sup> The RTOC also supports increasing the number of EPA trips to Tribal lands to identify Tribal needs.

<sup>4</sup> This encompasses opportunities in Tribal and federal agencies.

**(3) Education.** The RTOC strives to ensure EPA Regional staff is educated about Tribes and Indian Programs. It helps raise awareness of the diversity among Tribes and promote a better understanding of jurisdiction and sovereignty. It also works to ensure that Tribes are informed about EPA activities and available resources (from EPA or other sources). The RTOC educates EPA about specific barriers and needs among Tribes in the Region.

## **Structure and Membership**

The RTOC is a working committee of EPA and Tribal personnel co-chaired by an EPA representative and a Tribal representative. EPA designates its RTOC representatives through internal mechanisms. All Tribes within Region 9 are considered members of the RTOC. However, for organizational purposes, Tribal representatives to the RTOC shall be selected through government-to-government communication, by Tribal leaders in various geographical areas within Region 9. The Tribal RTOC representatives, in turn, will select representatives to the National Tribal Operations Committee (NTOC).

### **I. EPA Representation**

- A. There shall be a total of 18 EPA representatives reflecting all EPA programs.
- B. EPA representatives to the RTOC are identified by the Regional Tribal Program.
- C. The Director of the Land Division, or his designee, shall serve as the EPA Co-Chair of the RTOC.

### **II. Tribal Representation**

- A. Composition: All Tribes within Region 9 are considered members of the RTOC Tribal Caucus and their designees are welcome at all meetings. However, for organizational and voting purposes, there shall be 24 Tribal representatives, elected by specific geographic area:
  - 1. Ten (10) from California: three from the northern area, three from the central area, three from the southern area, and one from the eastern area.
  - 2. Seven (7) from Arizona: two from the northern area, two from the central area, two from the southern area and one from Navajo Nation.
  - 3. Seven (7) from Nevada: these will be at-large representatives.
- B. Tribal Representative Selection Process: EPA will issue a letter to Tribal leaders requesting nominations from the Tribal leaders in each area. Tribal leaders may nominate anyone they feel is qualified and will be committed to the RTOC, whether a representative of their own Tribe or another. Nominations will include the name, Tribal affiliation and a short statement of qualifications of the nominee. EPA will put nominations on a formal ballot for vote by Tribal leaders within the particular area from which each representative will be chosen. This process is further detailed in section G below. In RTOC elections, the person, and not the Tribe the person represents, is chosen.

- C. Alternates: Each elected RTOC representative must designate, in writing, an alternate to attend meetings if the representative is unable to attend. Alternates will be selected using the representatives' Tribal or agency protocol, and will be submitted to the RTOC Tribal Co-Chair within three months of the date of the letter confirming their election or appointment. If no alternate is selected within three months by the representative, the nominee with the next highest number of votes will be selected to serve in the alternate position. If there are no additional nominees to serve as an alternate, the Co-Chair and the Tribal Caucus will select an alternate.
- D. Term, Attendance, and Vacancy: Each RTOC representative will serve a two-year term. If an RTOC representative misses three meetings within a two-year period (without sending an alternate), they will automatically step down. A position vacated for this reason or otherwise (i.e., resignation) will then be filled, at or before the next RTOC meeting, as follows: (1) by the person's designated alternate, or if there is no alternate or the alternate is unable or unwilling to serve, (2) by the person from the same geographic area who received the second highest number of votes in the last election, or (3) by a person elected by the tribes in the geographic area represented by the vacant position, with assistance from EPA or RTOC if requested. The new representative will serve out the remainder of the term, and be subject to the same rules as any other elected representative, including attendance and naming an alternate. If the vacancy occurs within 90 days of the next regular election, the position may remain vacant until filled through the regular election process. Any special election will follow the same rules as outlined in Section 11(B).
- E. NTOC Representatives: Tribal RTOC representatives will select from among themselves (state by state) Region 9 representatives. *(and their alternates to the NTOC. Alternate NTOC representatives need not be elected RTOC representatives)*. The NTOC Charter states that all regions will be allowed one alternate, the alternate for Region 9 will be the RTOC Tribal Co – Chair.
- F. Tribal Co-Chair: Tribal RTOC representatives shall select from among themselves, in accordance with section G below, the Tribal Co-Chair of the RTOC, whose term of office shall run concurrently with his or her term as a representative. Tribal RTOC representatives shall also select from among themselves, in accordance with Section G below, a Co-Chair alternate to conduct meetings if the Tribal Co-Chair is unable to perform duties.
- G. Election Process; Timeline: (for use in election years)
1. Second Friday in November - EPA to send letter to Tribal leaders asking for nominations (attach nomination forms with RTOC representative duties and responsibilities).
  2. Second Friday in December - Nominations must be postmarked by this date.

All nominees to be asked if they are willing to serve a 2-year term.

3. Second Friday in January - EPA to send out cover letter and formal ballots.
4. Second Friday in February - Votes must be postmarked by this date.
5. Second Friday in March - Ballots to be counted and elected representatives to be notified and sent Congratulatory letters by Tribal Section (TS). TS to send announcement of newly elected RTOC representatives to all tribal leaders and environmental directors. Letters will include notification that the new Tribal Co-Chair and NTOC representatives will be selected at the April meeting, and request that nominations be directed to the sitting Tribal Co-Chair prior to or at that meeting.
6. Spring RTOC Meeting RTOC Co-Chair, NTOC delegates and alternates to be selected by newly elected RTOC representatives during the Tribal Caucus. Selections to be verbally announced at the RTOC meeting.
7. By the deadline given by the TS, not earlier than April 1 - Co-Chair elect submits grant application to EPA.
8. Spring & Summer RTOC Meetings - Co-Chair elect attends meetings and learns duties from existing Co-Chair. Existing Co-Chair serves out term until September 30.
9. October 1 - Co-Chair begins 2-year term and EPA awards new grant.

### **III. Subcommittees**

As a working committee, the RTOC may appoint subcommittees or workgroups, composed of EPA personnel and Tribal designees, as needed, to develop issues or accomplish tasks. Each workgroup shall have a Tribal lead and an EPA lead, if appropriate, and shall function in accordance with RTOC Workgroup Operating Procedures.

### **Meetings**

At a minimum, the Committee will meet four times a year. Additional meetings will be scheduled if necessary, contingent upon available funds. Meetings will be conducted by the co-chairs, including facilitation and management of the agenda

RTOC members should make every effort to attend meetings. If they are absent, they will abide by the decisions made in their absence. If they cannot attend, members have the responsibility of presenting their opinions through their alternates or other means (e.g. letter). Recommendations and actions will be made by RTOC representatives and will reflect the spirit of consensus to the extent possible.

Meetings will be open to EPA employees, and all Tribal members and staff. Tribal leaders are invited to attend. Persons other than EPA staff or Tribal members and staff may be invited to attend at the discretion of the Committee.

### **Administration**

EPA will staff the RTOC. EPA will arrange RTOC meetings; distribute information, agenda & minutes to members; provide support for particular projects or tasks. Tribal representatives on the RTOC will be compensated for their participation to the fullest extent possible.

### **Charter Amendment and Review**

As the RTOC's role and responsibilities evolve, it may amend this document as necessary. This charter will be reviewed at least annually; any proposed amendments shall be developed by the Tribal Caucus or Charter Workgroup, disseminated for review and input by all the Tribes in Region 9, and voted upon at the next RTOC meeting.

**MEMORANDUM**

**SUBJECT:** 2015 Certification of Regional Tribal Operations Committee Strategic Plan

**FROM:** Jeff Scott   
Regional Tribal Operations Committee US EPA Co-Chair

Cornelius Antone   
Regional Tribal Operations Committee Tribal Co-Chair

**TO:** Region 9 Regional Tribal Operations Committee

The Region 9 Tribal Operations Committee (RTOC) is a working committee composed of Region 9 EPA personnel and Region 9 tribal representatives. The RTOC has developed this Strategic Plan to address the issues the RTOC has identified and the activities the RTOC intends to carry out between October 1, 2015 and September 30, 2017.

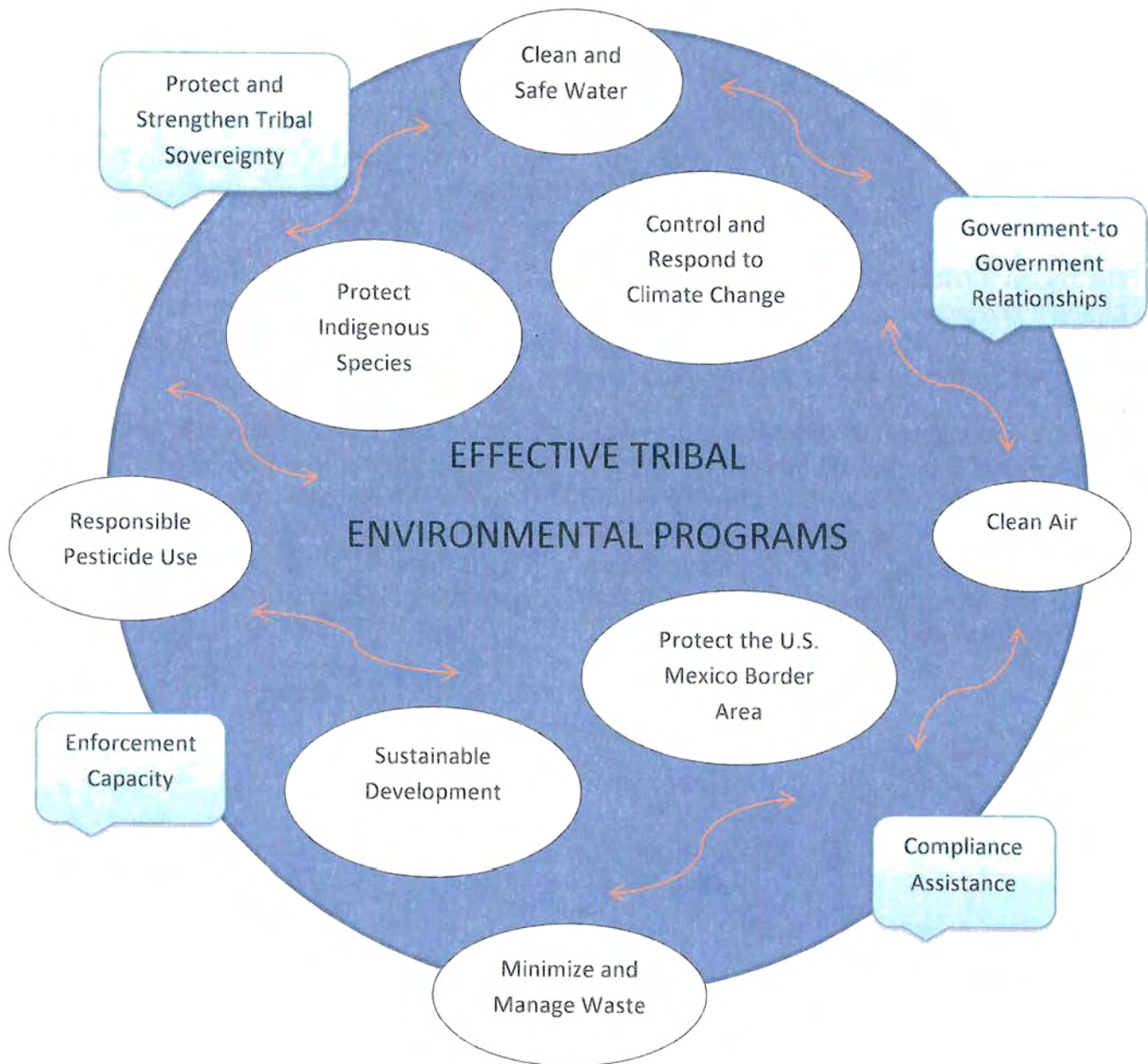
The Plan consolidates into one document a summary of RTOC operations, overarching strategic directions and proposed key actions; the objectives, strategies and tasks identified by and/or assigned by the RTOC to various workgroups to address media-specific and cross-media issues as developed by the Region 9 Tribal Caucus; and other important information to guide the work of the RTOC and ensure its continued success. The RTOC intends to use this Strategic Plan as a working document, to review it annually, and update it biannually or more often as priorities, needs and circumstances change.

REGION 9 TRIBAL OPERATIONS COMMITTEE

STRATEGIC PLAN

(October 1, 2014 – September 30, 2016)

STRATEGIES FOR MAINTAINING AND ENHANCING THE TRADITIONAL RELATIONSHIP  
BETWEEN TRIBAL COMMUNITIES AND THE ENVIRONMENT



## **INTRODUCTION**

The Regional Tribal Operations Committee (RTOC) is a working committee of EPA and Tribal personnel co-chaired by an EPA representative and a Tribal representative. The RTOC has developed this Strategic Plan to provide a comprehensive guide to issues the RTOC intends to address and activities the RTOC intends to implement between October 1, 2014 and September 30, 2016 to achieve its goals consistent with the RTOC Charter. The Plan consolidates into one document a summary of RTOC operations, overarching Strategic Directions and proposed Key Actions; the objectives, strategies and tasks identified by and/or assigned by the RTOC to various workgroups to address media-specific and cross-media issues; and other fundamental information to guide the work of the RTOC and ensure its continued success. The RTOC intends to use this Plan as a working document, to review it annually and update it biannually or more often as priorities, needs and circumstances change. This document and subsequent updates will be adopted by consensus of the RTOC at a regularly scheduled meeting.

## **ABOUT THE TRIBES IN REGION 9**

Of the nation's 572 federally recognized Indian tribes, 148 are located in the states of Arizona, California and Nevada. The areas over which the Region 9 tribes have jurisdiction and primary management authority comprise over 27 million acres, more than 10% of the land in the Region. The population, land base, government structure, history, and culture of Region 9 tribes varies widely, as do tribal environmental issues, needs and priorities reflecting the Region's ecological diversity. Underlying these variations, the tribes share a unique and significant relationship with the environment, as their histories, traditions and cultures are deeply rooted in the natural world and they face similar challenges in their efforts to protect the health of their people and the environment.

Tribal communities continue to experience significant disparity in economic, health and environmental conditions compared with the rest of the nation as a whole: nearly one-third of tribal homes remain at or below the poverty level; well over 10% of tribal homes lack access to safe drinking water or basic sanitation facilities; which can cause increase prevalence of environmentally-based illnesses.

Lacking an ability to raise independent revenue via taxation, most tribal governments are dependent on Federal assistance to support core government services, including support for environmental and community health protection efforts. See Table 1 for Funding Information for each EPA Tribal Program. Funding limitations present one of the most significant barriers to the establishment and maintenance of effective tribal environmental programs.

## **ABOUT EPA**

EPA's fundamental objective in carrying out its responsibilities in Indian country is to protect human health and the environment. EPA works directly with federally recognized tribes as sovereign entities with primary authority and responsibility for each tribe's land and membership, and not as political subdivisions of states or other governmental units.

EPA recognizes the federal government's trust responsibility, which derives from the historical relationship between the federal government and Indian tribes as expressed in certain treaties and federal Indian law. EPA ensures the close involvement of tribal governments and gives special

consideration to their interests whenever EPA's actions may affect Indian country as a whole or the interests of specific tribes.

## ABOUT THE RTOC

Originally established in or about 1995, the Region 9 Tribal Operations Committee is composed of EPA management and staff as well as tribal representatives selected by tribal leaders from eight (8) geographic areas within the Region.

The RTOC serves as a forum to identify policy and action that maximizes the effectiveness of EPA's tribal programs and protection of tribal environmental priorities, interests and needs. Consistent with its [Charter](#), the RTOC's role is to discuss general positions, views, beliefs and concerns of the tribes in Region 9 and EPA's programs, policies, and approaches in Indian Country, as well as to facilitate the provision of technical assistance to tribes by EPA, other agencies and entities, including other tribes; the RTOC is not intended to replace government-to-government relationships between tribes and the federal government or to represent the interests of any specific tribe to the Agency.

As described in its Charter, the RTOC's mission includes assisting EPA to meet its trust responsibility to tribes; providing support for tribal programs in Region 9; strengthening tribal environmental and public health programs; enhancing responsiveness to tribal needs; and facilitating communication and information exchange among tribes, the National Tribal Operations Committee, and EPA.

The Charter defines the goals of the RTOC to include enhancing the government-to-government relationship between EPA and all tribes; promoting and strengthening tribal efforts to manage environmental and public health programs; assisting EPA to meet the principles set forth in its 1984 Indian Policy; and fostering and encouraging partnerships between EPA and tribes.

The scope of RTOC activities identified in the Charter focus on three key areas: (1) policy and management of EPA's tribal programs; (2) coordination and communication among Tribes, EPA and other agencies; and (3) education.

For the last several years, RTOC meetings have been held quarterly, and generally include a day-long Tribal Caucus, various breakout sessions on specific issues, and a full day plenary session. While the body as a whole focuses on advancing its overarching priorities, the RTOC utilizes both standing and ad-hoc workgroups to focus on specific issues. The workgroups convene as needed between RTOC meetings to review, discuss and draft documents, and perform other assignments. Workgroup activities are reported out at RTOC meetings.

Through workgroup efforts and strategic focus of the larger group, the RTOC has been able to advance several of its goals on both the national and regional levels. For example, its role in providing comments on EPA's national consultation policy which was finalized in 2012 was essential. RTOC briefings and coordination with other tribal organizations strongly encouraged the President's stimulus package to ensure funding for tribal projects. RTOC work also encouraged the reinvigoration of the National Infrastructure Task force to address critical tribal drinking water and wastewater needs, and the ongoing participation by RTOC representatives in this and other national level organizations, such as the National Tribal Water Council, have ensured that the work of those organizations takes into account the concerns and perspectives, and appropriately addresses the needs, of Region 9 tribes. More locally, RTOC workgroups have assisted EPA in developing regional [policies and guidance documents, such as a FOIA guidance governing public requests for tribal](#)

information; dispute resolution procedures for tribal grantees; drinking water infrastructure funding guidance; and guidance regarding enforcement actions against off-reservation activities that impact tribal lands and resources.

## **RTOC PRIORITIES ~ STRATEGIC DIRECTIONS AND KEY ACTIONS**

Over the last several years, the RTOC has engaged in an annual exercise to define and clarify priority environmental issues for action by the RTOC and/or its workgroups. While numerous important issues have been brought to the RTOC, at the highest level the RTOC as a whole is focused on the following Strategic Directions:

- Ensuring EPA actions and policies reflect tribal priorities and EPA's trust responsibilities and consultation obligations;
- Promoting the protection, sustenance and enhancement of tribal program funding, technical assistance and other resources to support tribal environmental protection efforts.
- Facilitating coordination between tribes, EPA and other government agencies to comprehensively identify, assess and address tribal environmental protection needs; and
- Providing a forum to gather and share information and assist EPA and tribes to document achievements

To advance these Strategic Directions during the next two years, the RTOC intends to focus its efforts on one or more Key Actions, by identifying and implementing tasks to achieve the following objectives:

- Protect core tribal environmental program funding;
- Protect tribal water program funding;
- Reinvigorate support for tribal multi-media implementation funding;
- Ensure all Region 9 tribes have access to technical assistance for their drinking water and wastewater facilities; and
- Protect and enhance solid waste program funding and ensure agency policy reflects tribal solid waste management and implementation needs.

## **WORKGROUP FOCUS AREAS**

The RTOC has identified nine (9) media-specific and cross-media areas of focus:

- Facilitate the development and maintenance of effective core tribal environmental programs;
- Protect and enhance water quality in Indian Country;
- Ensure tribal access to safe drinking water and basic sanitation in parity with non-tribal communities;

- Support programs to effectively minimize and manage solid and hazardous wastes in Indian country;
- Protect and improve air quality;
- Support the capacity of tribal communities to mitigate and adapt to impacts of climate change;
- Protect tribal environments and community health in the U.S./Mexico border area;
- Facilitate access to resources that support the development of sustainable infrastructure in tribal communities; and
- Ensure other cross-media issues, such as pesticides and invasive species, are considered and addressed.

While the RTOC focuses on advancing its Strategic Directions through the Key Actions identified above, RTOC workgroups intend to continue their work on a wide variety of specific tasks to address these and other issues, as reflected in the attached in the appendices are Focus Area Workplans.

## **GUIDING PRINCIPLES**

All work undertaken by or on behalf of the RTOC will be guided by the following overarching principles:

All Things Are Related. The RTOC recognizes the interrelationship between and among its priority issues, and acknowledges that no issue can be defined and effectively addressed in a vacuum. The RTOC should strive to identify all aspects of each priority issue and ensure that its efforts to address issues are undertaken in the broadest, most inclusive possible manner.

The Link Between Environmental Values and Culture. The RTOC recognizes the fundamental cultural values that define each Tribe's relationship with the natural world and inform Tribal environmental priorities and protection efforts. The RTOC should always acknowledge, honor and seek to ensure the consideration of these values.

The Protection of Tribal Sovereignty. The RTOC recognizes the importance of protecting and advancing Tribal sovereignty in all of its efforts to address environmental issues.

The Importance of the Government-to-Government Relationship. The RTOC recognizes that meaningful government-to-government relationships between Tribes and EPA (as well as other federal, state and local agencies) are critical to effective environmental protection, and shall strive to facilitate and strengthen these relationships for the benefit of the tribes in Region 9.

## **SPECIAL UNDERSTANDINGS**

As required by the Antideficiency Act, 31 U.S.C. 1341 and 1342, all commitments made by EPA in this Plan are subject to the availability of appropriated funds. Nothing in this Plan, in and of itself, obligates EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations that would be inconsistent with Agency budget priorities. The parties agree not to submit a claim for compensation for services rendered to

EPA in connection with any activities it carries out in furtherance of this Plan. This Plan does not exempt the parties from EPA policies governing competition for assistance agreements. Any transaction involving reimbursement or contribution of funds between the parties to this Plan will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

This Plan does not create any exemptions from federal policies and/or regulations relating to public involvement, employment, and competition for grants and contracts. Nothing in this Plan exempts the parties from complying with any applicable federal, state, or local law or regulations.

If the parties find that an activity undertaken pursuant to this agreement may result in the creation of intellectual property or may require the sharing of proprietary information, the parties agree to negotiate separate agreements to address those matters. None of the parties shall construe any part of this Plan as an endorsement of the products or services of the other. Nothing in this Plan shall be construed as an endorsement of the fundraising activities of any of the parties. None of the parties shall make statements pursuant to this Plan that imply such endorsements.

The parties acknowledge that under 5 § C.F.R. 2635.702(c), EPA may not endorse the purchase or sale of commercial products and services provide by tribal participants. The Parties agree to ensure that promotional material describing or resulting from this Plan do not contain statements implying that EPA endorses any of the products or services of the participants. This includes statements to the public in news releases, publications on web sites or any other media. The Parties agree not to initiate or distribute any press releases, publicity matters or other promotional materials related or referencing the subject matter of this Plan without prior approval of the other parties.

This Plan is not intended to result in any legal obligations on the part of either EPA or any of the parties. This Plan does not create any right or benefit, enforceable by law or equity, against the parties, their officers or employees, or any other person. The parties agree that this Plan is entered into on a non-preferential basis, and either party may undertake similar Plans with other entities on a non-preferential basis. This Plan does not direct or apply to any person or entity outside of the parties to this Plan.

To carry out the joint activities described in the Plan, the some Parties may need to disclose proprietary information to EPA. Proprietary information is defined as information that an affected business claims to be confidential and is not otherwise available to the public. The Parties agrees to clearly identify confidential business information disclosed to EPA in writing; and to clearly memorialize in writing, within a reasonable time, any confidential information initially disclosed orally. EPA agrees not to disclose, copy, reproduce or otherwise make available in any form whatsoever to any other person, firm, corporation, partnership, association or other entity information designated as proprietary or confidential information without consent of the Parties except as such information may be subject to disclosure under the Freedom of Information Act (5 U.S.C. 552), and EPA's regulations at 40 C.F.R. Part 2, or as otherwise authorized by law.

## TABLE 1

# Table 1: FY15 Funding for Region 9 Tribes

Program	# of Tribes & Consortia Receiving Funding	FY15
General Assistance Program	158	\$16,415,000
Drinking Water Tribal Set-Aside	8	\$6,581,000
Clean Water Indian Set-Aside	13	\$10,737,422
Clean Water Act 106	89	\$8,669,000
Clean Water Act 319	77	\$2,560,000
Clean Air Act	30	\$2,910,663
Clean Water Act 104(b)3 (Wetlands)	5	\$1,575,875
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (OECA & OPP)	10	\$900,326
Brownfields (Superfund) – 128(a)	10	\$1,761,949

## **APPENDIX #1**

### **GAP Workgroup**

#### **Facilitate the Development and Maintenance of Effective Core Tribal Environmental Programs**

##### **ackground**

- An effective core environmental program is a fundamental need of every tribe that undertakes environmental protection efforts
- Requires adequate resources to establish the program, undertake capacity building activities, and maintain the program over the long-term
- Adequate resources are also needed for implementation activities, such as the development and implementation of enforcement mechanisms
- The General Assistance Program (GAP) has traditionally been the primary, if not sole, source of funding for these purposes
- Limited funding of the GAP, coupled with multiple demands on it from other programs, has resulted in less than adequate funding to support tribal core program needs
- Limitations on allowable uses of GAP funds have also hampered tribal efforts to implement program activities and to develop and sustain enforcement capacity

To address these issues, the RTOC has identified the following objectives:

!/ !chieve adequate funding of the Indian Environmental General Assistance Program (G!P) to provide ongoing support for tribal environmental programs-

/ !chieve greater flexibility in the use of G!P and other funds to address tribally identified priorities, including implementation-

/ Identify opportunities to leverage funds to address priority needs in Indian ountry-

D/ Ensure allowable uses of G!P and other funds honor and protect the traditional relationship between tribal communities and the environment- and

E/ Promote longevity of Tribal Environmental programs and capacity/

## **Relevant Provisions in EPI strategic planning and other documents**

### **EPI's 1984 Indian Policy**

### **EPI Strategic Plan 2011-2015**

Objective 3/4. Strengthen Human Health and Environmental Protection in Indian Country/  
Support federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian Country/

- By 2015, increase the percent of tribes implementing federal regulatory environmental programs in Indian Country to 18 percent (FY 2009 baseline: 13 percent of 572 tribes)
- By 2015, increase the percent of tribes conducting EPA-approved environmental monitoring and assessment activities in Indian Country to 50 percent (FY 2009 baseline: 40 percent of 572 tribes).

<http://www.epa.gov/planandbudget/strategicplan.html>

### **Region 9 Strategic Plan (2011-2014)**

Geographic Area of Focus: Tribal Partnerships

The United States has a trust responsibility to federally recognized Indian tribes. We work on a government-to-government basis with all 147 tribes in Region 9. Region 9 tribal lands comprise half of all Indian land in the country, and more than 80% of the tribes in the Region have an environmental presence. Economically disadvantaged populations in Indian Country still suffer from critical environmental and health problems. We will protect the environment in Indian Country by focusing on the following priorities:

Building Tribal Environmental Capacity through the General Assistance Program

- Work collaboratively with tribes to build and maintain environmental programs to protect 27 million acres of land and the health of more than 300,000 reservation residents
- Each year, award approximately 130 grants totaling more than \$15 million and technical support to over 125 tribes and inter-tribal consortia to build environmental protection programs.

<http://epa.gov/region9/strategicplan>

### **Key Past Activities and Accomplishments of the RTOC**

TBA

## **Recommended Activities**

### **Short-Term Activities (Within 1-3 Years)**

- Review, share information, receive input and comment on Revise Draft Guidebook for Building Tribal Environmental Capacity (due to be released 10/4/12 with a 90-day consultation and comment period)
- Continue to gather specific information regarding tribal needs; why funding is important and how it has made a difference; and disparity between tribes and states for use in budget and other advocacy
- Identify tribal compliance assistance needs
- Identify tribal enforcement capacity barriers and ways to address them for tribes with different levels of development

### **Long-Term Activities (Within 3-5 Years)**

- Continue to advocate for funding to support implementation activities, through the President's proposed multi-media program or otherwise.

<b>Strategies</b>	<b>Tasks</b>	<b>Time Frames</b>	<b>Leads</b>
Advocate for appropriate budget	Tribal Caucus develops regional budget request	Annually – for presentation at “Spring RTO ”	Budget Workgroup
	Provide input into NTC budget development	Annually – before July budget meetings	Budget Workgroup
	Gather specific info re need; why funding is important and how it has made a difference; and disparity between tribes and states for use in these efforts	Ongoing	Budget Workgroup
	Coordinate with other organizations, e.g. NCAI	Ongoing	RTOC / NTOC Reps
Advocate for appropriate allowable uses / limitations	Prepare briefings, correspondence, comments to decision-makers as appropriate	As needed	To be assigned
	Review and comment on Guide Book for Developing Environmental Capacity	Pending as of January 2012	Guide Book Working Group

	On implementing Guidebook – Develop a recommendation from RTOC for the writing and implementation of TEAs	Pending	To be assigned, with NTOC
Leveraging	Peer Matching – develop sample language to add to grants notifications (across media) on Peer Matching. Note Peer Matching can be anywhere from sharing information to on-site technical assistance	TBD	Grants Workgroup
	Explore how or if EPA funds can be used as a match for any other Federal funds – can indirect costs be a match?	TBD	Grants Workgroup
Longevity	Develop a template to prompt staff at Tribes to think about operations plans and succession planning across media programs	TBD	TBD
Facilitate Support for Tribal Enforcement Capacity	Explore avenues to leverage enforcement authorities under “alternate” statutes/programs to address environmental problems that fall under “regulatory gaps,” such as enforcement for illegal solid waste dumps that don’t contain hazardous materials and therefore aren’t addressed under RCRA C, or are located in Indian Country but on privately held lands		
	Identify ways that enforcement activities can help tribes in the Border are to address migrant waste (e.g., MOU with Homeland Security?)		
	Facilitate environmental trainings for tribal leaders, police and judiciary to build awareness of issues/impacts related to environmental violations, the importance of using all aspects of tribal authorities to address noncompliance		
	Explore opportunities for joint enforcement actions (under which authorities can tribes share penalties resulting from joint enforcement actions as states do?)		
	Identify needs and opportunities for inspector training, sharing resources		

	for federal inspector credentials and inspections		
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## **APPENDIX #2**

### **Water Quality Workgroup**

#### **Facilitate the Development and Maintenance of Effective Tribal Surface and Groundwater Programs**

##### **Background**

The fluctuation and decline of EPA funding for tribal water programs remains a significant obstacle for tribal governments as they strive to preserve, protect and restore the waters on their lands. Tribes require sustainable funding to provide program continuity and to allow tribal governments to engage in long-term program planning. As part of this requirement, Tribes call for the establishment of annual baseline funding levels for fundamental programs and funding targets for mature tribal water programs. This request would help support the long-term operations of tribal water programs. One method of achieving sustainable funding is to establish parity between tribal and state funding. Thus allowing Tribes to receive set funding allocations / targets on an annual basis for their water programs as states and territories currently have.

Another area of concern for tribes is the removal of barriers to the attainment of flexibility in water programs. The lack of flexibility works against the tribes' need to maintain water programs that are closely aligned with fluctuating environmental conditions on their reservations. Particularly, amongst these barriers are the statutory funding caps for the CWA NPS, SDWA SRF, CWA SRF tribal programs. Eliminating these caps and other regulatory barriers would improve funding in Tribal environmental programs.

Tribes have developed water programs tailored to meet the unique challenges of environmental protection on their lands. These programs have lead to significant improvements to the environment on tribal lands in the past decade, thus demonstrating the effectiveness of the EPA/Tribal partnership0/a partnership built on the foundation of Tribal sovereignty and the Federal government's trust responsibility. Under this partnership, Tribes expect Federal support for tribal water programs into the foreseeable future.

##### **Relevant Provisions in EPA's Strategic Planning Documents**

EPA's 2011-2015 Strategic Plan: The plan calls for protecting and restoring America's Waters by ensuring that both human health, and watersheds and aquatic ecosystems are protected. Through 2015, EPA hopes to ensure that the condition of the nation's streams and lakes does not degrade beyond 2006 baseline levels; and that water quality in Indian country will improve at 50 or more baseline monitoring stations in tribal waters (cumulative) (i.e., show improvement in one or more of seven key parameters: dissolved oxygen, pH, temperature, total nitrogen, total phosphorus, pathogen indicators, and turbidity) and identify monitoring stations that are showing no degradation in water quality (meaning the waters are meeting uses).

[http://water.epa.gov/aboutow/goals\\_objectives/goals.cfm](http://water.epa.gov/aboutow/goals_objectives/goals.cfm) (Water elements of EPA's Strategic Plan, 2011-2015)

2) EPA Region 9's 2011-2014 Strategic Plan – EPA Region 9's strategic plan describes a two-fold approach to protecting water quality which is to 1) Use the the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) as regulatory tools to develop effective permits and enforce compliance; and 2) Coordinate and leverage resources by providing financial and technical assistance towards specific goals that restore water quality. The Region expects to address its efforts in several areas including the Klamath River and Lake Tahoe, among other areas, home to several Region 9 tribes . Some of the efforts will include TMDL development and financial assistance. The Region has also included developing a sustainable water infrastructure for homes, industry and communities, including tribes. This is expected to be accomplished via funded infrastructure projects and tribal capacity building through contract circuit riders to assist tribal governments to endure SDWA compliance and providing safe water. <http://www.epa.gov/region9/strategicplan/StrategicPlan2011-14.pdf> (Region 9 Strategic Plan, 2011-2014)

### **Key Past Activities & Accomplishments of the Region 9 RTOC**

#### **Data collection and Education to support RTOC advocacy of increased funding for CWA programs:**

- Region 9 Regional Tribal Operations Committee (RTOC) initiated a CWA 106 needs assessment survey in May 2011 to help determine how much CWA 106 funding is needed to run a basic CWA 106 environmental program. Tribes are continuing to complete these to support future advocacy.
- The RTOC CWA Workgroup oversaw the development of the Water Quality Assessment Report (WQAR) template that provided a picture of water quality in Region 9 Indian Country. As a result, 80% of tribes receiving CWA 106 funds submitted completed WQARs in 2012.
- The RTOC CWA Workgroup provided education at RTOC meetings in 2010, 2011 and 2012 regarding completion of CWA 106 Water Quality Assessment Reports, that illustrate tribal water quality needs in Region 9. Information from these WQARs was used in the RTOC's FY2014 budget presentation to EPA at the May 2012 RTOC.

#### **Accomplishments of Region 9 tribes to further their water quality programs:**

##### **• Number of eligible Region 9 tribes who achieved Treatment as a State under CWA programs:**

CWA 106: Water Pollution Control Program – 104 tribes

- CWA 319: Nonpoint Source Pollution Prevention – 89 tribes
- CWA 303: Water Quality Standards – 11 tribes
- EPA approved Water Quality Standards – 8 tribes
- Number of Region 9 tribes completing CWA 106 Reporting Requirements:
  - Monitoring Strategies – 86 tribes
  - Submitting STORET-compatible Data – 75 tribes
  - Water quality Assessment Report – 77 tribes

### **Recommended Activities**

**Short-Term Activities (Within 1-3 years)**

Provide advocacy through the budget process on a regional and national level for flexibility in allocation of CWA funding to tribes.

Advocate at Regional and national level for continued water quality training for tribes.

Advocate for meaningful inclusion of tribes during NPDES actions affecting tribal lands.

**Long-Term Activities (Within 3-5 years)**

Same as above plus:

Advocate for simplification of the Treatment as a State under the Water Quality Standards Program process using legal tools.

Goals & Strategies	Specific Tasks	Time Frames	Leads
Advocacy through budget process on the regional and national level	Regional budget request	Annually	Budget Workgroup / Clean Water Workgroup
	Advocate for flexibility in allocation of funding (Achieving TAS means being treated like States). Issues include:  1) Recertified funding should be reprogrammed to other entities (i.e., State recertified funds should be given to Tribal Governments; 2) Raise Tribal CWA 106 allocation from 12.4% back up to 15.49%. 3) Support NTOC request for 20% or \$38 million.	Ongoing	NTOC/ROTC
	Provide input into NTC budget	Annually	Budget Workgroup / Clean Water Workgroup

	Coordinate with other organizations (i.e., NCAI, NTWC)	Annually	RTOC/NTOC reps
	Gather info re need; achievements; disparity between tribes and states	Ongoing	Budget Workgroup / Clean Water Workgroup
Provide input re EPA strategic plan, other documents & proposed actions	Prepare other briefings, correspondence, comments to decision-makers as appropriate	As needed	Clean Water Workgroup
Advocacy through RTOC, NTOC, NTWC	Advocate that tribes have meaningful voice during NPDES actions affecting tribal lands (i.e., State of California);  - Obtain list of off-reservation permits affecting tribal waters in R9	Ongoing	RTOC, NTOC, NTWC reps; Clean Water Workgroup
	Advocate that EPA reinterpret CWA TAS provision as a delegation of authority to streamline WQS TAS application .  Gather information/legal tools to simplify the approval process for the Treatment as a State under the Water Quality Standards program	Ongoing	RTOC, NTOC, NTWC reps;  RTOC, NTOC, NTWC reps; CW Workgroup
Ensure continuous and accessible water quality training	Provide circuit riders Develop framework for peer matching/training	Annually	Clean Water Workgroup
Ensure continuous and accessible Water Quality Training	Work with EPA to find solutions to provide one-on-one water quality assistance for R9 tribes:  Explore resources for Circuit Riders  Develop Framework for Peer Matching/Training	Annually	Clean Water Workgroup

Continue to find ways to address non-native species	Identify how the RTOC or Workgroup can address this issue (e.g., information gathering as a first step)	Ongoing / long term	CWA Workgroup
Develop a strategy to incorporate flow into Water Quality Standards to connect Water Quality and Water Quantity issues	Identify how the RTOC or Workgroup can address this issue (e.g., information gathering as a first step)	Ongoing / long term	CWA Workgroup

## APPENDIX #3

### Drinking Water / Wastewater Workgroup

#### Improve Tribal Access to Safe Drinking Water and Basic Sanitation

##### Background

Tribal communities continue to experience a significant disparity in access to safe drinking water and basic sanitation: although progress has been made, particularly with ARRA funding, 18% of the Tribal homes in R9 lack access compared to 1% of non-Indian homes. This is a fundamental environmental and public health issue that requires both physical infrastructure and operations & maintenance (O&M) needs be addressed

The US committed at Johannesburg Summit on Sustainable Development to reduce by half, by 2015, population lacking access to safe drinking water and basic sanitation (Access Goal). This Goal has been captured in EPI's Strategic Plan as a specific commitment in Indian country, and represents one step toward Congressional policy of ensuring all Tribal homes have access to safe drinking water and basic sanitation as soon as possible (25 USC §1632(a)(5))

Funding for new infrastructure, as well as for repairs, rehabilitation and upgrades to existing infrastructure is provided by several federal agencies including EPA, IHS, USDA-RD and HUD. Last year's increase on the CWA and SDWA Tribal Set Asides to 2%, along with ARRA funding, contributed to increased access in Indian Country, but significantly more is needed/ According to HIS's marginal cost analysis, \$1 BILLION is required to address all Tribal drinking water and wastewater infrastructure needs in Region 9, including \$300 MILLION to provide access for 18,990 homes. Due to expected cuts in the SDWA and CWA SRF, a Tribal funding floor at FY10 levels with adjustments for inflation should replace the percentage-based Tribal Set Asides

Operation & Maintenance funding is also critical to ensure delivery of safe drinking water and the sanitary operation of wastewater disposal facilities, as well as to protect the federal investment in infrastructure over long term. For many Tribal communities, it is not possible to cover O&M costs through rate structures due to small system size, high poverty levels and lack of income sources; however, THERE CONTINUES TO BE NO FEDERAL FUNDING TO SUPPORT O&M FOR TRIBAL FACILITIES. This represents a significant gap in resources necessary to address this critical public health and safety issue.

The overall objectives of the Region 9 RTOC are to take steps to achieve the following:

!/ Protect and enhance infrastructure funding

/ Identify / facilitate the establishment of funding to support asset protection (O&M)

/ Increase tribal technical, financial & managerial capacity to operate and maintain drinking water and wastewater facilities

D/ Maintain/increase funding to support technical assistance providers (such as R ! ) to ensure all Tribes in Region 9 have access to technical assistance for both drinking water and wastewater-related needs

#### **Relevant Provisions in EPI's Strategic Planning Documents**

EPI National Program Measures to Implement Strategic Plan 2/1/1.

SDW-18/N11 Increase number of American Indian and Alaskan Native homes provided access to safe drinking water in coordination with other federal agencies, to 119,000

SDW-SP3/N11 Increase percent of population in Indian country served by community water systems that meet receive drinking water meeting all applicable health-based drinking water standards

WQ-24/N11 Increase number of American Indian and Alaskan Native homes provided access to basic sanitation, in coordination with other federal agencies, to 67,600

#### **Key Past Activities and Accomplishments of the Region 9 RTO**

- Advocacy with supporting briefings led to reinvigoration of national level multi-agency task force to address Tribal drinking water and sanitation needs
- Participation by RTOC Representatives on the National Infrastructure Task Force ensured Tribal priorities and interests were included in its work, including its report of barriers and recommendations to overcome them
- Facilitation and support for development and completion of Region 9 Tribal Baseline Needs Assessment
- Advocacy regarding Tribal O&M needs led to the development of criteria for funding O&M pilot projects under GAP
- Advocacy to address deficiencies in California criteria for certifying wastewater operators ensured that time spent working at Tribal utilities is included as eligible experience under new state regulations (currently in public review and comment period)
- Facilitation and hosting of Regional Multi-Agency Workgroup, which has resulted in
  - Resource matrix
  - Support for collaborative projects to address Tribal operational and maintenance needs

#### **Recommended Activities**

##### **Short-Term Activities (Within 1-3 Years)**

- Support proposed revised regulations for the California Wastewater Operator Certification program
- Continue to participate in the National Infrastructure Task Force and O&M Study Workgroup
- Monitor, perform outreach, and coordination, and provide input on anticipated revisions to the Clean Water and Drinking Water Tribal Set-Aside guidance documents
- Identify tribes in Region 9 that do not have access to technical assistance to address their utilities' needs
- Host Resource Fair for Nevada tribes
- Host Regional Inter-Agency Workgroup meeting

**Long-Term Activities (Within 3-5 Years)**

- Continue to advocate for a adequate infrastructure funding
- Continue to advocate for sources of O&M funding
- Advocate to ensure technical assistance is available for all tribal drinking water and wastewater utilities

Goals & Strategies	Tasks	Time Frames	Leads
Advocate for the inclusion of tribal needs and projects in upcoming federal legislation (i.e., stimulus funding, jobs bills)	Draft briefing papers and comment letters as necessary	As needed	DW/WW Workgroup / Budget Workgroup
Advocate for a funding floor for SDWA & CWA tribal set asides at FY2010 (or at a minimum at FY2011) dollar levels if overall SRF funding is reduced	Annual budget request	Annually	DW/WW Workgroup / Budget Workgroup
Continue to participate in national activities and to coordinate with national organizations to ensure tribal input and consistency of message	Ongoing participation in Infrastructure Task Force	Ongoing	RTOC / NTOC reps
Continue to initiate and participate in regional activities to facilitate tribal access to funding and other resources	Sustainable infrastructure resource	Annually	DW/WW Workgroup / Sustainable Infrastructure Workgroup / Solid Waste Workgroup
Engage other federal agencies to promote tribal needs and priorities	Infrastructure Task Force; Sustainable Infrastructure Resource Fairs	Ongoing	RTOC / NTOC reps; DW/WW, SI & SW Workgroups



## **APPENDIX #4**

### **Solid Waste Workgroup**

#### **Minimize and Manage Solid Waste**

Ensure the safe and effective management of solid waste and promote sustainable and culturally appropriate solutions to address solid waste challenges. More than 2,000 open dumps exist on tribal lands in Region 9. In partnership with tribes, EPA is identifying sites posing the greatest threat, closing them, and preventing their recurrence. The adoption of Tribal Integrated Solid Waste Management Plans promotes long-term planning for safe solid waste disposal. To achieve this goal, the workgroup will:

- Promote an increase in the number of tribes with integrated solid waste management plans
- Advocate for the environmentally responsible closure of solid waste dumps on tribal lands
- Promote sustainable waste collection, recycling, reuse, and composting programs through training, technical assistance, and outreach

Barriers for achieving these goals include:

- Limited financial resources available to implement the tasks highlighted below
- Limited personnel resources for both EPA and tribes to address the goals
- Limited recycling options in AZ and NV
- Lack of support from IHS in cleaning up open dumps
- RCRA does not allow for delegation of authority to tribes
- Paucity of baseline data for existing waste management infrastructure and capacity across Tribal communities in the region thus constraining planning and coordinated decision making

#### **Links to current strategic planning documents of EPA and other federal agencies as appropriate**

##### **FY 2011-2015 EPA Strategic Plan**

- Goal 3: Cleaning Up Communities and Advancing Sustainable Development. Objective 3.2: Preserve Land - By 2015, close, clean up, or upgrade 281 open dumps in Indian country and on other tribal lands compared to FY 2009. (At the end of FY2009, 412 open dumps were closed, cleaned up, or upgraded. As of April 2010, 3464 open dumps were listed.)
- Cross-Cutting Fundamental Strategies. Strengthening State, Tribal, and International Partnerships. With Tribes – Focus on increasing tribal capacity to establish and implement

environmental programs while ensuring that our national programs are as effective in Indian country as they are throughout the rest of the nation.

#### Region 9 Strategic Plan, 2011-2014 – Tribal Solid Waste Management

- Close, clean up, or upgrade at least 35 open dumps during 2012, and improve tribal solid waste management.
- Increase by two each year the number of tribes that will have an Integrated Solid Waste Management Plan in place, for a total of 39 plans region-wide by October 2012.

#### **Key past activities & accomplishments**

Between FY09-FY12, tribes within Region 9 have closed or cleaned up 265 open dumps. During this same period, the ability to address open dump clean ups with EPA funding was, and continues to be increasingly scrutinized. RTOC has played a key role in informing tribes of increased challenges to addressing open dumps, and has strongly advocated for tribes to have the support needed to achieve environmentally responsible closure of solid waste dumps.

Between FY09-FY12, 15 tribes within Region 9 adopted Integrated Solid Waste Management Plans (ISWMPs). During this same period, RTOC was instrumental in informing EPA on how to assist tribes, through trainings and outreach, in support of the development and adoption of ISWMPs. EPA has determined that ISWMPs that effectively address a tribe's solid waste management needs will ensure the greatest opportunity for success. EPA has also provided information on elements to be considered when developing ISWMPs. RTOC has served to identify what information tribes want and need to successfully develop ISWMPs. RTOC has also coordinated various solid waste trainings towards this end. Examples of these trainings include:

- Waste Characterization Audits
- Greening Tribal Casinos
- How to Operate and Maintain a Transfer Station
- How to Write and ISWMP

#### **Overall objectives moving forward (i.e., measures of success)**

- Develop a list of common issues (we may be able to garner the top priorities to address within 1-3 years and 3-5 years)
- Promote availability and use of tools (e.g., Sustainable Evaluation Tool) for assessing and measuring improvement of Waste Management Programs
- Advocate for funding

**Commented [RR1]:** This will be pulled out and inserted into the body of the Strategic Plan rather than being in this Focus Area section

Goals (desired results) & Strategies (pathways to get there)	Specific Tasks	Time Frames	Leads
Reduce the number of open dumps in Indian country (Clean up 20 dumps in FY14).	<ul style="list-style-type: none"> <li>- Determine how RTOC will assist in prioritizing clean up of open dump sites.</li> <li>- Create training opportunities for tribes to learn to maintain their open dump inventory and prioritize/rank their importance/need for closure.</li> <li>- Foster increased collaboration between EPA and IHS for open dump cleanup.</li> </ul>	1-3 Years  1-3 Years  1-3 Years	
Ensure that every tribe that wants one has an approved Integrated Solid Waste Management Plan and is implementing that Plan (2-5 new ISWMPs in FY14).	<ul style="list-style-type: none"> <li>- Determine how RTOC will plan a role in advancing this annual goal/measure.</li> <li>- Determine ways that RTOC can promote ISWMP development.</li> <li>Work with ITEP to have at least 1 ISWMP training in R9 in FY14.</li> <li>Work with the R9 EFC to provide assistance to tribes who desire to draft an ISWMP.</li> </ul>	1-3 Years  1-3 Years  1-3 Years  1-3 Years	
Review the Agency Wide Plan for opportunities or barriers to solid waste management	<ul style="list-style-type: none"> <li>- Provide comments on the final Plan</li> </ul>	1-3 Years	
Conduct training on specific waste management issues.	<ul style="list-style-type: none"> <li>- Determine which tribes are willing and able to host or present trainings on the following potential topics: <ul style="list-style-type: none"> <li>• Design and Operation of Transfer Stations</li> <li>• Business plan development</li> <li>• Conducting Waste Characterization Audits</li> <li>• Greening Tribal Casino Operations</li> <li>• Refrigerant Removal</li> <li>• Solid Waste Business Planning and Management</li> <li>• Pay-As-You-Throw</li> <li>• Source Reduction</li> <li>• Developing Composting and Recycling Programs (Zero Waste)</li> </ul> </li> </ul>	3-5 Years	

	<ul style="list-style-type: none"> <li>• IWMP Development Training</li> <li>• Biodiesel Feasibility Training</li> </ul>		
Conduct outreach on specific waste management issues.	<p>- Work with EPA to provide outreach on the following topics:</p> <ul style="list-style-type: none"> <li>• Guide for Design and Operation of Transfer Stations Construction waste recycling</li> <li>• Illegal Dumping Enforcement Website *</li> <li>• Tribal Green Building Guide (web-based)</li> <li>• Climate change impacts</li> <li>• Source Reduction</li> <li>• Developing Composting and Recycling Programs (Zero Waste)</li> <li>• Waste Sort Guide for web publishing</li> <li>• Tire Removal/Management</li> <li>• Guide for Managing Dumpsites After Cleanup.</li> <li>• Guide for Haz Waste clean up               <ul style="list-style-type: none"> <li>○ Drug labs</li> <li>○ Marijuana grows</li> <li>○ One/Two page factsheet</li> <li>○ What to look for, who to contact, what to do, and what not to do</li> </ul> </li> </ul> <p>- Determine which tribes would be willing to share examples of success.</p> <p>- Develop a resource guide to include the following:</p> <ul style="list-style-type: none"> <li>• Technical assistance providers               <ul style="list-style-type: none"> <li>○ ITEP</li> <li>○ NAEPC</li> <li>○ RCAC</li> <li>○ Circuit Riders</li> <li>○ EPA</li> <li>○ Other Federal agencies</li> <li>○ Are they funded by EPA, and will it continue?</li> <li>○ Can we expand?</li> </ul> </li> <li>• By topic area               <ul style="list-style-type: none"> <li>○ Development of a landfill</li> <li>○ Development of a transfer station</li> </ul> </li> </ul>	<p>3-5 Years</p> <p>1-3 Years</p> <p>3-5 Years</p>	

	<ul style="list-style-type: none"> <li>○ Long term financial sustainability and business planning</li> <li>● Develop a matrix that includes <ul style="list-style-type: none"> <li>○ Grant funding and allowable costs</li> <li>○ Resources that aren't just funding <ul style="list-style-type: none"> <li>▪ Include peer match initiative</li> </ul> </li> </ul> </li> </ul>		
Focus on capacity building activities	<ul style="list-style-type: none"> <li>- Determine the tribal waste capacity assistance needs: <ul style="list-style-type: none"> <li>● Integrated Solid Waste Management Plans</li> <li>● Technical training</li> <li>● Long term financial sustainability (no grant funding)</li> <li>● Developing SW Program into a sustainable, revenue-generating program</li> <li>● Business planning</li> </ul> </li> </ul>	1-3 Years	
Improve relationships with other federal, state, and local agencies.	<ul style="list-style-type: none"> <li>- Promote increased dialogue between EPA and Department of Homeland Security regarding UDM waste.</li> <li>- Facilitate more collaboration among tribes, with federal and state agencies, with counties and locals, and with foundations, etc. e.g. new California diversion rate (75%) with state and counties, equipment and expertise with other tribes.</li> </ul>	3-5 Years  3-5 Years	
Advocate for grants, increased cooperation between the R9 Tribal Solid Waste Team and the R9 TPO, as well as partnerships between EPA and other federal agencies to support open dump clean-up in Indian Country	<ul style="list-style-type: none"> <li>- Assist with preparation of annual budget request.</li> </ul>	1-3 Years	

## APPENDIX #5

### Air Workgroup

#### Protect and Enhance Air Quality

##### Background

The following information gives a brief summary of the air programs in Region 9, keeping in mind that there are 147 Tribes within the Region:

From the Draft RTOC Barriers Document 2005:

Tribal communities are more greatly impacted by air pollution than non-Tribal communities as a result of subsistence lifestyles and location nearer to sources than urban populations. Thus, regulatory schemes deemed adequate to protect the public at large do not necessarily address Tribal health and welfare concerns. Many Reservations are located in non-attainment areas for criteria pollutants (pm & ozone in particular in Region 9), or otherwise subject to unhealthful air quality from toxic/hazardous air pollutants, despite the fact that most sources of air pollution affecting Tribal communities are located off-Reservation. As a result, Tribes must perform air program activities such as assessing ambient air quality, conducting emissions inventories, monitoring and tracking changes, and regulating on-Reservation sources, as well as participating in off-Reservation and regional air quality control efforts, so they can take appropriate steps to protect the health of their communities/ EPA's goal of reducing the number of people whose health is affected by air pollution must take these circumstances into account.

From the FY2014 Tribal Air Quality Budget Analysis Document developed by NTAA:

According to the OAQPS Report supplemented with data from Region 9 EPA the following numbers were reported for the region:

##### *Air Monitoring*

Monitoring shows fluctuations in the number of Tribal monitoring sites from 2005 to 2011. During this time eleven (11) Tribes submitted monitoring data in 2005 and twenty-two (22) Tribes submitted data in 2011. Tribal air monitoring sites have shown increases from seventeen (17) sites in 2005 to thirty-one (31) Tribal monitoring sites in 2012.

Air Monitoring	Diesel	Emissions	Grants	Permits	Regulations	TAS
31	0	27	28	21	3	3

##### *Diesel Work*

In FY 2011 Tribes in Region 9 had two (2) diesel projects with fifteen (15) retrofits completed. In FY 2012 there are no current programs in Region 9.

##### *Emissions*

In Region 9 there are twenty-seven (27) completed emission inventories.<sup>23</sup> Twelve (12) Tribes have completed emission inventories with submissions to the NEI<sup>24</sup>.

### *Grants*

As of 01/19/2012 Region 9 reported two (2) Local Showcase grants. According to EPA data, Region 9 has twenty-three (23) 103 air grants and three (3) 105 air grants.

### *Permits*

Currently there are twenty-one (21) permits identified in Region 9 Indian Country. These permits are: Title V: Major permits.

### *Regulations*

Regulatory programs can be developed by a tribe as they see fit and the types of regulations include TIP's, rules or permitting regulations. In Region 9, one (1) Tribe has submitted a regulation report, one (1) Tribe has regional approval and one (1) Tribe has a final rule.

### *TAS*

Under the TAR and Section 301(d) of the Clean Air Act, eligible Tribes can be "treated in a manner similar to states". In Region 9 ten (10) Tribes have submitted TAS applications, one (1) Tribe has regional determination and one (1) Tribe has the decision document signed.

### *Non-attainment or Maintenance Areas*

In Region 9, Tribal lands in non-attainment or maintenance areas are as follows:

Fifty-one (51) non-attainment areas for 8-hr ozone standard (1997 std), seventeen (17) in non-attainment for PM-2.5 (2006 std), fourteen (14) in non-attainment for PM-2.5 (1997 std), twenty-seven (27) in non attainment for PM-10 (1990 std), one (1) in non-attainment for SO<sub>2</sub> (1978 std) nine (9) are in a maintenance area for PM-10 (1990 std), twenty-nine (29) in maintenance for CO (1990 std), and three (3) in a maintenance area for SO<sub>2</sub> (1978 std).

### *Program Delegations*

In Region 9, one (1) Tribe has submitted a FIP and one (1) Tribe has been approved for a FIP. One Tribe has delegation of Title V (Part 71) operating permit program.

Information still needed for this section: How many Tribes received grants for FY2012/2013. How many Tribes applied, How many more Tribes would apply if there was funding available?

### **Relevant Provisions in EPA's strategic planning documents**

#### **Region 9 Strategic Plan Geographic Area of Focus**

The United States has a trust responsibility to federally recognized Indian tribes. We work on a government-to-government basis with all 147 tribes in Region 9. Region 9 tribal lands comprise half of all Indian land in the country, and more than 80% of the tribes in the Region have an environmental presence. Economically disadvantaged populations in Indian country still suffer from critical environmental and health problems. We will protect the environment in Indian country by focusing on the following priorities

#### Tribal Clean Air

- Support tribes in building capacity and protecting air quality through \$2.5 million in 2012 grant funds for training, education and outreach, monitoring, emission inventory development, and rule development.
- Provide technical support to 25 tribes for emission inventories and air monitoring during 2012.

#### **National EPA FY 2011-2015 Strategic Plan**

The Strategic Plan provides a blueprint for advancing Administrator Lisa Jackson's seven priorities and EPA's mission to protect human health and the environment/ EPA submitted the Plan on September 30, 2010 to the Congress and to the Office of Management and Budget.

The Plan identifies the measurable environmental and human health outcomes the public can expect over the next five years and describes how we intend to achieve those results. The Plan represents a commitment to our core values of science, transparency, and the rule of law in managing our programs.

The Plan also introduces the following five cross-cutting fundamental strategies which set clear expectations for changing the way EPA does business in achieving its results.

#### **Goal 1: Taking Action on Climate Change and Improving Air Quality**

##### **Objectives**

- Address Climate Change. Reduce the threats posed by climate change by reducing greenhouse gas emissions and taking actions that help communities and ecosystems become more resilient to the effects of climate change.
- **Improve Air Quality.** Achieve and maintain health-based air pollution standards and reduce risk from toxic air pollutants and indoor air contaminants.
- Restore the Ozone Layer/ Restore the earth's stratospheric ozone layer and protect the public from the harmful effects of ultraviolet (UV) radiation.
- Reduce Unnecessary Exposure to Radiation. Minimize unnecessary releases of radiation and be prepared to minimize impacts should unwanted releases occur. (pg 6)

Reduce GHG Emissions and Develop Adaptation Strategies to Address Climate Change (only one strategy listed that specifically mentions tribes):

EPA's strategies to address climate change support the President's GHG emissions reduction goals/ EPA and its partners will reduce GHG emissions domestically and internationally through cost-effective, voluntary programs while pursuing additional regulatory actions as needed. Our efforts include:

- Collaborating with state, local, and tribal governments on regulatory and policy initiatives, technical assistance, and voluntary programs related to climate change mitigation and adaptation. (pg 7)

EPA must adapt and plan for future changes in climate, work with state, tribal, and local partners, and continue to collaborate with the U.S. Global Change Research Program and the Interagency Task Force on Climate Change Adaptation (pg 7)

##### **Improve Air Quality**

Over the next five years, we will work with states and tribes to develop and implement plans to achieve and maintain these standards. Our research provides the tools and information necessary for EPA, states, and tribes to implement air quality standards and controls<sup>0</sup> (pg 8)

EPA can substantially reduce the resources needed to develop standards; provide more certainty and lower cost for industry; simplify implementation for states, local, and tribal agencies; and, enhance cost-effective regulatory approaches.

Along with these regulatory efforts, EPA has a wide range of voluntary efforts to reduce emissions, including programs to reduce multi-media and cumulative risks. Through data from our national toxics monitoring network and from national and local assessments, we are able to better characterize risks and assess priorities. We work with state and local agencies, tribes, schools, and community groups to identify communities where air toxics pollution is occurring at unsafe levels and aggressively take action to reduce air toxics pollution within those areas.

Often the people most exposed to air pollutants are those most susceptible to the effects—the young, the elderly, and the chronically ill. To improve indoor air quality, EPA deploys programs that educate the public about indoor air quality concerns, including radon, and promotes public action to reduce potential risks in homes, schools, and workplaces. EPA also collaborates with state and tribal organizations, environmental and public health officials, housing and building organizations, school personnel who manage school environments, and health care providers, who treat children prone to or suffering disproportionately from asthma/ The focus of these efforts is to support communities' efforts to address indoor air quality health risks; We also provide policy and technical support and financially assist states and tribes in developing and implementing effective radon programs. (pg 9)

#### **Key Past Activities & Accomplishments of the Region 9 RTOC**

- Work with the RTOC Budget W needs workgroup and National Tribal organizations to communicate consistent budgetary needs for Tribes in the region
- Work on Barriers document
- Work on Strategic planning strategies and tasks

#### **Recommended Activities**

##### **Short-Term Activities (Within 1-3 years)**

- Develop list of common issues (may be geographical. Include priorities or top 3 issues with summary of each
- Coordination of NSR by EPA and Tribes – How many Tribes have to deal with technical compliance assistance? This rule affects economic development and sovereignty. What is EPA's role? What will be permitted? Need a blanket Permit for small generators/ Need Compliance Assistance training, more communication strategy<sup>0</sup>
- GHG permitting streamlining, need more information

- Continue to advocate for more funding
- See attached table below

**Long-Term Activities (Within 3-5 years)**

- Continue to advocate for more funding

Goals (desired results) & Strategies (pathways to get there)	Specific Tasks	Time Frames	Leads
Advocate for the appropriate budget (e.g.: funding for mature programs, indoor air, radon analysis, regional planning organizations)	Yearly – as needed	On-going	Budget Workgroup/Air Workgroup
Share Best Management Practices with each other	Encourage networking between Tribes	On-going	Tribes
Advocate for flexibility in specific situations (e.g. exceptional events, boundary determinations)	Continue the dialogue	On-going	Tribal Governments/USEPA (Air Workgroup as needed)
EPA staff must be well versed in Tribal needs and issues, TAR, TAS, exceptional events, designation process, consultation policies, etc.	Training		USEPA/Air Workgroup/R9 Air

Insist on meaningful and effective consultation as government-to-government	Clarify what consultation is (ie: conference calls, webinars?)	On-going	Tribal Governments/USEPA (Air Workgroup as needed)
Coordinate with other Air organizations	Networking/communication	On-going	Air workgroup
Consistent recognition of Tribal Authority Rule	Training		Tribes/Air Workgroup/USEPA/R9 Air
Consistent relationships between Tribes, EPA R9, and Headquarters Air Division	Training		Tribes/Air Workgroup/USEPA/R9 Air
Training, tools and resources for Tribes	Communicate needs		Air Workgroup/Tribes/USEPA
Tribal Air Programs for all Tribes who want them	Access needs		Budget Workgroup/Air Workgroup/USEPA
Advocate for Climate Change as its own media with its own funding	As needed		Budget Workgroup/Air Workgroup
Develop list of common issues (may be geographical). Include priorities or top 3 issues with a summary of each	Networking communication	On-going	Tribes/Air Workgroup

## APPENDIX #6

### Tribal Science Workgroup

#### Support Tribal capacity to Mitigate and Adapt to Impacts of Climate Change

##### **Background**

Climate change affects almost everything in our environment and communities, including Tribal communities. Climate change not only poses threats to the health of our environment and the ecological health of the biological population, it also poses threats to the health of our community, especially to our elders and children who are more sensitive to adverse impacts than the general population. Tribes are disproportionately impacted by climate change. Tribes and Native Alaskans have a deep-rooted connection to the environment in direct correlation to their culture.

Traditional lifeways are drastically affected by environmental changes. Climate change has altered many of traditional ways of life. Tribes have been observing various changes in their environment, such as the reduction of natural ecosystems and biodiversity. Seasons are changing. In some part of the country, the rainy season has shifted to later in the year. Gathering periods for native plants and animal migration patterns also have been altered. Moreover, heavy winter rain storms resulted in storm damage. Parts of the southwest Tribes experienced prolonged drought and enhanced threat from wildfires.

Native plants and habitats are also affected. Tribal elders and communities still gather their food according to the traditional knowledge with respect to seasons. Climate change is adversely impacting the health of these communities and altering traditional way of life by shortening and/or eliminating growing seasons for native plants and damaging habitats. Tribes in California have noticed production of native food sources, such as acorns, has been significantly lower for several years in a row. Native plants seem less available, and trees, such as Tan Oaks, are suffering from sudden oak death. Lastly, populations of wild animals, such as deer, northern spotted owl, and quail are significantly reduced and less prevalent on Tribal lands. Other concerns include the indirect impacts on drinking water supplies caused by rising sea levels, and new migration patterns of animals traditionally hunted and harvested for foods.

##### **Relevant Provisions in EPA's strategic planning documents**

- Consequences of Global Change for Water Quality (USEPA, 2008).  
[http://epa.gov/ncer/rfa/2008/2008\\_star\\_gcwq.html](http://epa.gov/ncer/rfa/2008/2008_star_gcwq.html)
- USEPA Climate Change Adaptation Plan – Draft (USEPA, June, 2012).  
<http://www.epa.gov/climatechange/impacts-adaptation/>  
<http://www.epa.gov/climatechange/impacts-adaptation/adapt-tools.html>
- USEPA FY 2011-2015 Strategic Plan Goal 1: Taking Action on Climate Change and Improving Air Quality  
<http://www.epa.gov/planandbudget/strategicplan.html>

- National Tribal Science Priority (2011)

#### **Key Past Activities & Accomplishments of the Region 9 RTOC**

- Region IX RTOC Position Regarding Global Climate Change (2007)
- Region IX RTOC Climate Change Tribal Perspective Questionnaire (2006)
  - Note: Received 14 responses to the questionnaire.
- Region IX RTOC Annual Conference Climate Change Tribal Presentation (2009, 2010, 2011 )
- Presentation at the National Tribal Science Forum (2010)
- Region IX RTOC Priority (2010)
- National Tribal Operations Committee (NTOC, 2011)
- National Tribal Science Priority (2011)
  - <http://www.epa.gov/osp/tribes/who.htm>

#### **Recommended Activities**

- Achieve adequate funding to support climate change programs for all Tribes
- Promote Tribal understanding of the climate change impacts on traditional ways of life and natural ecosystems
- Ensure Tribal readiness to address and adequately manage climate change impacts through the development and implementation of tribal specific climate change mitigation and/or adaptation programs

#### **Short—Term Activities (Within 1-3 Years)**

**\*\*** Establish and facilitate the work of a committee of Tribal & EPA representatives to develop a regional implementation plan for EPA's national Climate Change Adaptation Plan.

Participate with USEPA Region 9 to develop a regional Climate Change Adaptation Implementation Plan.

Continue to gather information and document impacts of climate change on Tribal communities.

Facilitate the inclusion of Tribal representation in local, state, and federal multi-agency working groups addressing climate change issues.

Identify and advocate for tribal access to funding sources to support resource management and mitigation strategies to address impacts of climate change on tribal communities.

Provide information to Tribal representatives and facilitate Tribal input on any climate change regulations that may impact Tribal communities.

Advocate for the inclusion of Tribal access to resources in any regulations, policy and/or guidance documents issue by EPA, and other federal agencies.

**Long Term Activities (Within 3-5 Years)**

Provide information to Tribal representatives and facilitate Tribal input on any climate change regulations that may impact Tribal communities.

Advocate for the inclusion of Tribal access to resources in any regulations, policy and/or guidance documents issue by EPA, and other federal agencies.

Goals (desired results) & Strategies (pathways to get there)	Specific Tasks	Time Frames	Leads
Advocacy Tribal needs through budget process on regional and national levels	Provide input into NTC budget and regional budget request	Annually	Budget Workgroup / SI, Air, Tribal Science Workgroups
Document climate change impacts from R9 Tribes	Continue gathering climate change impacts from R9 Tribes (by filming of Tribal climate change stories such as: <ul style="list-style-type: none"> <li>Adaptive gardening and landscaping by Bridgeport Indian Colony</li> <li>Sustainable Housing by Pinoleville Rancheria</li> <li>Climate Change and Water Loss by Big Pine Tribe</li> </ul>	Ongoing	Tribal Science Workgroup / others TBA
	Document climate change impacts on habitats, culturally sensitive plants needed to support traditional lifeways (Traditional Ecological Knowledge)	Ongoing	Tribal Science Workgroup / others TBA
	Advocate for more comprehensive multi-agency discussions, and adequate tribal	Ongoing	TBA

Collaborate with all appropriate agencies to promote and ensure Tribal involvement in climate change policy development and decision-making as well as their implementations	consultation, prior to policy development and decision-making		
	Coordinate with other organizations (i.e., NCAI, NTSC)		
	Obtain tribal seats at Intergovernmental Panel on Climate Change, other national and regional organizations		
	Promote the recognition of federally recognized Tribes as “Domestic Dependent Nations” and equivalency to “Developing Nations” status for trading of carbon offset credits in the global markets per Kyoto Protocols. Tribes can use these generated incomes to finance climate change mitigation and adaptation activities such as purchasing degraded forest lands for carbon storage and natural resource improvement projects.		
Facilitate tribal access to resources that support mitigation and adaptation planning	Continue to communicate and discuss climate change issues at RTOC breakout sessions and workshops at EPA conferences	Ongoing	Tribal Science Workgroup / others TBA
	Sponsor and/or facilitate Tribal specific events such as Tribal climate change workshop, sustainable infrastructure resource fair (locally such as San Diego, Santa Rosa)		
	Create collaborative understandings of climate change with: <ul style="list-style-type: none"> <li>• Traditional Ecological Knowledge (TEK),</li> <li>• Permaculture</li> <li>• Sustainable infrastructure (e.g. straw bale house, solar &amp; wind energy in arid southwest region)</li> </ul>		

## APPENDIX #7

### Border Workgroup

#### Protect the Tribal Environment in the U.S. Mexico Border Area

OBJECTIVES: 1/ Ensure Border Tribes have access to adequate funding to address their environmental protection needs

2/ Achieve greater flexibility in the use of existing funding to ensure Tribal environmental priorities can be addressed

3/ Ensure Border programs, plans and policies reflect Tribal input and incorporate Tribal environmental priorities and needs

Strategies	Tasks	Time Frames	Leads
Advocate for adequate funding from EPA, BECC and other sources, as well as flexibility regarding allowable uses	Regional budget requests	Annually	
	Input into national budget requests	Annually	
	Coordination with other tribal organizations that advocate for tribal environmental funding	Annually	
	Gather information re need; achievements; disparity between tribes and non-tribal communities	Ongoing	
Identify and work to remove barriers that limit or prevent Border Tribes from accessing funding	Assess funding criteria and scope Border Tribes to gather information regarding barriers		
	Identify future tasks to remove barriers based on results of assessment and scoping		
Education and outreach to resource providers and policy-makers regarding tribal needs, including advocating for greater focus on funding environmental needs and results, rather than academic research	Sponsor multi-agency meetings		
	Prepare briefings, comment letters, correspondence to decision-makers as appropriate	As needed	

Education and outreach to border tribes regarding available resources	Sponsor multi-agency meetings		
	Prepare and regularly update resource matrix		

## APPENDIX #8

### Sustainable Development Workgroup

#### Improve Tribal Access to Resources that Support the Development of Sustainable Infrastructure in Tribal Communities

##### Background

In 1996, Congress passed the Native American Housing and Self Determination Act (NAHASDA). From this Act, tribes gained the authority to manage their building programs and adopt building codes; however, they were not given sufficient resources or technical assistance toward program development nor to develop or adopt codes. One consequence of this has been that the majority of tribes have not incorporated sustainable building practices into their infrastructure development projects, nor have adopted building or energy codes. Consequently, homes on tribal lands continue to be built poorly, especially in terms of energy efficiency and healthy indoor air quality.

##### OBJECTIVES:

- A. Maintain communication between EPA, Tribes & other federal agencies
- B. Increase the number of tribal homes that are weatherized and/or powered by renewable energy
- C. Increase the number of tribes covered by tribally developed sustainable building codes.  
***Known Barrier:** Tribal housing departments often face housing shortages and are reluctant to incorporate more sustainable building practices due to perceived and/or actual increases in cost.*
- D. Work from the existing Resources Fair model that is used by HUD and EPA to develop a Tribally-controlled Resources Fair in each state within Region 9.

##### Relevant provisions in EPI's strategic planning documents

TBD

##### Key past activities & accomplishments of the Region 9 RTOC

- 1) In February 2009, a Green Building Strategy was completed. This Strategy was drafted by US EPA and guided by input from RTO representatives/ The Strategy outlines EPI's role in assisting tribes as they pursue sustainable infrastructure development. This is a living document and will be reviewed throughout each year to ensure it reflects the development goals of tribes and appropriately outlines the role of US EPA and the RTOC Sustainable Infrastructure workgroup.
- 2) In response to guidance from the SI workgroup, EPA compiled a list of funding opportunities for tribes. This included federal and state resources, and non-profit organizations. These resources are on the EPA website at [Funding Resources for Green Building](#)

(<http://www.epa.gov/region9/greenbuilding/funding.html>)

- 3) Two draft tribal green building codes have been developed and circulated for comment, and a workshop on code development has been held (see below).
- 4) to be inclusive of tribes and created a new webpage [Green Building: Building and Energy Codes](http://www.epa.gov/region9/greenbuilding/building-codes.html) (<http://www.epa.gov/region9/greenbuilding/building-codes.html>) that lists and describes greener building and energy codes.
- 5) In FY11, EPA, tribes and contractors began developing a model code template to provide technical assistance to tribes that are adopting green building codes. This has become a national effort including tribes, federal agencies and organizations from across the country. To date, 2 tribes receiving direct technical assistance have adopted green building codes (Pinoleville Pomo Nation and Kayenta Township within Navajo Nation). The codes template will be published on the web in late summer, 2012.
- 6) In FY11, members of this workgroup started the National Tribal Green Building Code Workgroup which includes several tribes, federal agencies and non-profit, private sector organizations that work on sustainable building. **The goal of this national workgroup is to advance tribal goals in developing, implementing and enforcing culturally relevant green building codes, policies and programs leading to healthier, more sustainable communities.**
- 7) In late 2011, the Tribal Green Building Codes Workgroup webpage was also made available online and will be continuously updated with codes resources for tribes.  
(<http://www.epa.gov/region9/greenbuilding/tribal-workgroup.html>)

#### Renewable Energy Efforts

- 8) Since early 2009, EPA, and tribes in the region coordinated with DOE which conducted 4 3-day workshops in Region 9. The first workshop was held in Mendocino County and included participation from 6 tribes in the region/ The second workshop was January 2010 at the Tohono O'odham Nation and included participation from tribes in Arizona. The third workshop was February 2010 at the Bishop Paiute Reservation and included participation from 6 tribes. The forth workgroup was held in Nevada and included participation from 9 tribes.
  - a. Networking through the workgroup has helped several tribes access Grid Alternatives, a non-profit organization that assists low-income homeowners, leading to installations of roughly 3 kW systems on dozens of homes and counting.

#### Resource Fair

- 9) In April 2011, the Sustainable Infrastructure workgroup submitted a FY13 budget proposal through RTOC to support tribal staff needed to achieve this objective.

#### Recommended Activities

Goals (desired results) & Strategies (pathways to get there)	Tasks	Time Frames	Leads
Advocate for funding	Annual budget request		TBD

Increase partnerships with other federal agencies	Annual sustainable infrastructure resource fair		Michelle, Rob Roy,
Increase awareness of tribes' interest and efforts in green building. Increase tribal networks.	Participate on National Tribal Green Building Code Workgroup	Ongoing	EPA
Provide information and outreach to tribes	Template green building codes	Summer 2012	EPA
	Web resources for funding green building, energy efficiency and renewable energy		EPA
	Presentations at RTOC meetings, EPA conferences		TBD
	Annual sustainable infrastructure resource fair		TBD

**Long-Term Activities (Within 3-5 years)**

TBD

Goals (desired results) & Strategies (pathways to get there)	Tasks	Time Frames	Leads

## FOCUS AREA #9

### Other Cross-Media Issues

#### A. PESTICIDES WORKGROUP

##### Background

- Coordinating outreach and/or efforts in reducing risks to health and the environmental in Indian Country from pesticides;
- Increase tribes' ability and capacity to manage pesticide issues and concerns that impact Indian Country;
- Advance tribes' understanding of the pesticide program-
- Provide information about Integrated Pest Management (IPM) and promote mechanisms that enable tribes to adopt IPM in Schools programs;
- Advocate for tribal participation in pesticides issues at a regional and national level;and,
- Promote health care providers' awareness of potential pesticide poisoning and/or pesticide related illnesses.

##### Relevant Provisions in EPI'S Strategic Planning Documents

- EPA Strategic Goal 4: \*Ensuring the Safety of Chemicals and Preventing Pollution
- OCSPP Strategic Goal 3: Increase Tribal Program Coverage. Objective 2: Fund innovative approaches for delivering various OCSPP program services to interested tribes.
- OCSPP Strategic Goal 4: \*Ensuring the Safety of Chemicals and Preventing Pollution
- Goal 3: Increase Tribal Program Coverage.  
Objective 1: Reduce Tribal Risks from Pesticides  
Objective 2: Strengthen Integrated Pest Management (IPM) Practices  
Objective 4: Leverage other funding mechanisms and sources and simplify administrative requirements associated with various programmatic activities.
- OCSPP Strategic Goal 5: Improve Tribal Partnership, Outreach, Communication and Consultation  
Objective 3. Empower tribal organizations through information sharing, training and outreach.
- OCSPP Cross Cutting Fundamental Strategy 4: Strengthening State, Tribal, and International Partnerships.
- Administrator Jackson Priority 7: Building Strong State and Tribal Partnerships.

#### **Key Past Activities & Accomplishments of the Region 9 RTOC:**

- Pesticide Assessment conducted by Pesticide Workgroup
- Maps showing Region 9 tribes and impairments to water from pesticides (R9)
- Webinars and presentations on pesticide issues (NPDES permits, C & T) and increased feedback from tribes to OPP regarding these issues
- Region 9 Tribal Pesticide Inspector Workshop, with attendance by tribes without pesticide inspection and enforcement programs (2011 and 2012)

#### **Recommended Activities**

##### **Short-Term Activities (Within 1-3 years)**

- Identify and support development of IPM in Schools programs for tribes (The R9 Pesticides Office has selected a contractor to provide IPM in Schools Training for tribes in FY13. IPM in Schools template will be developed and provided to tribes (at training and via EPA website).
- Improve communication and cooperation between tribes, states, counties and EPA. (In FY13, the R9 Pesticides Office is sponsoring Working Effectively with Tribal Governments for DPR and CalEPA.) Cooperation between tribes, states, counties and EPA will improve.
- Facilitate communication among tribes so that tribes that want copies of existing tribal pesticide ordinances can get them. Awareness of tribal regulatory schemes for pesticides will improve.
- Increase tribes' understanding of pesticide issues and FIFRA by providing outreach to tribes that don't have tribal pesticide programs/ Identify topic and provide 1-2 focused outreach webinars to tribes on pesticide issues.
- Provide Tribal Pesticide Inspector Training in FY13 (funded by EPA and organized by ITCA).
- Increase awareness of and make available EPA's Recognition and Management of Pesticide Poisonings to tribes and health care providers for tribes. Identify and share information about similar additional resources (such as information available from state programs).

##### **Long-Term Activities (Within 3-5 years)**

- Continue to provide outreach and education to tribes so that tribes can better protect their communities from risks associated with pesticides.
- Increase tribes' knowledge and awareness of pesticide issues by working with individual tribes, as requested.
- Increase tribal program coverage where possible by leveraging or providing funding and/or technical support.

- Provide training to health care providers in Indian country on recognizing potential pesticide poisoning and or pesticide related illnesses.

Goals (desired results) & Strategies (pathways to get there)	Specific Tasks	Time Frames	Leads
Increased number of IPM programs for tribes, including support for School IPM	<ul style="list-style-type: none"> <li>- Provide IPM in Schools training</li> <li>- Provide IPM in Schools template</li> </ul>	1-5 years	R9 Pesticides Office; RTOC Pesticide Workgroup
Reduce risks to health and the environment from pesticides, including reducing exposure at collection sites	<ul style="list-style-type: none"> <li>- Provide focused outreach to tribes (including community members and health care providers) that can be used to protect the health of kids and communities from pesticides</li> <li>- Provide Recognition and Management of Pesticide Poisonings to tribes and health care providers</li> <li>- Provide training to health care providers in Indian country</li> </ul>	1-5 years	R9 Pesticides Office ; RTOC Pesticides Workgroup
Improve tribal participation and communication on pesticide issues	<ul style="list-style-type: none"> <li>- Increase outreach and education to all R9 tribes dealing with pesticide issues</li> <li>- Provide tribal access to resources, information, outreach materials, webinars and training</li> </ul>	Ongoing and as requested	R9 Pesticides Office; RTOC Pesticides Workgroup
Support tribal capacity to minimize and manage pesticides and prevent pesticide exposure	<ul style="list-style-type: none"> <li>- Provide copies of existing Pesticide Ordinances and Pesticide Plans to interested tribes.</li> <li>- Help tribes develop their own templates (including Pesticide Plan templates)</li> </ul>	<ul style="list-style-type: none"> <li>-As requested</li> <li>- IPM in Schools template (FY13)</li> </ul>	- R9 Pesticides Office; RTOC Pesticides Workgroup
Increase cooperation and communication with EPA and other agencies/entities (such as IHS), including states.	<ul style="list-style-type: none"> <li>- Work with tribal and state contacts to increase awareness of issues, including jurisdiction.</li> <li>- Inform tribes of opportunities for participation and feedback on pesticide issues</li> <li>- Look for and participate in national dialogue with other groups on pesticide issues.</li> </ul>	<ul style="list-style-type: none"> <li>- At present – 5 years</li> <li>- Ongoing</li> <li>- Ongoing</li> </ul>	- R9 Pesticides Office; RTOC Pesticides Workgroup

Identify and overcome barriers to increasing pesticide program capacity and coverage in Indian country	<ul style="list-style-type: none"> <li>- Provide feedback to EPA HQ's on tribes' funding needs</li> <li>- ID available grant funding from EPA (including GAP) and other potential sources (such as HUD, BIA, IHS, APHIS, USDA, Western IPM) to support pesticide objectives</li> </ul>		<ul style="list-style-type: none"> <li>- R9 Pesticides Office; RTOC Pesticides Workgroup</li> </ul>
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# INDIAN ENVIRONMENTAL GENERAL ASSISTANCE PROGRAM

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## Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortia



May 15, 2013

**U.S. Environmental Protection Agency  
Office of International and Tribal Affairs  
American Indian Environmental Office**

This Guidance identifies Agency policies and recommended procedures for coordinating activities related to assistance agreements awarded under the Indian Environmental General Assistance Program (GAP). The statutory provisions, EPA regulations, and other legally binding documents described in this Guidance contain legally binding requirements that govern the use and management of GAP resources. This Guidance document does not substitute for other binding requirements and it does not expressly or implicitly create, expand, or limit any legal rights, obligations, responsibilities, expectations, or benefits to any person. In the event of a conflict between the discussion in this Guidance and any legally binding requirement, this Guidance document would not be controlling.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
OFFICE OF INTERNATIONAL AND TRIBAL AFFAIRS  
1200 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20460

REPLY TO THE ATTENTION OF: 2610R

May 15, 2013

**SUBJECT:** Final Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortia

**FROM:** Michelle DePass, Assistant Administrator

A handwritten signature in black ink, appearing to read "MD", is located to the right of the "FROM:" line.

**TO:** Tribal Leaders  
Regional Administrators  
Assistant Administrators

The U.S. Environmental Protection Agency (EPA) is pleased to release new guidance for the Indian Environmental General Assistance Program (GAP) and to acknowledge the input and collaboration we received from our tribal government partners in the guidance development process. Since the program began in 1993, GAP resources have enabled tribes to achieve significant progress in establishing their environmental programs and have facilitated productive government-to-government partnerships for tribes and EPA. GAP has made it possible for most tribes to establish baseline technical, administrative, and legal capacity for tribal environmental protection programs that respond to environmental issues affecting tribal lands.

GAP resources have allowed tribes to strengthen or increase their involvement in environmental management decisions, design projects and programs that respond to environmental threats, and to access other funding sources. This guidance enhances the successful EPA-tribal partnership by identifying a means for joint strategic planning, documenting mutual responsibilities for program development and implementation, targeting resources to build tribal environmental program capacities that are aligned with the tribe's long-term goals, and measuring environmental program development progress over time. Implementing this guidance will enable EPA and tribes to allocate GAP resources to the most pressing program development priorities and improve our ability to demonstrate progress as we establish and grow successful tribal environmental protection programs with GAP for more than 520 tribal governments.

Historically, EPA has not provided a nationally consistent approach for building tribal environmental protection program capacity under GAP or a mechanism to measure the progress tribes are making toward their defined program development goals. This led EPA's Office of Inspector General (OIG) to conclude that the Agency had "not provided a framework for tribes to follow or adapt as they develop their capacity to implement environmental programs" and that "it is

not clear whether GAP funding will result in tribes being able to operate their own environmental programs.”<sup>1</sup> The OIG recommended that EPA:

- (1) Require the American Indian Environmental Office to develop and implement an overall framework for achieving capacity, including valid performance measures for each type of tribal entity, and provide assistance to the regions for incorporating the framework into the IGAP work plans.
- (2) Require regions to (a) negotiate with tribes to develop environmental plans that reflect intermediate and long-term goals, (b) link those plans to annual IGAP work plans, and (c) measure tribal progress in meeting plans and goals.
- (3) Revise how IGAP funding is distributed to tribes to place more emphasis on tribes’ prior progress, environmental capacity needs, and long-term goals.

EPA concurred with all OIG recommendations and noted in the Agency’s response: “The critical importance of relating GAP funding to long-term and interim goals against which progress can be measured is a shared concern that we plan to address. The negotiation of goals by tribes and EPA, the measurement and assessment of progress against those goals, and EPA’s evaluation of funding requests are all inextricably linked.”<sup>2</sup> Through this new GAP Guidance, we have established a framework that links these important components of building tribal environmental program capacity.

In the development of this GAP Guidance, EPA first consulted and coordinated with dozens of tribes on the “Guidebook for Building Tribal Environmental Capacity” (Guidebook) between August 1, 2011 and January 30, 2012. In addition to participating in numerous meetings, we received extensive written comments from 52 tribes and 10 tribal organizations. As a result, EPA made significant revisions to the Guidebook, and we conducted a second consultation and coordination process with tribes on the Guidebook, as part of the new GAP Guidance, between November 16, 2012 and February 22, 2013. During this second round, EPA participated in numerous meetings with tribal leaders and received written comments from 23 tribes and 6 tribal organizations.

The robust discussions with tribes substantially improved the new GAP Guidance. Importantly, tribes requested that the guidance contain sufficient flexibility for GAP resources to be tailored to the needs of individual tribes, and to avoid unnecessary additional procedures. We have structured this final Guidance to provide maximum flexibility within a consistent national framework for building tribal capacity that assures continued improvement and efficiencies in the management of GAP resources.

GAP assistance agreements have played a major role in the successful development of tribal environmental protection programs. We look forward to building on that success and working with tribes and tribal organizations to implement this new GAP Guidance. EPA will provide tribes and intertribal consortia with training and technical assistance as we implement the new GAP Guidance. Thank you in advance for your active participation in this important effort as together, we continue to protect human health and the environment through the GAP program.

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<sup>1</sup> U.S. EPA Office of Inspector General, “Framework for Developing Tribal Capacity Needed in the Indian General Assistance Program,” Report No. 08-P-0083, 02/19/2008.

<sup>2</sup> EPA Assistant Administrator Benjamin H. Grumbles to EPA’s Deputy Inspector General Bill A. Roderick, January 15, 2008. Subject: Response to the Office of Inspector General Draft Report “Framework for Developing Tribal Capacity Needed in Indian General Assistance Program” (Assignment No. 2007-539)

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# INDIAN ENVIRONMENTAL GENERAL ASSISTANCE PROGRAM

## Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortia

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## **INDIAN ENVIRONMENTAL GENERAL ASSISTANCE PROGRAM Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortia**

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### **1.0 Introduction**

This Guidance on the Award and Management of General Assistance Agreements (Guidance) describes how the U.S. Environmental Protection Agency (EPA or Agency) administers the Indian Environmental General Assistance Program (GAP) Act of 1992 (42 U.S.C. §4368b). In conjunction with the information provided in Appendix I, “Guidebook for Building Tribal Environmental Program Capacity,” this Guidance provides a consistent national framework for building tribal environmental program capacity under GAP and is designed to improve the management of GAP resources.

This document provides criteria for the award and administration of GAP grants. It reflects statutory and policy guidelines and contains binding requirements that govern the management and use of GAP funds. This Guidance applies to the work plans and budgets for GAP assistance agreements – as such, EPA regional offices and applicants are expected to follow this Guidance and refer to this document during the development of application materials.

This Guidance supersedes previous guidance issued March 9, 2000 and February 24, 2006.

### **1.1 Program Background**

The GAP was created to assist federally recognized tribes and intertribal consortia to plan, develop, and establish the capacity to implement programs administered by the EPA and to assist in the development and implementation of solid and hazardous waste programs for Indian lands.<sup>3</sup> In addition, the GAP was created to provide technical assistance from EPA to tribal governments and intertribal consortia in the development of multimedia programs to address environmental issues.<sup>4</sup>

EPA recognizes tribal governments as the primary parties for setting standards, making environmental policy decisions, and managing programs for reservations, consistent with Agency standards and regulations [“EPA Policy for the Administration of Environmental Programs on Indian Reservations<sup>5</sup>” (Indian Policy)]. As a result, EPA is committed to using

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<sup>3</sup> The Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b.

<sup>4</sup> Id.

<sup>5</sup> U.S. Environmental Protection Agency. 1984. *EPA Policy for the Administration of Environmental Programs on Indian Reservations*. (<http://www.epa.gov/tribalportal/pdf/indian-policy-84.pdf>).

the GAP to build tribal capacity to administer environmental protection programs consistent with the federal laws the EPA is charged with implementing. Through the GAP, the EPA also provides technical assistance to build environmental protection program capacity for tribes that are not implementing federally authorized regulatory programs or that may wish to go beyond federal requirements. GAP helps tribes have opportunities to meaningfully participate in policy making, standard setting, and direct implementation activities potentially affecting tribal environmental protection interests. The program also provides resources for tribal governments to cooperate with and, when appropriate, enter into intergovernmental agreements with federal, state, or local governments in an informed manner.

In keeping with the federal trust responsibility, the Agency works with tribes to ensure that EPA's environmental protection programs are implemented throughout the country. Depending on the particular federal statute, the Agency has a number of options to ensure that regulated entities<sup>6</sup> are in compliance with federal requirements. For example, the Agency can directly administer a federal program, approve eligible tribes to administer the program, or work cooperatively with tribes on a government-to-government basis to protect human health and the environment. No matter which mechanism EPA employs in carrying out its mission, the Agency strives to work closely with tribal governments, consider tribal interests, and encourage tribal governments' to develop their own environmental protection programs.

## 1.2 Program Priorities

Funding is provided under GAP for the purposes of planning, developing, and establishing tribal environmental protection programs consistent with programs and authorities administered by the EPA. This Guidance recognizes that there is a broad spectrum among tribes with respect to population, culture, income, geography, economic development, and environmental program management expertise and training. GAP assistance may be tailored to the needs of each tribe, and regions are responsible for working with tribes to establish assistance agreement work plans that are a proper fit.

As further detailed in Appendix I, GAP resources should support:

- Developing and maintaining core environmental program capacities (administrative, financial management, information management, environmental baseline needs assessment, public education/communication, legal, and technical/analytical);
- Engaging with the EPA to negotiate joint EPA-Tribal Environmental Plans (ETEPs, discussed in Section 4) that reflect intermediate and long-term goals for developing, establishing, and implementing environmental protection programs;
- Linking GAP-funded assistance agreement work plans to the ETEPs;
- Developing baseline capacities for media-specific environmental protection programs that are related to the needs of the recipient and to EPA statutory programs (e.g.,

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<sup>6</sup> Throughout this document, "entities" can include sites, facilities, and/or activities subject to federal environmental regulatory compliance requirements.

- ambient and indoor air quality; water quality; managing wastes; managing asbestos, lead-based paint, pesticides, toxics, and pollution prevention programs); and
- Implementing waste management programs (see Appendix I, “Guidebook for Building Tribal Environmental Program Capacity,” Section E).

### 1.3 EPA Program Roles and Responsibilities

American Indian Environmental Office (AIEO): Among other duties, AIEO is the National Program Manager for the GAP. As the National Program Manager, AIEO is responsible for: establishing guidance to administer the program; periodically evaluating the effectiveness and efficiency of the program; annually distributing funding allocations to regional offices; maintaining a GAP performance reporting system; gathering regional data and reporting results achieved through the GAP; and providing technical assistance to regional offices regarding the administration of GAP resources and the joint EPA-tribal environmental planning activities.

Regional Offices: Regional offices are responsible for: implementing in partnership with tribes a joint EPA-tribal environmental planning framework; negotiating GAP assistance agreement work plans that are linked to the joint EPA-tribal environmental plans; processing GAP applications; making award decisions consistent with this Guidance and applicable grant requirements; collecting data and information from award recipients that demonstrate outputs and outcomes achieved through the GAP; inputting information into GAP performance reporting system(s) (e.g., GAP Online); and conducting post-award management. Regional offices serve as the direct contact for applicants and recipients. Any supplemental guidance, policy, or criteria regional offices propose to apply to GAP grants awarded after the effective date of this Guidance should be provided to the AIEO Director for review and concurrence before being finalized to ensure consistency in how this national Guidance is being interpreted and applied.

Regional office personnel will serve as project officers for GAP assistance agreements and will work with applicants to finalize project work plans and budgets. Each Regional Administrator, or their designee, will review completed GAP applications and either approve, conditionally approve, or disapprove those applications within 60 days of receipt.<sup>7</sup> Once a GAP application is approved, the regional office will formally notify the applicant.

### 1.4 Allowable Activities and Restrictions under GAP

The GAP statute, applicable grant regulations, and this Guidance should be consulted where a region is not certain as to whether a proposed activity is eligible for funding under GAP. AIEO is also available to advise regional offices on specific questions of eligibility.

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<sup>7</sup> 40 C.F.R. § 35.510.

This subsection provides some general guidelines regarding eligible and ineligible activities, however it is not practicable to provide an exhaustive list of activities given the diversity of tribes and tribal environmental protection programs being developed across the country. The following list of allowable activities and general restrictions is not comprehensive, but illustrate the most common scenarios that arise under the GAP.

When identifying fundable GAP activities, the program capacity building indicators in Appendix I of this Guidance are a helpful resource because they provide specific examples of milestones that GAP-funded activities, or a combination of activities, could support toward building environmental program capacity, consistent with EPA's environmental protection programs. The indicators offer a non-exclusive menu of choices organized by category of environmental program development; they need not all be selected.

#### Examples of Allowable Activities

- Activities related to planning, developing and establishing tribal capacities for implementing environmental protection programs administered by the EPA are allowable, including the administrative, technical, legal, communications, outreach, compliance assurance, and enforcement components of a program.
  - As described in Section B.5 of Appendix I, activities to establish baseline environmental conditions are essential to developing a tribal environmental protection program and are allowable under GAP, including assessing environmental conditions for land a tribe is planning to acquire.
  - Establishing an environmental protection program may include performing a “test drive” of the program to determine whether the tribe is ready to move into the program implementation phase. “Test drives” of capacity to implement are for evaluating the effectiveness of a program and may be funded for up to four years under GAP. Work plans containing “test drive” activities should contain activities to collect information about program design and effectiveness and describe how this information will be used to identify options for improving the program, including but not limited to: new or revised environmental protection policies and procedures; more stringent standards and/or requirements; and additional capacity development needs.
- Tribes with limited jurisdiction to implement environmental regulatory programs may use GAP funds to develop program capacities for purposes consistent with the extent of their authorities, such as: evaluating environmental conditions; developing voluntary or partial environmental protection programs; participating in environmental policy making; coordinating with EPA or other federal agencies on the implementation of federal environmental protection programs; and entering into joint environmental protection programs with neighboring tribal, state, or local environmental agencies.
- Activities related to establishing environmental protection programs not administered by EPA, but that are consistent with those provisions of law for which Congress has given EPA authority, are allowable. For example a tribe could use GAP funds to develop a climate change adaptation plan or to establish environmental protection programs that compliment non-environmental protection programs (such as identifying ambient water

and/or air quality parameters that influence exotic plant species threatening the ecosystems or influence the reestablishment of culturally significant native plants).

- Activities related to establishing education, outreach, public participation, compliance assistance, and coordination programs for tribal environmental staff to work effectively with regulated entities are allowable. Examples of these programs include: (1) capacity to provide compliance assistance to ensure that facilities are aware of and complying with federal and/or tribal environmental program requirements; (2) capacity to work jointly with other jurisdictions on certain environmental planning projects such as source water protection plans, solid waste management plans, standard setting initiatives, federal policy making activities, and other issues appropriate for a tribe's participation in intergovernmental agreements; and (3) capacity to provide training to promote best management practices or compliance with federal and/or tribal environmental program requirements.
- The purchase of supplies (items that cost less than \$5,000) necessary to administer tribal environmental protection programs is allowable. Supplies may be repaired, upgraded, and/or replaced as required if included in the approved work plan budget. Examples include: (1) office supplies; (2) computers, printers, and related peripherals; and (3) software.
- Initial purchases of equipment (purchases equal to or greater than \$5,000) necessary to administer tribal environmental protection programs are allowable as direct costs.<sup>8</sup> Examples include: (1) GIS survey instruments and related equipment; (2) vehicles for environmental program operations; (3) sampling, measurement, analysis, and other related equipment; and (4) source separation, waste minimization, and waste management equipment. For information on what happens to equipment that was paid for with GAP funds following completion of the grant, see 40 C.F.R. §31.32.
- Notwithstanding the general prohibition on the use of GAP funds for construction as described below, certain construction activities necessary for building environmental protection program capacity may be permissible. For example, for a tribe to develop a core tribal environmental protection program it is necessary for the tribe to have a place for staff to conduct their work. If rental space is not available, it may be necessary to construct office space or buy a modular building and move it to an appropriate location. Similarly, as discussed in Appendix I Section E, the construction of facilities that are part of a tribe's source separation project are also allowable. For example, the construction of transfer stations, recycling centers, compost facilities, used oil collection stations, and other similar facilities may be funded under GAP. Any construction activities funded under GAP must meet the requirements of 2 C.F.R. §225, Appendix B(15). For information on what happens to the title of a building that was paid for with GAP funds following completion of the grant, see 40 C.F.R. §31.31.

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<sup>8</sup> 2 C.F.R. §225, Appendix B(15): "Cost Principles for State, Local, and Indian Tribal Governments".

EPA will evaluate proposed construction activities on a case-by-case basis to determine whether the proposed construction activity is necessary to plan, develop, or establish a tribal environmental protection program. Requests from applicants for construction activities will be evaluated by the Regional Office and referred to the AIEO Director with full justification for recommended approval or non-approval of the request, including provisions regarding compliance with the National Environmental Policy Act. AIEO will make the determination on the proposal within 30 days and in consultation with the appropriate EPA program office and the Office of General Counsel.

- Activities related to establishing the capacity indicators contained in Appendix I are allowable.
- Activities to implement solid and hazardous waste programs consistent with Appendix 1, Section E are allowable.

### Restrictions

- GAP funds cannot be used to fund activities not closely related to planning, developing, and establishing tribal environmental protection program capacity consistent with programs administered by EPA.<sup>9</sup> Examples include:
  - Animal husbandry, community gardens, the repatriation of Native American cultural items, and feral animal control.
  - Implementing environmental protection programs once established, except for solid and hazardous waste programs as discussed in Appendix I, Section E.
  - Conducting Natural Resource Damage Assessments are deemed to be part of program implementation under Agency policy and should not be funded under GAP.
  - Planning, developing, or establishing programs that primarily support ongoing litigation, for profit enterprises, or any commercial purposes (e.g., utility company, gas station, gaming enterprise).
  - Planning, developing, or establishing natural resource management programs that are generally not administered by EPA. Examples of these types of unallowable activities include: silviculture projects (e.g., tree farming); beaver dam control programs; programs to manage invasive species; and fishery operations.
  - Repairing, upgrading, and/or replacing facilities and equipment are typically deemed to be implementation costs and are generally unallowable under the GAP, except for source separation facilities and equipment as discussed in Appendix I Section E. Regional offices are to evaluate requests for GAP funds to repair, upgrade, or replace facilities and equipment on a case-by-case basis to determine whether they are restricted costs (implementation) or are allowable because they are necessary to plan, develop, or establish a tribal environmental protection program. These requests must meet the requirements of 2 C.F.R. §225, Appendix B(15).
  - Corrective actions – or other actions responding to an enforcement order – at regulated entities are implementation and are therefore unallowable under the GAP.

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<sup>9</sup> The Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(f).

- Activities that are the inherent responsibility of a state or local government, or that primarily benefit state or local governments or any other entity ineligible to receive GAP resources.
- Salaries and expenses of a tribe’s chief executive, tribal council, or of the judiciary branch of a tribal government are unallowable. However, the portion of salaries and expenses directly attributable to managing and operating federal environmental protection programs by a tribe’s chief executive and his staff are allowable.<sup>10</sup>
- General costs of government services normally provided to the general public, such as fire and police, are unallowable.<sup>11</sup> Under GAP, this restriction includes trash collection, transportation, backhaul, and disposal services which are generally outside the scope of programs administered by the EPA.<sup>12</sup> Section E of Appendix I describes a number of solid and hazardous waste program implementation activities that are allowable under the GAP.
- Goods or services for personal use are unallowable, regardless of whether the cost is reported as taxable income to the employees.<sup>13</sup>
- Planning, designing, constructing, and operating a specific facility is an implementation activity; therefore, such costs are not eligible for funding under GAP.<sup>14</sup> Examples of construction activities not allowed include, but are not limited to: landfill construction; wastewater treatment facility construction; drinking water system construction; construction related to implementation of best management practices for nonpoint source pollution control; and purchase of construction equipment such as trucks or graders. The feasibility studies and NEPA reviews associated with such facility construction, including environmental impact studies and assessments, are part of the planning phase of facility construction; therefore, they are also implementation activities not eligible for funding under GAP.<sup>15</sup>

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<sup>10</sup> 2 C.F.R. §225, Appendix B(19): “Cost Principles for State, Local, and Indian Tribal Governments”.

<sup>11</sup> Id.

<sup>12</sup> “Any general assistance under this section shall be expended for the purpose of planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency and specified in the assistance agreement. Purposes and programs authorized under this section shall include the development and implementation of solid and hazardous waste programs for Indian lands. [...] Such programs and general assistance shall be carried out in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).” Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(f).

<sup>13</sup> 2 C.F.R. §225, Appendix B(20): “Cost Principles for State, Local, and Indian Tribal Governments”.

<sup>14</sup> Except for solid waste source separation facilities as described in Section E.4(c) of Appendix I.

<sup>15</sup> These activities may be eligible for funding under other EPA programs and programs administered by other federal agencies.

## 2.0 Award Information

The Catalog of Federal Domestic Assistance number for the Indian Environmental General Assistance Program is 66.926.

### 2.1 General Information

- Congress provides GAP funding to EPA as part of the annual budget appropriations process, through the State and Tribal Assistance Grants (STAG) Appropriation.<sup>16</sup> OITA allocates GAP funds to regional offices annually and notifies regions via a decision memorandum. If a region is interested in moving STAG funds into or out of their GAP account, modifying the national allocation of STAG funds, regions must follow the process described in OITA's annual decision memorandum. The annual decision memorandum describes the procedures regional offices must follow when initiating a process to reprogram funds affecting the GAP that assures compliance with Congressional guidelines.
- Consistent with the GAP authorizing statute, each initial GAP assistance agreement shall be for at least \$75,000.<sup>17</sup> No single award may exceed ten percent of the total annual funds appropriated for the GAP.<sup>18</sup>
- EPA may elect to partially fund proposals by funding discrete portions or phases of proposed projects.
- EPA may elect to set aside a portion of GAP resources to support specific tribal or intertribal consortia projects. These projects should have national or region-wide application, address a national or regional program priority, or seek to demonstrate the applicability of novel program activities to a broader set of eligible recipients.

### 2.2 Types of Assistance

Assistance agreements funded under GAP may be issued in various forms. The project application should state the form of assistance preferred by the applicant.

Grant or Cooperative Agreement – Grants represent direct funding to a recipient to support an identified project with defined environmental results. Unlike a grant, a cooperative agreement anticipates substantial involvement from EPA, in collaboration with the recipient, to achieve project results after the award has been made. If EPA expects to have substantial

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<sup>16</sup> The total amount of GAP money Congress provides to EPA can change from year-to-year.

<sup>17</sup> The Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(d)(2).

<sup>18</sup> Id.

involvement, EPA will issue the assistance agreement as a cooperative agreement. If no substantial involvement by EPA is expected, EPA will issue a grant.<sup>19</sup>

Performance Partnership Grant (PPG)<sup>20</sup> – A PPG is a grant awarded from two or more categorical grant programs. A tribe can combine funds from two or more eligible grant programs into one PPG.<sup>21</sup> Recipients may then use PPGs to fund activities that are allowable under any of the eligible PPG grant programs. An applicant whose organization has an existing PPG or who is eligible to form a new PPG with EPA may request that GAP funding be included in a PPG. The flexibility of a PPG can allow for improved environmental performance, increased programmatic flexibility, and administrative savings. However, the need for flexibility should be balanced with the Agency's goals of establishing sustainable tribal environmental program capacities. For more information, please see the, "Best Practices Guide for Performance Partnership Grants with Tribes" (<http://www.epa.gov/ocir/nepps/pdf/ppg-guide-for-tribes.pdf>). Absent a request from the applicant for inclusion in a PPG, EPA will award the funding as a stand-alone assistance agreement.

## 2.3 Eligibility Information

The following are eligible to receive financial assistance: Indian tribal governments and intertribal consortium or consortia.<sup>22</sup>

The term *Indian tribal government (tribe)* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible by the U.S. Department of the Interior (DOI) for the special services provided by the United States to Indians because of their status as Indians.<sup>23</sup>

The term *intertribal consortium or consortia* means a partnership between two or more tribes that is authorized by the governing bodies of those tribes to apply for and receive assistance under this program.<sup>24</sup>

Tribes that form consortia may be able to use their resources more efficiently and address environmental issues more effectively than they could if each tribe individually developed and maintained separate environmental protection programs. Consortia are advised to describe how grant proposals respond to the program development needs of their eligible member tribes as documented by the process described in Section 4 below.

Under EPA's tribal grant regulations, an intertribal consortium is eligible to receive a GAP award if the consortium demonstrates that: (1) a majority of its members are eligible to

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<sup>19</sup> EPA Order 5700.1, *Policy for Distinguishing Between Assistance and Acquisition* (March 22, 1994).

<sup>20</sup> More information on the PPG funding authority is at 40 C.F.R. § 35.530-538.

<sup>21</sup> PPG eligible programs are listed at 40 C.F.R. § 35.501.

<sup>22</sup> 40 C.F.R. § 35.543.

<sup>23</sup> 40 C.F.R. § 35.502.

<sup>24</sup> *Id.*

receive GAP grants; (2) all members that meet GAP eligibility requirements authorize the consortium to apply for and receive the award<sup>25</sup>; and (3) adequate accounting controls are in place to ensure that only members that meet the eligibility requirements will benefit directly from the award and the consortium agrees to an award condition to that effect.<sup>26</sup> This means that a consortium may receive a GAP grant even if the consortium includes groups that are not federally recognized as tribes so long as the consortium meets the three regulatory requirements specified above. With each GAP grant application, an intertribal consortium must provide EPA with “adequate documentation” of: (1) the existence of the partnership between eligible tribal governments; and (2) the authorization of the consortium by all GAP-eligible member tribes to apply for and receive the grant.<sup>27</sup> Typically, tribal authorization by the GAP-eligible tribes is provided by a tribal leader letter or a tribal council resolution from each GAP-eligible member of the consortia. The Office of Regional Counsel for the region receiving the grant application should evaluate applications to determine whether the documents submitted for a particular grant meet the regulatory standard. Where additional documentation is required, EPA will work with the consortia to clarify what additional documentation is needed. Applications that do not contain adequate documentation from GAP-eligible tribes should be deemed incomplete.

## 2.4 Cost-Sharing or Matching Requirement

No cost-sharing or match is required from applicants.

## 2.5 Length of the Award

The term of a GAP award may exceed one year, but may not exceed four years.<sup>28</sup> The term is determined at the time of the award and documented in the work plan.

## 2.6 Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, “Intergovernmental Review of Federal Programs.”

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<sup>25</sup> Note the clear distinction between (1) and (2): an intertribal consortia is eligible to apply for a GAP grant where a **majority** of the consortia members are GAP-eligible; however, authorization of the consortia to apply for and receive a GAP grant is required from **all** GAP-eligible member tribes. All eligible members must authorize the grant application, given that those grant dollars would otherwise be available to the individual tribes under GAP.

<sup>26</sup> 40 C.F.R. § 35.504(b).

<sup>27</sup> 40 C.F.R. § 35.504(c) .

<sup>28</sup> 42 U.S.C. § 4368b (d)(3).

## 2.7 Competition Policy Exemption

This assistance agreement program is exempt from competition under EPA Order 5700.5A1, Policy for Competition of Assistance Agreements, Section 6(c)(2).<sup>29</sup> In any funding materials distributed, EPA should refrain from using the following terms or others like them that may create the impression that the GAP funds are being awarded “competitively”: request for proposals; solicitations; ranking criteria.

Regions should not use any allocation factors which have the effect of measuring the relative quality or merit of one work plan against the other.

## 2.8 Environmental Results Supported by Assistance Activities

Pursuant to EPA Order 5700.7, “Environmental Results under EPA Assistance,” EPA must link proposed work plan activities in funded assistance agreements to the Agency’s Strategic Plan. This is a previously established requirement binding the Agency, which governs all assistance agreements EPA awards. While the Order requires a link to the Agency’s Strategic Plan, EPA also acknowledges that work plan activities should also be linked to tribal program priorities, reflecting EPA’s commitment to supporting tribally defined outputs and outcomes that are consistent with the federal laws the EPA is charged with implementing. Under the Order, EPA requires assistance agreement recipients to define environmental outputs and environmental outcomes to be achieved under the award. Outputs and outcomes are defined as follows:

1. Outputs: The term “output” refers to an environmental activity, effort, and/or associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during the project period. Examples of outputs under GAP include: solid waste management plan; air emissions inventory; surface water sampling plan; and lead-based paint public education campaign. For each proposed work plan activity, applicants are expected to identify a measurable output.
2. Outcomes: The term “outcome” refers to the result, or consequence that will occur from carrying out the activities under the award. Outcomes may be environmental, behavioral, health-related, or programmatic; must be quantitative; and may not necessarily be achievable during the project period. Examples of outcomes under GAP include: level of reduction in unauthorized discharges to the air, water, or land; size of population benefiting from a reduction in pollution; changes in knowledge and understanding; and changes in behavior. Applicants are expected to identify an outcome for each program component funded under GAP.

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<sup>29</sup> The Order reads, in part: “The requirements of this Order do not apply to... programs available by statute, appropriation act, or regulation only to Indian tribes and Intertribal Consortia.”

## **2.9 Applicable Agency Guidance, Regulations, and OMB Circulars**

GAP awards are subject to the following regulations and requirements. Regions should be aware of these requirements when awarding and managing GAP assistance agreements:

- 2 C.F.R. Part 225 “Cost Principles for State, Local, and Indian Tribal Governments”
- 40 C.F.R. Part 31 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”
- 40 C.F.R. Part 35, Subpart B “Environmental Program Grants for Tribes”
- OMB Circular A-133 “Audits of States, Local Governments, and Non-Profit Organizations”
- 2 C.F.R. Part 1536 "Requirements for Drug-Free Workplace (Financial Assistance)"
- 40 C.F.R. Part 33 "Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs" - see specifically 40 C.F.R. § 33.304 ("Must a Native American (either as an individual, organization, Tribe, or Tribal Government) recipient or prime contractor follow the six good faith efforts?")

## **3.0 Performance Reporting: Indicators of Tribal Environmental Program Capacity**

Tribal governments have tribe-specific priorities. Tribes will identify program areas to focus on with respect to building environmental protection program capacity. In addition, each tribal government determines how far down the path of program development it wants to proceed (e.g., all the way to program implementation or in between core program capacity and development of some of the media-specific program capacities). There is not just one pathway to follow for building environmental program capacity, and as such there are many indicators that can be used to assess and measure progress in the capacity building process.

One indicator that is far down the path of program capacity building is when a tribe assumes a lead regulatory or co-regulatory role for implementing federal program requirements (i.e., in lieu of direct implementation by the EPA). Where programmatically available, this is measured by a tribe obtaining treatment in a manner similar to a state (TAS) status to implement a particular regulatory program instead of EPA implementing it. A tribe can also build sufficient programmatic capacities to support EPA implementation activities under a Direct Implementation Tribal Cooperative Agreement (DITCA) or work share Memorandum of Understanding (MOU).

Tribes that are not seeking TAS status may wish to establish other meaningful and important levels of environmental program capacity directly in support of the environmental statutes the

EPA implements, or for tribal environmental protection programs that are consistent with EPA's programs. Seeking TAS status is not a requirement for receiving funding under this program.

The indicators in Appendix I are designed to help identify and measure the status of tribal environmental program capacity. The indicators are tools to help tribes as they plan for program capacity development under the GAP. These indicators provide examples of "road-maps" for building a tribal environmental program and will help tribes and EPA identify both short-term and long-term goals and activities. The indicators in Appendix I offer a non-exclusive menu of choices, organized by category of environmental program development; they need not all be selected. Other indicators of capacity may be identified in GAP assistance agreement work plans and in long-term planning agreements as described in Section 4 of this guidance on a tribe-by-tribe basis, reflecting the unique priorities and program development plans of a particular recipient. There are often many activities that must occur to establish a single indicator and EPA can provide specific program guidance and technical assistance tools and resources to help identify and plan for those specific activities.

As described further in Section A.3 of Appendix I, EPA acknowledges that developing, establishing, and maintaining environmental protection program capacity is a continuing programmatic need. Tribes may need to re-establish capacities due to staff turnover, land acquisition, or other changing circumstances and may need to revise projected program development goals. GAP resources provide a significant foundation for maintaining tribal environmental program capacities over time and tribes can continue to receive GAP funding to expand, enhance, or evolve their capacity in light of specific tribal needs.

Where a tribe is using GAP grant resources to plan, develop, and establish environmental protection program capacities in one of the areas listed in Appendix I, GAP assistance agreement work plans should incorporate indicators from Appendix I, as appropriate based on the activities planned, and link those capacity indicators to long-term program development goals described in the EPA-Tribal Environmental Plan (ETEP) described in Section 4 of this guidance. Where capacities are being developed in areas not described in Appendix I, the work plan must adequately identify and describe the applicable indicators of capacity. Tribes and EPA will rely on the capacity indicators that have been identified in work plans and the long-term goals in ETEPs to assess and report on progress in the development of tribal environmental program capacities under the GAP program.

## **4.0 Developing EPA-Tribal Environmental Plans (ETEPs)**

### **4.1 Background**

EPA has long recognized the value of establishing intergovernmental planning agreements with states and tribes to define mutual roles and responsibilities for program

implementation.<sup>30</sup> Tribes have also promoted the idea of a joint EPA-tribal planning process to address tribal environmental priorities and ensure that federal programs are fully implemented. For example, EPA, in partnership with the National Tribal Operations Committee's National Tribal Caucus (NTC), first adopted a cooperative EPA-tribal program planning strategy in 1994. This approach included "the tribes' plans to manage authorized environmental programs and/or their need for federal technical assistance, education and implementation and management of environmental protection."<sup>31</sup> The approach also ensured that each Regional Administrator had flexibility to "determine, in consultation with tribes, the most appropriate way to develop these workplans."<sup>32</sup> The NTC has consistently endorsed the joint EPA-tribal planning process concept.<sup>33</sup>

In 2008, the EPA Office of Inspector General (OIG) issued an Audit Report on the GAP program.<sup>34</sup> The OIG found that some tribes did not have long-term plans in place for building environmental capacity, and that for those tribes that did have plans with long-term goals (usually in the form of the Tribal Environmental Agreement [TEA]), EPA was not tracking the tribe's GAP work plan progress against those long term goals. Therefore, the OIG concluded, it was unclear just how well GAP was helping tribes be able to operate their own environmental programs. EPA agreed to take several actions in response to the OIG's recommendations resulting from the Audit. Specifically, EPA agreed to standardize a computer-based, online work plan process to improve the Agency's ability to document the good work being done under GAP. That process was fully implemented in 2010 through GAP Online. In addition, EPA agreed to provide a framework for tribes and EPA to follow or adapt as tribes develop their environmental program capacities. That framework is embodied in this Guidance, but most importantly in Appendix I,<sup>35</sup> which contains the specific capacity building indicators that can be used as milestones, or measures, along the pathway toward building specific core and programmatic capacities. EPA also agreed to ensure that this framework provided a means for linking the GAP-funded work described in the annual work plans back to the long-term goals for program capacity building. To accomplish this, EPA is committed to working with our tribal partners to ensure the following:

- EPA Regional offices discuss and develop ETEPs with tribes that seek GAP funding, to reflect the intermediate and long-term goals of the tribe for building environmental program capacities;

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<sup>30</sup> U.S. EPA Memorandum, "Final EPA/Tribal Agreements Template," March 20, 1995; visit <http://www.epa.gov/ocir/nepps/> for information on EPA-state partnerships through the National Environmental Performance Partnership System (NEPPS).

<sup>31</sup> U.S. EPA Memorandum, "Announcement of Actions for Strengthening EPA's Tribal Operations," July 14, 1994.

<sup>32</sup> Id.

<sup>33</sup> July 2012 Addendum to the "National Tribal Caucus Environmental Protection for Indian Country, Environmental Resource Needs & Recommendations," Fiscal Year 2014 Update.

<sup>34</sup> "Framework for Developing Tribal Capacity Needed in the Indian General Assistance Program," February 19, 2008, Report No. 08-P-0083.

<sup>35</sup> A different version of Appendix I was previously discussed with tribes as a stand-alone "Guidebook for Building Tribal Environmental Program Capacity" through a consultation and coordination process that ran from August 2011 through January 2012. Based on feedback, the Guidebook was modified substantially and incorporated into the GAP Guidance.

- Approved GAP work plans contain capacity indicators that are related to accomplishing the goals identified in the ETEPs; and
- EPA and the tribe are able to measure progress under the GAP work plan and the progress being made toward accomplishing the long-term goals in the ETEPs.

Through the development of these ETEPs, or strategic planning documents, and with improved alignment of the specific activities in the GAP work plans with the long-term goals and priorities identified in those planning documents, EPA and tribes will be better positioned to ensure that GAP is being used effectively to build tribal environmental program capacity.<sup>36</sup> EPA recognizes that in some instances the prior use of long-term planning tools, usually in the form of a TEA, did not benefit tribes or the Agency. In addressing some of those weaknesses, EPA has developed this streamlined approach for a long-term planning tool that can be modified as needed. The ETEPs are intended to be living, usable documents for both tribes and EPA as environmental partners to use in planning and guiding our work.

## **4.2 Purpose and Format for ETEPs**

To accomplish the three goals listed above in the context of the GAP program, Regions and tribes are expected to develop an ETEP that contains the following components: (1) identification of tribal environmental program priorities, including capacity building and program implementation goals; (2) identification of EPA program priorities and management requirements; (3) an inventory of regulated entities; and (4) identification of mutual roles and responsibilities. The purpose of the ETEP is to develop the complete picture of the particular environmental issues facing the tribe, establish a shared understanding of the issues the tribe will be working on, and a shared understanding of those issues that EPA will address consistent with its responsibility to protect human health and the environment. By having these elements of a plan in place, EPA should be able to ensure that GAP work plans are developed to support the long-term priorities and goals of the tribe and that funds are directed toward building environmental program capacities. EPA considers this jointly-developed plan an important component of effective GAP resource management.

The specific format and approach to developing ETEPs may vary from tribe to tribe and region to region. Maximum flexibility is provided as to how the ETEPs are developed. For example, a tribe and region may decide to develop a streamlined document that succinctly addresses the four components of an ETEP listed above (described in more detail below). As another example, TEAs may be developed, or modified if necessary, to ensure the four components are addressed. As another example, tribes and regions may update existing documents, to the extent they are useful and still relevant, to ensure they address the four ETEP components, and memorialize in a written memo or through specific correspondence, the shared understanding of how those documents comprise the ETEP (examples of some

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<sup>36</sup> While ETEPs do not necessarily apply to intertribal consortia, EPA regional offices should refer to the individual ETEPs of a consortium's member tribes when negotiating work plans with a consortium to ensure that the proposal responds to their member tribes' program development needs.

existing documents include Tribal Environmental Plans, Tribal Environmental Agreements (TEAs), Tribal Strategic Environmental Plans, etc.).

In recognition that there is great variation not only in the size of tribal governments, but also in the range of environmental issues and program capacities across the nation, it is expected that the length and level of detail for the ETEPs will also be greatly varied. For example, for a small Alaska Native Village, an ETEP may only need to address one or two program areas and as a result the ETEP itself may only be a few pages long. As another example, for a tribe that has program implementation authority under a federal statute (i.e., TAS approval), and is building capacities in other areas, a more comprehensive ETEP will likely be appropriate.

The remainder of this section describes the four components of an ETEP. It is recommended that these agreements cover no more than a 5 year time-period to achieve specific capacity development milestones. GAP-funded activities, along with other activities prioritized by the tribe and the Agency, should be reflected in the ETEP.

### **4.3 Components of an ETEP**

#### **(1) Tribal Programs and Priorities**

Many tribal governments have already developed programs to address human health and environmental threats facing their communities. Other tribes may have yet to develop programs, but have conducted needs assessments or community surveys, or have used a comprehensive planning process (for example, development of a baseline needs assessment, tribal Integrated Resource Management Plan, or other comparable document) to identify and prioritize environmental concerns for their communities. These priorities will be an important factor in how a particular tribe will want to partner with the Agency to meet short- and long-term program development milestones for building capacity. ETEPs may also contain specific technical assistance and training the tribe may need from EPA.

Tribal governments should include environmental program priorities for their community in this section of the ETEP. For each priority, the following detail should be included: (1) short description of the priority; (2) the tribe's long-term environmental program development goals that help to address or support the priority; (3) intermediate program development milestones the tribal government would like to meet during the time period of the ETEP; (4) the tribe's plans to manage authorized environmental programs; and (5) any type of assistance (training, technical assistance, EPA direct implementation actions, financial, etc.) that may be needed. This information should be discussed between the tribe and EPA regional office staff to identify any connections between the tribe's priorities and the implementation of the federal environmental programs, and to identify potential EPA assistance that could be provided to help the tribe accomplish the proposed actions.

#### **(2) EPA Programs and Priorities**

As the EPA Indian Policy underscores, until tribal governments assume responsibility for managing programs authorized, approved, or delegated by the Agency, EPA retains

responsibility for human health and environmental protection by managing federal statutory environmental programs. Reviewing federal environmental programs that EPA implements in each tribal area can provide important background information useful for developing an ETEP. This can include, for example, documenting which programs the tribe is implementing with TAS status; documenting which program the tribe is not planning to develop; and identifying programs that are not relevant currently because there are no applicable regulated entities in the tribal area (e.g., no underground storage tanks in the area, no facility requiring an air discharge permit, etc.).

EPA's regional offices should review the implementation of federal environmental statutory programs in each tribal area and document these programs in the ETEP.<sup>37</sup> This review could include, as appropriate, ongoing or anticipated program implementation activities such as permitting, compliance assurance and enforcement, developing inventories of regulated entities, issuing identification numbers for regulated entities, issuing certifications, and other activities.

These reviews should be done in coordination with the appropriate tribal governments and with EPA headquarters, as necessary. Because an ETEP should be developed as a joint work-sharing document, it is important that there is mutual understanding of what is required to implement the environmental protection programs; the time frames for this work; the government (federal or tribal) that will conduct which portion of that work; and the expected results.

### (3) Inventories of Regulated Entities

In general, the presence of regulated entities determines which federal environmental statutes are applicable. The Agency maintains many program-specific databases of regulated entities and data query tools to help identify regulated entities that may affect tribal interests, including the Facility Registry System (FRS) – a centrally managed database that identifies facilities, sites, or places subject to environmental regulations or of environmental interest. Tribal and state government programs may also contain regulatory program information. As part of an ETEP, the tribe and EPA regional office should have a complete listing of regulated entities of interest. As part of the regular review of the ETEP, the inventory should be updated as appropriate, to reflect operating status changes, new facilities, etc.

### (4) Mutual Roles and Responsibilities for Tribal Program Development Milestones and Environmental Program Implementation

The information on program priorities and regulated entities discussed above will provide the basis for discussion between regional EPA staff and tribal staff on joint work planning and

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<sup>37</sup> Clean Air Act (CAA); Clean Water Act (CWA); Safe Drinking Water Act (SDWA); Resource Recovery and Conservation Act (RCRA); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Emergency Planning and Community Right-to-Know Act (EPCRA); Brownfields; Asbestos Hazard Emergency Response Act (AHERA); Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Toxic Substances Control Act (TSCA), and Pollution Prevention Act.

partnering to ensure environmental protection. The ETEP should define the actual activities that the tribe and EPA anticipates conducting during the time period of the agreement, including activities that tribal staff will perform to support EPA direct implementation of federal environmental programs, activities EPA will perform to support tribal program development and implementation, and activities that tribes will undertake to either apply for program approval/delegation, and/or build capacities to partner with EPA to implement applicable federal programs. ETEPs should indicate which environmental protection program capacity indicators a tribe intends to establish and a general time line for establishing them. GAP work plans should contain these indicators and the activities designed to help the tribe achieve them.

#### **4.4 Development, Use and Management of the ETEP**

The ETEP should be a living document that is actively used as a management tool by both EPA and the tribe to ensure work is being done in support of agreed upon priorities and that progress is being made over time. ETEPs do not need to be complex and long to serve their intended purpose; however developing ETEPs involves coordination among EPA's regional and headquarters media offices, and between EPA and tribal governments. The ETEP should have the support of senior officials in both EPA and the tribal government, as they will be used to help prioritize the work that is funded under GAP and the work that EPA is conducting in the tribal area.

EPA acknowledges that various factors may impede a tribe's progress toward establishing environmental protection program capacity indicators. These factors include staff turnover and adjustments in a tribe's priorities based on unanticipated changing conditions, such as potential impacts to human health and the environment from unanticipated resource extraction projects, changes in land uses, proposed development projects with potential pollution sources, etc. Capacity development indicators and completion dates should be revised as appropriate when a tribe's needs and priorities change.

The ETEP should be reviewed jointly by tribes and EPA at least annually, and updated as appropriate.

- ETEPs should contain completion dates for tribal and EPA activities to allow progress to be measured;
- ETEPs should indicate how the tribe and EPA will monitor progress being made toward the goals described in the document;
- As part of the required annual work plan joint evaluation, regions should not only assess the tribe's performance and progress, but also summarize EPA's activities related to that tribe to inform subsequent work and longer-term priorities in the ETEP;
- EPA and tribes should ensure that GAP grant work plans reflect the tribal program priorities and mutual roles and responsibilities identified in the ETEPs.

By September 30, 2013, each region will submit a proposed schedule to AIEO for establishing ETEPs with the tribes in their region that receive GAP funding. Each region will subsequently submit final schedules for establishing ETEPs to AIEO by January 1, 2014.

## **5.0 Assistance Agreement Work Plan and Reporting**

All award recipients must negotiate an assistance agreement work plan with EPA in accordance with 40 C.F.R. § 35.507. In addition, work plans should be linked to the intermediate and long-term program development goals identified in an ETEP. For tribes that have not yet established a plan with EPA that satisfies the four components of an ETEP described in Section 4.3, GAP work plans should contain a component to develop one when it is consistent with the applicable regional schedule to do so (see Appendix III for a sample work plan component).

To improve the Agency's ability to track work plan progress and performance, as well as overall program performance reporting, EPA will use national program management systems to collect and report specific information from work plans (currently, the Agency uses GAP Online as the national program management system).

## **6.0 Application Submission, Review, and Award Process**

### **6.1 Submission Schedule and Requirements**

Regional Offices are responsible for establishing the time frame for application submission, negotiation of work plans and budgets, and award decisions. Regional Offices should provide early notice to each eligible tribe and intertribal consortium of the availability of GAP funds, program requirements, and submission process.

### **6.2 Application Review**

EPA Regional Offices are responsible for reviewing application materials. Proposals should include all information requested in the funding announcement, including: the applicant's portion of an ETEP, or plans to develop ETEPs, as described in Section 4 of this Guidance; adequate description of proposed eligible GAP activities; description of how proposed activities support the priority areas described in Section 1.2 of this Guidance; and a description of how the proposed activities support achieving the applicant's intermediate or long-term program development goals.

Applications will be reviewed to determine:

- 1. The extent to which the proposed activities in the work plan support the purpose of the GAP** (i.e., development of tribal environmental protection program capacities, consistent with EPA statutory programs). Proposed activities should focus on developing

core environmental protection program capacities, environmental planning activities with EPA, and/or developing baseline capacities for media-specific environmental protection programs that either directly builds toward implementing a federal program or developing a tribal program that is consistent with EPA statutory programs. Work plans should include measurable indicators of capacity-building; applicants should consult Appendix I, Guidebook for Building Tribal Environmental Program Capacity, for further information on indicators.

2. **The feasibility and likely effectiveness of the proposed activities.** The work plan should provide detail sufficient to demonstrate that the applicant has a comprehensive, well thought-out plan (identifying proposed activities, responsible persons, milestones, and timelines/due dates for tasks/deliverables) that is reasonably likely to achieve the purpose of the project within the proposed project time and budget. The focus here is on the feasibility and effectiveness of proposed activities rather than adequacy of budget and personnel resources identified for the project.
3. **The extent to which the budget, resources, and requested funds for key personnel are reasonable and sufficient to accomplish the proposed project.** The proposals will be evaluated to determine whether the amount requested is adequate to support the proposed activities, the allocations within object classes are appropriate for the proposed work, and whether the applicant has the personnel and program resources to accomplish the project. The focus here is on budget, personnel, and other resources rather than the feasibility and effectiveness of the proposed activities themselves.
4. **The degree to which the work plan identifies the expected environmental results of the proposed project.** The work plan will be evaluated on the detail provided regarding the likely outcomes and outputs of the proposed project. Outputs and outcomes should be linked to the proposed activities and resulting improvements to environmental and/or human health conditions. These outputs and outcomes should be measurable and achievable.
5. **The degree to which the proposed activities in the work plan support achieving the long-term goals identified in the EPA-Tribal Environmental Plans.** The work plan should indicate how the proposed activities relate to: identified tribal priorities and specific environmental and human health threats/issues within the context of EPA's authorities; developing tribal capacity to request and assume delegable federal authorities; developing tribal environmental protection programs under tribal authority; and/or building tribal environmental program capacity to assist EPA in implementing EPA's statutory programs.
6. **Prior performance.** Generally, work plan components and commitments should not duplicate prior efforts; they should demonstrate clear progress over time toward achieving the longer term goals, or specify new focus areas. Duplicates of prior year work plan activities may be rejected and EPA will take into consideration prior year performance when evaluating new work plans associated with similar previously funded work.

## **7.0 Award Administration**

### **7.1 Award Notices**

A funding award notice, signed by an EPA grant officer, is the official document authorizing work to commence. EPA will provide funding award notification to recipients.

### **7.2 Reporting Requirements**

The applicant and the Regional Office will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan. A description of the evaluation process and reporting schedule must be included in the work plan. Recipients must report at least annually and satisfy the requirements for progress reporting under 40 C.F.R. § 31.40(b).

The evaluation process must provide for:<sup>38</sup>

- A discussion of accomplishments as measured against work plan commitments;
- A discussion of the cumulative effectiveness of the work performed under all work plan commitments;
- A discussion of existing and potential problem areas; and
- Suggestions for improvement, including, where feasible, schedules for making improvements.

Regions should also work with recipients to evaluate status of tribal capacity as defined by the indicators of tribal capacity found in Appendix I of this Guidance or other clearly defined indicators that may be identified in the work plan.

In addition to performance reports, GAP recipients and their EPA project officer should have frequent contact (no less than quarterly) to keep EPA informed of progress and to resolve any problems that may arise.

### **7.3 Quality Assurance Documentation**

GAP recipients are subject to EPA's quality assurance requirements as found in 40 C.F.R. §31.45. If a recipient's project involves environmentally related measurements or data generation, the recipient shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions. Approved plans must be in place before environmental

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<sup>38</sup> 40 C.F.R. § 35.515.

data collection, production, or use can occur. More information is available online at:  
<http://www.epa.gov/ogd/grants/assurance.htm>.

#### **7.4 Disputes**

Disputes related to this program will be resolved in accordance with 40 C.F.R. §31.70.

## **Appendix I**

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# **Guidebook for Building Tribal Environmental Program Capacity**

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May 15, 2013

**U.S. Environmental Protection Agency  
Office of International and Tribal Affairs  
American Indian Environmental Office**

## Guidebook for Building Tribal Environmental Program Capacity

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## **Guidebook for Building Tribal Environmental Program Capacity**

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### **A: Introduction**

#### **A.1 Purpose: Enhancing the EPA/Tribal Partnership for Environmental Protection and Measuring Tribal Program Development Progress**

The Indian Environmental General Assistance Program (GAP) was created to assist tribes with developing the capacity to manage their own environmental protection programs. Therefore, GAP resources are targeted to those activities designed to build a tribe's capacity to administer environmental protection programs that address tribal priorities supporting the objectives of EPA's programs.

Historically, EPA has not provided a clear pathway under GAP to help tribes and intertribal consortia develop environmental protection program capacities. The indicators contained in this Guidebook provide a pathway for defining and tracking tribal capacity building progress under GAP, including when GAP funds are combined with other Agency resources through Performance Partnership Grants.

The Guidebook begins with a discussion of the core program capacities that each tribal environmental program should consider establishing with GAP funding. The remainder of the document provides additional indicators for developing tribal capacity to administer media-specific environmental protection programs that tribes can pursue using GAP funding. There are often many activities that must occur to support achieving a single indicator. EPA has specific program guidance and technical assistance tools and resources available to help identify and plan for those specific activities; key resources are highlighted in each section.

It is important to note that while this Guidebook outlines key indicators for developing capacities for the major environmental protection programs, it should not be interpreted as a prescription for all tribal environmental protection programs. As noted in the Guidance, where indicators provided here are not appropriate or applicable, the grantee should work with the EPA to identify appropriate capacity building indicators for inclusion in the work plan and EPA-Tribal Environmental Plan (ETEP) and to link funded activities to the program capacity being developed. Each tribe should define the scope and content of its particular environmental program based on its priorities, environmental conditions, jurisdictional situation, or other factors.

Where there are connections between tribal environmental priorities and the federal environmental statutes, this Guidebook provides a menu of applicable capacity building indicators that will assist in planning capacity building activities and measuring progress in development of those capacities. Tribes are not required to pursue each capacity

indicator listed in this Guidebook – only those applicable to the recipients’ specific circumstances and program development goals described in an ETEP (as described in GAP Guidance Section 4.0). For tribal program activities that are outside the scope of EPA authority, and in keeping with the Agency’s 1984 Indian Policy, EPA will encourage cooperation between tribes and other appropriate federal agencies, state and local governments, and non-governmental organizations to resolve environmental problems of mutual concern where appropriate.

## **A.2 Capacity Development for Tribes with Limited Environmental Program Jurisdiction**

Some tribes may not be able to demonstrate exclusive environmental regulatory jurisdiction over facilities, activities, or sites. However, the Agency recognizes that these tribal governments should still be afforded the opportunity to develop environmental protection programs that support their meaningful involvement in the protection of human health and natural resources. Tribes with limited jurisdiction to implement environmental regulatory programs may use GAP funds to develop program capacities for purposes consistent with the extent of their authorities, such as: evaluating environmental conditions; developing voluntary or partial environmental protection programs; participating in environmental policy making; coordinating with EPA or other federal agencies on the implementation of federal environmental protection programs; and entering into joint environmental protection programs with neighboring tribal, state, or local environmental agencies.

## **A.3 Capacity Development is a Continuing Programmatic Need**

Ultimately, establishing core program capacities should result in tribes being able to meaningfully participate in the national system of environmental protection, in accordance with the desired capacity level and authorities of each tribe. Developing, establishing, and maintaining environmental program capacities is an on-going effort requiring capacities to evolve as the tribal environmental program itself expands and undertakes additional challenges. EPA also recognizes that GAP resources provide a significant foundation for maintaining tribal environmental program capacities over time.

Tribes that have successfully developed capacity in a given area can continue to receive GAP funding to expand, enhance, or evolve their capacity. For example, a tribe with a community education program may continue to receive GAP funds to expand the program by adding new features, such as outreach strategies for vulnerable groups (i.e., children, the elderly, people in poor health, and expectant mothers) or identifying new media outlets to reach target audiences. Similarly, a tribe with basic water program capacity may continue to receive GAP funds to expand their water program by adding new baseline data to their existing program, developing additional laboratory analysis quality assurance plans, or adding capacity to share additional water quality data across multiple data platforms.

GAP Guidance establishes a mechanism (ETEPs) for tribes to use with their respective regional offices to document the tribe's program development goals. Tribes should re-evaluate their program capacity development goals on a regular basis to ensure that their systems, procedures, and policies are still appropriate for the current stage of the environmental protection program and to determine if additional capacities are needed to support media-specific environmental programs.

#### **A.4 GAP: A Foundation for Tribal Program Implementation**

The 566 federally recognized tribes<sup>39</sup> (ranging from the Northern slope of Alaska to the southern tip of Florida) and intertribal consortia face an expansive number of environmental issues, concerns, and priorities. As a result, it is not practicable to list all activities fundable under GAP in this Guidance; general guidelines regarding allowable activities under GAP are provided in Section 1.4 of this Guidance.

This Guidebook presents a nationally consistent approach for defining and measuring a tribe's environmental program capacity development. This approach is optimized to position a tribe to expand into and administer media-specific environmental protection programs consistent with the purposes and requirements of applicable provisions of law. By establishing the capacity milestones identified in this Guidebook, a tribe or intertribal consortia should be well positioned to continue to develop and implement tribal environmental protection programs and address almost any environmental issue. A tribe or intertribal consortia may also be able to continue to develop and implement tribal programs that are only related to EPA's programs, but are not designed to build toward implementing EPA programs. This approach preserves maximum flexibility for tribes to use GAP resources effectively in response to a wide range of tribal priorities while providing EPA with a nationally consistent approach for defining and measuring the development of tribal environmental program capacity under GAP.

Ultimately, for many tribes, environmental protection program capacities are being built so that the tribe may become the lead government agency for implementation of a federal environmental program. EPA has identified three primary types of implementation pathways related to EPA programs that tribal governments could pursue individually or in some combination: (1) participate in EPA's direct implementation activities; (2) implement under tribal authority; (3) implement under an EPA-approved /delegated / authorized program. Appendix V provides a list of potential sources of EPA funding for tribes. Please note that certain funding programs listed in Appendix V are eligible to be combined in a Performance Partnership Grant [Catalog of Federal Domestic Assistance (CFDA) No. 66.605]. Funds available under these programs may vary from year-to-year.

For many other tribes, as noted earlier in this Guidance, program implementation is not a long-term goal. The capacity building activities are just as important and relevant to those tribes as to the tribes on the path to implementation. The specific pathway a tribe pursues

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<sup>39</sup> As of May, 2013.

will depend on a number of factors; as such, the indicators of tribal capacity presented in this Guidebook cover a wide variety of approaches.

## **B: Building Core Environmental Protection Program Capacities**

### **B.1 Purpose**

Many tribes receiving GAP financial assistance will operate a core multimedia<sup>40</sup> environmental program to identify tribal environmental priorities and maintain an environmental presence in regulatory activities affecting the tribe. Where active steps are taken to sustain a knowledge-base and support necessary institutional infrastructure, EPA views this environmental presence as essential to effective government-to-government partnerships with tribes seeking to actively and meaningfully participate in environmental protection, including tribes with limited jurisdiction to implement their own environmental regulatory programs.

After receiving GAP grant resources to build core program capacities, tribes may need continued funding to sustain their programs (i.e., ensure adequate program management capacity, processes, and resources are in place for future environmental program staff) while pursuing media specific grant resources. Adjacent jurisdictions may create situations that are outside the control of the tribe, but directly impact the tribal environment. Examples include, a mine opening on adjacent lands, a state implementing a watershed planning process, or other planning processes impacting a tribe. These events, and others like them, happen on a regular basis and tribal environmental staff should be prepared and available to take on new tasks as they arise. Where a tribe is ready and able to pursue assistance agreements under other EPA programs, continued GAP funding may be directed to activities that expand on existing capacity, or a tribe may determine it no longer needs capacity building resources in that specific area under GAP and would transition from GAP to other funding sources.

Indicators of core capacities are included below and EPA project officers should refer to these during GAP work plan negotiations.

The remainder of this section presents the core capacities that should be present for planning, developing, and establishing tribal environmental protection programs.

### **B.2 Establishing Core Administrative Capacities**

Establishing administrative core capacities includes assessing, modifying, or developing policies and guidance that will be used to manage an environmental program and recruiting, hiring, and retaining qualified staff to develop and manage these policies.

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<sup>40</sup> The term “media” used throughout this document refers to the EPA’s individual environmental program areas (air, land, water, waste, etc.). Programs designed to address multiple media areas, or that can apply to multiple programs, are referred to as “multimedia.” For example, the capacity to administer an underground storage tank program is single media while community involvement programs are typically “multimedia” because they tend to address a range of environmental topics.

Indicators of Capacity:

- B.2.1 Organizational system for the environmental program that defines staff roles and responsibilities, describes the relationship of the environmental program to tribal leadership and other departments, and includes supporting personnel management policies/procedures.
- B.2.2 Staff with appropriate skills, knowledge and experience to manage the environmental program.
- B.2.3 Training plan for staff that reflects the capacity-building priorities for the environmental program.
- B.2.4 Program evaluation system for use in determining whether program objectives are met, fiscal resources are appropriately managed, and assistance award requirements satisfied.
- B.2.5 Intergovernmental agreements (tribal, federal, state, local) necessary to implement the environmental program.
- B.2.6 Written procedures similar to the Administrative Procedure Act to ensure meaningful involvement and fair treatment in public participation.
- B.2.7 Organizational filing/records retention system and policies (paper and electronic).
- B.2.8 Policies and procedures to coordinate tribal environmental protection programs with other tribal government initiatives (e.g., transportation, housing, infrastructure, economic development, and natural resource management).

**B.3 Establishing Core Financial Management Capacities**

Establishing financial management core capacities includes assessing, modifying, or developing financial, procurement, equipment tracking, property management, and grants management procedures to ensure that the tribal systems are in compliance with federal requirements. Procedures should clearly delineate roles and responsibilities, describe recordkeeping activities, and define auditing and other evaluation methods that will be used to ensure fiscal accountability.

Indicators of Capacity:

- B.3.1 A statement by the appropriate tribal financial department demonstrating that the tribe's accounting system, internal controls, and financial reporting procedures adhere to the requirements found in 40 C.F.R. § 31 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; 40 C.F.R. § 35 "Environmental Program Grants for Tribes"; 2 C.F.R., § 225 "Cost Principles for State, Local and Indian Tribal Governments" (formerly OMB Circular A-87); and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- B.3.2 A statement by the appropriate tribal financial department demonstrating that the tribe has a procurement procedure that meets the minimum requirements for purchasing systems as outlined in 40 C.F.R. § 31.

- B.3.3 Written procedure for tracking (including final disposition) equipment and supplies acquired by the environmental program in compliance with 40 C.F.R. § 31.
- B.3.4 Written procedure that describes how the environmental program will coordinate with other tribal departments to satisfy grant terms and conditions and reporting requirements (for example, application development/review/approval, creation and submission of required reports, maintenance of official file, closeout of award).
- B.3.5 Current indirect cost rate agreement.
- B.3.6 Tribe demonstrates proficiency in processing financial payment requests, submits required annual Federal Financial Reports, and performs annual financial audits as required.

#### **B.4 Establishing Core Information Management Capacities**

Establishing information management core capacities includes assessing, modifying, or developing systems to maintain administrative records and files, useful reference material for the environmental protection program, and information on environmental and human health conditions that may impact human health or the environment. Information management systems should: clearly identify roles and responsibilities; prescribe a required format for materials and information tracked in the system(s); identify the physical (hard copy) location of materials and information entered into the system; identify any confidentiality issues pertaining to specific materials and information; and note whether materials and information must be legally maintained for a specific time period. Information management is also essential for measuring and tracking program performance over time, including data management on environmental indicators. Data collection, management, and reporting are key features of a core environmental protection program.

Key sources of information management information include:

- Environmental Information Exchange Network & Grant Program:  
<http://www.epa.gov/exchangenetwork/grants/index.html>
- EPA Quality Management System: Quality Management Tools - QA Project Plans:  
<http://www.epa.gov/quality/qapps.html>
- Doing Business with EPA: Quality Specifications for non-EPA Organizations:  
<http://www.epa.gov/quality/exmural.html>

##### Indicators of Capacity:

- B.4.1 Written procedure for establishing an official file for each assistance award that contains all documentation from application through final closeout and that requires record retention in compliance with 40 C.F.R. Part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
- B.4.2 Written inventory of administrative and technical procedures, policies, regulations, or other guidelines developed to implement the environmental program.

- B.4.3 System to store and organize data and information collected or generated by the environmental program for future use in characterizing environmental and human health conditions, responding to information requests, developing environmental projects/initiatives, or other project management data systems.
- B.4.4 Exchanging and/or sharing data through the National Environmental Information Exchange Network.
- B.4.5 Written policies and procedures for protecting sensitive tribal environmental and human health data (e.g., traditional ecological knowledge and cultural resources).
- B.4.6 Environmental mapping (Geographic Information System) capabilities.

## **B.5 Establishing a Baseline Needs Assessment**

A baseline needs assessment is a primary step to determine the environmental resources needing protection and the environmental and human health issues facing a particular tribal community. Such an assessment can help a tribe to identify and prioritize a tribe's approach for undertaking protection and restoration efforts. While there are many approaches for conducting effective baseline needs assessments, including those that are informed by traditional ecological knowledge, information on conducting a baseline needs assessment can be found in Appendix II. Periodically, the baseline needs assessment should be updated in response to factors such as: new sources of pollution, changing environmental conditions, new development in the community, acquisition of lands, and changes to the environmental program. However, GAP funds should not support a baseline or other assessment that is principally for solving particular problems at particular places – such as an environmental assessment associated with a particular facility construction project – because they are considered program implementation (except those related to solid and hazardous waste programs as described in Section E, because solid and hazardous waste program implementation activities are eligible for GAP funding).

### Indicators of Capacity:

- B.5.1 A current baseline needs assessment or comparable planning document, such as a tribal Integrated Resource Management Plan, tribal environmental inventory, natural resource assessment that reflects: (1) environmental resources needing protection; (2) known information about existing/potential threats to human health and the environment within the tribe's area; (3) an evaluation of the potential impact of these threats to tribal members and resources (4) strategic plan with long term program development and implementation goals identified; and (5) prioritization of activities by the environmental program to address identified threats.

## **B.6 Establishing Core Public Participation, Community Involvement, Education, and Communication Capacities**

Establishing public participation, community involvement, education, and communication core capacities includes assessing, modifying, or developing systems to

ensure that the tribal environmental protection program can notify the general public of important events or information, publicize activities related to its projects and programs, 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. These systems should identify the various routes or methods of disseminating information, and the time frame and particular audience that each method would reach.

#### Indicators of Capacity:

- B.6.1 Program to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of tribal programs, policies, and activities on minority populations and low-income populations within the tribe's area of program responsibility.
- B.6.2 Outreach methods that will be used to reach and solicit input from potentially affected communities and groups.
- B.6.3 Environmental Education/Outreach plans and (or) curricula.
- B.6.4 Format for public notices, press releases, and other types of communications.
- B.6.5 Methods that will be used to identify public concerns and respond to issues raised.
- B.6.6 Contact lists for other governmental entities and types of information that will be shared.
- B.6.7 Methods to conduct general public education, awareness, community engagement, and information exchange on issues related to human health and the environment.
- B.6.8 Methods for collaborating and sharing information with other tribal, federal, state, and local governments, or with other organizations.
- B.6.9 Tribal consultation policies and procedures.
- B.6.10 Development of tribal community-based advisory groups to assist with planning and implementation of the tribal environmental program.

### **B.7 Establishing Core Legal Capacities**

Establishing legal core capacities includes assessing, modifying, or enacting the tribal laws, codes, and regulations, Interagency Agreements, Memoranda of Understanding, and associated policies and guidance that are necessary to prevent environmental deterioration, abate pollution conditions, and manage or enforce specific regulatory programs. Tribes should determine what legal authorities it may use to regulate facilities and activities that may impact air, land, or water resources within its jurisdiction, including any compliance assurance and enforcement actions that may be appropriate. The tribe should determine and take steps if necessary to ensure that it has the legal authority and ability to establish and implement standards, permitting processes, certification requirements, and civil enforcement procedures.

Tribes may use GAP funds to develop a compliance monitoring program to determine compliance status and inform tribal decisions on when enforcement is necessary. A tribe's compliance monitoring program should include capacities for information gathering, data analysis, facility inspections, review of reports from regulated entities,

and addressing citizen complaints. To ensure effectiveness and consistency, tribes should train and provide appropriate credentials to authorized compliance monitoring personnel, develop and adopt standardized compliance monitoring and inspection procedures and practices, and manage the resulting information in computerized data management systems.

Tribes may use GAP funds to establish programs that require regulated entities to undertake self-monitoring, recordkeeping, and reporting as a means for tribes to monitor compliance. By requiring regulated entities to measure and report their performance, tribes are able to shift some of the burden for compliance monitoring to the regulated community. Through sanctions for false reporting or non-reporting, defined in regulations or permit requirements, a tribe can increase the accuracy of reports from regulated entities.

Tribes may use GAP funds to establish programs for the enforcement of environmental requirements. Enforcement is a fundamental element of any compliance assurance program. In designing enforcement programs under GAP, tribes should consider adopting and implementing a full suite of relevant enforcement mechanisms, including informal approaches (e.g., warnings and notices of violation); formal tribal administrative or judicial actions to compel compliance, assess penalties and/or impose other sanctions (e.g., shut down the facility); and criminal enforcement (e.g., fines and/or imprisonment) consistent with the tribe's authority. In responding to violations, tribes should act in a timely manner to correct noncompliance, deter future noncompliance and where possible redress environmental harm caused by noncompliance. Tribes may also use GAP funds to develop and maintain the capacity to work cooperatively with federal enforcement officials to address environmental violations that give rise to civil or criminal investigations.

Tribes may use GAP funds to establish programs that facilitate citizen access to compliance information, subject to confidentiality and preservation of privileged information. Providing the public with information on the compliance status of regulated entities gives surrounding communities information on possible risks they may be facing as a result of noncompliance and arms citizens with information they can use to put pressure on noncompliant facilities to come into compliance and on regulatory agencies to address noncompliance. Without prematurely revealing information on enforcement cases or compromising confidentiality and privileged information, tribes should strive to provide public access to information on the entities regulated by environmental requirements, their compliance status, and any history of formal and informal enforcement actions taken to address noncompliance. Tribes should establish procedures for citizens to request and receive specific information via all available media within a reasonable timeframe, subject to applicable laws and policies on confidentiality, the preservation of privileged information, and other limitations on sharing information.

Indicators of Legal Capacity:

- B.7.1 A statement by tribal legal counsel demonstrating that the tribe has authority to pass and enforce laws/ordinances to protect human health and the environment.
- B.7.2 A statement by tribal legal counsel demonstrating that tribal government authority provides the tribe with power to enjoin activities determined to be harmful to the health or welfare of persons or the environment.
- B.7.3 A dedicated section of the tribe's laws/codes/ordinances for environmental protection program activities that establish standards, permitting processes, certification requirements, compliance assurance, and enforcement procedures.
- B.7.4 A program to provide compliance assistance to regulated entities to promote an understanding of applicable environmental requirements and assist them in attaining and maintaining compliance.
- B. 7.5 Documentation supporting the tribe's claim of interests to usual and accustomed areas and to cultural resources potentially affected by environmental protection activities.
- B.7.6 Interagency Agreements or Memoranda of Understanding with other tribal, federal, state, or local governments regarding environmental protection.

Compliance Monitoring Program Indicators:

- B.7.7 Procedures and systems for maintaining an inventory of regulated entities or activities.
- B.7.8 Procedures to train and provide credentials to authorized compliance monitoring personnel.
- B.7.9 A program to require regulated entities to keep records, review records, and provide applicable records to the tribe.
- B.7.10 Incentives and voluntary reporting of noncompliance that encourages compliance and environmental stewardship.
- B.7.11 Procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of regulated entities.
- B.7.12 Procedures and resources to assure adequate coverage of regulated entities through compliance monitoring activities. Compliance monitoring activities, including inspections, should be conducted to: (a) determine compliance with applicable program requirements, including but not limited to permit conditions; (b) document noncompliance; (c) verify the accuracy of information required to be reported or maintained by the regulated entity; and (d) verify the adequacy of sampling, monitoring, and other methods used to develop the information submitted.
- B.7.13 A program to enter a site potentially subject to regulation – or in which records relevant to applicable program requirements are kept – in order to copy records, inspect, monitor emissions or take samples, or otherwise investigate compliance.

- B.7.14 Procedures to ensure that compliance monitoring activity is conducted in a manner (e.g., using “chain of custody” procedures for samples taken from a regulated entity) that will produce evidence admissible in enforcement proceedings or court.
- B.7.15 Procedures for encouraging public reporting of violations, including a mechanism for the public to submit such reports, and for ensuring proper consideration of citizen tips and complaints.

Enforcement Program Indicators:

- B.7.16 A program to immediately and effectively enjoin any activity that may present an imminent and substantial endangerment to public health or the environment.
- B.7.17 A program to restrain unauthorized activity, compel compliance with applicable requirements, and impose injunctive relief to remedy noncompliance.
- B.7.18 A program to compel regulated entities to submit reports and provide documents to the tribe for the purpose of assessing compliance with applicable requirements.
- B.7.19 A program to compel regulated entities to conduct monitoring or sampling and provide results to the tribe for the purpose of assessing compliance with applicable requirements.
- B.7.20 A program to assess or sue to recover civil penalties appropriate to the violation.
- B.7.21 A program to assess penalties for violations of applicable requirements, such as fines or imprisonment for environmental crimes.

## **B.8 Establishing Core Technical and Analytical Capacities**

Tribes may use GAP resources to build baseline environmental program capacities that will then be further developed and enhanced through media-specific EPA programs and other funding sources. GAP should be used to provide a foundation of technical and analytical skills, knowledge, and resources that will be valuable to tribes as they make decisions to pursue specific media projects and programs. GAP may support activities that establish the recipient’s capacity to manage projects involving data collection, including the establishment of a quality system conforming to the current edition American National Standard Institute ANSI/ASQ E4, “Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use.” Capacities include the ability to conduct direct measurements or generate data, model environmental conditions, compile data from literature or electronic media, and the ability to manage data supporting the design, construction, and operation of environmental technology. The collection and management of data associated with specific technologies is considered implementation and is not fundable under GAP. More information is available online at: <http://www.epa.gov/ogd/grants/assurance.htm>.

Indicators of Capacities:

- B.8.1 Quality assurance and management plans.
- B.8.2 Intergovernmental agreements with other jurisdictions related to environmental protection.
- B.8.3 Funding from other sources.
- B.8.4 Environmental monitoring/sampling programs.

## **C: Building Tribal Ambient and Indoor Air Quality Program Capacities**

### **C.1 EPA's Air Quality Programs**

Air quality is regulated primarily under the CAA. The CAA was first enacted in 1963 and underwent significant revisions in 1970 and 1990. The CAA focuses on three key areas: (1) reducing outdoor, or ambient, concentrations of air pollutants that cause smog, haze, acid rain, and other problems; (2) reducing emissions of toxic air pollutants that are known to, or are suspected to, cause cancer or other serious health effects; and (3) phasing out production and use of chemicals that destroy stratospheric ozone. For more information on the CAA, visit: <http://www.epa.gov/air/caa/>.

EPA takes on varying roles to ensure the CAA is implemented, including EPA authorization and oversight of state and tribal CAA programs and/or direct implementation by EPA, where applicable. Under the CAA, EPA implementation activities include: (1) designation of non-attainment areas for national ambient air quality standards; (2) development and promulgation of federal implementation plans (FIPs); (3) issuing pre-construction permits and operating permits for sources of air pollution; (4) compliance assurance (including inspections) and enforcement; (5) processing asbestos notifications for demolitions/renovations or regulated structures; and (6) ensuring risk management plans are submitted by regulated entities. The CAA Tribal Authority Rule (TAR) offers tribes the option to seek TAS eligibility to develop air quality management programs, write rules to reduce air pollution, and implement and enforce rules under the CAA that are appropriate for their communities.

The Emissions Inventory System (EIS) contains compliance and permit data for stationary sources of air pollution (such as electric power plants, steel mills, factories, and universities) regulated by EPA, tribes, states, and local air pollution agencies. The information in EIS is used to prepare Federal Implementation Plans or Tribal Implementation Plans (TIPs) and to track the compliance status of point sources under the CAA. EIS can be accessed at <http://www.epa.gov/ttn/chief/eiinformation.html>. Tribal staff may be aware of other facilities that may be subject to regulation under the CAA.

In addition to participating in the federal CAA scheme for managing air quality, tribes may use GAP funds to develop their own air quality management programs consistent with their own priorities and authorities. As a result, tribal program management TAS designations are only one indicator of successful tribal program capacity. This section includes a number of tribal program capacity indicators applicable to a wide range of tribes, including tribes that are not planning to pursue TAS status for program implementation.

Key sources of program guidance include:

- The Tribal Air Grants Framework: A Menu of Options. October 2007.  
[http://www.epa.gov/oar/tribal/pdfs/Tribal%20Air%20Grants%20Framework%20rev%2011\\_07.pdf](http://www.epa.gov/oar/tribal/pdfs/Tribal%20Air%20Grants%20Framework%20rev%2011_07.pdf)
- Tribal Air Program Resources. <http://www.epa.gov/air/tribal/airprogs.html>

- Radiation Publications: <http://www.epa.gov/radiation/pubs.html>
- Office of Air and Radiation National Program and Grant Guidance.  
<http://epa.gov/planandbudget/>
- Preparing for Climate Change: A Guidebook for Local, Regional, and State Governments: <http://www.icleiusa.org/action-center/planning/adaptation-guidebook>

## **C.2 Establishing Tribal Air Quality Programs**

This subsection provides a “road map” for tribes and outlines a non-exclusive list of tribal environmental protection program capacity indicators that EPA will use to evaluate progress under the GAP. In general, GAP funding should be used to build baseline environmental program capacities; once capacity is established, tribes may seek funding under EPA’s media-specific programs to support more complex program development and implementation while continuing to use GAP resources for ongoing capacity building activities.

The first stage in developing an air quality management program is to develop the necessary expertise and skills to identify, address, and manage air quality issues. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on air quality issues, collecting and analyzing new air quality data, and using this information to make decisions on further development of an air quality management program.

After building fundamental program capacities related to the CAA and evaluating the type of air quality issues facing the community, tribes may consider undertaking efforts to establish air quality protection programs. Tribes and inter-tribal consortia are encouraged to seek funding support under EPA’s media-specific programs where appropriate.

## **C.3 Indicators of Air Quality Program Capacity**

- C.3.1 Tribe has established a staffing plan (position description and recruitment/retention/promotion plan) for who will serve as tribal air quality/indoor air quality program coordinator(s).
- C.3.2 Staff has completed appropriate training and acquired baseline knowledge and skills related to the CAA (become familiar with the major goals, programs, and requirements of the CAA; the national structure for implementing the CAA; and the EPA regional personnel and organization).
- C 3.3 Staff has completed appropriate indoor air quality training and acquired skills related to indoor air quality (e.g., Healthy Homes training).
- C.3.4 Tribe has established a program to meaningfully participate in air quality management programs administered by other tribal, federal, state, or local governments (including reviewing and commenting on air quality standards and facility permit actions).

- C.3.5 Tribe is receiving funding under the CAA or other related EPA media specific program.
- C.3.6 Tribe has completed an emissions inventory and submitted to the National Emissions Inventory Database.
- C.3.7 Tribe has developed an air monitoring strategy and associated quality assurance project plan.
- C.3.8 Tribe has established a program to collect and upload quality assured ambient air monitoring data into the Air Quality System (AQS) database.
- C.3.9 Tribe has completed a report analyzing air quality and radiation hazard issues impacting the tribe and evaluated air pollution control options (identifies air pollution sources and known levels of emissions, defines potential human health and environmental impacts of current air quality, and provides recommendations for action).
- C.3.10 Tribe has completed an indoor air quality assessment and report.
- C.3.11 Tribe has established a radon program that tests residential and other occupied structures for radon, identifies those above the EPA action level, and conducts outreach and education in the community.
- C.3.12 Tribe has prepared a report recommending actions to improve indoor air quality and reduce levels for radon, mold, moisture, and environmental pollutants.
- C.3.13 Tribe has incorporated indoor air quality improvements or features as part of building renovation programs (e.g., weatherization and rehabilitation) and new construction.
- C.3.14 Tribe has developed a climate change vulnerability/risk assessment.
- C.3.15 Tribe has developed a climate change preparedness/adaptation program (e.g., zoning rules and regulations; tax incentives; building codes/design standards; utility rates/fee setting; public safety rules and regulations; outreach and education; emergency management powers).
- C.3.16 Tribe has established a Diesel Emissions Reduction Program (identified diesel engine use; evaluated short- and long-term priorities for reduction of emissions; selected implementation options such as installing diesel retrofit devices with verified technologies on school buses, maintaining/repairing/rebuilding engines, replacing older vehicles/equipment with more efficient engines or engines that run on cleaner fuel, improve operational strategies).
- C.3.17 Tribe has established energy efficiency policies and program(s) (e.g., building design standards/codes, ENERGY STAR initiatives for government operations and tribal housing).
- C.3.18 Tribe has established an air toxics program (capacity to: monitor for acid and mercury deposition; sample subsistence food sources to measure the accumulation of toxics; partner with other jurisdictions on assessment projects; communicate potential threats to community members; implement actions to reduce sources of air toxics pollution).

- C.3.19 Tribe has established community outreach/education programs, including air quality advisory system (e.g., indoor air quality, radon, diesel emissions reduction, burn barrels, wood smoke, anti-idling, greenhouse gas and ozone-depleting substance reduction, climate change, and radiation hazards).
- C.3.20 Tribe has established intergovernmental partnerships with federal, state, local, and tribal governments to address air quality issues, including climate change, and radiation hazards (e.g., memoranda of understanding, interagency agreements).
- C.3.21 Tribe has established a program to comply with Federal Air Rules for Indian Reservations (FARR) requirements, where applicable.
- C.3.22 Tribe has developed and promulgated air quality standards.
- C.3.23 Tribe has developed a Tribal Implementation Plan (TIP) under CAA Section 301 to identify sources of air pollution and to determine what reductions are necessary to meet air quality standards.
- C.3.24 Tribe has developed/submitted request to redesignate a reservation as a CAA Class I area.
- C.3.25 Tribe has developed/submitted recommendations on designations for new National Ambient Air Quality Standards.
- C.3.26 Tribe has established program to assist EPA with implementing the federal CAA program (e.g., assisting the Agency to develop/update an inventory of regulated entities, compliance assistance activities for regulated entities, obtaining federal inspection credentials to inspect regulated entities, and assisting EPA to draft permits for regulated entities).
- C.3.27 Tribe has submitted application under the Tribal Authority Rule (TAR) requesting approval of specific CAA programs.
- C.3.28 Tribe has developed program to implement a Title V operating permit program for major sources of air pollution.
- C.3.29 Tribe has developed program to implement new source review permitting program for minor sources of air pollution.
- C.3.30 Tribe has enacted ambient air quality and/or radiation hazard laws, codes, and/or regulations with effective compliance assurance and enforcement provisions that are at least as stringent as the federal statutes.
- C 3.31 Tribe has enacted green building codes, guidelines and/or protocols that promote healthier indoor air quality and apply these practices to new and retrofitted buildings.
- C 3.32 Tribe has established a program to conduct indoor air quality outreach, education, and/or training for tribal government personnel and/or community members.
- C.3.33 Tribe has enacted indoor air quality laws, codes, and/or regulations with effective compliance assurance and enforcement provisions.
- C.3.34 Tribe has developed a program to provide compliance assurance (including inspections) and enforcement (e.g., work with regulated community system operators to determine if appropriate training and certification has been obtained, and, if not, assist with acquiring such training and/or certification).

## **D: Building Tribal Water Quality Program Capacities**

### **D.1 EPA's Clean Water and Safe Drinking Water Programs**

The Clean Water Act (CWA) is the primary federal law protecting the quality of surface water. The law was originally passed in 1972, and was amended in 1977 and 1987. The CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating water quality standards for surface waters. In ensuring water quality to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters,” the CWA includes provisions for addressing water pollution from point sources, diffuse sources of surface water runoff (nonpoint), protection of national estuaries and coastal waters, and dredge and fill actions (e.g., of wetlands) into waters of the United States. For more information on the CWA, visit <http://www.epa.gov/lawsregs/laws/cwa.html>.

EPA takes on varying roles to ensure the CWA is implemented, including EPA authorization and oversight of state and tribal CWA programs and/or direct implementation by EPA, where applicable. The primary program implementation activities include: (1) determining protection levels for waters of the United States by establishing Water Quality Standards; (2) assessing water quality to identify impaired waters (water quality monitoring); (3) defining and allocating control responsibilities to meet water quality standards; (4) issuing CWA Section 402 surface water discharge permits; (5) providing assistance to address nonpoint source pollution; (6) providing compliance assurance (including inspections) and enforcement; (7) issuing water quality certifications; and (8) reviewing CWA Section 404 dredge and fill permit applications. In addition, under the CWA, EPA: (9) responds to releases of petroleum products to navigable waters; (10) ensures that regulated entities have spill prevention, control and counter-measures (SPCC) plans, and (11) provides financial and technical assistance for the construction of wastewater facilities.

The Safe Drinking Water Act (SDWA) is the legal framework under which the nation’s public drinking water supplies are regulated and applies to every public water system in the United States. It requires many actions, such as the setting of national drinking water standards or requiring ways to treat the water to remove contaminants to protect drinking water and its sources – rivers, lakes, reservoirs, springs, and ground water wells. The Underground Injection Control program, under the SDWA, is designed to prevent underground injections from endangering drinking water sources. The SDWA was originally passed in 1974, and it was amended in 1986 and 1996. For more information on the SDWA, visit <http://water.epa.gov/lawsregs/rulesregs/sdwa/index.cfm>.

EPA takes on varying roles to ensure the SDWA is implemented, including EPA authorization and oversight of state and tribal primacy programs and/or direct implementation by EPA, where applicable. The primary program implementation activities include: (1) conducting sanitary surveys; (2) providing technical assistance to managers and operators of facilities subject to compliance requirements; (3) permit actions for regulated entities; (4) maintaining a database to hold compliance information

of public water systems; (5) monitoring public water supplies and providing compliance assurance (including inspections); (6) compliance assurance (including inspections) at regulated Underground Injection Control (UIC) wells; and (7) conducting enforcement.

The Permit Compliance System (PCS) provides information on facilities that have been issued permits to discharge to surface water. The Safe Drinking Water Information System (SDWIS) contains information about public water systems that have been reported to EPA by state or tribal environmental agencies. To access PCS or SDWIS information, please visit <http://www.epa.gov/enviro/index.html>.

The Agency is currently developing a national information system for facilities regulated under the UIC Program. In the meantime, the EPA regional offices maintain separate databases of UIC injection well activities.

Tribal staff may be aware of other facilities that may be subject to regulation under the CWA and SDWA.

Tribes are not required to administer CWA programs, but may apply for TAS eligibility under CWA Section 518(e) to administer certain CWA programs. Tribes must apply for and receive EPA approval to be eligible for TAS for each program in which they are interested.<sup>41</sup> In addition to acquiring eligibility for certain water-related funding programs, tribes may also seek authorization to administer CWA water quality standards, water discharge permit programs, water quality certification programs, and dredge and fill permitting programs.

Similarly, EPA is the primary federal agency responsible for administering the SDWA, and directly implements the drinking water program and underground injection control program, except where states or tribes have primacy, which is the authority to implement SDWA within their jurisdictions. Under Section 1451 of the SDWA, tribes may apply for TAS and seek “primacy” to administer a public water supply supervision program and/or the requirements related to underground injection control wells.

In addition to participating in the federal CWA and SDWA scheme for managing water quality, tribes may use GAP funds to develop their own water quality management programs consistent with their own priorities and authorities. As a result, tribal program management TAS designations are only one indicator of successful tribal program capacity. This section includes a number of tribal program capacity indicators applicable to a wide range of tribes, including tribes that are not planning to pursue TAS status for program implementation.

In addition to pursuing program eligibility for delegation of EPA CWA programs, there are other opportunities for tribal governments to partner with EPA to implement CWA

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<sup>41</sup> Limitations in the CWA or other federal legal impediments prevent some tribes from obtaining TAS status. Excluded tribes include tribes that are not federally recognized, and tribes without formal reservations or tribal trust lands, such as most Alaska Native Villages.

provisions. As appropriate, EPA regional offices can utilize Direct Implementation Tribal Cooperative Agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in the implementation of the CWA. Please see Appendix IV, “EPA Water Program Reference Table: Framework for Tribal Water Program Strategic Planning and Development,” for more information on program activities associated with partnering with EPA on water program implementation, developing a tribal water program under tribal authority, and pursuing TAS for certain water programs.

Key sources of program guidance and information for developing programs under these statutes include:

- CWA –Information on activities and developing Water Quality programs:
  - “Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act,” EPA, 2007 (EPA 832-R-06-003).  
[http://water.epa.gov/grants\\_funding/cwsrf/upload/2006\\_10\\_20\\_cwfinance\\_final-tribal-guidance.pdf](http://water.epa.gov/grants_funding/cwsrf/upload/2006_10_20_cwfinance_final-tribal-guidance.pdf)
  - “Handbook for Developing and Managing Tribal Nonpoint Source Pollution Programs Under Section 319 of the Clean Water Act,” EPA, 2010.  
<http://water.epa.gov/polwaste/nps/tribal/index.cfm>
- SDWA – Information on activities and developing the Tribal PWSS Program:
  - Overview of PWSS: <http://www.epa.gov/indian/laws/tas.htm#pwss>
  - Tribal Drinking Water: <http://water.epa.gov/aboutow/ogwdw/tribal.cfm>
  - TAS for PWSS under the SDWA: [www.epa.gov/tribal/pdf/tas-strategy-attach-h.pdf](http://www.epa.gov/tribal/pdf/tas-strategy-attach-h.pdf); [www.epa.gov/tribal/pdf/tas-strategy-attach-i.pdf](http://www.epa.gov/tribal/pdf/tas-strategy-attach-i.pdf)

## **D.2 Establishing Tribal Water Quality Programs**

This subsection provides a “road map” for tribes and outlines a non-exclusive list of tribal environmental protection program capacity indicators that EPA will use to evaluate progress under the GAP. In general, GAP funding should be used to build baseline environmental program capacities; once capacity is established, tribes may seek funding under EPA’s media-specific programs to support more complex program development and implementation while continuing to use GAP funding for ongoing capacity building activities. When considering water program capacity-building activities, it may be beneficial for a tribe to align their capacity-building activities with EPA water program guidance early on. This can: (1) increase efficiency in a tribe’s use of both GAP and media program funding towards developing a program; (2) facilitate obtaining future EPA tribal water grant funding; and/or (3) facilitate obtaining EPA approval for a tribe to implement federal regulatory roles under the CWA or SDWA. Tribes developing water quality and drinking water protection programs should work directly with EPA water program staff and follow EPA Clean Water Act and Safe Drinking Water Act-related policies and guidance.

The first stage in developing a water quality management program is to develop the necessary expertise and skills to identify, address, and manage water quality issues. Tribal capacity-building activities should focus on: (1) assigning staff; (2) acquiring

initial training; (3) compiling relevant data on which the tribe can make program development decisions; and (4) engaging the tribal community on water quality issues.

After building fundamental program capacities related to the CWA and SDWA and evaluating the type of water quality issues facing the community, tribes may consider undertaking efforts to establish water quality protection programs. Tribes and inter-tribal consortia are encouraged to seek funding support under EPA's media-specific programs where appropriate. Please see Appendix IV to view water program planning and development activities in relation to water program implementation under the CWA and SDWA.

### **D.3 Indicators of Water Quality Program Capacity**

#### General Tribal Water Program Indicators

- D.3.1 Tribe has established a staffing plan (position description and recruitment/retention/promotion plan) for who will serve as tribal water quality program coordinator.
- D.3.2 Staff has completed training and acquired baseline knowledge and skills related to the CWA and SDWA (e.g., become familiar with the major goals, programs, and requirements of the CWA and SDWA; the national structure for implementing the CWA and SDWA; and the EPA regional personnel and organization).
- D.3.3 Tribe has established a program to meaningfully participate in water quality management programs administered by other tribal, federal, state, or local governments (including reviewing and commenting on technical water documents, water quality standards, and facility permit actions).
- D.3.4 Tribe is receiving funding under the CWA, SDWA, or other related EPA media specific program.
- D.3.5 Tribe has identified its water resources and associated environmental and human health issues (including: inventories of regulated entities; discharge points requiring NPDES permits; facilities requiring Spill Prevention, Control, and Countermeasure (SPCC) plans; sensitive ecosystems).
- D.3.6 Tribe has established community outreach/education programs related to water quality and/or protecting health through safe drinking water (e.g., fish consumption advisory system, water efficiency, nonpoint source pollution best management practices, infrastructure needs for water and wastewater utilities, and wetlands restoration activities).
- D.3.7 Tribe has established water efficiency policies and program(s) (e.g., building design standards/codes, WaterSense initiatives for government operations, water use restrictions).
- D.3.8 Tribe has established intergovernmental partnerships with federal, state, local, and tribal governments to address water quality or drinking water issues (e.g., memoranda of understanding, interagency agreements).

### Indicators Related to the Clean Water Act

#### *Water Quality Monitoring Program Indicators*

- D.3.9 Tribe has completed a water quality assessment report that analyzes water quality issues impacting the tribe and evaluated water pollution control options (e.g., identifies dischargers and types/amounts of discharge, defines potential human health and environmental impacts of current water quality, provides recommendations for action, identifies water program financial needs, and identifies water quality program goals, objectives, and milestones).
- D.3.10 Tribe has developed a water quality monitoring strategy.
- D.3.11 Tribe has developed quality assurance project plan (QAPP) associated with the water quality monitoring strategy.
- D.3.12 Tribe has established data management functions for its water quality monitoring data, including a program to collect and upload all required quality assured surface monitoring data into WQX/STORET database where applicable.
- D.3.13 Tribe has developed a water quality monitoring program.
- D.3.14 Tribe has submitted complete TAS package for 106 grant eligibility.

#### *Nonpoint Source (NPS) Program Indicators*

- D.3.15 Tribe has worked with other stakeholders in the watershed to develop a watershed based plan that identifies nonpoint source pollution problems and options for best management practices.
- D.3.16 Tribe has submitted an eligibility package for CWA Section 319, including a TAS package and a Nonpoint Source Assessment Report and Management Plan.

#### *Wetlands Program Indicators*

- D.3.17 Tribe has developed a Wetlands Program Plan.
- D.3.18 Tribe has developed a wetlands protection program pursuing one or more of the core wetland program elements (Monitoring & Assessment, Regulation, Voluntary Restoration & Protection, and Water Quality Standards for Wetlands).

#### *Water Quality Standards Indicators*

- D.3.19 Tribe has developed and promulgated tribal water quality standards, including designated uses for tribal waters.

*Indicators for Impaired Waters Identification/Listing and Total Maximum Daily Loads (TMDLs) Programs*

- D.3.20 Tribe has established a program to provide water quality-related data and information on geographically-relevant waters to EPA.
- D.3.21 Tribe has established a program to review and comment on water quality reports, TMDLs, and other watershed-based planning efforts undertaken by other government agencies (federal, state, local, or tribal).
- D.3.22 Tribe has established a program to assess water quality conditions, including comparing water quality monitoring information and data against applicable water quality standards.

*Water Quality Permitting, Compliance, and Enforcement Program Indicators*

- D.3.23 Tribe has established a program to assist EPA with implementing the federal CWA programs (e.g., compliance assurance activities for regulated entities, obtaining federal inspection credentials to inspect regulated entities, and assisting EPA to draft permits for regulated entities).
- D.3.24 Tribe has developed the funding structure and legal framework (e.g., laws, codes, and/or regulations with effective enforcement provisions that are at least as stringent as the CWA) to implement a permit program.
- D.3.25 Tribe has established a program to permit facilities discharging to tribal waters.
- D.3.26 Tribe has established a program to provide compliance assurance (including inspections) and enforcement for a tribal permit program.

*Indicators to pursue only if seeking EPA-approved CWA TAS authority*

- D.3.27 Tribe has developed and submitted a TAS package for EPA-approved WQS program.
- D.3.28 Tribe has developed and submitted a TAS package for EPA-approved NPDES program.
- D.3.29 Tribe has developed and submitted a TAS package for a CWA Section 401 certification program.
- D.3.30 Tribe has developed and submitted a TAS package for a CWA Section 404 dredge and fill permit program.
- D.3.31 Tribe has established a program (including modeling) to develop TMDLs and other water quality based planning efforts.
- D.3.32 EPA-approved Water Quality Standards are in place.
- D.3.33 Tribe has established program to monitor federally-approved surface and/or wetlands water quality standards and perform triennial review.

### Indicators Related to the Safe Drinking Water Act

#### *Ground Water and Source Water Protection Program Indicators*

- D.3.34 Tribe has delineated source water protection areas.
- D.3.35 Tribe has developed source water assessment and protection plan/wellhead protection plans for community water supplies.

#### *Drinking Water Permitting, Compliance, and Enforcement Program Indicators*

- D.3.36 Tribe has established a program to assist EPA with implementing the federal Public Water System Supervision (PWSS) program (e.g., compliance assurance activities, obtaining federal inspection credentials, and assisting EPA to draft permits).
- D.3.37 Tribe has established a program to assist EPA with implementing the federal Underground Injection Control (UIC) program (e.g., compliance assurance activities, obtaining federal inspection credentials, and assisting EPA to draft permits).
- D.3.38 Tribe reports quality assured Underground Injection Control (UIC) inventory information to EPA (especially Class V wells).

#### *Indicators to pursue only if seeking EPA-approved SDWA program delegation authority*

- D.3.39 Tribe has developed the funding structure and legal framework (e.g., laws, codes, and/or regulations with effective enforcement provisions that are at least as stringent as the SDWA) to implement the primary drinking water enforcement program (primacy).
- D.3.40 Tribe has primacy for implementing the Public Water Supervision System (PWSS) program (SDWA Section 1451).
- D.3.41 Tribe has developed and submitted a draft authorization package to EPA for approval to enforce federal UIC requirements and manage injection wells on tribal lands.
- D.3.42 Tribe has primacy for implementing Underground Injection Control wells regulatory program.

## **E: Building Solid Waste, Hazardous Waste, and Underground Storage Tank Capacities**

### **E.1 EPA's Solid Waste, Hazardous Waste, and Underground Storage Tank Programs**

GAP funding related to tribal solid and hazardous waste programs is unique in that the GAP statute provides EPA with the authority to fund both the development of program capacity as well as program implementation in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).<sup>42</sup> Agency priorities for resources applied to tribal solid waste programs will be consistent with both the GAP Guidance and the Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes (Plan). Therefore, each fiscal year regions should review GAP assistance agreement work plans for consistency with the priorities expressed in the Plan. The GAP Guidance and Plan are dynamic documents subject to further refinement as priorities and resources change.

The Resource Conservation and Recovery Act (RCRA) is the primary federal law for managing solid waste, hazardous waste, and Underground Storage Tanks (USTs). The law was originally enacted in 1976, amending the Solid Waste Disposal Act of 1965, and has been subsequently amended. The federal hazardous waste regulations under RCRA Subtitle C apply to all facilities generating and managing hazardous wastes. Under RCRA Subtitle D, EPA has established nationally applicable criteria for non-hazardous waste disposal facilities.<sup>43</sup> Under RCRA Subtitle I, EPA has established criteria for the operation and closure of USTs and Leaking USTs (LUSTs). Also pursuant to RCRA, EPA promotes sustainable materials management, including pollution prevention and environmentally-sound recycling. Sustainable materials management uses a “cradle-to-cradle” approach to focus on the full life cycle of materials including how they can be reinvested and reincorporated into manufacturing, thus reducing the use of virgin materials. For more information on RCRA, visit: <http://www.epa.gov/epawaste/index.htm> and <http://www.epa.gov/oust/tribes/index.htm>

Under RCRA, EPA implementation activities include: (1) issuing permits to hazardous waste treatment, storage, and disposal facilities; (2) issuing RCRA identification numbers to facilities that handle (generate, store, treat, transport, etc.) hazardous waste; (3) conducting compliance assurance (including inspections) and enforcement at facilities subject to the hazardous waste or UST requirements; (4) accepting required notifications from regulated UST owner/operators; (5) directing corrective action activities at facilities subject to the hazardous waste or UST requirements; and (6) exercising enforcement options as necessary under RCRA, including: RCRA § 7003<sup>44</sup> (which allows EPA to

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<sup>42</sup> The Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(f).

<sup>43</sup> 40 C.F.R. Parts 257 and 258.

<sup>44</sup> Guidance on the Use of Section 7003 of RCRA, U.S. EPA Office of Enforcement and Compliance Assurance, October 1997 (<http://www.lb7.uscourts.gov/documents/08-34331.pdf>).

respond to conditions at non-hazardous waste facilities which may present an imminent and substantial endangerment to health or the environment) or § 4005(c)(2).<sup>45</sup>

In 1994, Congress passed the Indian Lands Open Dump Cleanup Act of 1994 (25 U.S.C. § 3901-3908).<sup>46</sup> The Act authorizes the Indian Health Service (IHS), in cooperation with EPA, to develop and maintain an inventory of open dumps and an assessment of the relative severity of the threat posed by each dump. The IHS uses the Web Sanitation Tracking and Reporting System (w/STARS) database to inventory sanitation infrastructure deficiencies, including open dumps in tribal areas.

EPA's RCRA Information system (RCRAInfo) is a national program management and inventory system that maintains information on hazardous waste generators, transporters, treatment facilities, storage facilities, and disposal facilities. To access RCRAInfo, please visit <http://www.epa.gov/enviro/facts/rcrainfo/index.html>. EPA regional offices maintain UST inventories for each tribal land area.

Tribal governments have opportunities to partner with EPA in its RCRA activities under the Subtitle C (hazardous waste) and I (UST) programs. As appropriate, EPA regional offices can utilize Direct Implementation Tribal Cooperative Agreements (DITCAs), memoranda of agreement, program funding, or other mechanisms to provide for tribal participation in the implementation of the RCRA hazardous waste and UST programs. Examples of activities that tribal staff may be able to engage in with EPA include: (1) assisting the Agency to develop/update an inventory of facilities subject to federal compliance requirements; (2) conducting compliance assistance activities for inventoried facilities; (3) obtaining federal inspection credentials to inspect facilities on behalf of EPA; (4) assisting EPA to draft facility permits; and (5) assisting EPA to provide oversight of corrective actions.

Key sources of tribal-related program guidance include:

- “The Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes” (Date TBD)  
<http://www.epa.gov/epawaste/wyl/tribal/capacityassist.htm>
- “OSWER Tribal Strategy: EPA and Tribal Partnership to Preserve and Restore Land in Indian Country,” November 2008.  
[http://www.epa.gov/oswer/tribal/pdfs/oswer\\_tribal\\_strategy.pdf](http://www.epa.gov/oswer/tribal/pdfs/oswer_tribal_strategy.pdf)
- “Tribal Decision Makers Guide to Solid Waste Management,” November 2003  
<http://www.epa.gov/epawaste/wyl/tribal/tribalguide.htm>
- “The Five Elements of a Tribal Integrated Waste Management Plan,” July 2007  
(<http://yosemite.epa.gov/osw/rcra.nsf/6f3756c16d517d7185256f2a007818ee/e7661f353791ad71852573780050876e!OpenDocument>)

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<sup>45</sup> Guidance on Using RCRA Section 4005(c)(2) to Address Uncontrolled Waste Dumps in Indian Country, U.S. EPA Office of Enforcement and Compliance Assurance, March 2007.  
(<http://www.epa.gov/compliance/resources/policies/civil/rcra/rcrasection4005c2-guidance.pdf>)

<sup>46</sup> The Indian Lands Open Dump Cleanup Act of 1994 can be found at:  
[http://www.gsa.gov/graphics/pbs/INDIAN\\_LANDS\\_OPEN\\_DUMP\\_CLEANUP\\_ACT\\_OF\\_1994.pdf](http://www.gsa.gov/graphics/pbs/INDIAN_LANDS_OPEN_DUMP_CLEANUP_ACT_OF_1994.pdf)

- “Building a Tribal Solid Waste Program”  
[http://www.epa.gov/region10/pdf/tribal/igapfy13/attachment\\_B\\_building\\_a\\_tribal\\_solid\\_waste\\_program.pdf](http://www.epa.gov/region10/pdf/tribal/igapfy13/attachment_B_building_a_tribal_solid_waste_program.pdf)
- “Sustainable Materials Management”  
<http://www.epa.gov/epawaste/conserve/smm/index.htm>
- “Report to Congress on Implementing and Enforcing the Underground Storage Tank Program in Indian Country,” August 2007.  
[http://www.epa.gov/oust/fedlaws/rtc\\_finalblnkpgs.pdf](http://www.epa.gov/oust/fedlaws/rtc_finalblnkpgs.pdf)
- “Strategy for an EPA/Tribal Partnership to Implement Section 1529 of the Energy Policy Act of 2005,” August 2006. <http://www.epa.gov/oust/fedlaws/tribal-strat-080706r.pdf>
- RCRA Compliance Monitoring Policies and Guidance  
<http://epa.gov/compliance/resources/policies/monitoring/index.html#rcra>
- “Underground Storage Tank Enforcement Compendium,” May 2009  
[http://www.epa.gov/oecaerth/resources/policies/federalfacilities/enforcement/civil/ust\\_compndium.pdf](http://www.epa.gov/oecaerth/resources/policies/federalfacilities/enforcement/civil/ust_compndium.pdf)

## **E.2 Program Capacity Building: Planning, Developing, and Establishing Tribal Waste Management and Underground Storage Tank Program Capacity**

Tribal environmental departments develop waste management program capacity through a range of planning and development activities. Section E.3 provides a non-exclusive list of tribal environmental protection program capacity indicators that EPA will use to evaluate progress under the GAP. In general, GAP funding should be used to build the applicable tribal environmental program capacities; once capacity is established, tribes may seek funding to support more complex program development and implementation while continuing to use GAP resources for ongoing capacity building activities.

EPA’s main tribal solid waste priority is the promotion of sustainable tribal waste management programs through the development and implementation of Integrated Waste Management Plans (IWMPs).

EPA will focus GAP funding on this priority. An IWMP outlines a tribe’s overall long-term approach for managing waste and serves as a roadmap for developing an effective waste management program. IWMPs also provide tribes with a way to identify waste management funding needs, investigate potential funding sources, and allocate resources accordingly. By promoting the adoption of effective cradle-to-grave regulatory oversight, IWMPs also help tribes address existing open dumps and prevent new open dumps. GAP funding should first be used to establish tribal waste management program capacities like the ones described in Section E.3; tribes may then transition to program implementation.

In addition to the GAP, Appendix V provides a list of other potential sources of EPA funding related to RCRA activities. More detailed descriptions of Agency funding resources may be found in the Plan.

The first stage in developing an IWMP is to develop the necessary expertise and skills to identify, address, and manage the solid and hazardous waste issues facing the community. Tribal capacity-building activities should focus on assigning staff, acquiring initial training, compiling relevant data on which the tribe can make program development decisions, engaging the tribal community on waste management issues, and using this information to make decisions on further development of a waste management program. The specific capacities described in Section E.3 that a tribe may wish to establish with GAP funding should be based on the presence or absence of certain facilities or activities on tribal land. For example: solid waste landfills; open or unauthorized waste dumps; hazardous waste generators, transporters, or disposal facilities; transfer stations; and USTs. Tribes may use GAP funds for any activity identified in an approved work plan designed to establish an applicable capacity indicator; tribes may not need to develop all the capacities described below.

### **E.3 Indicators of Tribal Waste Management and UST Program Capacity**

- E.3.1 Tribe has established a staffing plan (position description and recruitment/retention/promotion plan) for who will serve as tribal waste management program coordinator(s).
- E.3.2 Staff has completed appropriate training and acquired baseline knowledge and skills related to the relevant areas of RCRA (become familiar with the major goals, programs, and requirements of the RCRA; the national structure for implementing the RCRA; and the EPA regional personnel and organization).
- E.3.3 Tribe has established a program to meaningfully participate in waste management programs administered by other tribal, federal, state, or local governments (including reviewing and commenting on waste disposal facility permits and applicable waste management regulations).
- E.3.4 Tribe is receiving funding under the RCRA or other related EPA media specific program.
- E.3.5 Tribe is conducting community education and outreach activities to assess community knowledge and interest in source reduction, alternatives for managing household hazardous waste, recycling, composting, and the use of green materials in tribal construction and to promote the use of such integrated solid waste management systems.
- E.3.6 Tribe has completed a waste assessment (e.g., a waste stream characterization study of the solid and hazardous waste management practices, facilities, and issues in the community; effectiveness of current waste management system(s); waste collection and disposal options; and associated costs).
- E.3.7 Tribe has a tribally-approved Integrated Waste Management Plan (IWMP).
- E.3.8 Tribe has established a program to provide waste minimization, recycling, household hazardous waste collection, used oil collection, junk vehicle removal, bulk waste/appliance/electronic waste collection, and/or composting.
- E.3.9 Tribe has established co-management roles through an intergovernmental agreement with a municipal government (e.g., Memorandum of Understanding or other mechanism) regarding landfill management where both governments have a stake.

- E.3.10 Tribe has completed a solid waste facility plan/feasibility study.
- E.3.11 Tribe has completed an open dump inventory and submitted to EPA and IHS for inclusion in the w/STARS database (including: GPS location; estimated size/volume; contents/type of waste; estimated distance to nearest homes, surface water and groundwater; estimated project costs; and site name).
- E.3.12 Sites included in the open dump inventory have a health hazard ranking score.
- E.3.13 Tribe has coordinated with EPA to ensure accuracy of EPA's regulated hazardous waste facility inventory and operating status.
- E.3.14 Tribe has coordinated with EPA to ensure accuracy of EPA's regulated UST & LUST facility inventory and operating status.
- E.3.15 Tribe has established capacity to provide information to EPA that may be used to conduct compliance monitoring inspections or in a RCRA § 3008, § 7003, § 4005(c)(2), or § 9006 enforcement action.
- E.3.16 Tribe has established a program to assist EPA with implementing the federal RCRA program(s) (e.g., assisting the Agency to conduct compliance assistance activities for regulated entities, obtaining federal inspection credentials to inspect regulated entities, and assisting EPA to draft permits for regulated entities).
- E.3.17 Tribe has enacted waste management and/or UST laws, codes, and/or regulations with effective compliance assurance and enforcement mechanisms (including anti-littering provisions and protocols to address small-scale dumping/burning activities; siting/operating requirements for USTs that are at least as stringent as the federal program).
- E.3.18 Tribe has established a compliance monitoring and enforcement strategy for the tribe's solid and hazardous waste management laws, codes, and/or regulations.
- E.3.19 Tribe has established mechanisms to assure a financially sustainable waste management program, including financing for trash collection services (e.g., fee for service, tribal government funding of trash collection services, or other cost recovery systems).
- E.3.20 Tribal staff is leading circuit rider, train the trainer, and peer-match programs.

#### **E.4 Program Implementation: Tribal Waste Management and UST Program Implementation**

Once a tribe has established a waste management program that is generally consistent with the applicable indicators described above, GAP funds may be used for the following implementation activities in order of priority: (a) program administration; (b) compliance and enforcement; (c) solid waste management, resource recovery, and resource conservation support; and (d) cleanup and closure.

**(a) Tribal Waste Management Program Administration.** Program administration generally includes all administrative oversight functions to ensure proper program implementation (e.g., financial management, human resources management, program performance evaluation, scheduling). Program administration and oversight do not generally include the costs of facility operation and maintenance or general

government services normally provided to the general public, such as fire and police.<sup>47</sup> Under GAP, this restriction on government services includes trash collection, transportation, backhaul, and disposal services which are generally outside the scope of programs administered by the EPA.<sup>48</sup> In limited circumstances, EPA may exercise discretion and grant an exception to this restriction on government services by approving the use of GAP funds for waste management services for up to two years for a grant recipient that has established a waste management program consistent with Sections E.2 and E.3 above. An applicant seeking approval to use GAP funds for waste management services under this exception must demonstrate that no other resources for such services are currently available and document the actions they will take during the approved grant period to establish sustainable funding for collection, transportation, backhaul and/or disposal services. Regional offices will evaluate requests to use GAP resources for solid waste services and will submit the request to the AIEO Director and their justification for a recommended approval or non-approval of the request. AIEO will make the determination on the recommendation within 30 days and in consultation with Office of Solid Waste and Emergency Response (OSWER).

**(b) Tribal Compliance and Enforcement Programs.** Tribes are not eligible for authorization to administer a RCRA Subtitle C hazardous waste or Subtitle I UST program, nor may tribal programs be approved by EPA under RCRA Subtitle D. However, under EPA policy and consistent with EPA's role as a regulatory agency, GAP may fund implementation activities associated with tribal waste management laws, codes, and/or regulations, such as compliance assurance (including inspections) and enforcement consistent with the extent of their authorities. In addition, GAP may fund tribes to support compliance with federal requirements, including: (1) compliance assurance (including inspections) under tribal authority at non-hazardous waste disposal facilities to help verify that such facilities are in compliance with 40 C.F.R. Part 257 and/or Part 258; (2) compliance assistance and inspections to help verify that hazardous waste generators are in compliance with 40 C.F.R. Parts 261 and/or 262; or (3) compliance assurance (including inspections) to help verify that hazardous waste transporters are in compliance with 49 C.F.R. Parts 172, 173, 178, and 179. In accordance with a tribally approved IWMP, tribes may also use GAP funds to conduct community outreach and education programs on solid waste, hazardous waste, source reduction and diversion, and USTs.

**(c) Activities to Support Solid Waste Management, Resource Recovery, and Resource Conservation.** Consistent with RCRA § 4008, activities funded under

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<sup>47</sup> 2 C.F.R. § 225, Appendix B(19)(a)(5): "Cost Principles for State, Local, and Indian Tribal Governments."

<sup>48</sup> "Any general assistance under this section shall be expended for the purpose of planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency and specified in the assistance agreement. Purposes and programs authorized under this section shall include the development and implementation of solid and hazardous waste programs for Indian lands. [...] Such programs and general assistance shall be carried out in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)." Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(f).

GAP may include: facility planning and feasibility studies; expert consultation; surveys and analysis of market needs; marketing of recovered resources; technology assessments; legal expenses; construction feasibility studies; source separation projects; and fiscal or economic investigations or studies but shall not include any other element of construction, or any acquisition of land or interest in land, or any subsidy for the price of recovered resources.<sup>49</sup> Activities that are part of a sustainable waste management program designed to increase waste source reduction, recycling, composting, and sustainable materials management are also allowable under GAP. Under EPA policy, the operation and maintenance of solid waste facilities and trash collection services are not deemed to be eligible for GAP funding; however, program administration and oversight as described in paragraph (a) above may be eligible. Further, the purchase, repair, upgrade, and replacement of resource recovery, resource conservation, and source separation supplies and equipment (e.g., vehicles, scales, containers, crushers, shredders, sheds, fencing, and signage) may be eligible for GAP funding. Similarly, the construction, repair, upgrade, and replacement of source separation facilities (e.g., transfer stations, recycling centers, compost facilities, household hazardous waste collection facilities, bulk waste/appliance/electronic waste collection facilities; construction and demolition debris facilities, used oil collection stations, and other similar facilities) may also be funded under GAP.

**(d) Cleanup and Closure Activities.** Unauthorized dumping of solid waste is typically a symptom of inadequate access to, or citizen participation in, integrated and sustainable waste minimization, recycling, collection, and disposal programs. As a result, funding cleanup activities prior to establishing and implementing an effective program seldom results in lasting changes to a community's waste disposal practices. While GAP funds may be used to implement solid and hazardous waste programs consistent with the GAP statute,<sup>50</sup> including cleanup activities, GAP will remain focused on supporting tribal government efforts to develop a sustainable program designed to address and prevent new, or recurring, unauthorized dumping on tribal lands. IHS is the primary federal agency responsible for identifying, assessing and funding open dump cleanups and closures.<sup>51</sup>

Regional offices will evaluate requests to use GAP resources for cleanup activities described below in Section E.4(d)(i-iii) and will submit the request to the AIEO Director with supporting documentation, including assurance that the tribe has adequate administrative controls to oversee the cleanup, and their justification for a recommended approval or non-approval of the request. AIEO will make the determination on the recommendation within 30 days and in consultation with the appropriate EPA program office(s) (e.g., the Office of Solid Waste and Emergency Response, the Office of Enforcement and Compliance Assurance, and the Office of General Counsel).

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<sup>49</sup> 42 U.S.C. § 6948(a)(2)(A).

<sup>50</sup> The Indian Environmental General Assistance Act of 1992, 42 U.S.C. § 4368b(f).

<sup>51</sup> Consistent with the Indian Lands Open Dump Cleanup Act of 1994, EPA works cooperatively with the IHS to develop the inventory and evaluate open dumps, as requested. 25 U.S.C. §3904.

**(i) Cleanup and Closure Activities for Established Tribal Programs**

Cleanup or closure activities may be eligible for funding under GAP after the tribe has established a program and demonstrated the following program capacity indicators: E.3.5, E.3.6, E.3.7, E.3.8, E.3.17, and E.3.18.<sup>52</sup> EPA decisions on funding cleanup and closure activities should be consistent with the tribal waste program priorities as defined in the Plan. If funded, cleanup and closure work should include documentation on the amount of waste removed/recycled, the types of wastes removed, and the disposition of the waste.

**(ii) Cleanup and Closure Activities for Tribal Programs under Development**

Cleanup or closure activities may be eligible for funding under GAP when the tribe has demonstrated that they are substantially pursuing tangible elements of the following actions towards building a sustainable waste management program:

- Conducting a characterization study of the waste streams a tribe generates and an assessment of current waste management practices.
- Conducting solid waste facility planning and feasibility studies.
- Developing an IWMP for approval by the tribe's governing body.
- Developing waste management laws, codes, ordinances, or regulations within the scope of their authority.
- Developing and implementing a compliance monitoring and enforcement program and/or other mechanisms to identify and respond to illegal dumping activity.
- Conducting community outreach and/or environmental education on waste management programs.

**(iii) Cleanup and Closure Activities Where No Tribal Program is being Developed**

Where a tribe does not have an established program as described above, or is not substantially pursuing tangible elements of the above actions, EPA will not prioritize providing financial assistance, including GAP funds, for the cleanup or closure activities *unless* the open or unauthorized dump presents an imminent and substantial endangerment to human health or the environment.<sup>53</sup> Where this standard is met, AIEO will as part of their approval process, consult with OSWER and OECA. This is consistent with the coordinated approach described in the Plan and will ensure proper EPA involvement and oversight of cleanups where there is an imminent and substantial endangerment to human health and the environment.

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<sup>52</sup> To help protect human health and the environment, EPA may consider approving GAP funding for cleanup activities for tribes with limited jurisdiction that have not developed E.3.17 and E.3.18, on a case-by-case basis.

<sup>53</sup> This standard is consistent with RCRA §7003 (42 U.S.C. § 6973) and is applied here as a matter of policy to guide the use of GAP resources for open dump cleanup and closure actions.

## **F: Building Tribal Contaminated Site Remediation and Emergency Response Program Capacities**

### **F.1 EPA's Comprehensive Environmental Response, Compensation and Liability Act; Emergency Planning, Community Right-to-Know Act; and Small Business Liability Relief and Brownfields Revitalization Act Programs**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, is the primary federal law that ensures responses to releases or threatened releases of hazardous substances that may endanger public health or the environment. The law was originally passed in 1980 and amended in 1986 by the Superfund Amendments and Reauthorization Act. CERCLA authorizes responses to address releases requiring prompt response and actions to address dangers associated with releases or threats of releases to the environment that are not immediately life-threatening. EPA can fund remedial actions under CERCLA only at sites listed on the National Priorities List, which is a list of national priorities among the known releases or threatened releases from uncontrolled or abandoned hazardous waste sites. The CERCLA provides EPA with authority to ensure cleanup and payment for cleanup. If a responsible party does not agree to do the cleanup, EPA can issue an order to do certain work, or work with the Department of Justice to pursue the party through the federal court system. If a party is out of compliance with an order or settlement, the Superfund enforcement program takes action to bring them into compliance. For more information on CERCLA, visit: <http://www.epa.gov/superfund>.

The Emergency Planning and Community Right-to-Know Act (EPCRA) establishes hazardous chemical emergency planning and reporting requirements for federal, state and local governments, Indian tribes, and industry. The right-to-know provisions are designed to increase the public's knowledge and access to information on hazardous substances at specific facilities, their uses, and releases into the environment. Government entities use this information to prepare for and respond to emergencies involving hazardous substances. For more information, visit: <http://www.epa.gov/ceppo/web/content/epcra/>.

The Small Business Liability Relief and Brownfields Revitalization Act, commonly referred to as the Brownfields law, provides CERCLA liability relief for certain property owners and small businesses, and limits CERCLA enforcement authority at sites remediated under state or tribal voluntary cleanup programs. The Act also significantly expands federal grant authority to increase Brownfields redevelopment. Noncompetitive CERCLA § 128(a) State and Tribal Response Program grants fund tribes to establish and enhance a response program which can include addressing contaminated lands. The competitive brownfields grants such as the Assessment, Revolving Loan Fund, and Cleanup, and Environmental Workforce and Job Training Grants are open to all tribes except those in Alaska. For more information on Brownfields, visit: <http://epa.gov/Brownfields/laws/2869sum.htm>.

EPA implementation activities include: (1) maintaining and updating the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)

database to reflect newly identified sites where contaminants are suspected to have been released or new actions at existing sites; (2) response actions to address clean-up of hazardous substances; (3) response and post-clean up monitoring at sites on the National Priorities List (NPL); and (4) compliance assistance and enforcement actions to ensure that required EPCRA reports are submitted to formal EPCRA organizations.

CERCLIS contains information on hazardous waste sites, potentially hazardous waste sites, emergency response or removal sites, and remedial activities across the nation, including NPL sites or sites that are being considered for the NPL. The information is updated by the EPA regional offices. The data describes what has happened at Superfund sites, identifies involved parties (other federal agencies, states, and tribes), and includes information on human exposure, ground water migration, and construction status.

While there is no national database of Brownfield sites, an important component of the Brownfields Program is the development of site inventories. Tribal Response Program grants can be used to survey and develop brownfield inventories, many of which can be accessed online. Tribal staff may be aware of other facilities that may be subject to regulation under CERCLA or EPCRA.

In addition to participating in the federal CERCLA and EPCRA schemes for remediating contaminated sites and providing emergency response, tribes may use GAP funds to develop their own programs consistent with their own priorities and authorities.

Tribes may request delegation of federal authority under CERCLA and EPCRA and can form agreements with EPA to become involved in decision-making concerning CERCLA sites, including assuming the lead role for site assessment or long-term cleanup of sites. In addition, tribes concerned about contaminated federal facilities can partner with other federal agencies, such as the Department of Defense and Department of Energy, through advisory boards and committees to help make site decisions.

Under EPCRA, tribal governments have the lead role in ensuring an EPCRA-compliant emergency preparedness/response organization covers the tribe. Tribes can establish Tribal Emergency Response Commissions (TERCs), join existing Local Emergency Planning Committees (LEPCs), or coordinate with State Emergency Response Commissions (SERCs) to draft and implement an Emergency Response Plan.

Under Brownfields, tribes are co-regulators for many of the program aspects that address contaminated lands. In many instances tribes can serve as the lead for assessment or cleanup of brownfield sites. State and Tribal Response program funding can be used to establish and enhance programs to address contaminated sites, development of necessary codes and regulations, brownfields assessment and cleanup (including open dumps that meet the definition of a brownfields site), development of emergency response programs, and/or receive technical assistance such as job training. Brownfields grants are also available to assess and clean up brownfields sites.

Key sources of program guidance include:

- “OSWER Tribal Strategy: EPA and Tribal Partnership to Preserve and Restore Land in Indian Country,” November 2008.  
[http://www.epa.gov/oswer/tribal/pdfs/oswer\\_tribal\\_strategy.pdf](http://www.epa.gov/oswer/tribal/pdfs/oswer_tribal_strategy.pdf)
- Funding Guidance for State and Tribal Response Programs Fiscal Year 2013  
[http://www.epa.gov/swerosps/bf/state\\_tribal/fund\\_guide.htm](http://www.epa.gov/swerosps/bf/state_tribal/fund_guide.htm)
- “Tribal Brownfields and Response Programs: Respecting Our Land, Revitalizing Our Communities,” 2011. [http://www.epa.gov/swerosps/bf/state\\_tribal/pubs.htm](http://www.epa.gov/swerosps/bf/state_tribal/pubs.htm)
- “Plan to Enhance the Role of States and Tribes in the Superfund Program,” Chapter 4: Tribal Recommendations, March 1998.  
<http://www.epa.gov/superfund/partners/osrti/pdfs/chapt4.pdf>
- Emergency Planning and Community Right-to-Know Act (EPCRA) Local Emergency Planning Requirements. [http://www.epa.gov/osweroel/content/epcra/epcra\\_plan.htm](http://www.epa.gov/osweroel/content/epcra/epcra_plan.htm)
- “Guidance for Preparing Tribal Emergency Response Plans,” September 2004.  
[http://www.epa.gov/oswer/tribal/pdfs/guidance\\_for\\_preparing\\_tribal\\_erps.pdf](http://www.epa.gov/oswer/tribal/pdfs/guidance_for_preparing_tribal_erps.pdf)

## **F.2 Establishing Tribal Programs Related to CERCLA, EPCRA, and Brownfields**

This subsection provides a “road map” for tribes and outlines a non-exclusive list of tribal environmental protection program capacity indicators that EPA will use to evaluate progress under the GAP. The subsection describes in general terms the types of indicators that tribes and/or inter-tribal consortia could undertake with GAP funding to address issues related to CERCLA, EPCRA, or Brownfields. In general, GAP funding should be used to build baseline environmental program capacities; once capacity is established, tribes may seek funding under EPA’s media-specific programs to support more complex program development and implementation while continuing to use GAP resources for ongoing capacity building activities.

The first stage in developing a tribal site response program is to develop the necessary expertise and skills in order to establish an appropriate response planning committee, evaluate the threats from contaminated sites, evaluate the options for tribal programs, and develop partnerships with appropriate federal agencies to address contamination. Tribal capacity-building activities should focus on: (1) assigning staff; (2) acquiring initial training; (3) compiling relevant data on which the tribe can make program development decisions; (4) engaging the tribal community on contaminated land issues; and (5) using this information to make decisions on further development of a tribal site response program.

After building fundamental program capacities related to CERCLA, EPCRA, and Brownfields Tribal Response Program, and evaluating the type of related issues that may be facing the community, tribes may consider undertaking efforts to establish programs to address these issues. Tribes and inter-tribal consortia are encouraged to seek funding support under EPA’s media-specific programs where appropriate.

**F.3 Indicators of Tribal Emergency Response and Remediation Program Capacity**

- F.3.1 Tribe has established a staffing plan (position description and recruitment/retention/promotion plan) for who will serve as tribal program coordinator(s).
- F.3.2 Staff has completed appropriate training and acquired baseline knowledge and skills related to CERCLA, EPCRA, and Brownfields (e.g., become familiar with the major goals, programs, and requirements in CERCLA, EPCRA, and Brownfields Tribal Response Program; the national structure for implementing these programs; and the EPA regional personnel and organization).
- F.3.3 Tribal response staff has completed and developed proficiency in OSHA-required HAZWOPER baseline and annual refresher training to qualify them to safely respond to spills and emergency incidents, and other appropriate training (e.g., acquire certification in an Incident Command System (ICS) course).
- F.3.4 Tribal staff has completed and developed proficiency in All Appropriate Inquiries (EPA 40 C.F.R. § 312), Phase 1 ESA (ASTM E 1527-05), and ECM 10-2 (Department of Interior).
- F.3.5 Tribe has established mechanisms to provide meaningful opportunities for public participation / community involvement to identify contamination concerns and/or solicit input on site cleanup decisions.
- F.3.6 Tribe is meaningfully participating in programs administered by other tribal, federal, state, or local governments (including reviewing and commenting on cleanup and response standards/plans).
- F.3.7 Tribe has completed a site inventory of properties of environmental concern and identified potential EPA program(s) associated with the sites.
- F.3.8 Tribe has established an EPCRA compliant tribal emergency planning organization (TERC, LEPC members, or SERC coordination).
- F.3.9 Tribe has established program to conduct emergency response training and exercises for community members (e.g., orientation seminars to review the contents of the emergency response plan; table tops drills to verify understanding of notification procedures and response actions; and field exercises to ensure that response personnel are familiar with equipment and responsibilities).
- F.3.10 Tribe has established a program to receive and manage material safety data sheets under EPCRA's Hazardous Chemical Storage Reporting Requirements.
- F.3.11 Tribal lands and resources covered by an EPCRA-compliant emergency response plan.
- F.3.12 Tribe has established program to coordinate with state and federal agencies on specific spill response trainings (hands on response to oil and chemical hazards).
- F.3.13 Tribe is conducting, alone or in collaboration with other governmental entities, annual hazmat or oil spill incident exercises (tabletop, functional or full-scale).
- F.3.14 Tribe is receiving funding under CERCLA, EPCRA, or Brownfields.

- F.3.15 Tribe has enacted laws, codes, and/or regulations establishing oversight and enforcement authority to address contaminated sites, including emergency response authority.
- F.3.16 Tribe has promulgated cleanup standards for soil, surface water, and groundwater to guide response and remediation decisions on contaminated sites (e.g., tribal “Applicable or Relevant and Appropriate Requirements” (ARARs).
- F.3.17 Tribe has established capacity to conduct Phase I and Phase II site assessments.
- F.3.18 Tribe has established program to participate in Department of Defense and Department of Energy advisory boards (Federal Facilities Restoration and Reuse) that involve stakeholders in cleanup decisions.
- F.3.19 Tribe has established support agency cooperative agreements with EPA to provide for tribal input in cleanup decisions at CERCLA sites.
- F.3.20 Tribe has developed MOA/MOU with EPA on implementation of appropriate CERCLA programs.

## **G: Building Tribal Chemical Safety and Pollution Prevention Program Capacities**

### **G.1 EPA's Asbestos Hazard Emergency Response Act; Federal Insecticide, Fungicide and Rodenticide Act; and Toxic Substances Control Act Programs**

The Asbestos Hazard Emergency Response Act (AHERA) is a provision of the Toxic Substances Control Act (TSCA) that was enacted in 1986. The EPA implemented AHERA through the Asbestos-Containing Materials in School rule (40 C.F.R. Part 763(E)). This rule requires local education agencies to inspect public and non-profit private K-12 schools for asbestos-containing building material and prepare management plans to prevent or reduce asbestos hazards. Specific requirements include: performing an original inspection and re-inspection every three years of asbestos-containing material; developing, maintaining, and updating an asbestos management plan and keeping a copy at the school; providing yearly notification to parent, teacher, and employee organizations regarding the availability of the school's asbestos management plan and any asbestos abatement actions taken or planned in the school; designating and training a contact person to ensure the responsibilities of the local education agency are properly implemented; performing periodic surveillance of known or suspected asbestos-containing building material; ensuring that properly accredited professionals perform inspections and response actions and prepare management plans; and providing custodial staff with asbestos-awareness training. To implement AHERA, the Agency provides outreach and compliance assistance, and conducts compliance inspections. For more information on AHERA, visit:

[http://www.epa.gov/asbestos/pubs/asbestos\\_in\\_schools.html](http://www.epa.gov/asbestos/pubs/asbestos_in_schools.html).

In addition to AHERA requirements, the Asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP) under the CAA specifies practices to be followed for renovations or demolition of buildings containing asbestos (40 C.F.R. Part 61(M)).

The Federal Insecticide, Fungicide, and Rodenticide (FIFRA) provides for federal regulation of pesticide distribution, sale, and use. All pesticides distributed or sold in the United States must be registered by EPA. Pesticide use is regulated through the registration program, label requirements, and a compliance assurance and enforcement program. The labeling requirements include directions for use, precautionary statements, environmental hazards, detailed explanations regarding acceptable use sites, and requirements related to pesticide handlers and field workers. It is a violation of FIFRA to use a pesticide in a manner contrary to its labeling. This provision applies to all label requirements, including but not limited to mixing, loading, applying, storage and disposal. Through FIFRA, EPA also addresses the certification and training of restricted use pesticide applicators, and establishes requirements for restricted use pesticide record-keeping. The law was originally passed in 1947, substantially revised in 1972, and amended in 1988, 1996, and 2003. Under FIFRA, the Agency provides compliance assurance (including inspections), takes enforcement actions against violators, provides technical assistance, and conducts education and outreach. For more information on FIFRA, visit: <http://www.epa.gov/lawsregs/laws/fifra.html>.

The TSCA provides EPA with the authority to regulate the importation, manufacture, and use of chemical substances and/or mixtures. It does this through reporting, recordkeeping, and testing requirements, as well as restrictions and bans. TSCA addresses the production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, radon and lead-based paint. TSCA was originally enacted in 1976, and significantly amended in 1986, 1988, and 1992. To implement TSCA, EPA provides outreach and compliance assistance and conducts compliance inspections. For more information on TSCA, visit: <http://www.epa.gov/lawsregs/laws/tsca.html>.

The Residential Lead-Based Paint Hazard Reduction Act's Real Estate Notification and Disclosure Rule requires landlords, property management companies, real estate agencies, and sellers to inform potential lessees and purchasers of the presence of lead-based paint and lead-based paint hazards in pre-1978 housing. This ensures that potential tenants and home buyers are receiving the information necessary to protect themselves and their families from lead-based paint hazards. The Lead-based Paint Activities Training and Certification Rule holds that no individuals or firms can perform lead-based paint activities without certification from EPA. The Renovation, Repair and Painting Rule addresses common renovation activities like sanding, cutting, and demolition that can create hazardous lead dust and chips by disturbing lead-based paint. Under the rule, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified by EPA-approved training providers and must follow specific work practices to prevent lead contamination.

EPA generally is the primary enforcement authority for pesticide use violations in Indian country. Tribes may restrict or prohibit the sale or use of a federally registered pesticide, but may not allow the sale or use of an unregistered product. EPA works cooperatively with tribes to enforce FIFRA, as it does with states and territories. For example, under FIFRA Section 23, EPA may enter into cooperative agreements with tribes. These agreements may include provisions for tribes to assist EPA in ensuring compliance with FIFRA by obtaining federal inspector credentials, conducting inspections, and recommending enforcement actions to EPA.

Under FIFRA and TSCA, EPA regional offices can utilize, as appropriate, Direct Implementation Tribal Cooperative Agreements (DITCAs), memoranda of agreement, program funding, and other devices to provide for tribal participation in the implementation of the federal program. Examples of activities that tribal staff may engage in with EPA include: (1) conducting compliance assistance activities for regulated entities; (2) providing technical and compliance assistance, education, and outreach; and (3) obtaining federal inspection credentials to inspect regulated activities.

For many of the activities regulated under TSCA (including AHERA and lead programs) and FIFRA, the Agency does not maintain a national inventory of regulated entities. EPA

regional offices will work closely with tribal staff to identify facilities potentially affecting each tribe that may be subject to the requirements in these federal statutes. While tribal governments cannot operate the federal AHERA program, tribes may seek EPA approval of and subsequently implement certain lead-based paint programs under TSCA and pesticide programs under FIFRA in a manner similar to states. For example, EPA may approve tribal training and certification programs for applicators of restricted-use pesticides.

In addition to participating in the federal AHERA, FIFRA, and TSCA schemes, tribes may use GAP funds to develop their own chemical safety and pollution prevention programs consistent with their own priorities and authorities.

Key sources of program guidance include:

- “Guidance for Funding Development and Administration of Tribal Pesticide Field Program and Enforcement Cooperative Agreements,” January 3, 2011.  
<http://www.epa.gov/nscep/index.html>.
- “The National Pesticide Tribal Program: Achieving Public Health and Environmental Protection in Indian Country and Alaska Native Villages.” October 2009.  
<http://www.epa.gov/oppfead1/Publications/tribal-brochure.pdf>.
- "Guidance on Basic Elements of an EPA-Funded Tribal Pesticide Program," March 11, 2002.  
<http://www.epa.gov/oppfead1/tribes/guidance.htm>.

## **G.2 Activities Eligible for Funding Under EPA Programs that Support Tribal Capacity Development and/or Implementation of Chemical Safety and Pollution Prevention**

This subsection provides a “road map” for tribes and outlines a non-exclusive list of tribal environmental protection program capacity indicators that EPA will use to evaluate progress under the GAP. The subsection describes in general terms the types of indicators that tribes and/or inter-tribal consortia could establish with GAP funding to address issues related to TSCA (including AHERA and lead programs) and FIFRA. In general, GAP funding should be used to build baseline environmental program capacities; once capacity is established, tribes may seek funding under EPA’s media-specific programs to support more complex program development and implementation while continuing to use GAP resources for ongoing capacity building activities.

The first stage in developing programs related to asbestos, lead-based paint, pesticides, and toxics is to develop the necessary expertise and skills to identify, address, and manage any of those issues that may be facing the community. Tribal capacity-building activities should focus on: (1) assigning staff; (2) acquiring initial training; (3) compiling relevant data on which the tribe can make program development decisions; (4) engaging the tribal community on chemical safety and pollution prevention issues; and (5) using this information to make decisions on further development of chemical safety and pollution prevention programs. Based on the presence or absence of certain facilities or activities (for example, pesticide use, residences or child-occupied buildings with lead-based paint), it will not be necessary for all tribes to develop all the capacities below.

After building fundamental program capacities related to the federal asbestos, pesticides, lead-based paint, and toxics programs and evaluating the type of related issues that may be facing the community, tribes may consider undertaking efforts to establish programs to address these issues. Tribes and inter-tribal consortia are encouraged to seek funding support under EPA's media-specific programs where appropriate.

### **G.3 Indicators of Chemical Safety and Pollution Prevention Program Capacity**

- G.3.1 Staff has established a staffing plan (position description and recruitment/retention/promotion plan) for who will serve as tribal program coordinator(s).
- G.3.2 Staff has completed appropriate training and acquired baseline knowledge and skills related to TSCA (including AHERA and lead paint programs), FIFRA, and pollution prevention (e.g., become familiar with: the major goals, programs, and requirements related to TSCA and FIFRA; the national structure for implementing these programs; and the EPA regional personnel and organization).
- G.3.3 Tribe is receiving funding under FIFRA, TSCA, Pollution Prevention Act, or other similar program to support projects or programs related to managing chemical safety and pollution prevention.
- G.3.4 Tribe has completed an asbestos, pesticides, lead-based paint, and pesticides needs assessment that: collects and evaluates existing data on pesticide use and other relevant factors; assesses the need to develop related projects and/or programs; and evaluates short-term and long-term options to address those identified needs.
- G.3.5 Tribal staff has acquired necessary training/accreditation/certification to conduct lead-based paint hazard evaluations at pre-1978 tribal housing/pre-1978 child occupied facilities.
- G.3.6 Tribe has developed Quality Assurance Plan (QAP) to cover sampling and analysis activities and secured EPA approval for QAP before conducting physical sampling, blood testing, or other investigations.
- G.3.7 Tribe has established community outreach/education programs.
- G.3.8 Tribe has established mechanisms to provide meaningful opportunities for public participation / community involvement to identify concerns related to chemical safety and pollution prevention and/or solicit input on decisions.
- G.3.9 Tribe has completed inventory of all pre-1978 target housing and child-occupied buildings and gathered information on the presence of lead-based paint and/or lead-based paint hazards in or around these buildings.
- G.3.10 Tribe has completed an inventory of asbestos (in accordance with the AHERA), pesticides, and toxics in K-12 schools.
- G.3.11 Tribe has adopted a pollution prevention strategy and/or policy (e.g., integrate pollution prevention practices through government services, policies, and initiatives; establish environmentally preferable purchasing standards, green building codes/standards, greenhouse gas emission reduction targets; reduction targets for the use of hazardous materials; establish an integrated

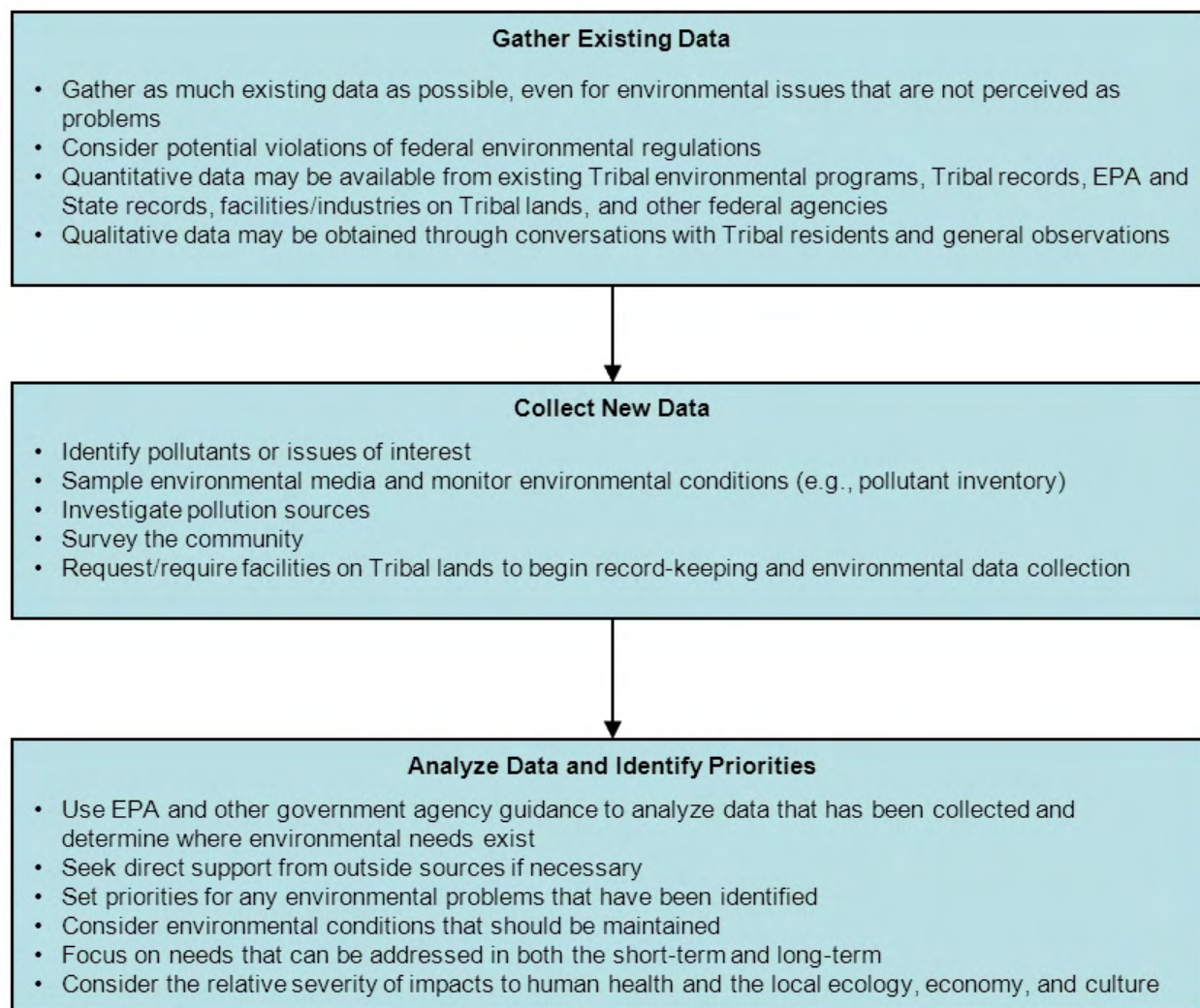
- pest management program; and adopt natural resources protection policies/procedures).
- G.3.12 Tribe is meaningfully participating in programs administered by other tribal, federal, state, or local governments.
- G.3.13 Tribe has established an EPA-tribal MOA/MOU or interagency agreement concerning joint implementation of FIFRA, TSCA, or other authorities.
- G.3.14 Tribe has established a program to implement lead abatement and Renovation, Repair and Painting (RRP) program.
- G.3.15 Tribe has established certification and training plan for restricted use pesticide applicators (commercial and private) to educate applicators and control restricted use pesticides in Indian country.
- G.3.16 Tribe has established a training/accreditation/certification program similar to TSCA Section 402 for individuals and firms engaged in lead-paint activities and for asbestos related accredited training under AHERA requirements (i.e., a model accreditation plan).
- G.3.17 Tribe has established a Pesticides Field Program, including identification of possible pesticide inspection targets and pesticide-specific issues to determine the kind of approach needed to address concerns related to the use and sale of pesticides.
- G.3.18 Tribe has established a pesticides compliance assurance and enforcement program under which a tribal inspector completes all required training and, upon EPA approval, obtains federal credentials to conduct inspections of the regulated community (e.g., pesticide applicators, marketplaces that sell pesticides, etc.) to determine compliance with FIFRA or tribal pesticide regulations.
- G.3.19 Tribe has established a compliance assurance and enforcement program similar to TSCA Section 406(b) that requires distribution of information on lead-based paint hazards.
- G.3.20 Tribe has established a compliance assurance and enforcement program for tribal laws and regulations to manage asbestos, pesticides, toxics, or other chemical risks that are at least as stringent as the applicable federal statutes.
- G.3.21 Tribal staff has capacity to lead circuit rider, train the trainer, and peer-match programs.
- G.3.22 Tribe has enacted tribal laws, codes, and regulations with effective compliance assurance and enforcement provisions to manage asbestos, pesticides, toxics, or other chemical risks that are at least as stringent as the applicable federal statutes.

## Appendix II

### Baseline Needs Assessment

The diagram below illustrates the types of steps that tribes can take to identify and prioritize the environmental issues they want to address. Such an assessment can help inform a tribe's approach for undertaking protection and restoration efforts. As a tribe develops a more sophisticated environmental program, it may undertake extensive sampling and monitoring efforts. The baseline needs assessment is not meant to be such an extensive data collection effort, but rather a primary step to prioritize general environmental issues.

#### Conducting a Baseline Needs Assessment



## Appendix III

### Sample GAP Work Plan: Developing or Updating a Joint EPA-Tribal Environmental Plan

#### Work Plan Details

<b>Tribe</b>	<i>Recipient Name</i>
<b>Work Plan Period</b>	
<b>Reporting Frequency</b>	
<b>Fiscal Year of Funding</b>	
<b>Status</b>	
<b>Author(s)</b>	<i>Author Name</i>
<b>Description</b>	

#### Component #1: Joint EPA-Tribal Environmental Plan

<b>Description</b>	Developing (or Updating) a joint environmental protection plan that identifies long-range environmental capacity development and program implementation goals that are consistent with the GAP capacity indicators and EPA program authorities.
<b>Long-Term Outcome</b>	Increased knowledge of EPA programs, resources, and technical assistance that are aligned with tribal priorities and tribal environmental protection program development goals.
<b>Measures</b>	
<b>Intermediate Outcomes</b>	Identify EPA statutes and regulations applicable to regulated entities in the community. Identify appropriate role for tribe in helping to implement EPA programs. Identify current and needed tribal laws/codes/ordinances/regulations. Identify the long term program development goals and capacity indicators that the tribe will establish.
<b>Estimated Component Cost</b>	
<b>Estimated Work Year (FTE)</b>	
<b>EPA Program Coding</b>	

#### Commitment #1.1

<b>Description</b>	Work with EPA project officers and programs to identify which EPA statutes and regulations apply to facilities, sites, and activities that may affect the tribe or that are located in close proximity to tribal boundaries
<b>Estimated Cost</b>	

<b>End Date</b>	
<b>Positions</b>	Program Director/Assistant Director
<b>Outputs and Deliverables</b>	List of applicable statutes and regulations

### Commitment #1.2

<b>Description</b>	Review, and update with tribal information, EPA's baseline inventory of regulated entities, sites, or activities that may affect the tribe or that are located in close proximity to tribal boundaries
<b>Estimated Cost</b>	
<b>End Date</b>	
<b>Positions</b>	Environmental Specialist, Program Director/Assistant Director
<b>Outputs and Deliverables</b>	Complete accurate inventory

### Commitment #1.3

<b>Description</b>	Identify existing tribal priorities and associated capacity indicators the tribe intends to establish
<b>Estimated Cost</b>	
<b>End Date</b>	
<b>Positions</b>	Program Director/Assistant Director
<b>Outputs and Deliverables</b>	Tribe sends Environmental Priorities document to EPA

### Commitment #1.4

<b>Description</b>	Develop (or Update) a joint EPA-Tribal Environmental Plan that includes the following for each of the programs identified under this Commitment: 1) identification of tribal environmental program priorities, including capacity building and program implementation goals; (2) identification of EPA program priorities and management requirements; (3) inventory of regulated entities; and (4) identification of mutual roles and responsibilities.
<b>Estimated Cost</b>	
<b>End Date</b>	
<b>Positions</b>	Administrative Assistant, Program Director/Assistant Director
<b>Outputs and Deliverables</b>	Joint Planning Agreement approved by both the legally authorized tribal leadership and the EPA Regional Administrator

## Appendix IV

### EPA Water Program Reference Table: Framework for Tribal Water Program Strategic Planning and Development

This reference table is for tribes that intend to establish water programs that are consistent with authorities under the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) and that may pursue, or are already receiving, EPA funding under the CWA or the SDWA in tandem with GAP funds. With careful planning, tribes may initiate activities to establish water programs using GAP funds and continue to enhance their water programs using CWA or SDWA grant funds, provided the activities are consistent with and eligible under CWA or SDWA funding authorities.

The table provides examples of basic activities that are consistent with program guidance under the CWA and SDWA and therefore are generally viewed as eligible for funding under EPA grant programs supporting tribal water programs. The activities are subdivided into CWA and SDWA program areas, and are separated into two columns to distinguish between activities that are typically considered *planning and development* and activities typically considered to be *implementation*.

The table may be useful to:

- Provide a summary view of CWA and SDWA program milestones that tribes can use to plan their water program goals, including short, intermediate, and long-term (i.e., implementation) goals for water programs that are consistent with the CWA and SDWA.
- Provide examples of indicators for building capacity to meet those long-term goals.
- Provide examples of indicators for inclusion in the GAP work plan, which contains the short-term goals, so that the indicators are clearly linked to the longer-term goals.
- Enable the tribe and EPA to have a shared understanding of the path that will be followed to successfully develop tribal environmental program capacity.
- Clarify examples of activities a tribe could pursue based on whether a tribe wants to develop a program under (1) their own tribal authority, (2) a Direct Implementation Tribal Cooperative Agreement (DITCA) with EPA, and/or (3) EPA-approved treatment in a manner similar to a state (TAS) authorization or delegation of primacy.
- Distinguish between program development and program implementation activities for a particular water program area.
- Identify capacity building activities that are generally eligible for funding by EPA.

In general, the planning and development activities in the left hand column are capacity building and therefore may be eligible for GAP funding. In many cases, planning and development activities can also be funded by specific EPA program grants (such as SDWA Section 1451, and CWA Sections 106 and 319).

In general, the ongoing operation and implementation activities in the right hand column are eligible for funding through water program grants.

Tribes should consult with the GAP and water programs to determine the best program planning and funding approach for their specific situation when developing their work plans.

Note: The baseline environmental program capacities listed in the left hand column of the table are consistent with the “capacity indicators” in Appendix 1 of this Guidance, and may be used in GAP work plans.

This table is a non-exclusive list of possible water program planning, development and implementation activities. Tribes should consult with the GAP and water programs, as well as review applicable EPA water program guidance, as appropriate, in determining the types of capacity activities for which to pursue using GAP funding. In addition, please note that: (1) this information is intended as a summary, and despite mandatory language, does not itself contain requirements for the programs described independent of the statutory and regulatory authorities; (2) statutes and regulations control if there is any ambiguity between this information and the requirements contained in statute or regulation; (3) there is no guarantee all eligible entities will be eligible for, or will receive, funding under any specific grant competition or funding announcement.

Tribes may prefer to use other indicators of water program capacity in GAP assistance agreement work plans (i.e., indicators that are not directly related to CWA and SDWA programs), and can work with regions on a tribe-by-tribe basis, reflecting the unique priorities and program development plans of a particular recipient. EPA will rely on the capacity indicators that have been identified in work plans and ETEPs to assess and report on progress in the development of tribal environmental program capacities under the GAP program.

**Table 1:** Framework of Activities Generally Consistent with EPA CWA and SDWA Authorities and Funding Sources that Support Tribal Water Program Capacity Planning, Development and/or Implementation

Tribal Activities for Water Program <b>Planning and Development</b>	Tribal Activities for Water Program <b>Implementation</b>
<b>Clean Water Act</b>	
<p><b><u>Water Quality Monitoring Activities</u></b></p> <ul style="list-style-type: none"> <li>- Identify basic water resources.</li> <li>- Identify water quality and financial needs.</li> <li>- Identify water quality program objectives, goals and milestones.</li> <li>- Begin developing a water quality monitoring strategy.</li> <li>- Begin developing a Quality Assurance Project Plan (QAPP) associated with their water quality monitoring strategy.</li> <li>- Begin developing a database management function for its water quality monitoring data.</li> <li>- Begin conducting water quality outreach and education activities.</li> <li>- Developing TAS Package for 106 grant eligibility.</li> </ul>	<p><b><u>Water Quality Monitoring Activities</u></b></p> <ul style="list-style-type: none"> <li>- Implementing and updating a water quality monitoring strategy.</li> <li>- Collecting surface water quality data.</li> <li>- Collecting surface water quality data for the 7 parameters (106 Guidance).</li> <li>- Collecting groundwater quality data.</li> <li>- Provide quality assured surface water monitoring data in a format accessible for storage into EPA's database.</li> <li>- Routinely provide quality assured surface water monitoring data in a format accessible for storage into EPA's STORET database.</li> <li>- Analyze water quality data and determine the status of water quality in tribal waters.</li> </ul>

Tribal Activities for Water Program Planning and Development	Tribal Activities for Water Program Implementation
Clean Water Act	
	<ul style="list-style-type: none"> <li>- Complete an annual water quality assessment report.</li> </ul>
<p><b><u>Non Point Source (NPS) Activities</u></b></p> <ul style="list-style-type: none"> <li>- Determine areas with water quality problems.</li> <li>- Determined watershed-based goals.</li> <li>- Begin developed a Watershed-Based Plan.</li> <li>- Conduct nonpoint source (NPS) outreach and education activities.</li> <li>- Develop TAS Package for 319 grant eligibility.</li> </ul>	<p><b><u>Non Point Source (NPS) Activities</u></b></p> <ul style="list-style-type: none"> <li>- Implement Watershed-Based Plan that has been reviewed by EPA Regional staff.</li> <li>- Work with other stakeholders to develop watershed management plan.</li> <li>- Develop/implement voluntary programs and/or specific projects to prevent or mitigate nonpoint source pollution.</li> <li>- Implementing water quality protection and restoration activities.</li> <li>- Applying for 319 competitive funding.</li> </ul>
<p><b><u>Wetlands Activities</u></b></p> <ul style="list-style-type: none"> <li>- Developing a wetland protection program pursuing one of more of the core wetland program elements.</li> <li>- Developing a Wetlands Program Plan.</li> </ul>	<p><b><u>Wetlands Activities</u></b></p> <ul style="list-style-type: none"> <li>- Applying for wetland program grants.</li> <li>- Implementing a tribal wetlands protection program.</li> <li>- Implementing voluntary surface water and/or wetlands protection and restoration activities.</li> <li>- Implementing a wetland permitting program.</li> <li>- Developing WQS that cover designated uses for wetlands.</li> </ul>
	<p><b><i>Activities following EPA-approved WQS and TAS authority only</i></b></p> <ul style="list-style-type: none"> <li>- Implementing the Section 404 CWA program to regulate the discharge of dredged or fill material into waters of the US, including wetlands.</li> </ul>
<p><b><u>Water Quality Standards Activities</u></b></p> <p><b><i>Activities to pursue using either tribal authority and/or EPA authority<sup>a</sup></i></b></p> <ul style="list-style-type: none"> <li>- Developing draft water quality standards.</li> <li>- Obtaining tribal council adoption of initial water quality standards.</li> <li>- Conducting a survey to determine fish consumption rates for the purpose of setting or revising water quality criteria for human health effects from bioaccumulative pollutants.</li> </ul>	<p><b><u>Water Quality Standards Activities</u></b></p> <p><b><i>Activities to pursue using either tribal authority and/or EPA authority<sup>a</sup></i></b></p> <ul style="list-style-type: none"> <li>- Implementing water quality standards.</li> <li>- Revising and/or submitting any necessary new or revised standards, such as updating numeric criteria.</li> </ul>
<p><b><i>Activities to pursue only if seeking EPA-approved TAS authority</i></b></p> <ul style="list-style-type: none"> <li>- Developing TAS package for EPA-approved WQS.</li> <li>- Submitting draft standards to EPA for review.</li> </ul>	<p><b><i>Activities to pursue following EPA-approved TAS authority only</i></b></p> <ul style="list-style-type: none"> <li>- Developing and implementing a CWA Section 401 certification program.</li> <li>- Conducting at least one triennial review.</li> <li>- Carrying out implementation method for antidegradation policy, including conducting any necessary review of activities that may lower water quality in high quality waters.</li> </ul>

Tribal Activities for Water Program Planning and Development	Tribal Activities for Water Program Implementation
Clean Water Act	
<p><b><i>Impaired Waters Identification/Listing and Total Maximum Daily Loads (TMDLs) Activities</i></b></p> <ul style="list-style-type: none"> <li>- Providing available water quality-related data and information on geographically-relevant waters</li> <li>- Reviewing and commenting on water quality reports, TMDLs, and other watershed-based planning efforts</li> <li>- Developing capacity to assess water quality conditions, including comparing water quality monitoring information and data against applicable water quality standards</li> <li>- Develop capacity (including modeling) to develop TMDLs and other water quality-based planning efforts</li> </ul>	<p><b><i>Impaired Waters Identification/Listing and Total Maximum Daily Loads (TMDLs) Activities</i></b></p> <ul style="list-style-type: none"> <li>- Developing reports/lists of impaired and threatened waters</li> <li>- Developing TMDLs for impaired and threatened waters</li> </ul>
<p><b><u>Permit Activities</u></b></p> <p><b><i>Activities to pursue using either tribal authority and/or EPA authority<sup>a</sup></i></b></p> <ul style="list-style-type: none"> <li>- Developing the legal framework to implement the permit program, e.g., promulgation of regulations</li> <li>- Developing the funding structure necessary to implement the permit program</li> </ul>	<p><b><u>Permit Activities</u></b></p> <p><b><i>Activities to pursue using either Tribal authority and/or EPA authority<sup>a</sup></i></b></p> <ul style="list-style-type: none"> <li>- Issuing permits</li> <li>- Renewing permits in a timely manner</li> <li>- Conducting inspections</li> <li>- Providing compliance assistance</li> <li>- Revising regulations, as needed</li> </ul>
<p><b><i>Activities to pursue only if seeking EPA TAS authority</i></b></p> <ul style="list-style-type: none"> <li>- Develop TAS Package for NPDES</li> <li>- Develop a draft authorization package for EPA review and comment</li> </ul>	<p><b><i>Activities to pursue following EPA-approved TAS authority only</i></b></p> <ul style="list-style-type: none"> <li>- Providing data to EPA's ICIS database</li> <li>- Assisting the Region in enforcement and compliance activities.</li> </ul>
<p><b><u>Wastewater Infrastructure – CWA</u></b></p> <ul style="list-style-type: none"> <li>- Tribe becomes knowledgeable of the processes to procure Federal funds for the construction of tribal wastewater treatment systems (funding sources may include: EPA Tribal Set Aside, USDA-RD, IHS, HUD &amp; DOI).</li> </ul>	<p><b><u>Wastewater Infrastructure – CWA</u></b></p> <ul style="list-style-type: none"> <li>- Apply for federal funds for the construction of tribal wastewater treatment systems (EPA Tribal Set Aside, USDA-RD, IHS, HUD &amp; DOI).</li> <li>- Manage grants, agreements, and contracts through project completion.</li> </ul>

Tribal Activities for Water Program Planning and Development	Tribal Activities for Water Program Implementation
Safe Drinking Water Act	
<p><b><u>Ground Water and Source Water Protection Activities</u></b></p> <ul style="list-style-type: none"> <li>- Delineate source water protection areas</li> <li>- Begin developing a Source Water Assessment.</li> </ul>	<p><b><u>Ground Water and Source Water Protection Activities</u></b></p> <ul style="list-style-type: none"> <li>- Complete and implement source water protection plan/wellhead protection plan for public water supplies</li> <li>- Institute land use planning to protect susceptible</li> </ul>

Tribal Activities for Water Program Planning and Development	Tribal Activities for Water Program Implementation
Safe Drinking Water Act	
	source water areas.
<p><b><u>Drinking Water Infrastructure – SDWA</u></b></p> <ul style="list-style-type: none"> <li>- Tribe becomes knowledgeable of the processes to procure Federal funds for the construction of tribal public drinking water systems (funding sources may include: EPA Indian Set Aside, USDA-RD, IHS, HUD, and DOI).</li> </ul>	<p><b><u>Drinking Water Infrastructure – SDWA</u></b></p> <ul style="list-style-type: none"> <li>- Apply for federal funds for the construction of tribal public drinking water systems (EPA Tribal Set Aside, USDA-RD, IHS, HUD, and DOI).</li> <li>- Manage grants, agreements, and contracts through project completion.</li> </ul>
<p><b>Oversight, Enforcement and Permitting Activities under SDWA</b></p> <p><b><i>Activities to pursue using either tribal authority and/or EPA authority<sup>a</sup></i></b></p> <ul style="list-style-type: none"> <li>- Tribe requests a DITCA with their EPA Region that assists EPA with direct implementation activities of the Public Water System Supervision (PWSS) program</li> <li>- Tribe requests a DITCA with their EPA Region that assists EPA with direct implementation activities of the Underground Injection Control (UIC) program</li> <li>- Tribe Reports UIC inventory (esp. Class V wells) information to EPA.</li> </ul>	<p><b>Oversight, Enforcement and Permitting Activities under SDWA</b></p> <p><b><i>Activities to pursue using either tribal authority and/or EPA authority<sup>a</sup></i></b></p> <ul style="list-style-type: none"> <li>- Enact UIC laws and regulations to administer and implement a UIC program</li> <li>- Issue individual permits and rule authorized injection</li> <li>- Renew permits in a timely manner</li> <li>- Conduct inspections</li> <li>- Provide compliance assistance</li> <li>- Revise regulations, as needed</li> </ul>
<p><b><i>Activities to pursue only if seeking EPA-approved program delegation authority</i></b></p> <ul style="list-style-type: none"> <li>- Developing the legal framework to implement the primary enforcement program (primacy), e.g., promulgation of regulations, enforcement capabilities</li> <li>- Developing a draft authorization package for EPA review and comment for primary enforcement responsibility under Section 1451 of SDWA (“primacy”)</li> <li>- Developing a draft authorization package for EPA review and comment for primacy to enforce federal UIC requirements and manage injection wells on tribal lands.</li> </ul>	<p><b><i>Activities to pursue only following EPA-approved program delegation via TAS or the primacy agency</i></b></p> <ul style="list-style-type: none"> <li>- Oversee and enforce the National Primary Drinking Water Regulations for the PWSS program at public water systems under tribal jurisdiction</li> <li>- Maintain compliance data systems on public water systems</li> <li>- Receive and analyze compliance monitoring data</li> <li>- Conduct sanitary surveys of public water systems</li> <li>- Certify laboratories that can perform analysis of drinking water, which will be used to determine compliance with the regulations</li> <li>- Provide technical assistance to managers and operators of public water systems;</li> <li>- Use UIC grant funds to implement the minimum Federal UIC requirements</li> <li>- Implement and enforcement the Federal UIC regulations on tribal lands.</li> </ul>

***a*** – Means that a tribe could pursue these activities under (1) their own tribal authority, (2) a Direct Implementation Tribal Cooperative Agreement (DITCA) or Memorandum of Understanding (MOU) with EPA, and/or (3) EPA-approved treatment in a manner similar to a state (TAS) authorization or delegation of primacy.

## Appendix V

### **EPA Funding Programs that Support Tribal Environmental Program Capacity Development and/or Implementation Activities**

Indian Environmental General Assistance Program [CFDA No. 66.926]: Assistance to build tribal capacity to administer environmental regulatory programs on Indian lands, and technical assistance in the development of multimedia programs. Supports planning, developing, and establishing the capability to implement programs administered by EPA and includes the development and implementation of solid and hazardous waste programs for Indian lands in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act.

Direct Implementation Tribal Cooperative Agreements [CFDA No. 66.473]: Assistance authority to support tribes to work with EPA to directly implement federal environmental programs required or authorized by law in the absence of an acceptable Tribal program.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of CAA

Training, Investigations, and Special Purpose Activities of Federally-Recognized Indian Tribes Consistent with the Clean Air Act, Tribal Sovereignty and the Protection and Management of Air Quality CAA Section 103 (Tribal CAA 103 Project Grants) [CFDA No. 66.038]: Assistance to support tribal efforts to understand, assess and characterize air quality; design methods and plans to protect and improve air quality on tribal lands through surveys, studies, research, training, investigations, and special purpose activities.

Air Pollution Control Support Program (CAA Section 105) [CFDA No. 66.01]: Assistance for planning, developing, establishing, improving, and maintaining adequate programs for the continuing prevention and control of air pollution and/or in the implementation of national primary and secondary air quality standards.

National Clean Diesel Emissions Reduction Program [CFDA No. 66.039]: Assistance through grants and low-cost revolving loans to eligible entities to fund the costs of a retrofit technology that significantly reduces emissions for buses (including school buses), medium heavy-duty or heavy heavy-duty diesel trucks, marine engines, locomotives, or nonroad engines or diesel vehicles or equipment used in construction, handling of cargo (including at port or airport), agriculture, mining, or energy production. In addition, eligible entities may also use funds awarded for programs or projects to reduce long-duration idling using verified technology involving a vehicle or equipment described above, or the creation of low-cost revolving loan programs to finance diesel emissions reduction projects.

Chemical and Emergency Preparedness and Prevention Technical Assistance Grants [CFDA No. 66.810]: Assistance for chemical accident prevention activities that relate to

the Risk Management Program under the Clean Air Act Section 112(r), chemical emergency planning, and community right-to-know programs which are established to prevent or eliminate unreasonable risk to the health and environment of the community.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of CWA and SDWA

SDWA Capitalization Grants for Drinking Water State Revolving Funds (Drinking Water Infrastructure Grants: Tribal Set-Aside Program) [CFDA No. 66.468]: Assistance to finance infrastructure improvements for public drinking water systems.

Construction Grants for Wastewater Treatment Works & Capitalization Grants for Clean Water State Revolving Funds (Indian Set Aside Program) [CFDA No. 66.418, 66.458]: Assistance for planning, design and construction of wastewater treatment facilities; low-cost financing to eligible entities within tribal lands for water quality projects including all types of nonpoint source, watershed protection or restoration, and estuary management projects, as well as more traditional municipal wastewater treatment projects.

Assessment and Watershed Protection Program Grants (CWA Section 104(b)(3)) [CFDA No. 66.480]: Assistance to support a watershed approach to water quality problems and building capacity to develop and implement programs for watershed protection, restoration, and management.

Surveys, Studies, Investigations, Demonstrations, and Training Grants and Cooperative Agreements – Section 104(b)(3) of the Clean Water Act [CFDA No. 66.436]: Assistance to support the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, reduction, and elimination of water pollution.

Regional Wetland Program Development Grants (CWA Section 104(b)(3)) [CFDA No. 66.461]: Assistance for building programs which protect, manage, and restore wetlands.

Water Pollution Control State, Interstate, and Tribal Program Support (CWA Section 106) [CFDA No. 66.419]: Assistance to establish and maintain adequate measures for prevention and control of surface and ground water pollution from both point and nonpoint sources.

Nonpoint Source Implementation Grants (CWA Section 319) [CFDA No. 66.460]: Assistance for implementing EPA-approved nonpoint source management programs.

Beach Program Monitoring and Notification Implementation Grants [CFDA No. 66.472]: Assistance for eligible coastal and Great Lakes Tribes 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.

Surveys, Studies, Investigations, Demonstrations, and Training Grants – Section 1442 of the Safe Drinking Water Act [CFDA No. 66.424]: Assistance for source water protection program support, operator certification program support, tribal capacity development program support, and administration of drinking water system infrastructure.

State Public Water System Supervision [CFDA No. 66.432]: Assistance for eligible tribes (those that have Primary Enforcement Responsibility for the Public Water System Supervision Program, or are developing such a program) for implementation of Public Water Systems Supervision Program.

State Underground Water Source Protection [CFDA No. 66.433]: Assistance for states and Indian tribes that have been delegated primary underground injection control enforcement authority pursuant to the Safe Drinking Water Act (SDWA)..

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of RCRA

Tribal Solid Waste Management Assistance Projects [CFDA No. 66.808]: Assistance to characterize/assess open dumps; develop IWM plans and tribal codes and regulations; develop and implement alternative solid waste management activities/facilities (including equipment acquisition); and develop and implement cleanup, closure, and post-closure programs for open dumps in Indian Country. Note that starting in Fiscal Year 2012, funding from all federal agencies for this Project was zero, “reflecting the challenging fiscal constraints facing the federal government.”<sup>54</sup>

Headquarters and Regional Underground Storage Tank Program [CFDA 66.816]: Assistance to support activities that promote the prevention, compliance, and identification of USTs and to support activities that promote corrective action, enforcement and management of releases from UST systems.

Underground Storage Tank Prevention, Detection, and Compliance Program [CFDA No. 66.804]: Assistance for the development and implementation of UST programs and for leak prevention, compliance and other activities.

Leaking Underground Storage Tank Trust Fund Corrective Action Program [CFDA No. 66.805]: Assistance for the oversight and corrective action associated with petroleum releases from federally-regulated USTs, as well as for enforcement activities related to such corrective action.

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<sup>54</sup> “The Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes, Draft for Tribal Review,” Month, 2012, at page 16.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of CERCLA, EPCRA, and Brownfields

Superfund State, Political Subdivision, and Indian Tribe Site-Specific Cooperative Agreements [CFDA No. 66.802]: Assistance to conduct site characterization activities at potential or confirmed hazardous waste sites; undertake response planning and implementation actions at sites on the NPL to clean up the hazardous waste sites that are found to pose hazards to human health; and effectively implement the statutory requirements of CERCLA 121(f), as appropriate, which mandates substantial and meaningful involvement, and CERCLA 126(a).

Superfund State and Indian Tribe Core Program Cooperative Agreements [CFDA No. 66.809]: Assistance to conduct CERCLA activities which are not assignable to specific sites, but support a recipient's site-specific response program, such as developing procedures for emergency response actions and remediation of environmental and health risks; establishing legal authorities and enforcement support; hiring and training staff; and activities that support EPA/recipient interaction.

Chemical and Emergency Preparedness and Prevention Technical Assistance Grants [CFDA No. 66.810]: Assistance for chemical accident prevention activities that relate to the Risk Management Program under the Clean Air Act Section 112(r), chemical emergency planning, and community right-to-know programs which are established to prevent or eliminate unreasonable risk to the health and environment of the community.

State and Tribal Response Program Grants [CFDA No. 66.817]: Non competitive assistance through annual grant program to develop and enhance response programs, including establishing and maintaining a public record of sites at which response actions have been completed or are planned, inventorying brownfields sites, establishing legal authorities for environmental programs, and addressing contaminated brownfields sites through assessment and clean up; hiring and training staff; creating procedures for meaningful community involvement and for site-specific work; and activities to reduce and revitalize the number of contaminated sites. Funding can also be used to provide program capacity for inventorying UST and ABT sites, developing an integrated solid waste management plan, developing and implementing oversight and enforcement of the tribe's environmental programs. Federally recognized tribes/native villages in Alaska are eligible to request funding.

Brownfield Environmental Workforce Development and Job Training Grants [CFDA No. 66.808, 66.813, & 66.815]: Assistance to recruit, train, and place unemployed and under-employed predominantly low-income and minority persons, providing them with the skills needed to secure full-time, sustainable employment in the environmental field and in the assessment and cleanup work taking place in or near their communities. Federally recognized tribes are eligible to apply with the exception of those in Alaska.

Brownfields Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements [CFDA No. 66.818]: Assistance to: inventory, characterize, assess, and conduct planning

and community involvement related to Brownfield sites; capitalize a revolving loan fund (RLF) and provide sub-grants to carry out cleanup activities at brownfield sites; and carry out cleanup activities at Brownfield sites that are owned by the grant recipient. Federally recognized tribes are eligible to apply with the exception of those in Alaska.

- EPA Funding Programs that Support Tribal Capacity Development and/or Implementation of TSCA (including AHERA and lead program) and FIFRA

Community Action for a Renewed Environmental Program [CFDA No. 66.035]:

Assistance to support analyses, studies, evaluations, surveys, investigations, conferences, demonstrations and special purpose projects which empower communities to reduce risks from exposures to toxic pollutants in the air, in the water, and on the land through collaborative action at the local level.

Consolidated Pesticides Enforcement Cooperative Agreements [CFDA No. 66.700]:

Assistance for developing and maintaining comprehensive pesticide programs that address all aspects of pesticide enforcement, and special pesticide initiatives; sponsor cooperative surveillance, monitoring and analytical procedures; and encourage regulatory activities to support and strengthen pesticide compliance programs, including pesticide compliance monitoring, inspection and enforcement activities.

Pesticide Environmental Stewardship Regional Grants [CFDA No. 66.714]: Assistance to support integrated pest management approaches that reduce the risks associated with pesticide use in agricultural and non-agricultural settings, including: pesticide risk reduction, pesticide pollution prevention, Integrated Pest Management (IPM) implementation, and children's health issues related to pesticides.

Tribal Education Outreach on Lead Poisoning and Baseline Assessment of Tribal Children's Existing and Potential Exposure and Risks Associated with Lead [CFDA: No. 66.715]: Assistance to support tribal outreach and baseline assessment activities on lead-based paint to identify children's risk to lead hazards and lead poisoning.

Research, Development, Monitoring, Public Education, Training, Demonstrations, and Studies [CFDA No. 66.716]: Assistance support Research, Development, Monitoring, Public Education, Training, Demonstrations, and Studies assistance relating to the protection of public health and the environment from pesticides and potential risk from toxic substances. Projects for safer use of pesticides, including worker protection, certification and training of pesticide applicators, protection of endangered species, tribal pesticide programs, integrated pest management; environmental stewardship.

Pollution Prevention Grants Program [CFDA No. 66.708]: Assistance to implement pollution prevention technical Assistance services for businesses, and promote training in pollution prevention/source reduction techniques.

State Indoor Radon Grants [CFDA No. 66.032]: Assistance to develop and implement programs to assess and mitigate radon-related lung cancer risk.

Surveys, Studies, Investigations, Training Demonstrations, and Educational Outreach Related to Environmental Information and the Release of Toxic Chemicals [CFDA No. 66.612]: Assistance to educate the public on the how to obtain access to and effectively use environmental information, including information about toxic chemical releases and other waste management activities.

Toxic Substances Compliance Monitoring Cooperative Agreements [CFDA No. 66.701]: Assistance to develop and maintain compliance monitoring programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances or mixtures, specifically asbestos, PCB, and lead-based paint; encourage establishment of regulatory activities for lead-based paint and asbestos; and support enforcement activities for asbestos and lead-based paint programs.

TSCA Title IV State Lead Grants Certification of Lead-Based Paint Professionals [CFDA No. 66.707]: Assistance to develop and implement authorized programs that: certify contractors engaged in lead-based paint activities and accredit lead-based paint activities training programs; certify contractors engaged in renovation, repair and painting activities that disturb painted surfaces in most target housing; and/or require distribution of lead-hazard information prior to renovation (pre-renovation education program).

# **NTOC REFERENCE GUIDE**

**January 10, 2013**

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### Introduction

EPA created this National Tribal Operations Committee (NTOC) Reference Guide to provide NTOC members with background on NTOC policy and procedures. It contains both high-level information on the NTOC (e.g., *What is the purpose of the NTOC? What groups interact with NTOC?*) and its operational procedures (e.g., *How are new National Tribal Caucus (NTC) Executive Committee members elected?*)

This document does not substitute for the official NTOC Charter, which sets the purpose, roles and responsibilities and basic operating parameters for the NTOC. For ease of cross-reference, each section of this Manual provides a link to the specific parts of the NTOC Charter used to form the basis for each section.

The sections of this Manual are:

- **Section 1: Overview and Purpose of NTOC:** Provides a short background of NTOC purpose.
- **Section 2: NTOC Membership, Roles and Responsibilities:** Outlines the responsibilities and duties of each member, the NTOC's role in development of national priorities and the National Tribal Caucus (NTC) Executive Committee election process.
- **Section 3: NTOC and NTC Meetings:** Provides a schedule of annual meetings and outlines meeting processes.
- **Section 4: NTC Operations and Guidelines:** Contains general information on the operations of the NTC and guidelines for travel and working with NTC support contractors.
- **Section 5: Interactions with other EPA Tribal Partnership Groups:** Describes interactions and communications between the NTOC and other Tribal Partnership Groups.
- **Appendix A: NTOC Charter**
- **Appendix B: NTC Members**
- **Appendix C: Major EPA Programs**
- **Appendix D: EPA Budget Cycle**

This document will be periodically updated as procedures are modified or changed, as agreed upon by both U.S. Environmental Protection Agency (EPA) and the NTC. Any changes to the NTOC Charter will require an update to this Guide.

## Section 1: Overview and Purpose of NTOC

### NTOC Vision Statement

EPA and federally recognized tribes are implementing environmental programs consistent with federal environmental laws, EPA's mission, tribal values and lifeways, which address the gaps in environmental protection in Indian country and achieve high levels of protection for human health, while also safeguarding the environment.

### *Applicable NTOC Charter Sections: Parts 1-4*

EPA established the NTOC in February 1994 to improve communication and build stronger partnerships between the Agency and federally recognized tribes.<sup>1</sup> It is comprised of 19 tribal members from nine EPA Regions (referred to as the NTC) and EPA's Senior Leadership Team, including the Administrator, the Deputy Administrator and the Agency's Assistant Administrators and Regional Administrators. Whenever possible in this document, differences between the larger NTOC and the NTC are highlighted. It is important to keep this distinction in mind because while the NTC is part of the NTOC, the groups have different roles.

The NTOC serves as the forum for the NTC and EPA senior leadership to work together on policy and resource matters related to tribal capacity building, environmental program development, and implementation in Indian country.<sup>2</sup> The NTOC also identifies mechanisms for EPA and tribes to facilitate actions that protect human health and environment in Indian country. Specifically, the NTOC members work together to:

- Exchange views, information and advice concerning intergovernmental efforts to manage and implement EPA's programs in Indian country;

<sup>1</sup> A "federally recognized tribe" is an Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1944, 25 U.S.C. 479a.

<sup>2</sup> Indian country as used in this document includes reservations, dependent Indian communities, Indian allotments and Alaska Native Villages.

- Identify and facilitate actions that address the gaps in data, information, policy and understanding that impact environmental and human health protection in Indian country and strive for relative parity in resources for environmental protection between state and tribal programs.
- Strengthen EPA-tribal partnerships to build capacity to develop and implement environmental programs in Indian country.
- Promote mutual understanding of interests and perspectives on national tribal environmental issues, policies and priorities.
- Monitor and assess progress in EPA's tribal program, including the performance of the NTOC in fulfilling its mission.

The NTOC Charter was originally enacted in April 1996, updated and re-certified in July 2001, and again updated and re-certified in July 2012. A copy of the Charter is provided in Appendix A.

The NTOC operates in a manner consistent with EPA's 1984 Indian Policy<sup>3</sup>, the federal trust responsibility to federally recognized tribes, federal laws, regulations, policies and guidance, as well as tribal values and interests. The 1984 Indian Policy states that EPA will work directly with tribes on a one-to-one (or Nation-to-Nation) basis and not as political subdivisions of States or other governmental units. The interactions of the NTOC do not substitute for this government-to-government relationship between EPA and federally recognized tribes.

In line with the NTOC mission and vision the principal purpose of the NTC is to **advise** EPA on how the Agency's tribal programs can be improved. Because the NTC serves in an **advisory capacity** it may initially appear to be subject to the Federal Advisory Committee Act (FACA; see text box). However, the Unfunded Mandates Reform Act of 1995 (UMRA)<sup>4</sup> specifically exempts certain intergovernmental meetings from FACA if they meet the following criteria:

### What is FACA?

Enacted by Congress in 1972, FACA governs the behavior of federal advisory committees. In particular, it has special emphasis on open meetings, public involvement and reporting. FACA applies to any committee or other group established or utilized by the President or a federal agency to obtain collective advice or recommendations and which does **not** consist solely of full time federal employees. NTC and NTOC are **not** subject to FACA requirements, as explained in the text.

1. *Are held exclusively between Federal official and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and*

<sup>3</sup> The EPA Policy for the Administration of Environmental Programs on Indian Reservations, November 8, 1984 can be found at <http://www.epa.gov/tribal/pdf/indian-policy-84.pdf>.

<sup>4</sup> Section 204 of the Title II, codified at 2 U.S.C Sec. 1534(b)

2. *Are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.*

Therefore the NTC and its activities are **not** subject to FACA requirements.<sup>5</sup> Overall, this is important because it promotes free communication and permits federal officials to speak directly with their tribal counterparts and not the public at large. This communication can occur at any point during NTOC activities, whether during day-to-day operations, conference calls or meetings.

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<sup>5</sup> 2 U.S.C. Sec. 1534(b) (1) & (2)

## Section 2: NTOC Membership, Roles and Responsibilities

### *Applicable NTOC Charter Sections: Parts 5-7*

The NTOC includes members of NTC and EPA senior leaders. This section provides additional details about membership and the important roles that the NTC and EPA play in the functioning of the NTOC.

### NTC Membership

The NTC is, first and foremost, a **national body** of high-level tribal advisors. Members are selected on a regional basis and represent all tribes within their region. Their primary focus is to identify and address tribal environmental issues that are national in scope, cross-agency or cross-media in nature, or that may be emerging or urgent. It is not the role of the NTC to address issues of individual tribes per se. However, if the issue of an individual tribe is indicative of a larger, national issue, the NTC may consider that issue as one of their national priorities.

As noted in Part 6.1 of the NTOC Charter, NTC members are selected based on specific criteria that are designed to help ensure that each member has the knowledge, skills and support to fully participate in the work of the NTOC. A list of current NTC members is provided in *Appendix B: NTC Members*. In summary, the NTC members may be individuals with tribal environmental program experience and expertise in program areas or elected tribal officials. The specific criteria are listed in the *NTC Membership Criteria* text box. EPA relies on the individual expertise as well as the tribal and regional perspective of each member to add to the richness of the dialogue that occurs among the NTC and with the full NTOC.

Tribes in each Region are responsible for determining the method of selection of NTC member(s) and alternate(s), insuring an open membership process. If a member is selected and

### NTC Membership Criteria

Members and alternates should meet all criteria under either (1) the Environmental Experience option **OR** (2) the Elected Official option. If members meet the Environmental Experience option and are not tribal elected officials, they must be designated in writing by their tribal leadership to act on behalf of their tribe.

#### Environmental Experience Option:

- Served for at least 3 years as an Environmental Director, Deputy Director or an equivalent position for a federally recognized tribe;
- Experience managing the implementation of a variety of tribal environmental programs for a federally recognized tribe; and,
- Experience working with, or interacting with, EPA senior managers at the Regional or Headquarters levels. This interaction could include involvement with regional tribal partnership groups.

#### Elected Official Option:

- Serves as an elected official or a traditionally appointed representative of a federally recognized tribe with broad responsibilities that include oversight of environmental, natural resource and/or human health issues.

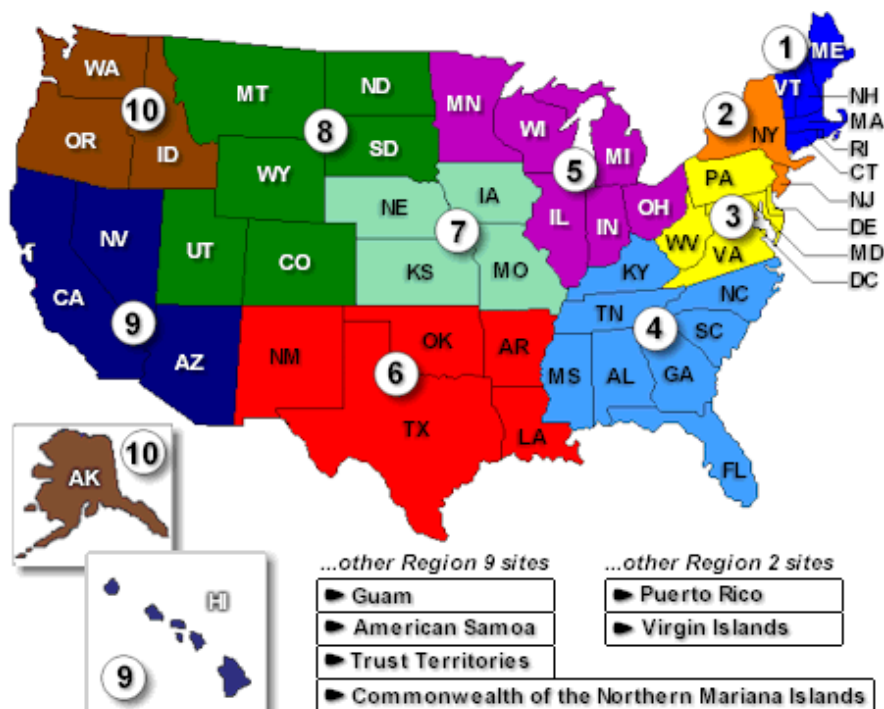
they choose to designate someone to serve in their place on the NTC, that individual becomes the recognized primary member of the group.

**All members and alternates should be willing and able to commit time and energy to the work of the NTC and NTOC.**

EPA's American Indian Environmental Office (AIEO) is responsible for working with the Regions to certify each candidate as a NTC member. Once certified, the member is considered a duly authorized delegate for his or her Region.

There are 19 NTOC tribal members (i.e., the NTC) from nine<sup>6</sup> EPA Regions (see Figure 1 for a map of EPA Regions):

- |               |   |
|---------------|---|
| Region 1: One | Region 7: One                                     |
| Region 2: One | Region 8: Three                                   |
| Region 4: One | Region 9: Four (one from Navajo Nation)           |
| Region 5: Two | Region 10: Four (two from Alaska Native Villages) |
| Region 6: Two |   |



*Figure 1: Map of EPA Regions*

<sup>6</sup> When one or more tribes receive federal recognition in Region 3, the NTC membership will be adjusted to include a member from that Region.

### Alternates

Each Region has one alternate. There is also an alternate for Alaska and the Navajo Nation. Alternates participate in meetings or conference calls when a member from that Region (or Alaska or Navajo Nation) cannot participate and requests his/her alternate to participate. When a NTC member is absent, his/her alternate takes over the voting rights.

### Meeting Participation

All NTC members or their alternates are expected to fully participate in all meetings. Participation can be in person or virtual (e.g., through the internet or via conference call). Attendance on conference calls is encouraged for all NTC members and their alternates. For more information on meetings, please see Section 3.

### Tribal General Assistance Program (GAP) Funds

In 1992, Congress passed the Indian Environmental General Assistance Program Act (42 U.S.C. 4368b), which authorizes EPA to provide GAP grants to federally recognized tribes and tribal consortia for planning, developing and establishing environmental protection programs in Indian country. Beyond capacity building, the only allowable implementation activities under GAP are for solid and hazardous waste.

Since its inception, GAP has become a core program and the largest single source of funding for tribal environmental programs, with almost \$455 million of funding to about 500 different tribal entities. EPA Regional offices have discretion in how funds are allocated to individual tribal programs.

In addition to GAP funds, EPA also provides media specific funding to tribes through 31 grant programs (e.g., Clean Water 106 funds).

### Roles and Responsibilities

NTC members may be asked to perform many duties during their term. In general, NTC members are expected to undertake the following actions to support the NTOC mission:

- Identify and articulate the relative environmental and human health priorities and issues of tribes that are national in scope, cross-EPA or cross-media in nature and/or are emerging or urgent.
- Provide advice and feedback to the NTOC on tribal goals and strategies for protecting human health and the environment and environmental program development and implementation in Indian country.
- In accordance with *EPA's Policy on Consultation and Coordination with Indian Tribes*, assist in the identification of EPA matters that may be appropriate for tribal consultation.
- Listen to, understand and provide feedback on the environmental and human health issues and requests put forward by EPA.
- Request and analyze data, information and input from EPA, federally recognized tribes and EPA Tribal Partnership Groups to understand the relative environmental priorities and issues of tribes nationally.
- Identify the resource needs of tribes to address the environmental priorities identified.

- Convey information about the work of the NTOC back to tribes and EPA Tribal Partnership Groups in a timely way.
- Work with tribal organizations outside of EPA to raise environmental and human health issues and advance NTOC initiatives that are mutually beneficial.
- Identify issues to be placed on NTC and NTOC meeting agendas and, as necessary, develop issue papers for discussion.

### ***NTC Role in Development of National Tribal Priorities***

A major role of the NTC is to identify national tribal environmental priorities and associated resource needs. These priorities and needs help guide EPA in its decisions about program direction and funding for tribal programs, such as tribal General Assistance Program (GAP) funds (see *text box*). To identify these priorities, NTC members draw on a variety of resources, including their own expertise and experience with environmental issues, observations of trends in Indian country, and information on Regional or programmatic priorities brought forward during NTC meetings or by other Tribal Partnership Groups.

To the extent that NTC members need information to support the development of these priorities, they may work with EPA staff at the Regional and Headquarters levels to gather data. (See *Appendix C: Major EPA Programs* for a list of EPA program offices.) If the data are not available, the NTC can work with EPA staff to develop a plan to get the data where possible.

The NTC typically aligns tribal environmental priorities and budget requests with goals from EPA's strategic plan.<sup>7</sup> The group has recently moved to a five-year planning process with annual updates, again similar to EPA's planning process. The NTC also considers whether there are environmental issues the best way to promote these issues to EPA's Tribal Program. Additional information on coordinating with EPA's strategic goals is provided in Section 4.

When identifying priorities, NTC members gather input from a variety of sources. Members should focus on national or cross-programmatic priorities even though these priorities may differ from the priorities of their tribe or of the Region they represent.

### ***NTC Executive Committee***

The NTC Executive Committee includes the Chair, Vice-Chair and Secretary. Serving on the NTC Executive Committee requires dedication and a commitment to act in a leadership position and engage in regular discussions with EPA senior leaders.

### ***Roles and Responsibilities***

The roles of all executive members extend above and beyond the normal duties of NTC members outlined in the previous section. The specific responsibilities of each Executive Committee member are provided in the Charter and listed below:

#### ***NTC Chair***

- Presides at NTC meetings and co-chairs NTOC meetings.
- Facilitates consensus of the NTC on national tribal environmental issues.

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<sup>7</sup> For EPA's 2011-2015 Strategic Plan see: <http://www.epa.gov/planandbudget/strategicplan.html>

- May convene the NTC as a separate subcommittee from the NTOC to accomplish goals and objectives.
- Serves as ex-officio member of subcommittees and work groups.
- Delegates issues to smaller work groups of the NTC.
- Facilitates the consensus of the NTC at EPA Regional and National Indian Workgroup meetings.
- Represents the NTC on various EPA work groups and committees, as appropriate.
- Works with EPA staff to identify needs and ensure that any support required in accomplishing the group's goals are fulfilled; *(Proposed)*

### **Vice-Chair**

- Presides at meetings in the absence of the Chair.
- Assumes and discharges all the duties of the Chair in his/her absence.
- Takes leadership on specific issues per Chair's direction.

### **Secretary**

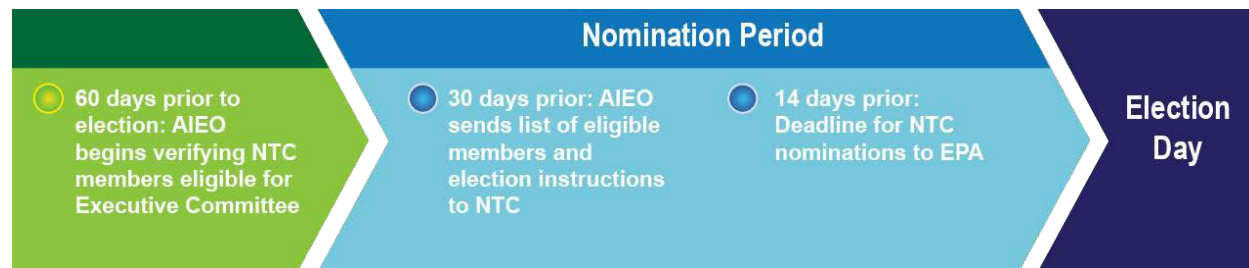
- Creates or reviews a written record of all meetings and teleconferences of the NTC and any discussions of the NTC (*this is generally in coordination with EPA contractor support*).
- Ensures NTC comments are accurately reflected in written records.
- Transmits this information to the NTC and, as appropriate, to EPA.
- May receive assistance from AIEO to help distribute information in a timely manner to NTC members.
- Co-manages NTC's online document sharing site with AIEO staff, to ensure that important information is distributed and discussions are facilitated between monthly conference calls. *(Proposed)*

### **Election Overview**

Elections of tribal members for the NTC Executive Committee occur every year during a meeting of the NTC, usually during the fall. Only NTC official delegates (19 primary members) of the NTC can submit nominations. Nominations must be made in writing. For each election process only current official primary members of the NTC are eligible to be nominated. Officers are elected by a majority vote of the members on the Tribal Caucus. If all 19 members are not present, the group is to have a quorum present to vote, and the officers are elected based on a majority vote of the quorum. Officers hold offices for one year or until their successors are elected.

Nomination and election processes are initiated and coordinated by AIEO in consultation with the NTC Officers. Maintaining anonymity of voting members and ensuring integrity of the voting process are of the utmost importance.

## Election Timeline



**Figure 2: NTC Executive Committee Election Process**

**Approximately 60 days prior to election:** AIEO begins the process to verify and validate all NTC members eligible to serve on the Executive Committee, by requesting each Regional Administrator to certify their primary members or alternates for the upcoming year. A list of all eligible primary members is compiled.

**No later than 30 days prior to election:** AIEO sends this list to all NTC members requesting nominations for the Executive Committee positions. AIEO also sends election instructions—including date of election—to all NTC members and includes contact information for a single AIEO point of contact (and alternate) throughout the election process.

**No later than 14 days prior to election:** NTC members send nominations via email, regular mail, or fax to the AIEO contact, with a copy also sent to the current NTC Secretary. All nominations must be postmarked or electronically time-stamped by the deadline to be considered valid. AIEO compiles the nominations and contacts all nominated members to verify their willingness and ability to serve. If a member notes a conflict with serving on the Executive Committee, he or she may remove his or her name from consideration from voting before the election takes place. Finally, AIEO creates an official ballot.

**Election Day:** During an official NTC meeting, members confirm the official ballot prior to voting by asking each candidate to verbally confirm or deny his or her candidacy. All nominated members have the opportunity to briefly speak about their qualifications and commitment. A person may be a candidate for more than one office. Candidates may remove themselves from the ballot at this time, if they have not already. All ballots are distributed by AIEO. Votes are cast for the Chair position first, then for the Vice-Chair, and finally for the Secretary. NTC members complete the ballots and return them to AIEO during the meeting. At the completion

### Proxy Votes

In instances when both an NTC member and his/her alternate are unable to attend the meeting during which the NTC elections are held, a submission of a vote by proxy is permitted. It is the responsibility of the NTC member or the alternate to request a proxy vote by contacting the NTC Secretary and the AIEO contact person. AIEO will then send the official ballot to the NTC member. A proxy vote must be submitted by a letter (via regular mail, email or fax) signed by the voting member and addressed to the AIEO Director with the heading Attention: Proxy Vote with the accompanying official ballot. Official ballots, containing the names of the certified candidates, must be used by all voting NTC members, whether in person or by proxy.

of in-person voting, the current NTC Secretary calls for proxy votes. A proxy vote is disqualified if the person indicated on the proxy ballot is not on the final ballot. AIEO adds any valid proxy votes to the completed, untabulated ballots. At least two people conduct independent tabulations of the ballots. Following the election, AIEO securely retains the ballots for one year.

## **EPA Membership**

When forming the NTOC the Agency recognized that tribes and nations needed access to EP!'s senior leadership team to ensure that tribal interests were considered at the highest levels of Agency decisions. Although the NTOC does not prohibit individual tribes from requesting an audience with the EPA Administrator and other EPA leaders, the NTOC serves as a regular forum for representatives of federally recognized tribes and nations to work with EPA on identifying and addressing national tribal environmental priorities and important agency tribal program policies and activities.

EPA members of the NTOC reflect this commitment to high-level EPA engagement. EPA members of the NTOC include:

- Administrator
- Deputy Administrator
- Assistant Administrator, Office of International and Tribal Affairs
- AIEO Director
- Chief Financial Officer
- Assistant Administrators
- Regional Administrators
- General Counsel
- Inspector General
- Associate Administrators
- Senior Advisor to the Administrator on Environmental Justice

## **Meeting Participation**

At a minimum, EPA members are expected to attend the full NTOC meeting each year. They may also be called on to engage with the NTC as issues impacting tribal interests arise, or at the request of the NTC to provide specific information on EPA initiatives and regulatory actions. When an EPA member is not able to participate in NTOC activities, he or she may designate another senior manager (such as a Deputy) to participate.

In addition to the senior managers noted above, other senior staff from EPA Headquarters and Regional offices may participate in NTOC activities at the discretion of the NTC and AIEO, to advance the goals of the NTOC. These EPA participants should have direct experience working with tribes or have specific subject matter expertise on issues impacting tribal communities. For more information on meetings, please see Section 3.

### **EP!'s Tribal Consultation Policy**

On May 4th, 2011, EPA released its final policy on consultation and coordination with Indian tribes. EPA was among the first of the federal agencies to finalize its consultation policy in response to President Obama's first tribal leaders summit in November 2009, and the issuance of Executive Order 13175, which established regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications. EPA Regions and program offices (including those listed in Appendix C) have the primary responsibility for consulting with tribes and will work closely with the NTC and tribes to ensure that consultation occurs on a government to government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests. For more on the tribal consultation policy, see: [http://www.epa.gov/tp/pdf/cons\\_and\\_coord\\_with\\_indian\\_tribes\\_policy.pdf](http://www.epa.gov/tp/pdf/cons_and_coord_with_indian_tribes_policy.pdf)

## ***EPA Roles and Responsibilities***

Together, EPA members of the NTOC work to fulfill the NTOC mission by conducting the following actions as noted in the Charter:

- Share information and Agency initiatives that may be of interest to tribes or that may have an impact on tribal environmental programs with the NTOC in a timely manner.
- Listen to, understand and provide feedback to the NTC on the priority issues and requests that they put forward.
- Take action on priority issues, where possible, and ensure that tribal interests are addressed consistently and routinely in the course of Agency operations.
- Update the NTC at least annually about progress being made by the Agency in addressing tribal priorities.
- Support the NTC with appropriate resources and information.
- Support EPA Tribal Partnership Groups and internal Agency groups in collecting and disseminating information, to ensure issues are brought forward to the NTOC in a timely way.
- Consistent with NTOC agendas and NTC priorities and requests, work with other federal agencies to address programmatic inconsistencies and explore opportunities for collaboration to protect human health and the environment in Indian country.

## ***EP!'s !merican Indian Environmental Office (AIEO)***

AIEO is housed within the Office of International and Tribal Affairs (OITA). Within EPA, AIEO provides leadership direction on the Agency-wide effort to strengthen public health and environmental protection in Indian country, with a special emphasis on helping tribes administer their own environmental programs. AIEO also provides coordination support for EP!'s tribal consultation activities as outlined in EP!'S *Policy on Consultation and Coordination with Indian Tribes* (see text box).

### **EPA Tribal Portal**

AIEO houses EPA's tribal portal website, <http://www.epa.gov/indian/>, a gateway to EPA environmental information specifically related to tribal governments, such as environmental policies, practices and laws. The website is updated frequently and provides a single source for EPA's tribal activities and news.

AIEO staff coordinates NTOC activities and participation from EPA members and groups, including EP!'s tribal program managers (TPMs), and EPA speakers and guests. In addition, AIEO supports NTOC with technical, policy and logistic support including, but not limited to:

- Providing administrative and technical support to the NTC for all meetings;
- Coordinating between the NTC workgroups and EPA workgroups undertaking similar activities;
- Maintaining open, direct communication paths between EPA and NTC members;
- Coordinating meeting agenda development with the NTC, ensuring all meeting topics have a clear purpose and work toward concrete outcomes;

- Finalizing and distributing meeting agendas;
- Tracking action items from each meeting and regularly updating lists with input from NTOC members; and
- Facilitating NTC Executive Committee elections.

### *Other EPA Participants*

**EPA TPMs** consist of Headquarters and Regional tribal coordinators and serve as liaisons between the EPA office and the NTC, coordinating information sharing on program-specific (e.g., air, water, toxic, environmental data) issues. TPMs are not official members of the NTOC; however, they may be called on throughout the year to discuss subject-specific matters with the NTC and are expected to participate in monthly NTC conference calls.

Every two years a different EPA Region is designated as the Tribal Lead Region. The Tribal Lead Region selects a Lead Region Coordinator (LRC) who coordinates the Regional TPM's involvement in the NTC and NTOC discussions.

## Section 3: NTOC and NTC Meetings

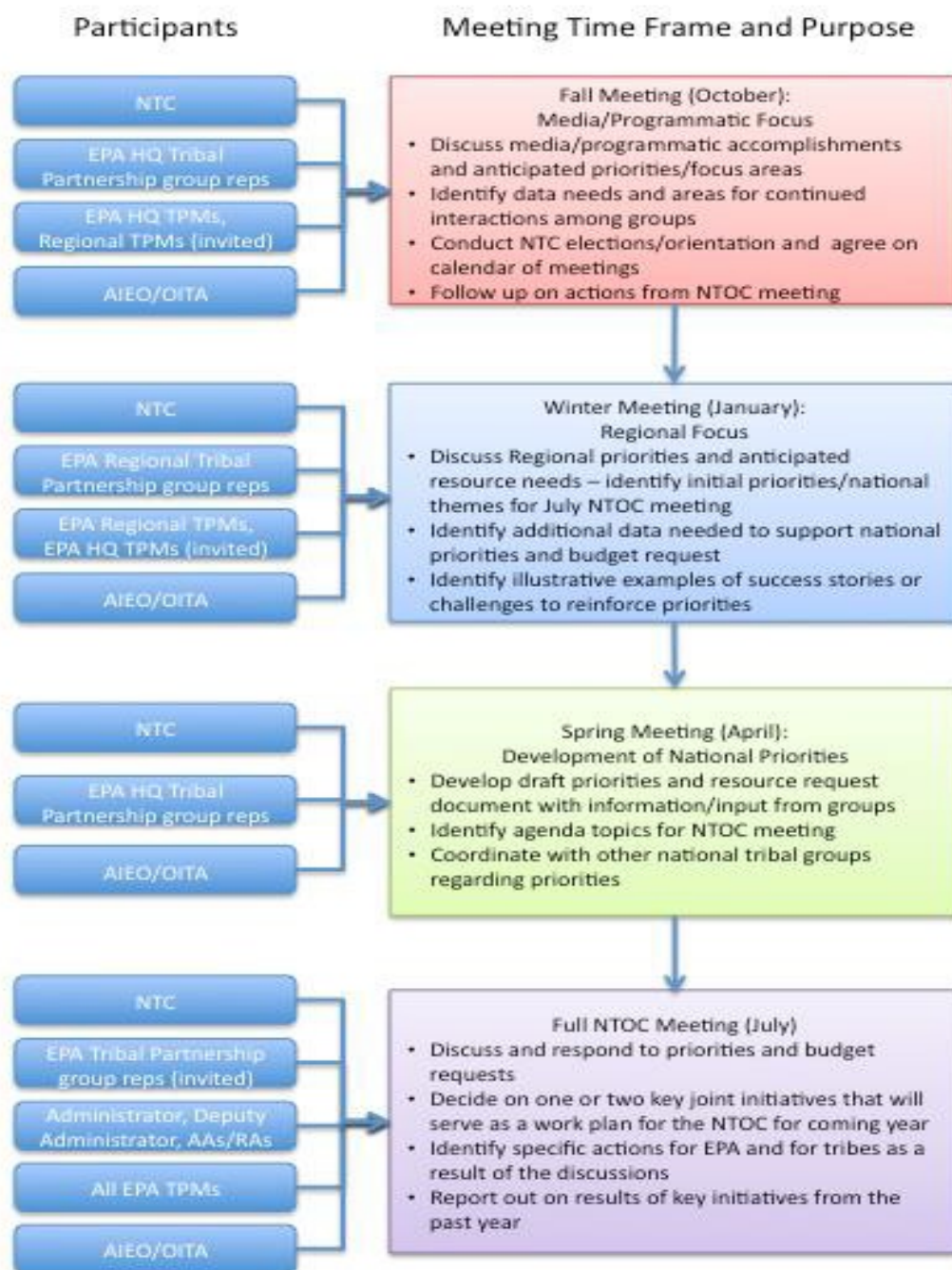
### *Applicable NTOC Charter Sections: Parts 8 and 9*

As an NTC member, one of the most important ways to both provide input on EP!'s decision-making, and support and advance the work of the group, is by participating in regularly scheduled meetings and conference calls. This section provides information on meeting schedules, processes and participation.

### *Overview and General Schedule*

Face-to-face interactions are critical to the success of the NTOC and NTC. Meetings are held to exchange views, information or advice relating to the management or implementation of federal environmental programs. Tribal customs, practices and manner govern the order of all meetings. Travel to and from meetings is conducted in accordance with the travel standard operating procedures (SOPs) provided in Section 4. Recent guidance from EPA senior management encourages EPA offices to hold meetings in a virtual environment, rather than face-to-face meetings, as a way to focus the !gency's tribal budget on providing the most effective and efficient support possible. In response to this directive, AIEO is working with the NTC to ensure that all meetings, whether in-person or virtual, allow for robust participation of the full NTC.

## Overview of Straw Proposal for a Strategic Regular Engagement Process Between EPA Tribal Partnership Groups and the National Tribal Caucus



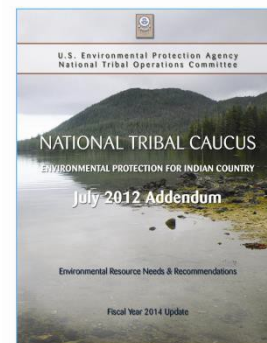
**Figure 3: General Meeting Schedule**

As shown in Figure 3: General Meeting Schedule, a full cycle of development of national tribal environmental priorities occurs in discussions throughout the year. Each year the exact timing and month of each meeting may be adjusted so as not to conflict with other important tribal meetings or activities. For example, for FY2011, the fall meeting was held in December and the

winter meeting was held via telecom and video-conference in March. Some of the actions in Figure 3 take place in meetings, during monthly calls, or in other communications among members. The cycle coincides with EPA's budget-setting cycle. A complete calendar of EPA's budget process is found in Appendix D.

To facilitate the priority setting process and discussions, EPA provides support for meetings, conference calls and other forms of virtual interaction between the NTC and EPA throughout the year. A full NTOC meeting is held annually, usually in the summer. Depending on the availability of funds, the following meeting/interaction schedule may apply<sup>8</sup>:

- **Fall Meeting (Media/Programmatic Focus):** This meeting formally initiates the process for identifying environmental priorities for the following fiscal year and includes discussion of action items from the summer NTOC annual meeting. This meeting also includes election of the new NTC Executive Committee, as outlined in Section 2, and completion of other NTC/AIEO business processes. During this meeting, a draft schedule of meetings/interactions for the year, along with possible host tribes, is developed.
- **Winter Meeting (Regional Focus):** The purpose of the meeting is to meet with EPA Regional Tribal Partnership Groups (TPGs) to discuss Regional priorities and further identify national priorities and budget requests. After members start gathering and sharing data from a regional perspective, the NTC spends several months discussing and deciding on tribal environmental priorities on a national scale.
- **Spring Meeting (Development of National Priorities):** This meeting is traditionally a working meeting of the NTC and EPA with input from Tribal Partnership Groups, as appropriate. Attendees analyze data from the regions and EPA programs and continue to identify a list of national priorities and budget requests.
- **NTOC Annual Meeting (July):** The cycle culminates in the annual NTOC meeting in Washington, DC. At this meeting, national tribal environmental goals and budget requests—in the form of a budget and policy priority document (see Figure 4: *2012 NTC Environmental Priorities in Indian Country*)—are officially presented by the NTC to the full NTOC, including EPA management. The annual budget document identifies the pressing environmental issues relayed to the NTC by tribal governments from across the nation. Starting in 2010, the NTC moved from creating a one-year priority document to creating a document that reflects priorities over a five-year span. The NTC revisits and adjusts the document on an annual basis, as needed. For more information on development of this document, see *NTC Role in Development of National Tribal Priorities* in Section 2. This meeting also includes discussion of national tribal environmental issues of interest to EPA and helps frame key initiatives and actions for the following year.



**Figure 4: 2012 NTC Environmental Priorities in Indian Country**

<sup>8</sup> While EPA makes every effort to adhere to this schedule, each meeting is dependent on funding availability. In some years, meetings are combined or in-person meetings are replaced with video conferences or other remote meeting tools.

## **Meeting Processes**

EPA and NTC strive for consensus decision-making during discussions and meetings. All meetings are reflective of tribal customs, practices and traditions and should be constructive to help, not hinder the business of the group. Each NTOC member is encouraged to participate fully in the discussions and decision-making.

While the overall goal of all meetings is to improve communication and build stronger partnerships between EPA and the tribes, specific processes for each meeting vary depending on tribal and EPA priorities.

## **NTC Meetings**

In-person meetings will alternate between EPA Headquarters and locations throughout Indian country, depending on the availability of resources. All meetings will make use of current technologies for attendees to participate in the meeting remotely if they are unable to attend in person.

Prior to the first meeting in the fall, AIEO asks all NTC members to provide EPA with the dates of RTOC meetings or other important tribal regional and national meetings for the upcoming year. Additionally, AIEO encourages NTC members and EPA TPMs to provide regular updates of meeting dates throughout the year, as they are scheduled. AIEO then works to reduce or eliminate scheduling conflicts for NTC members and EPA staff.

Each of the NTC meetings furthers the development of the agenda for the annual NTOC meeting and provides the NTC with dedicated time to identify and discuss tribal environmental short-term and long-term priorities. Prior to each meeting, NTC members work with EPA to outline specific goals and develop an agenda. EPA TPMs, senior leadership and other guests may be invited to attend to discuss important tribal programs or agency policy/legislative updates.

Whenever possible, meetings are coordinated in conjunction with a host tribe and include site visits with the host tribe. NTC and EPA strive to rotate the meeting locations among different tribal areas.

### **NTC Meeting with Office of Management and Budget**

In addition to the meetings outlined in this section, the NTC, or the NTC Executive Committee, also meets with the White House's Office of Management and Budget (OMB) on an annual basis. The purpose of this meeting is to provide a summary of tribal environmental needs so this information can be considered in the President's Budget Proposal as well as EPA's.

## **NTOC Annual Meeting**

As noted previously in this section, the annual meeting is held to structure and present upcoming fiscal year tribal priorities to EPA senior management, both from a programmatic and budget perspective. The NTC and EPA work jointly before the annual meeting, usually via a sub-workgroup, to develop meeting goals, agenda and discussion topics. The annual meeting is scheduled to coincide with the Agency's annual budget meetings, to increase the opportunities for interaction between NTC and the EPA members of the NTOC. In conjunction with (or in place of) the spring meeting, NTC Executive Committee members may be asked to meet (in-person or virtually) with EPA's

Deputy Administrator and Chief Financial Officer, to directly communicate and coordinate

budget and tribal priority requests. This is a unique opportunity to directly communicate tribal priorities to EPA and discuss funding issues for the upcoming federal fiscal years.

Selected EPA program leaders and NTC members generally meet the day prior to the official NTOC one-day meeting in order to discuss program-specific issues that are not covered during the full NTOC meeting. EPA can also request to meet with the NTC before the NTOC meeting in order to discuss agency priorities.

During the full NTOC meeting, AIEO records all major discussion points and action items in an action item matrix. This document tracks progress on each action item throughout the year. AIEO provides updates on this information in real-time via the NTC's online Website (*Proposed*), and notifies responsible parties of outstanding items before each meeting, so all members can track progress towards completing items.

### ***Monthly Conference Calls***

The NTC also has monthly conference calls, currently scheduled for the second Tuesday of each month. During the monthly conference calls the first hour is dedicated to internal NTC discussions with only NTC members and alternates on the line. The second hour expands discussions to include EPA. Generally, the EPA personnel on the call include AIEO, the TPMs, the National Indian Workgroup (NIWG), and invited program coordinators and contacts.

The purpose of these calls is to share progress on joint NTC-EPA initiatives, provide the opportunity for NTC members to ask questions of EPA about national tribal environmental priority issues and activities, and for EPA to update the NTC on important Agency initiatives that may be of interest to tribes. The NTOC action item matrix is also distributed and discussed during monthly calls, as needed. An effort is made to focus these calls on substantive and timely discussions, rather than just reporting out on completed tasks.

As with the other meetings, AIEO works with NTC members and EPA staff to develop a structured agenda and distribute the agenda to all NTC members and participants one week before the call, along with supporting materials.

Participating in these calls is important to the overall priority-setting structure of the NTC, and to share detailed information between NTC and EPA; therefore, attendance on the calls is tracked by EPA. As with all other meetings, AIEO's support contractor records important points from meeting discussions and action items. Notes from conference calls are distributed within 5 days following a call.

### ***Workgroups on the NTOC***

EPA – or the NTC with EPA's concurrence – may establish subcommittees or workgroups to accomplish the NTOC's mission; NTC members may be asked to participate in these subcommittees or workgroups, to lend their technical expertise. A lead from both the EPA and the NTC is designated to convene and oversee the subcommittee or workgroup. The leads are responsible for (1) ensuring the group and/or subcommittee carries out its assigned tasks and (2) placing items on NTC meeting agendas for discussion and reporting. AIEO helps coordinate between the NTOC workgroups and other EPA workgroups.

NTC members are encouraged to be actively involved in these discussions, especially if they have particular subject matter expertise, and to recommend additional tribal members for

inclusion who would be beneficial to the group's success. The workgroups provide a unique opportunity for tribal and EPA experts to work collaboratively on environmental issues of national importance. The value and importance EPA pays to suggestions and discussions from these groups cannot be overstated.

### *Meeting Protocol and Participation*

All NTC meetings are led by the NTC Chair (or Vice-Chair in the Chair's absence); NTC and EP! joint meetings are co-led by the NTC Chair and the AIEO Director (or designee). The annual NTOC meeting is led by the NTOC Co-Chairs; the NTC Chair and the EPA Administrator, with support from the Office of International and Tribal Affairs Assistant Administrator and AIEO Director.

There is no dress code for meetings, but attendees are encouraged to maintain a professional appearance (e.g., tribal dress, business casual), especially for the full annual NTOC meeting. Internal NTC meetings are typically more intimate and less formal than the NTOC annual meeting.

Members are expected to attend the entire portion of each meeting and actively participate in discussions. Although occasional absences from the group due to extenuating circumstances may occur, if a member has advance notice of a scheduling conflict he or she should work with their alternate member(s) to ensure that their Region is represented at the meeting. If a member misses two meetings in a year<sup>9</sup> (excluding monthly conference calls), regardless of alternate participation, AIEO and the Tribal Caucus leadership, in conjunction with the EPA Region, will work with that individual to understand what is preventing participation and either ensure that the member can participate at future meetings or provide the tribes in the Region with the opportunity to replace that individual with someone else. AIEO tracks the participation of Tribal and EPA members for all meetings and conference calls and provides the information to NTC leadership and the applicable RTOC on a regular basis.

Over the course of a member's term, an NTC member may find he or she can no longer fulfill his or her obligations. In such cases, the member is encouraged to work with the NTC Chair and their respective Regional Administrator to transition off the Caucus. It is very rare for any NTC member to be involuntarily removed from the Caucus.

### **FY2012 NTOC Workgroups**

There are currently three main NTOC workgroups:

- **Strengthening EPA/Tribal Partnership Paradigm:** Engages with EPA to examine current regulatory and EPA processes that can be changed or used to improve agency tribal relationships.
- **Hydraulic Fracturing Workgroup:** Focuses on issues associated with hydraulic fracturing activities on or impacting tribal lands. Since its founding in 2011, the workgroup recommended that EPA focus on: Technical Assistance, Regulatory Clarity, and Coordination and Information Sharing
- **Climate Change Adaptation Workgroup:** Discusses and addresses issues associated with climate change. The group has open and regular communications with EPA's Tribal Science Council and the National Tribal Air Association.

<sup>9</sup> A "year" is measured based on the term of the individual member. For example, if the member is selected to serve starting in August, participation will be evaluated from that point until the following August.



## Section 4: NTC Operations and Guidelines

### *Applicable NTOC Charter Section: All*

As discussed throughout this Manual, EPA relies on the expertise of the NTC members to work with EPA senior leadership on environmental policy and resource matters impacting Indian country. Because EPA appreciates the commitment and time NTC members willingly share to support the NTOC's mission, EPA has established procedures to ensure efficient operations of the group. This section discusses the daily operations of the NTC, procedures and policy, and on-the-ground actions that help ensure effective and efficient processes to meet the responsibilities listed in Section 2.

### Travel Requirements

The principal purpose of the NTC travel is to meet as a group so tribal members can advise EPA on how the Agency's tribal programs can be improved; NTC members travel for meetings as EPA invitational travelers. Travel procedures in this section are developed in conjunction with EPA travel procedures noted at 41 CFR §301-

70.800 (available at: <http://www.gpoaccess.gov/cfr/>) and with special consideration of the travel needs of NTC members and alternates.

The primary member is responsible for informing his or her regional alternate and AIEO, via email, of any meeting for which they will be absent or unable to attend.

When planning and preparing for travel, it is important that NTC members keep in mind that EPA can only pay travel reimbursement at federal rates and will only cover reimbursement for travel costs (including federal per diem rates).<sup>10</sup> EPA cannot compensate travelers for time spent at or preparing for meetings.

### Invitational Travel Guidelines

The Agency supports tribal participation in NTC/NTOC meetings by issuing invitational travel orders. Under federal policy, EPA **may not** use an assistance agreement to gather information for the Agency's own use, to evaluate or improve EPA's operations, or to obtain advice for EPA's direct benefit.\* Consequently tribes **cannot** use their GAP funds to pay for travel to NTOC or charge GAP grants for the time staff spends advising EPA at a meeting.

*\*The Federal Grant and Cooperative Agreement Act (FGCAA), 31 U.S.C. 6304 and 6305, as interpreted by EPA Order 5700.1, Policy for Distinguishing Between Assistance and Acquisition*

### Preparing for Travel

#### Step 1: Receiving Information about the Travel Itinerary

1. EPA or contract personnel will provide the traveler with information about the lodging location, approved lodging dates, approved room rates and reservation cut-off dates.

<sup>10</sup> NTC members will receive standard government per diem reimbursement for meals and incidentals allowable under 41 CFR §301-11 (see <http://www.gsa.gov/portal/category/21287> for per diem rates).

2. Do not make a lodging reservation until after receiving the event specific information.

## **Step 2: Making the Lodging Reservation**

1. Please contact the hotel to reserve lodging before the cut-off date to ensure government rates.
2. The hotel will likely require a credit card to hold your reservation.
3. Reserve the lodging for no longer than the approved lodging dates. If the traveller requires special travel arrangements or different dates, please verify any variances with EPA before finalizing plans with the hotel.
4. If the hotel quotes a non-government room rate or a room rate that is different from that included in the information provided by EPA, please check with AIEO (see page 4 for contact information) for approval of the rates before making the reservation.
5. Ask for email confirmation from the hotel or note the confirmation number, lodging dates, and government rate for future reference.

### **Important Information for First Time Travelers**

First time travelers must submit **mailing address, date of birth, and full legal name** to AIEO for EPA Traveler Identification. Please be sure the name exactly matches that on an approved ID for airline travel.

Please email or fax the information attention to Edna Silver at AIEO.

This information is needed for account processing and will be held in strict confidence, following EPA's policy for Personally Identifiable Information (PII). A public copy of this policy is available at: [www.epa.gov/privacy/policy/2151/](http://www.epa.gov/privacy/policy/2151/)

## **Step 3: Securing Your Airline Ticket with EPA Headquarters Travel Service (Rodgers Travel Inc.)**

1. All NTC travelers **MUST** use Rodgers Travel Inc. (contact information following) to make online reservations. EPA **cannot** reimburse any tickets purchased elsewhere.
2. When making airline reservations, please identify yourself as an **Invitational Traveler** for EPA/AIEO (Headquarters). Please work with Rodgers Travel to make sure the flight meets all needs before they book the ticket. If the flight they suggest presents a logistical challenge (e.g., excessive layovers), travelers may ask them to search for other flights.
3. Request a copy of the flight itinerary from Rodgers Travel.
4. Email total airfare cost to Edna Silver at AIEO. She will begin the Travel Authorization (TA) once she receives the flight itinerary from Rodgers Travel.
5. If the traveler would like to use alternate travel arrangements and drive a privately owned vehicle (POV), email the request along with a statement as to why the traveler is using the POV to Edna Silver. Send Edna Silver the round-trip mileage from residence to the departing airport, in order to be reimbursed for mileage costs. All alternate travel **MUST** be approved by AIEO prior to the trip.
6. Rodgers Travel, Inc. Contact Information:
  - Reservations: 1-866-614-0615 (Wait for Prompt #1)

- Fax Number: 1-215-473-1902
- 24-Hour Emergency Line: 1-866-383-2095

#### **Step 4: Receiving your Travel Authorization (TA)**

1. AIEO will prepare the TA and secure the appropriate approval signature(s). AIEO will send the approved TA to the traveler by email or fax within five business days.
2. EPA Travel (Rodgers Travel, Inc.) will issue an electronic ticket for pick-up from the airport with an approved picture ID. EPA pays for the airline ticket directly. There will be no cost to the traveler.
3. Cash advances are not available to invitational travelers.
4. RENTAL CARS MAY ONLY BE UTILIZED IF AUTHORIZED AND APPROVED BY AIEO. TRAVELER MUST SUBMIT A JUSTIFICATION SHOWING CAUSE. It is not EPA's policy to authorize use of rental cars for Invitational Travelers.
5. **ALL NTC members are required to carry approved travel authorizations when traveling for the federal government, regardless of the mode of travel.**

#### **Important Information for Travelers from Alaska**

Alaska Travelers may book an extra travel day on either end of the trip. In addition, please inform Edna Silver of the specific mode of transportation (and costs) from your primary place of residence to the main departure airport (e.g., Anchorage).

### ***Canceling Travel Plans***

If for any reason travel plans change, the member or alternate is responsible for canceling all travel and lodging reservations as soon as possible:

1. Contact Rodgers Travel to cancel airline travel. Ask for and record the cancellation number.
2. Contact the hotel to cancel lodging. Ask for and record the cancellation number.
3. Inform AIEO as soon as possible by email or fax (see page 4 for contact information) of the cancellation.

If unable to attend the event the member or alternate is responsible for canceling travel and lodging reservations. Members or alternates will be **personally liable** for all travel expenses that are not canceled.

***EPA 2550B Travel Manual, Chapter 2, Section 3.b(4)***

### ***Reimbursement Process***

#### **Step 1: Receipt Submittal**

1. Each NTC traveler is responsible for all airline tickets, hotel and other expense receipts.
2. Each traveler must collect and retain all original receipts and submit them to AIEO with the signed Travel Voucher to complete the reimbursement process as noted in the next step.

3. ***Within five business days of completion of the trip***, the traveler **must** submit receipts to AIEO by faxing or emailing photocopies of all receipts to Edna Silver at AEIO office. Travelers will not be funded by AIEO for subsequent NTC travel until vouchers are received.

**Step 2: Travel Voucher Preparation/Submittal by AIEO**

1. AIEO will prepare and complete your Travel Voucher based on the receipts faxed.
2. AIEO will fax or send the Travel Voucher electronically via email for traveler review and signatures.
3. Each traveler must initial, sign, and date the Travel Voucher where indicated using a pen with **blue** ink.
4. Mail or courier the signed Travel Voucher and original receipts to AIEO (address below).
5. AIEO will forward the completed Travel Voucher package to EPI's Financial Management Center (FMC) for Agency review and processing.

**Step 3: Reimbursement of Travel Costs**

1. FMC disburses a reimbursement check directly to the traveler within 10 business days upon their receipt of a completed Travel Voucher package.
2. Please contact Edna Silver at with any questions regarding the status of your Travel Authorization or Travel Voucher.

***AIEO Contact and Mailing Information***

**By Email:** Edna Silver at [Silver.Edna@epamail.epa.gov](mailto:Silver.Edna@epamail.epa.gov)  
**By Phone:** Edna Silver at (202) 564-0286  
**By Fax:** Attn. Edna Silver to (202) 565-2427  
**Alternate:** Elvira Dixon at (202)564-0378 or [dixon.elvira@epa.gov](mailto:dixon.elvira@epa.gov)  
**By US mail:** Attn: Edna Silver  
Environmental Protection Agency  
American Indian Environmental Office – MC 2690R  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460  
**By Courier:** Attn: Edna Silver  
Environmental Protection Agency  
American Indian Environmental Office  
Ronald Reagan Building, Room 31244, MC 2690R  
1201 Constitution Avenue, NW  
Washington, D.C. 20460

***Working with Contractors***

All NTC members have important responsibilities and jobs outside of their duties on the NTC. Some run tribal environmental programs or are elected members of their tribes. Others actively engage in important environmental work on tribal lands and throughout the Regions. To help

ease some of the duties and logistical complexities of being an NTC member, EPA has engaged contractor support.

Currently, there are two separate contractors that support the activities of the NTC: SRA International, Inc. (SRA) and Kauffman and Associates, Inc. (KAI), a Native American owned firm. SRA provides meeting logistics support to EPA and the NTC. KAI provides technical support to the NTC, coordinated via EPA. Because NTC members and alternates are more likely to regularly interact with KAI, this section will focus on guidelines for those activities.

EPA engaged KAI in the fall of 2011 to provide the NTC with timely and effective analysis of issues that may have national importance for tribal environmental programs. KAI can be tasked by NTC to assemble, analyze, and report out data and information. All requests for support must follow the guidelines presented in the text box and must be coordinated via EPA through the following process:

- NTC members present requests for contractor support to the NTC Chair.
- The NTC Chair or other executive committee members (along with interested NTC participants) then coordinate with the EPA Project Officer (PO) to deliver the request to the contractor. The role of the EPA PO is mainly administrative; other AIEO managers or EPA staff will also be involved in substantive discussions depending on the topic. The current PO is Paige Ingram, who can be contacted at [ingram.paige@epa.gov](mailto:ingram.paige@epa.gov) or (202)564-9957.
- Work completed by KAI will be submitted to the EPA PO, who will forward the document(s) to the NTC Chair.

### **Guidelines for Working with Technical Support Contractors**

1. All NTC requests for contract support are to be made by the NTC Chair to the EPA Project Officer (PO). **Due to legal restrictions of federal contract work, requests cannot be made directly from an NTC member, including the Chair, to KAI.**
2. KAI shall provide analytical support that will consist of gathering publically available environmental data, analysis (arranging data for presentation), and compiling information into appropriate documents.
3. It is the NTC's responsibility to determine how to use the data/information (e.g., to help support a policy recommendation).
4. At the request of the PO, the contractor may provide an analysis of the data, but cannot provide their own recommendation or views on policy matters.
5. As requested by the PO, the contractor can provide word processing support for any reports that need to be prepared for the NTC (e.g., briefing documents).
6. The contractor cannot be involved in developing the technical content (what the NTC will be recommending) of the documents, and cannot provide any policy or scientific technical expertise, nor represent their own views in the materials.
7. The contractor may attend the regular scheduled in person NTC meetings and should participate in the monthly conference calls. This will enable them to have heard the background discussion that leads to the request for research from the NTC.

### **Coordinating with EPI's Strategic Goals**

As noted in Section 3, the NTC typically aligns and coordinates tribal environmental priorities and budget requests with goals from EPI's Strategic Plan.<sup>11</sup> For EPI's 2011-2015 fiscal years, the goals are:

- Goal 1: Taking Action on Climate Change and Improving Air Quality
- Goal 2: Protecting America's Waters
- Goal 3: Cleaning Up Communities and Advancing Sustainable Development
- Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution
- Goal 5: Enforcing Environmental Laws

During the Fall NTC meeting, the NTC selects members to serve as lead contacts for each of EPA Goals. Each goal may have more than one NTC Goal Lead at a time.

The EPA Headquarters Tribal Program Managers (TPMs) serve in their respective program areas under each goal along with a lead Regional contact. The TPMs serve as the contact point and generally support the direct work of the NTC Goal Leads to assist in data and information gathering, as needed.

The NTC Goal Leads are responsible for leading the creation of priorities and budget requests for that specific area, and are expected to devote a significant amount of time to this purpose if needed. All NTC members are encouraged to work closely with the TPM and if appropriate, their respective Tribal Partnership Group (see Section 5) throughout the year to provide expertise, regional viewpoints, and data to develop the fiscal year priorities. The NTC Goal

<sup>11</sup> For EPA's 2011-2015 Strategic Plan see: <http://www.epa.gov/planandbudget/strategicplan.html>

Leads also provide progress updates on their goal at each NTC meeting and work closely with the NTC Executive Committee and AIEO to create the *NTC Environmental Priorities in Indian Country* document and annual updates. All members along with AIEO (and contractor support) work together to finalize the document in the late spring and present it to EPA at the annual NTOC meeting.

## Section 5: Interactions with other EPA Tribal Partnership Groups

### *Applicable NTOC Charter Section: Part 5*

When the NTOC was formed in 1994, its purpose was to provide a main link between EPA and tribal nations. Now, there are many more Tribal Partnership Groups (TPGs) both at EPA (typically focused on media-specific issues and interactions between EPA and tribal representatives) and outside of EPA. In some cases, NTC members also belong to one or more of these Tribal Partnership Groups, (e.g., RTOCs). As noted in the previous section, NTC members (and NTC Goal Leads in particular) communicate with these groups, as appropriate, to establish their annual priorities.

This section presents information on working with TPGs and summary data on some of the tribal groups that NTC members interact with throughout the year.

### **Working with TPGs**

NTC members should be aware that each TPG operates through different funding vehicles and have different processes for initiating interactions. NTC members should rely on TPMs to help navigate the communications and interactions with their respective groups. These interactions will focus on coordination and cooperation and do not imply that any group is directing the work of another.

Coordinating with the appropriate TPM contact, the NTC Goal leads are encouraged to maintain regular communications with their respective Tribal Partnership Group, and whenever possible to participate in the activities and discussions of the groups. Working with these groups to discuss, and when possible coordinate, messages and priorities helps EPA develop a clear path forward to address the gaps in environmental protection in Indian country and achieve high levels of protection for human health while safeguarding the environment.

### **Developing National Priorities**

To develop the national tribal program priorities and resource needs, NTC relies on both Regional EPA Tribal Partnership Groups and Programmatic/Media-specific Partnership Groups (more information on these groups is presented later in the Section).

### **Value of Working with TPGs**

As articulated in the NTOC Charter, it is the responsibility of the NTC to share information about national tribal environmental priorities with all EPA Tribal Partnership Groups, but especially the Regional groups. This exchange at the Regional level ensures that information about priorities is disseminated broadly to tribes across the country.

In addition, both Regional and Programmatic/Media specific EPA TPGs benefit from these interactions. Their engagement provides the opportunity to raise the profile of national issues they are working on and could result in increased resources or Agency attention.

- Regional EPA TPGs collect and communicate to the NTC the regional priorities and resource needs throughout the year. During NTC meetings, members look across regional priorities and identify issues that have national significance. In addition, NTC members communicate back to the Regions (via TPGs and direct communications with the EPA Regional leadership) nationally significant issues.
- Programmatic/Media-specific Tribal Partnership Groups support developing the national priorities in two ways. First, they provide information on trends and topics of interest for their particular program. These topics and trends may provide indicators of, or support for, issues that may be nationally significant or cross-media in nature. Second, some Programmatic/Media-specific Tribal Partnership groups assess national priorities within their focus area. They provide these priorities to the NTC for evaluation along with the Regional priorities that are received.

Based on these inputs, the NTC identifies themes, trends, and common priorities to develop a set of national tribal environmental priorities and resource needs. It reaches out to Regional or Programmatic/Media-specific Tribal Partnership Groups to clarify issues or get input that adds impact or urgency to these priorities. As discussed in Section 3, the NTC develops a priority and resource needs document and presents it to the EPA Administrator and Senior Leadership at the annual NTOC meeting, typically held in the summer.

Some EP! programs, such as EP!'s Office of Environmental Compliance and Assurance (OECA), do not have specific tribal partnership groups. NTC directly works with these offices and other regional and national groups (e.g., National Environmental Justice Advisory Council) to coordinate programmatic priorities.

### **National Tribal Air Association (NTAA)**

The mission of NTAA is to advance air quality management policies and programs, consistent with the needs, interests and unique legal status of American Indian Tribes and Alaska Natives.

- **Member criteria:** All federally recognized tribes are eligible to become Member Tribes of the NTAA.
- **Selection process:** Administration of the NTAA is vested in the Executive Committee consisting of 12 tribal representatives, one from each of the 10 EPA Regions, plus one each from Alaska and Hawaii. The tribes in each region shall decide their own process for selecting their regional tribal representative to serve on the NTAA's Executive Committee.
- **Term lengths:** There is no term limit for member tribes. Terms of office for the Executive Committee Board shall be staggered terms of two (2) years.
- **EPA Primary Contact:** Pat Childers (*Acting*), Office of Air and Radiation (OAR); phone: (202) 564-1082

### **National Tribal Water Council (NTWC)**

NTWC advocates for the best interests of federally-recognized Indian and Alaska Native Tribes, and tribally-authorized organizations, in matters pertaining to water. It is the intent of the

NTWC to advocate for the health and sustainability of clean and safe water, and for the productive use of water for the health and well-being of Indian country, Indian communities, Alaska Native Tribes and Alaska Native Villages (ANVs).

- **Member criteria:** The NTWC has detailed criteria to determine the qualifications of nominees for membership on the NTWC, based on professional water-related experience in Indian country, including ANVs; tribe or tribally authorized organization affiliation; and willingness to participate in NTWC activities and share expertise. A detailed list of criteria is at: <http://www.nationaltribalwatercouncil.org/members.htm>.
- **Selection process:** The Council consists of fifteen (15) members. Nine members are appointed, one from each of the EPA regions with federally-recognized tribes, and six members serve as at-large members. The NTWC reserves the right to appoint additional members up to a total of twenty (20) Council members.
- **Term lengths:** Members of the first full Council serve staggered two- or three-year terms, determined by lot. Thereafter, all Council members serve three-year terms. There is no prohibition on re-nominating and re-appointing members whose terms are due to expire.
- **EPA Primary Contact:** Felicia Wright, Office of Water; phone: (202) 566-1886

### **EPA-Tribal Science Council (TSC)**

TSC was created in partnership with tribal representatives to help integrate Agency and tribal interests, specifically with respect to environmental science issues. The TSC provides a forum for tribes and EPA to identify priority environmental science issues and collaboratively design effective solutions.

- **Member criteria:** All TSC members must have an adequate scientific background to understand and work on tribal science issues effectively.
- **Regional selection process:** The TSC is composed of a single tribal representative from each of the nine EPA Regions with federally recognized tribes, with an additional tribal representative designated in Region 10 to represent Alaska Native communities. Tribal representatives are nominated by their Regional Tribal Operations Committees or similar bodies through the National Tribal Operations Committee. There is also a single Agency representative from each Headquarters Program Office and Region. Agency representatives are designated by Assistant Administrators from the EPA Program Offices and Regions.
- **Term lengths:** Unknown
- **EPA Primary Contact:** Monica Rodia, Office of Research and Development (ORD); phone: (202) 564-8322

### **EP!'s National Tribal Toxics Council (NTTC)**

The newly formed Tribal Toxics Council provides tribes a forum for providing advice on the development of EP!'s chemical management and pollution prevention programs that affect them. The council held its first meeting in 2011. The group is currently developing a Charter, identifying cross-agency issues, and coordinating agency input and response.

- **EPA Primary Contact:** Anna Kelso, Office of Chemical Safety and Pollution Prevention (OCSPP); phone: (202) 564-0645

### **Tribal Grants Council (TGC)**

The Tribal Grants Council is a forum for tribes and EPA to jointly and collaboratively respond as “co-regulators” to challenges and opportunities in tribal management of EP! grants, cooperative agreements and other forms of financial assistance.

- **Member criteria:** The individuals are to be designated by the tribal members of their respective Regional Tribal Operations Committees or similar bodies and each individual must be authorized by its tribe to represent it.
- **Regional selection process:** Each EPA Region will have two tribal representatives consisting of one environmental staff person and one financial management staff person.
- **Term lengths:** Unknown
- **EPA Primary Contact:** TBD

### **Tribal Pesticides Program Council (TPPC)**

The TPPC is a tribal technical resource and program and policy dialogue and development group, focused on pesticide issues and concerns. It is composed of authorized representatives from federally recognized tribes and Indian nations and intertribal organizations.

- **Member criteria:** All tribes, Indian nations and intertribal organizations that are interested in pesticide issues and concerns and want to participate in the TPPC are welcome to authorize a representative to the TPPC.
- **Regional selection process:** Authorization for new representatives must be in writing by a letter from either the Tribal Chairperson or a letter or resolution from the Tribal Council or similar governing body.
- **Term lengths:** Unknown
- **EPA Primary Point of Contact:** Caren Robinson, Office of Chemical Safety and Pollution Prevention (OSCPP); phone: (202) 564-0544

### **Tribal Waste and Response Assistance Program (TWRAP)**

The Tribal Waste and Response Assistance Program (TWRAP) is funded by EPA and provides training and assistance to tribes in the fields of solid and hazardous waste management and compliance and enforcement programs. The Institute of Tribal Professionals (ITEP) has established a national tribal steering committee in order to assist with the work of the TWRAP and to ensure that tribal needs and priorities are addressed by this program’s activities;

- **Member criteria:** The Committee is an advisory body composed of tribal representatives that represent a broad range of expertise and national geographic distribution. Each tribal representative serving on the Committee must be affiliated with a federally recognized tribe and engaged in tribal environmental quality issues. Any person engaged in tribal environmental quality issues may be nominated for Committee membership.

- **Regional selection process:** Once an individual is nominated, ITEP will send a letter of notification to the nominee and to the appropriate elected official. To be eligible to participate as a member of the Committee, each nominee must have authorization from an appropriate elected official. The Committee strives to maintain a minimum of seven members to help ensure broad programmatic experience and national geographic distribution.
- **Term lengths:** The Committee may consist of up to 10 members with a term of office of two years. The terms of office for the Chair and Vice-Chair shall be one year. Terms are limited to a period of four consecutive years.
- **EPA Primary Point of Contact:** Andrew Baca, Office of Solid Waste and Emergency Response (OSWER); phone: (202) 566-0185

### **National Environmental Justice Advisory Council (NEJAC)**

The NEJAC was established by charter pursuant to the Federal Advisory Committee Act (FACA) on September 30, 1993. The Council meets once each year and provides a forum focusing on human health and environmental conditions in all communities, including minority populations and low-income populations. Tribal issues are considered by NEJAC.

- **Member Criteria:** The full NEJAC is made up of approximately 26 members and one Designated Federal Office (DFO). To ensure that all views are represented, membership comprises a balanced representation of the following groups: tribal governments/indigenous groups, academia, community groups, industry/business, non-government organizations/environmental organizations, and state/local governments. NEJAC has an Indigenous People's Subcommittee;
- **Regional selection process:** Typically, at least one member of the NTC is a member of NEJAC and helps ensure tribal interests are considered in all NEJAC actions and discussions. NEJAC coordinates selection of tribal representation with the NTC.
- **Term lengths:** Each NEJAC appointment lasts for one year from January 1-December 31. Extensions may be granted for up to 3 years. If a member resigns, a replacement is appointed to complete the term.
- **EPA Primary Point of Contact:** Danny Gogal, Office of Environmental Justice (OEJ); phone: (202) 564-2576

### **Exchange Network Tribal Governance Group (TGG)**

The Exchange Network includes representatives from States, Tribes, Territories, and EPA working together to provide better access to high-quality environmental data. All partners share in the management and administration of the Network, basing decisions on collaborative consensus. Tribal representatives have been serving on Exchange Network Governance groups since 2005. These representatives form the Tribal Governance Group (TGG) and support Tribal participation in the Network. The TGG includes representatives from across Indian Country, as well as national and regional Tribal organizations.

- **EPA Primary Point of Contact:** Beth Jackson, Office of Environmental Information (OEI); phone: 202-566-0626

## **Regional Tribal Groups (Regional Operations Committees (RTOCs/ROCs) or their Equivalent)**

RTOCs serve as a liaison between the NTOC, the tribes and EPA Regions on national policy issues and to articulate tribal concerns to Senior Managers and staff regarding regional issues.

- **Member criteria:** Vary, depending on regional procedures
- **Regional selection process:** Vary, depending on regional procedures
- **Term lengths:** Vary, depending on regional procedures

## Acronyms

The following acronyms are commonly used by the NTOC.

<b>AEA</b>	<b>Atomic Energy Act</b>
<b>AIEO</b>	American Indian Environmental Office
<b>ANV</b>	Alaska Native Village
<b>CAA</b>	Clean Air Act
<b>CERCLA</b>	Comprehensive Environmental Response, Compensation, and Liability Act (a.k.a, Superfund)
<b>CWA</b>	Clean Water Act
<b>DFO</b>	Designated Federal Office
<b>DITCA</b>	Direct Implementation Tribal Cooperative Agreement
<b>EPCRA</b>	Emergency Planning & Community Right-to-Know Act
<b>FACA</b>	Federal Advisory Committee Act
<b>FFDCA</b>	Federal Food, Drug, and Cosmetic Act
<b>FIFRA</b>	Federal Insecticide, Fungicide, and Rodenticide Act
<b>ITEP</b>	Institute of Tribal Professionals
<b>LUST</b>	Leaking Underground Storage Tanks
<b>MPRSA</b>	Marine Protection, Research, and Sanctuaries Act
<b>NCAI</b>	National Congress of American Indians
<b>NEJAC</b>	National Environmental Justice Advisory Council
<b>NEPA</b>	National Environmental Policy Act
<b>NIWG</b>	National Indian Workgroup
<b>NTAA</b>	National Tribal Air Association
<b>NTC</b>	National Tribal Caucus
<b>NTOC</b>	National Tribal Operations Committee
<b>NTWC</b>	National Tribal Water Council
<b>OAR</b>	Office of Air and Radiation
<b>OCFO</b>	Office of Chief Financial Officer
<b>OCR</b>	Office of Civil Rights
<b>OCSP</b>	Office of Chemical Safety and Pollution Prevention
<b>OECA</b>	Office of Enforcement and Compliance Assurance
<b>OEI</b>	Office of Environmental Information
<b>OGC</b>	Office of General Counsel
<b>OIG</b>	Office of Inspector General
<b>OITA</b>	Office of International and Tribal Affairs
<b>OMB</b>	Office of Management and Budget
<b>OPA</b>	Oil Pollution Act
<b>ORD</b>	Office of Research and Development
<b>OSWER</b>	Office of Solid Waste and Emergency Response
<b>OW</b>	Office of Water
<b>PPA</b>	Pollution Prevention Act

<b>RCRA</b>	Resource Conservation and Recovery Act
<b>RIC</b>	Regional Indian Coordinator
<b>RTOC</b>	Regional Tribal Operations Committee
<b>SAB</b>	Science Advisory Board
<b>SDWA</b>	Safe Drinking Water Act
<b>TAS</b>	Treatment in a Manner Similar to States
<b>TGC</b>	Tribal Grants Council
<b>TGG</b>	Tribal Governance Group (Exchange Network)
<b>TPPC</b>	Tribal Pesticides Program Council
<b>TPM</b>	Tribal Program Manager
<b>TSC</b>	Tribal Science Council
<b>TSCA</b>	Toxic Substances Control Act
<b>TWRAP</b>	Tribal Waste and Response Assistance Program
<b>UST</b>	Underground Storage Tanks

## Appendix A: NTOC Charter

### EPA National Tribal Operations Committee Charter

#### 1. TITLE

Committee's Official Designation: National Tribal Operations Committee (NTOC)

#### 2. AUTHORITY

This Charter complies with the statutory provisions as set forth at 2 U.S.C. Sec. 1534(b) (1) & (2), and therefore the NTOC is not subject to the Federal Advisory Committee Act (FACA).<sup>12</sup>

#### 3. VISION STATEMENT

EPA and federally recognized tribes<sup>13</sup> are implementing environmental programs consistent with federal environmental laws, EPA's mission, and tribal values and lifeways that address the gaps in environmental protection in Indian country and achieve high levels of protection for human health while safeguarding the environment.

For the purposes of this Charter, Indian country may include, as appropriate to the circumstance or activity being described, Indian country as defined at 18 U.S.C. § 1151 and/or other tribal areas, including Alaska Native Villages, where federally recognized tribes have rights and interests.

#### 4. MISSION STATEMENT

The NTOC serves as a forum for federally recognized tribes to work with EPA Senior Leadership on policy and resource matters related to tribal capacity building, environmental program development and implementation in Indian country. Further, the NTOC identifies mechanisms for federally recognized tribes and EPA to facilitate actions that protect human health and the environment in Indian country.

The NTOC seeks to implement this mission in a manner consistent with *EPA's 1984 Indian*

<sup>12</sup> 2 U.S.C. § 1534 (n) *support of intergovernmental communications where –*

(1) meetings are held exclusively between Federal official and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

<sup>13</sup> *Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1944, 25 U.S.C. 479a.*

*Policy*,<sup>14</sup> the federal trust responsibility to federally recognized tribes, federal laws, regulations, policies, and guidance as well as tribal values and interests. *The 1984 Indian Policy* states that EPA will work directly with tribes on a one-to one (or Nation-to-Nation) basis and not as political subdivisions of States or other governmental units. The interactions of the NTOC do not substitute for this government-to-government relationship between EPA and federally recognized tribes.

## **5. ROLES AND RESPONSIBILITIES**

### **5.1. NATIONAL TRIBAL OPERATIONS COMMITTEE**

The NTOC is composed of the National Tribal Caucus (NTC) and EPA Senior Management across the Agency, including the American Indian Environmental Office (AIEO). The NTOC members work together to:

- Exchange views, information and advice concerning intergovernmental efforts to manage and implement EPA's programs in Indian country;
- Identify and facilitate actions that address the gaps in data, information, policy and understanding that impact environmental and human health protection in Indian country and strive for relative parity in resources for environmental protection between state and tribal programs.
- Strengthen EPA-tribal partnerships to build capacity to develop and implement environmental programs in Indian country.
- Promote mutual understanding of interests and perspectives on national tribal environmental issues, policies, and priorities.
- Monitor and assess progress in EPA's tribal program, including the performance of the NTOC in fulfilling its mission.

### **5.2. NATIONAL TRIBAL CAUCUS**

To support the mission of the NTOC, the NTC members of the NTOC:

- Identify and articulate the relative environmental and human health priorities and issues of tribes that are national in scope, cross-EPA or cross-media in nature, and/or are emerging or urgent.
- Provide advice and feedback to the NTOC on tribal goals and strategies for protecting human health and the environment and environmental program development and implementation in Indian country.

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<sup>14</sup> *The EPA Policy for the Administration of Environmental Programs on Indian Reservations, November 8, 1984* can be found at <http://www.epa.gov/tribal/pdf/indian-policy-84.pdf>

- In accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes*,<sup>15</sup> assist in the identification of EPA matters that may be appropriate for tribal consultation.
- Listen to, understand and provide feedback on the environmental and human health issues and requests put forward by EPA.
- Request and analyze data, information and input from EPA, federally recognized tribes and EPA Tribal Partnership Groups<sup>16</sup> to understand the relative environmental and human health priorities and issues of tribes nationally.
- Identify the resource needs of tribes to address the environmental and human health priorities identified.
- Convey information about the work of the NTOC to tribes and EPA Tribal Partnership Groups in a timely way.
- Work with tribal organizations outside of EPA to raise environmental and human health issues and advance NTOC initiatives that are mutually beneficial.
- Identify issues to be placed on NTC and NTOC meeting agendas and, as necessary, develop issue papers for discussion.

### **5.3. EPA SENIOR MANAGEMENT**

To support the mission of the NTOC, the EPA Senior Leadership works together to:

- Share data, information and Agency initiatives that may be of interest to federally recognized tribes or that may have an impact on tribal environmental programs in a timely manner.
- Listen to, understand and provide feedback to the NTC on the environmental and human health issues and requests that they put forward.
- Request environmental and human health priorities from the NTC and take action, as appropriate, to address these priorities.
- Ensure that tribal interests are addressed consistently and routinely in the course of EPA operations.
- Update the NTC at least annually about progress being made by EPA in addressing tribal priorities.
- Support the NTC with the resources, data and information necessary to do their work as part of the NTOC.
- Support EPA Tribal Partnership Groups and internal Agency groups in collecting and disseminating information to ensure issues are brought to the NTOC in a timely way.

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<sup>15</sup> <http://www.epa.gov/indian/pdf/cons-and-coord-with-indian-tribes-policy.pdf>

<sup>16</sup> EPA Tribal Partnership Groups include Regional Tribal Operations Committees or their equivalents and Headquarters Tribal Partnership groups (e.g., Tribal Water Council, Tribal Science Council) focused on media, programmatic, or regional issues.

- Consistent with NTOC agendas and NTC priorities and requests, work with other federal agencies to address programmatic inconsistencies and explore opportunities for collaboration to protect human health and the environment in Indian country.

## **6. NTOC MEMBERSHIP**

### **6.1. NATIONAL TRIBAL CAUCUS MEMBERSHIP**

**MEMBERS:** There are 19 members of the National Tribal Caucus of the NTOC from nine EPA Regions as indicated below:

Region I	- 1	Region VII	- 1
Region II	- 1	Region VIII	- 3
Region IV	- 1	Region IX	- 4 (one member from the Navajo Nation)
Region V	- 2	Region X	- 4 (two members from Alaska)
Region VI	- 2		

If one or more tribes or nations receive federal recognition in Region III, the NTC membership will be adjusted to include one member from that Region.

**ALTERNATES:** Each Region is to have a single alternate member. There is also an alternate member for Navajo Nation and for Alaska. The NTC member is responsible for informing his or her alternate member and AIEO of any meeting or conference call for which they will be absent or unable to attend. All alternate members have the same voting rights as the NTC member in the absence of the NTC member.

**SELECTION:** Tribes in each Region are responsible for determining the method of selection of NTC members and alternate members and ensuring an open membership renewal process. EPA Regions are responsible for providing assistance to tribes in the selection process, if requested.

Members and alternate members should meet all criteria under either (1) the Environmental Experience option OR (2) the Elected Official option. If members meet the criteria under the Environmental Experience option and are not tribal elected officials, they must be designated in writing by their tribal leadership to act on behalf of their federally recognized tribe as an NTC member.

#### **Environmental Experience Option:**

- Served for at least 3 years as an Environmental Director, Deputy Director or an equivalent position for a federally recognized tribe.
- Experience managing the implementation of a variety of tribal environmental programs for a federally recognized tribe.
- Experience working with, or interacting with, EPA Senior managers at the Regional or Headquarters levels. This interaction could include involvement with Regional Tribal Partnership groups.

### **Elected Official Option:**

- Serves as an elected official or traditionally appointed representative of a federally recognized tribe with broad responsibilities that include oversight of environmental, natural resource, and/or human health issues.

All members and alternates should be willing and able to commit time and energy to the work of the NTC and NTOC.

The Regional Administrator recertifies each NTC member annually in a letter to the NTOC Co-chairs and the Director of AIEO. The Regional Administrator also issues letters to the NTOC Co-chairs and Director of AIEO when members are appointed to or resign from the NTC.

**REGULAR ATTENDANCE:** Each NTC member or their alternate is expected to participate fully in all in-person meetings. Participation can be in-person or virtual (e.g., through a web conference). Attendance on conference calls is also encouraged for all NTC members or their alternates.

**REPLACEMENT OF MEMBERS:** If an NTC member fails to participate (in person or virtually) in two in-person meetings in a year<sup>17</sup>, regardless of alternate participation, the NTC leadership and AIEO will work with the respective RTOC (or equivalent group) to assess the situation and determine if the member is able to continue to participate or needs to be replaced with someone who can participate fully. This determination should be made within one month of the second missed meeting. AIEO is responsible for tracking the participation of NTC members for all meetings and calls and providing participation information to NTC leadership and to the applicable RTOC on a regular basis.

**LENGTH OF TERM:** The length of term is to correspond with the RTOC or equivalent Regional tribal group's length of term designation;

## **6.2. EPA MEMBERSHIP**

**MEMBERS:** The following are EPA members of the NTOC:

Administrator  
Deputy Administrator  
Assistant Administrator for International and Tribal Affairs  
AIEO Director  
Chief Financial Officer  
Assistant Administrators  
Regional Administrators

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<sup>17</sup> A "year" is measured based on the term of the individual member. For example, if they are selected to serve on the NTC in August, their participation will be evaluated from that point until the following August.

General Counsel  
Inspector General  
Associate Administrators  
Senior Advisor to the Administrator on Environmental Justice

**REGULAR ATTENDANCE:** EPA members of the NTOC are expected to fully participate in the annual meeting of the entire NTOC. If a member is unable to attend this meeting, the member's Deputy is expected to participate. EPA members may be requested to attend additional meetings with the NTC to discuss specific priorities that impact their Program or Region. EPA members are expected to make every effort to attend such meetings, or send their Deputy or other designated representative to participate in their absence. Regional and Headquarters Tribal Program Managers are expected to participate in conference calls and in-person meetings with the NTC, as needed, to further the work of the NTOC. AIEO is responsible for tracking the participation of EPA NTOC members for all meetings and calls and providing participation information to EPA leadership at Headquarters and in the Regions.

**LENGTH OF TERM:** The length of term for EPA members is to correspond to the length of time they serve in their position.

### **6.3. NTOC LEADERSHIP**

The EPA Administrator serves as the Co-chair of the NTOC representing the Agency. The EPA Deputy Administrator serves as the Co-chair in the absence of the Administrator. The NTC Chair serves as the Co-chair of the NTOC representing the NTC. The Vice-Chair serves as the NTOC Co-chair in the absence of the NTC Chair.

## **7. NATIONAL TRIBAL CAUCUS OFFICERS**

### **7.1. OFFICERS**

- Chair
- Vice-Chair
- Secretary

### **7.2. SELECTION OF NTC OFFICERS**

The selection of NTC Officers is to be held every year at a regular meeting of the NTC. Nominations are to be made by an NTC member in writing. Only sitting NTC members are eligible to become officers. Officers are to be elected by a majority vote of the 19 members of the NTC. If all 19 members are not present, the group is to have a quorum present to vote, and the officers are to be elected based on a majority vote of the quorum. (Quorum is defined in Section 8.5.) Thirty days advance notice of any pending elections and nominations of officers is to be provided to each NTC member. Officers shall hold office for one year or until their

successor is elected. Nomination and election processes are to be initiated and coordinated by AIEO in consultation with the NTC Officers. Additional details about the election process can be found in the NTOC Orientation Manual.

### **7.3. DUTIES OF NATIONAL TRIBAL CAUCUS OFFICERS**

#### **a. CHAIR**

- Presides at meetings of the NTC and co-chairs NTOC meetings.
- Facilitates consensus of the NTC on national tribal environmental issues.
- May convene the NTC as a separate subcommittee from the NTOC to accomplish goals and objectives.
- Serves as ex-officio member of subcommittees and work groups.
- Delegates issues to smaller work groups of the NTC.
- Facilitates the consensus of the NTC at EPA Regional and National Indian Workgroup meetings.
- Represents the NTC on various EPA work groups and committees, as appropriate.

#### **b. VICE-CHAIR**

- Presides at meetings in the absence of the Chair.
- Assumes and discharges all the duties of the Chair in the Chair's absence;
- Takes leadership on specific issues per Chair's direction;

#### **c. SECRETARY**

- Creates or reviews a written record of all meetings, teleconferences and discussions of the NTC.
- Ensures NTC comments are accurately reflected in written records.
- Transmits this information to the NTC and, as appropriate, to EPA.
- May receive assistance from AIEO to help distribute information in a timely manner to the NTC members.

## **8. MEETINGS**

### **8.1. REGULAR MEETINGS**

Face-to-face interactions are critical to the success of the NTC and NTOC. Depending on the availability of funds, these interactions may occur in person. In lieu of in-person meetings or if participants are unable to travel to meetings, virtual opportunities for interaction (e.g., conference call, webinar, video conference, etc.) may be provided.

The annual meeting of the entire NTOC may be held in conjunction with the Annual Agency Planning Meeting where the NTC members participate in priority setting and budget formulation discussions for the upcoming fiscal year.

### **8.2. SPECIAL MEETINGS**

Special meetings can be requested by either the Co-Chair of the NTOC or the Director of AIEO with concurrence of the Co-Chairs of the NTOC.

### **8.3. CONDUCT OF MEETINGS**

Tribal customs, practices and manner are to govern the order of the meeting for all NTC meetings and NTOC meetings, as appropriate. The NTC is expected to strive for consensus decision-making as a means to formally establish the position of the NTC. Where NTC members cannot reach consensus on a specific issue, members may craft or articulate dissenting opinions that are to be entered into meeting records alongside other opinions on specific matters.

All meetings will be conducted pursuant to Section 204(b) of the Unfunded Mandates Reform Act [2 U.S.C. Section 1534(b)].

### **8.4. CONFERENCE CALLS**

The NTC and EPA Tribal Program Managers meet monthly via conference calls. AIEO is responsible for administering conference calls for the NTC on a regular schedule.

### **8.5. QUORUM**

A majority (at least 51%) of the full membership of the NTC constitutes a quorum for all NTC meetings. The lack of a quorum at an NTC meeting does not prevent those present from proceeding with discussions and consensus building. The lack of a quorum, however, prevents the NTC from voting on the election of NTC officers.

## **9. SUBCOMMITTEES & WORKGROUPS**

EP! or the NTC with EP!’s concurrence may establish subcommittees or workgroups, when necessary, to facilitate the mission of the NTOC. NTOC members may be asked to participate in these subcommittees or workgroups to lend their technical expertise. A lead from EPA and the NTC will be designated to convene and oversee the subcommittee or workgroup. The leads are responsible for ensuring the group and/or subcommittee carries out its assigned tasks and placing items on NTC meeting agendas for discussion and reporting. AIEO is responsible for communicating all issues and concerns of any subcommittees or workgroups to the full NTOC, when appropriate. AIEO is expected to coordinate between the NTC workgroups and EPA workgroups.

## **10. AMENDMENTS**

This Charter may be amended at a full NTOC meeting, or outside of a full meeting with consent from the NTOC Co-chairs. Amendments are effective and incorporated into the Charter when accepted by the consensus of the NTC, the EPA Administrator, the Assistant Administrator of the Office of International and Tribal Affairs, and the AIEO Director.

## **11. CERTIFICATION**

We hereby certify that the National Tribal Operations Committee Charter was amended and adopted at a duly called meeting of the National Tribal Operations Committee held on the 18<sup>th</sup> day of July 2012, where a quorum was present.

Dated this 18<sup>th</sup> day of July 2012.

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Lisa P. Jackson, EPA Administrator  
NTOC Co-Chair

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William Clay Bravo, NTC Chair  
NTOC Co-Chair

## Appendix B: NTC Members

Updated on December 7, 2012

*Italic typeface indicates alternate members*

### Executive Committee<sup>18</sup>

NTC Chair

**Clay Bravo**, Hualapai Tribe (R9)

NTC Vice Chair

**Gerald Wagner**, Blackfeet Tribe (R8)

NTC Secretary

**Erica Helms-Schenk**, Soboba Band of Luiseno Indians (R9)

### Region 1

**Sharri Venno**, Houlton Band of Maliseet Indians

**John Banks**, Penobscot Indian Nation

### Region 2

**Dan Hill**, Cayuga Nation

**Mardell Sundown**, Tonawanda Seneca

### Region 4

**Jamie Long**, Eastern Band of Cherokee Indians

**Darin Steen**, Catawba Indian Nation

### Region 5

**Monica Hedstrom**, White Earth Band of Ojibwa

**Tom Maulson**, Lac du Flambeau Band of Lake Superior Chippewa Indians

**Stanley Ellison**, Shakopee Mdewakanton Sioux Community

### Region 6

**Darren Shields**, Kickapoo Tribe of Oklahoma

**Evaristo Cruz**, Ysleta del Sur Pueblo of Texas

*Alternate Vacant*

### Region 7

**Felix Kitto**, Santee Sioux Nation

**Luke Terry**, Kickapoo Tribe in Kansas

### Region 8

**Wesley Martel**, Eastern Shoshone Tribe

**David Nelson**, Cheyenne River Sioux Tribe

**Scott Clow**, Ute Mountain Ute

### Region 9

**Marie Barry**, Washoe Tribe of Nevada and California

**Cornelius Antone**, Tohono O'odham Nation

**Stephen B. Etsitty**, Navajo Nation EPA

*Navajo Nation Alternate Vacant*

### Region 10

**Virginia Washington**, Native Village of St. Michael

**Ronald Wassillie**, Newhalen Tribal Council

**William "Billy" Maines**, Curyung Tribe  
(Alaska Alternate)

**Lee Juan Tyler**, Shoshone Bannock Tribes

**Debra Lekanoff**, Swinomish Indian Tribal Community

**Kelly Wright**, Shoshone Bannock Tribes  
(Region 10 Alternate)

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<sup>18</sup> Executive Committee members also act as members of their respective Regions.



## **Appendix C: Major EPA Programs**

As noted throughout this Manual, EPA and NTC work closely together throughout the year to support the goals of the NTOC. Although NTC members may interact with many different EPA offices, main interactions will be with the offices briefly described in this appendix. Each office has at least one specific senior-level Tribal Program Coordinator that works closely on tribal environmental issues and acts as a point-person for communications between EPA and tribes. An updated list of specific EPA Tribal Program Coordinators can be found at: <http://www.epa.gov/tp/contactinfo/hqcontacts.htm>.

### **Office of Air and Radiation (OAR)**

OAR's Tribal Air Program works to strengthen EPA and tribal air quality programs in Indian country by providing timely and user-friendly access to key information, promoting the exchange of ideas and making available relevant documents to all environmental professionals who live and work in Indian country. For additional information please contact Tribal Air Coordinators: <http://www.epa.gov/air/tribal/coordinators.html>

### **Office of Water (OW)**

EPA's Office of Water has several interoffice programs specifically dealing with supporting tribal water programs via the Tribal Drinking Water program in the Office of Ground Water and Drinking Water; Tribal Nonpoint Source Pollution in the Office of Wetlands, Oceans, and Watersheds; and Tribal Wastewater located in the Office of Wastewater Management.

### **Office of Chemical Safety and Pollution Prevention (OCSPP)**

OCSPP's Office of Pesticide Programs (OPP) works with tribes, EPA regions, states, other EPA program offices, the EPA Office of General Counsel (OGC) and other federal agencies to coordinate efforts related to tribes and pesticides. In particular, OPP works closely with Office of Enforcement and Compliance Assurance (OECA), which provides continuing funding support, through the EPA regional offices, for tribal cooperation in pesticide enforcement and related activities. OECA presently has cooperative enforcement agreements with 38 tribes. <http://www.epa.gov/ocspp/pubs/tribal/index.htm>

### **Office of Solid Waste and Emergency Response (OSWER)**

OSWER provides financial and technical assistance to tribal governments to build capacity in OSWER programs. In 2010, OSWER funding supported over 135 cooperative agreements with tribes to build program capacity in OSWER programs, and supported a strong array of tribal-specific training on solid and hazardous waste, emergency preparedness, tribal response programs and underground storage tank prevention and cleanup. For additional information please contact OSWER Tribal Coordinators: <http://www.epa.gov/oswer/tribal/contacts.htm>

### **Office of Enforcement and Compliance Assurance (OECA)**

OECA works closely with federally-recognized Indian tribes to ensure compliance at federally-regulated facilities in Indian country. Tribes authorized to manage federal programs must have enforcement authorities that are at least as stringent as federal law. Where authorization is lacking, EPA directly implements federal programs and ensures compliance with federal environmental laws. In both cases, EPA works with officials in tribal environmental, health and agricultural agencies on strategic planning, priority-setting and measurement of results.  
<http://www.epa.gov/aboutepa/oeca.html>

### **Office of Environmental Information (OEI)**

OEI works with EPA programs and regional offices on the importance of environmental data and how these data can be used to support tribal priorities, tribal self-governance and strengthening the government-to-government relationships between EPA and tribes.  
<http://www.epa.gov/aboutepa/oei.html>

### **Office of Research and Development (ORD)**

ORD is the scientific research arm of EPA, whose leading-edge research helps provide the solid underpinning of science and technology for the Agency. ORD supports a wide range of science information and resources gathered through tribal traditional knowledge, analytical science and integrated approaches to science by tribes. ORD is also the host office for EPA's Tribal Science Council. <http://www.epa.gov/osp/tribes/tribes.htm>

### **Office of General Counsel (OGC)**

OGC provides legal service to all organizational elements of the Agency with respect to Agency programs and activities. OGC provides legal opinions, legal counsel and litigation support. In addition, the Office assists in the formulation and administration of the Agency's policies and programs as legal advisor. OGC provides tribal support to cross-cutting tribal law issues and tribal funding/finance legal issues.

## Appendix D: EPA Budget Cycle

This appendix provides a high-level summary of EPA's budget process, from planning, through passage in Congress and oversight. This abbreviated timeline (see Figure 5) covers approximately 1.5 years and includes areas where NTC involvement may be requested and incorporated into EPA's budget process;

The President, according to the Budget and Accounting Act of 1921, must submit a budget to Congress each year.

EPA begins work on each annual fiscal year budget at least one and a half years before the start of each fiscal year.

For example, the OMB Guidance for the 2014 fiscal year is

released in spring of 2012. At any point in the timeline,

EPA is working on planning, enacting, or oversight for three or four consecutive fiscal years. This appendix illustrates budget activities for an example year of FY 2014.

### Fiscal Year

The federal government's fiscal year (FY) begins on October 1 and ends on September 30 of the next calendar year. The fiscal year corresponds to the calendar year in which it ends. For example, FY 2014 begins on October 1, 2013 and ends September 30, 2014.

### Example Budget and Planning Meetings for FY 2014 Budget

- **OMB Guidance (Spring 2012)** OMB issues planning guidance to EPA for the upcoming budget (FY 2014 in this example) and EPA holds internal goal meetings to discuss progress toward the Agency's strategic goals;
  - **NTC Involvement:** Limited; may be asked to provide information for internal EPA meetings.
- **EPA's Annual Planning Meeting (Late Spring/Early Summer 2012)** All Regional Administrators and Assistant Administrators meet to discuss fiscal year planning for 2014.
  - **NTC Involvement:** The NTC may be asked to provide input on tribal program budgetary needs in preparation for this meeting.
- **The Budget Forum (July/August 2012)** EPA Regional Administrators and Assistant Administrators discuss budget initiatives at the Agency Budget Forum.
  - **NTC Involvement:** NTC delivers budget and priority requests for 2014, which are discussed by EPA during this meeting. The annual NTOC meeting is generally scheduled to take place at the same time as the Forum.
- **OMB Meetings (July/August 2012)** EPA works with OMB on the 2014 budget proposal.
  - **NTC Involvement:** The NTC leadership may be invited to meet with OMB at this time to formally present and discuss the NTC budget and priority requests.
- **EPA Budget Submittal (September 2012):** EPA submits the full agency 2014 budget proposal to OMB.
  - **NTC Involvement:** None

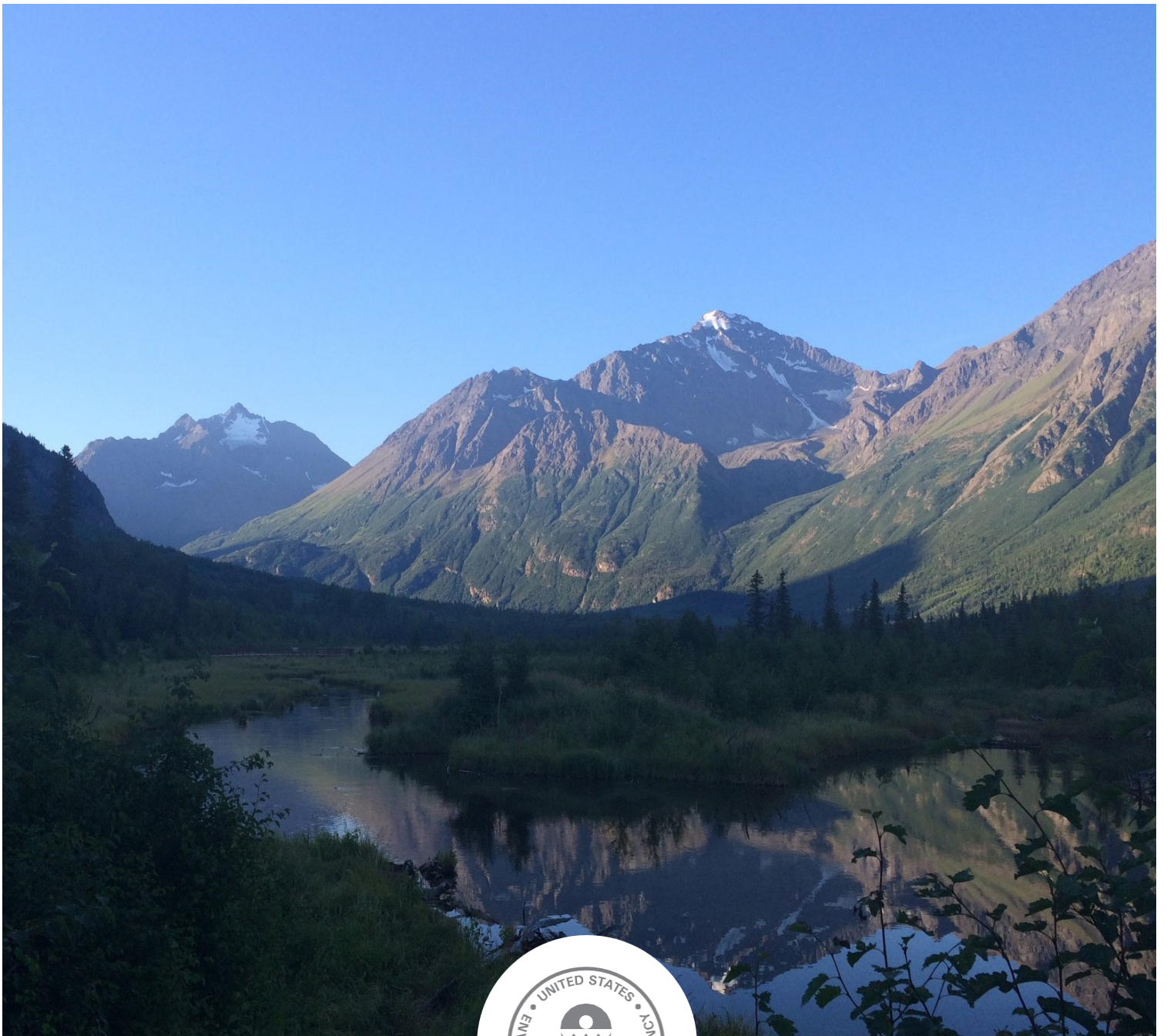
- OMB Budget Preparation (September-December 2012)** OMB analyzes proposed budgets with consideration to Presidential priorities, program performance and budget constraints. OMB and agencies continue communication and budget adjustments. OMB briefs the President and senior advisors on proposed budget policies.
  - NTC Involvement:** None
- Budget Transmittal to Congress (January 1, 2013-first Monday in February 2013)** The President transmits his FY budget proposal to Congress, usually a week or so after the State of the Union Address.
  - NTC Involvement:** None
- Budget Finalization (February 2013-September 30, 2013)** The Congressional Budget Office (CBO), Budget Committees in the U.S. House of Representatives and Senate, and the full Congress work toward finalizing 2014 FY budget and completing action on appropriations bills for the upcoming fiscal year.
  - NTC Involvement:** None
- Budget Passage (By September 30, 2013)** Congress passes the FY 2014 budget. In recent years, Congress has passed one or more Continuing Resolutions (*see text box*), or temporary budgets, before passing the final budget well into the fiscal year.
  - NTC Involvement:** AIEO reports back to the NTC the outcome of their budget and priority requests based on the approved budget.

## Continuing Resolution

In recent years, the federal government budget has been subject to a continuing resolution. A continuing resolution is legislation when the new fiscal year is about to begin (or has begun) to provide budget authority for Federal agencies and programs to continue in operation until the regular appropriations acts are enacted. When continuing resolutions are in effect, EPA generally does not have a detailed picture of available programmatic resources for the fiscal year. This makes longer term planning difficult for both tribes and the Agency.



**Figure 5: Overview of Federal Budget Process**



# Working Together

## FY 2018-2022 U.S. EPA Strategic Plan

February 2018 (Updated: September 2019)



# EPA's Mission

Protect Human Health and the Environment

## Goal 1

A Cleaner, Healthier Environment:

Deliver a cleaner, safer, and healthier environment for all Americans and future generations by carrying out the Agency's core mission.

## Goal 2

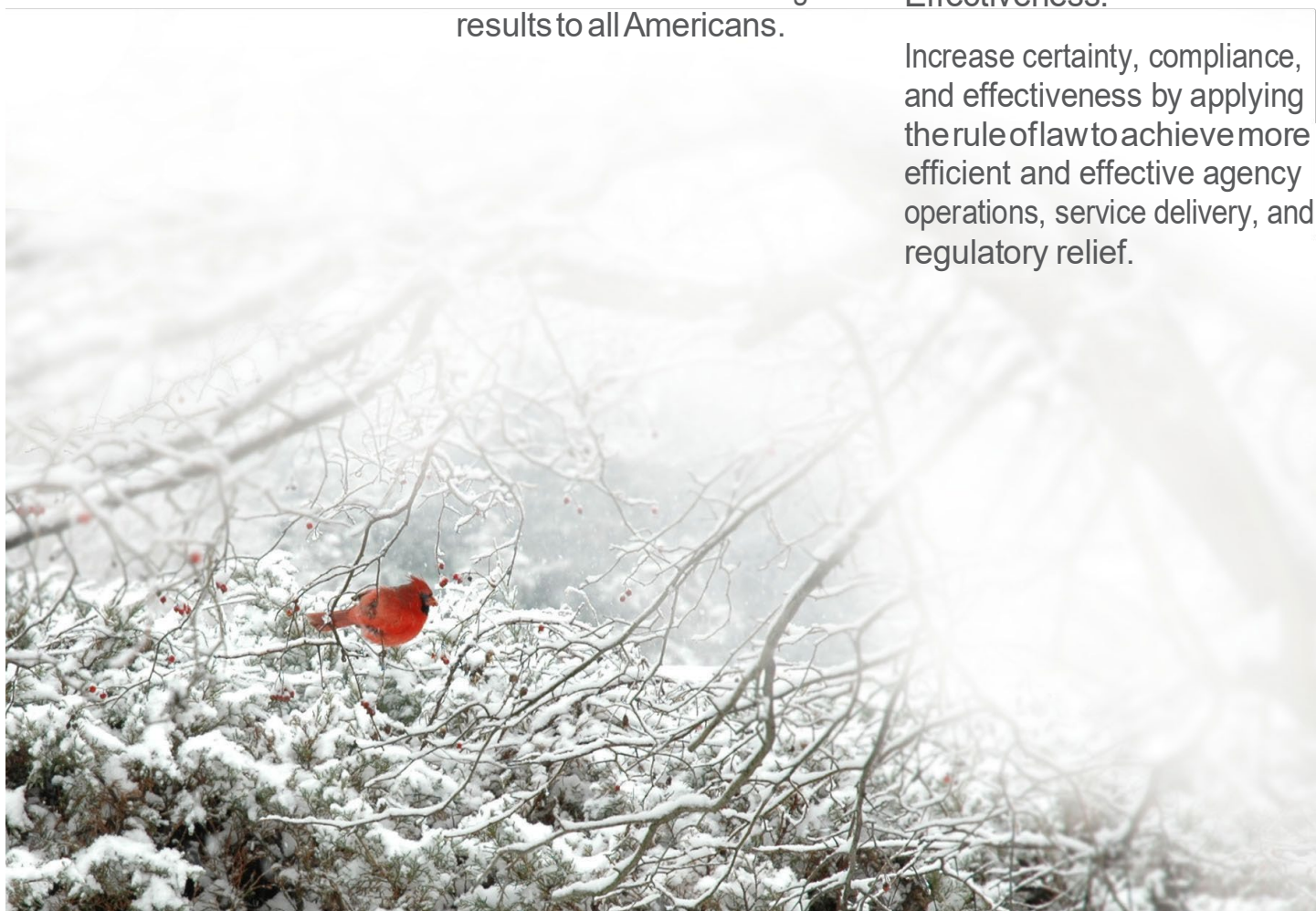
More Effective Partnerships:

Provide certainty to states, localities, tribal nations, and the regulated community in carrying out shared responsibilities and communicating results to all Americans.

## Goal 3

Greater Certainty, Compliance, and Effectiveness:

Increase certainty, compliance, and effectiveness by applying the rule of law to achieve more efficient and effective agency operations, service delivery, and regulatory relief.



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*The GPRA (Government Performance and Results Act) Modernization Act of 2010 directs agencies to consult with the Congress and requires that they solicit and consider the views and suggestions of those entities likely to be interested in or potentially affected by a strategic plan. Consultation with EPA's federal, state, tribal, and local government partners and its many stakeholders is integral to the Agency's strategic planning process. In developing the FY 2018-2022 EPA Strategic Plan, EPA issued a Federal Register notice and used [www.regulations.gov](http://www.regulations.gov) to encourage and share feedback on the draft Plan. The Agency also sent notifications on the availability of the draft Plan to leaders of the Agency's Congressional authorizing, appropriations, and oversight committees, and notified all federally-recognized Indian tribes of the opportunity for consultation and coordination. These outreach efforts resulted in unique submissions from approximately 5,000 organizations and individuals.*

# Message from EPA

The U.S. Environmental Protection Agency's FY 2018–FY 2022 Strategic Plan, emphasizes the EPA's "Back-to-Basics" agenda. The agenda set out in this plan has three over-arching goals\*: (1) Deliver a cleaner, safer, and healthier environment for all Americans and future generations by carrying out the Agency's core mission; (2) Provide certainty to states, localities, tribal nations, and the regulated community in carrying out shared responsibilities and communicating results to all Americans; and (3) Increase certainty, compliance, and effectiveness by applying the rule of law to achieve more efficient and effective agency operations, service delivery, and regulatory relief. The agency's mission of protecting human health and the environment resonates with all Americans; we all can agree that we want our future generations to inherit a cleaner, healthier environment that supports a thriving economy.

Our nation has made great progress in making rivers and lakes safer for swimming and boating, reducing the smog that clouded city skies, cleaning up lands that were once used as hidden chemical dumps and providing Americans greater access to information on chemical safety. However, we still have important work to do.

We must create a sense of shared accountability between states, tribes and the federal government to achieve positive environmental results. Along with faithfully applying the rule of law, improving the processes by which the EPA has operated is crucial in advancing the agency's mission.

## Air

Over the next five years, the EPA will prioritize key activities to support attainment of the national ambient air quality standards (NAAQS) and implementation of stationary source regulations.

We will work with our state and tribal partners to rapidly approve their implementation plans for attaining air quality standards to reduce contaminants that cause or exacerbate health issues.

## Water

We will modernize and update aging drinking water, wastewater and stormwater infrastructure which the American public depends on.

The agency will continue to leverage the State Revolving Funds (SRFs) and Water Infrastructure Finance and Innovation Act (WIFIA) to assist states, tribes, municipalities and private entities to finance high-priority infrastructure investments that protect human health and the environment.

## Land

The Administration is placing particular emphasis on the top priority list of Superfund sites and will implement Superfund Task Force recommendations to accelerate the pace of cleanups and promote site reuse, while addressing risks to human health and the environment.

The agency will accelerate cleanup by re-prioritizing some resources to focus on remedial actions, construction completions, ready-for-reuse determinations and National Priorities List site deletions.

## Chemicals

We will prioritize the safety of chemicals in the marketplace in the implementation of the new Frank R. Lautenberg Chemical Safety for the 21st Century Act, which modernizes the Toxic Substances and Control Act (TSCA).

To achieve this, the EPA will focus on meeting its statutory requirements and mandatory deadlines of TSCA and ensure our reviews are efficient, effective and transparent to stakeholders.

More than 45 years after the creation of the EPA most states, and to a lesser extent territories and tribes, are authorized to implement delegated federal environmental programs within their jurisdictions. Recognizing the congressionally intended responsibilities of our state, local and tribal partners, we must adapt and modernize our practices to reduce duplication of effort and tailor oversight of delegated programs.

For example, the EPA will expand its compliance assistance work by continuing to partner with third-party organizations and federal agencies to support existing web-based, sector-specific compliance assistance centers and seek to develop new centers. EPA will assess our shared governance to clarify the agency's statutory roles and responsibilities and tailor state oversight to maximize our return on investment and reduce burden on states.

Over the next five years, the EPA will increase certainty, compliance, and effectiveness by applying the rule of law to achieve more efficient and effective agency operations, service delivery, and regulatory relief.

Federal agencies exist to administer laws passed by Congress, in accordance with the will of this body. The EPA will ensure compliance with the law by providing consistency and certainty for the regulated community and clarify the impact of proposed actions on human health, the environment and the economy to provide a clear path and timeline for entities to achieve compliance.

Further, we will reform our approach to regulatory development and prioritize meeting our statutory deadlines to ensure that expectations for the regulated community and the public are clear and

comprehensive. The EPA will also employ business process improvement strategies, such as Lean, to improve efficiencies in all permitting processes, working alongside states to streamline the review of state-issued permits and to improve our internal business processes.

EPA can accomplish the environmental and human health outcomes outlined in this Strategic Plan by increasing collaboration with other external partners and striving to achieve improved consistency and certainty for the regulated community.

*\*In September 2019, EPA updated language in this Plan to better reflect the Agency's environmental and policy goals. While the update does not change the Agency's Strategic Objectives or Long-Term Performance Goals, re-framing EPA's overarching strategic goals will help communicate the Agency's priority to deliver tangible results to further the Agency's mission to protect human health and the environment. The changes are as follows:*

STRATEGIC GOALS	PREVIOUS LANGUAGE	UPDATED LANGUAGE
GOAL 1	Core Mission: Deliver real results to provide Americans with clean air, land, and water, and ensure chemical safety.	A Cleaner, Healthier Environment: Deliver a cleaner, safer, and healthier environment for all Americans and future generations by carrying out the Agency's core mission.
GOAL 2	Cooperative Federalism: Rebalance the power between Washington and the states to create tangible environmental results for the American people.	More Effective Partnerships: Provide certainty to states, localities, tribal nations, and the regulated community in carrying out shared responsibilities and communicating results to all Americans.
GOAL 3	Rule of Law and Process: Administer the law as Congress intended, to refocus the Agency on its statutory obligations under the law.	Greater Certainty, Compliance, and Effectiveness: Increase certainty, compliance, and effectiveness by applying the rule of law to achieve more efficient and effective agency operations, service delivery, and regulatory relief.

# Introduction

## Goal 1

**A Cleaner, Healthier Environment:**  
Deliver a cleaner, safer, and healthier environment for all Americans and future generations by carrying out the Agency's core mission.

The U.S. Environmental Protection Agency (EPA) developed this *FY 2018-2022 EPA Strategic Plan* (the *Plan*) to: (1) deliver a cleaner, safer, and healthier environment for all Americans and future generations by carrying out the Agency's core mission; (2) provide certainty to states, localities, tribal nations, and the regulated community in carrying out shared responsibilities and communicating results to all Americans; and (3) increase certainty, compliance, and effectiveness by applying the rule of law to achieve more efficient and effective agency operations, service delivery, and regulatory relief. The *Plan* supports states, localities, and federally-recognized Indian tribes<sup>1</sup> by streamlining programs and processes, reducing duplication of effort, providing greater transparency and listening opportunities, and enabling the Agency to focus on its core mission.

## Goal 2

**More Effective Partnerships:**  
Provide certainty to states, localities, tribal nations, and the regulated community in carrying out shared responsibilities and communicating results to all Americans.

EPA's senior managers will use this *Plan* routinely as a management tool to guide the Agency's path forward, tracking progress and assessing and addressing risks and challenges that could potentially interfere with EPA's ability to accomplish its goals. The three strategic goals established in the *Plan* are supported by strategic objectives and long-term performance goals<sup>2</sup> focused on advancing human health and environmental results over the next five years. These long-term performance goals are supported by annual performance goals included in the annual performance plans and budgets that EPA submits to Congress. The strategies and long-term performance goals in this *Plan* highlight key areas in which the Agency will make the most dramatic changes over the next five years and are not intended to address all ongoing programs. The annual performance plans and budgets, and supporting annual and operational measures, address a broader range of the Agency's work. In addition, the Agency will hold quarterly and monthly meetings to assess progress toward annual and long-term performance goals.

## Goal 3

**Greater Certainty, Compliance, and Effectiveness:**  
Increase certainty, compliance, and effectiveness by applying the rule of law to achieve more efficient and effective agency operations, service delivery, and regulatory relief.

The EPA Administrator established two-year agency priority goals (APGs) for accelerating progress on EPA priorities. APGs reflect agency leadership's top near-term priorities for implementing performance improvement. EPA's APGs were selected from among the suite of long-term performance goals. EPA will support these priority goals by developing two-year implementation plans and reporting quarterly progress.

The *FY 2018-2022 EPA Strategic Plan* is supported by other, more detailed Agency plans in specific areas. For example, EPA's Human Capital Operating Plan details the

<sup>1</sup> Tribes include all federally-recognized tribes, including Alaska Native Villages (as issued by the Secretary of the Interior).

<sup>2</sup> Long-term performance goals are the measurable results the Agency is working to achieve over the life of the Plan and are supported by data quality records (DQRs), which provide details such as the methods of measurement and other important contextual information such as baselines. DQRs can be found at <https://www.epa.gov/planandbudget/results>.

## FY 2018-2019 Agency Priority Goals

APG-1: Improve air quality by implementing pollution control measures to reduce the number of nonattainment areas. By September 30, 2019, EPA, in close collaboration with states, will reduce the number of nonattainment areas to 138 from a baseline of 166.

APG-2: Empower communities to leverage EPA water infrastructure investments. By September 30, 2019, EPA will increase by \$16 billion the non-federal dollars leveraged by EPA water infrastructure finance programs (Clean Water and Drinking Water State Revolving Funds and the Water Infrastructure Finance and Innovation Act).

APG-3: Accelerate the pace of cleanups and return sites to beneficial use in their communities. By September 30, 2019, EPA will make an additional 102 Superfund sites and 1,368 brownfields sites ready for anticipated use (RAU).

APG-4: Meet new statutory requirements to improve the safety of chemicals in commerce. By September 30, 2019, EPA will complete in accordance with statutory timelines (excluding statutorily-allowable extensions): 100% of required EPA-initiated Toxic Substances Control Act (TSCA) risk evaluations for existing chemicals; 100% of required TSCA risk management actions for existing chemicals; and 80% of TSCA pre-manufacture notice final determinations.

APG-5: Increase environmental law compliance rate. Through September 30, 2019, EPA will increase compliance by reducing the percentage of Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permittees in significant noncompliance with their permit limits to 21% from a baseline of 24%.

APG-6: Accelerate permitting-related decisions. By September 30, 2019, EPA will reduce by 50% the number of permitting-related decisions that exceed six months.

actions the Agency will execute to achieve its overarching human capital goals, and EPA's Information Technology/Information Management Strategic Plan will guide efforts to support and modernize the Agency's technology and data infrastructure. The EPA's workforce and reform efforts will support streamlining efforts to work more efficiently and effectively in the future. The many activities described in these plans align with and help position the Agency to achieve the strategic goals and objectives presented in this *Plan*.

EPA is also in the process of deploying a Lean management system specifically designed to deliver measurable results that align with this Plan. Lean is a set of principles and tools designed to identify and eliminate waste from processes while maximizing customer value and return on taxpayer investment. EPA will standardize and streamline processes to strengthen efficiency and quality to better meet mission goals and objectives. Under the Administrator's leadership, EPA will become a Lean organization.

Strategies to achieve EPA's goals and objectives are also informed by gathering evidence related to environmental problems and evaluating the effectiveness of the strategies that the programs use to address them. Examples of recent evidence and evaluation efforts used to develop this FY 2018-2022 EPA Strategic Plan and a preliminary list of future planned efforts can be found at <https://www.epa.gov/planandbudget/strategicplan>.



# A Cleaner, Healthier Environment



# Deliver a cleaner, safer, and healthier environment for all Americans and future generations by carrying out the Agency's core mission.

Pollution comes in many forms with myriad impacts on human health and the environment. With the goal of clean and safe air, water, and land for all Americans, Congress enacted a range of environmental statutes that spell out EPA's core responsibilities. Our nation has come a long way since EPA was established in 1970. We have made great progress in making rivers and lakes safe for swimming and boating, reducing the smog that clouded city skies, cleaning up lands that were once used as hidden chemical dumps, and providing Americans greater access to information on the safety of the chemicals all around us. Today we can see enormous progress—yet we still have important work to do.

EPA has established priorities for advancing progress over the next five years in each of its core mission areas—land, air, water—as well as chemicals. The Agency will focus on speeding the cleanup of Superfund and brownfields sites, and will use a list of top priority sites to advance progress on Superfund sites of particular concern. We will work with states and tribes to more rapidly approve their implementation plans for attaining air quality standards, reducing contaminants that can cause or exacerbate health issues. We will work with our state and tribal partners to provide for clean and safe water by updating aging infrastructure, both for drinking water and wastewater systems. EPA's top priority for ensuring the safety of chemicals in the marketplace is the implementation of the new Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act, which modernizes the Toxic Substances and Control Act (TSCA) by creating new standards and processes for assessing chemical safety within specific deadlines. These

efforts will be supported by strong compliance assurance and enforcement in collaboration with our state and tribal partners, up-to-date training for partners, and use of the best available science and research to address current and future environmental hazards, develop new approaches, and improve the foundation for decision making.

The Agency will collaborate more efficiently and effectively with other federal agencies, states, tribes, local governments, communities, and other partners and stakeholders to address existing pollution and prevent future problems. EPA will directly implement federal environmental laws in Indian country where eligible tribes have not taken on program responsibility.

With our partners, we will pay particular attention to vulnerable populations. Children and the elderly, for example, may be at significantly greater risk from elevated exposure or increased susceptibility to the harmful effects of environmental contaminants. Some low-income and minority communities may face greater risks because of proximity to contaminated sites or because fewer resources are available to avoid exposure to pollutants. Tribal ways of life such as traditional subsistence hunting, fishing, and gathering also may increase exposure to contaminants and increase risks. Much work remains and, together with our partners, we will continue making progress in protecting human health and the environment.

# Objective 1.1

## Improve Air Quality

Work with states and tribes to accurately measure air quality and ensure that more Americans are living and working in areas that meet high air quality standards.

### Introduction

As part of its mission to protect human health and the environment, EPA is dedicated to improving the quality of the nation's air. From 1970 to 2016, aggregate national emissions of the six criteria air pollutants<sup>3</sup> were reduced over 70 percent, while gross domestic

product grew by over 253 percent. Despite this progress, in 2016, more than 120 million people lived in counties with monitored air quality that did not meet standards for at least one criteria pollutant. EPA's work to control emissions of air pollutants is critical to

continued progress in reducing public health risks and improving the quality of the environment. Over the next five years, EPA will conduct a wide range of activities that contribute to improving air quality and protecting human health and the environment.

### Long-Term Performance Goal

LTPG-1.1.1 By September 30, 2022, reduce the number of nonattainment areas to 101.<sup>4</sup>

### Strategies for Achieving the Objective

EPA works in cooperation with states, tribes, and local governments to design and implement air quality standards and programs. EPA relies on other federal agencies, academia, researchers, industry, other organizations, and the public. These partnerships are critical to achieving improvements in air quality and reducing public health risks.

EPA will prioritize key activities to support attainment of the national ambient air quality standards (NAAQS) and implementation of stationary source regulations. The Agency will address its Clean Air Act (CAA) responsibilities by collaborating with and providing technical assistance to states and tribes to develop plans and implement decisions that administer the NAAQS and

<sup>3</sup> The Clean Air Act (CAA) requires EPA to set National Ambient Air Quality Standards (NAAQS) for six common air pollutants including carbon monoxide, lead, ground-level ozone, nitrogen dioxide, particulate matter, and sulfur dioxide.

<sup>4</sup> The baseline is 166 nonattainment areas as of 10/1/2017.

visibility programs; taking federal oversight actions such as approving state implementation plan/tribal implementation plan (SIP/TIP) submittals consistent with statutory obligations; developing regulations and guidance to implement standards; and addressing transported air pollution. EPA will focus on ways to improve the efficiency and effectiveness of the SIP/TIP process, including the Agency's own review process, with a goal of maximizing timely processing of state/tribal-requested implementation plan actions to help move more quickly to attainment.

EPA will operate effective nationwide and multi-state programs, such as the acid rain program and the cross-state air pollution rule, which address global, national, and regional air pollutants from the power sector and other large stationary sources. The Agency also will develop and provide data, analysis, and technical tools and assistance to industries, states, tribes, and communities to meet CAA obligations and other statutory requirements.

EPA also develops, implements, and ensures compliance with national emission standards to reduce mobile source-related air pollution from light-duty cars and trucks, heavy-duty trucks and buses, nonroad engines and vehicles, and their fuels—a priority for the Agency to ensure that industry has the certainty it needs while protecting human health and the environment and to support improvements in air quality and moving areas into attainment. The Agency evaluates new emission control technologies and provides information to state, tribal, and local air quality managers on a variety of transportation programs. EPA will review and approve vehicle and engine emissions certification applications and perform its compliance oversight functions on priority matters where there is evidence to suggest noncompliance. The Agency will also conduct pre-certification confirmatory testing for emissions and fuel economy for passenger cars.



EPA develops and implements national emission standards for stationary and mobile sources and works with state, tribal, and local air agencies to address air toxics problems in communities. For stationary sources, pursuant to the CAA, EPA develops initial air toxics emissions standards for categories of industrial sources and reviews these standards' risk reduction and technological currency according to timeframes set by the Act. EPA will conduct these reviews to meet CAA requirements and to ensure that the air toxics rules appropriately protect public health.

To support our partners in meeting their CAA obligations, EPA will provide grants and technical assistance to state, tribal, and local air pollution control agencies to manage and implement their individual air quality programs, including funding for air quality monitoring. State and tribal air quality monitoring, which provides critical information for developing clean air plans, for research, and for public awareness, will be a focus of the Administration.

EPA will prioritize efforts to reduce the production, import, and use of ozone depleting substances (ODS), including reviewing and listing alternatives that are safer for the stratospheric ozone layer through implementation of Title VI of the CAA and the Montreal Protocol.

EPA also is responsible for measuring and monitoring ambient radiation and radioactive materials and assessing radioactive contamination in the environment. The Agency supports federal radiological emergency response and recovery operations under the National Response Framework and the National Oil and Hazardous Substances Pollution Contingency Plan and will assist states, tribes, and other partners, as appropriate. EPA will design essential training and conduct exercises to improve our nation's radiation response preparedness.

## External Factors and Emerging Issues

Emerging measurement and information technologies are shifting the paradigm for air quality data. Traditionally, state, tribal, and local air programs, along with EPA, have been the primary resource for collecting, storing, sharing, and communicating air data. Increasingly, air quality information is also available from nontraditional sources, such as satellites or sensors. Additionally, big data companies are becoming involved in storing, analyzing, and presenting publicly available air quality data alongside other data sets. These developments are expected to have profound influence on understanding air quality, as well as determining the most cost-effective ways to improve air quality. EPA partners with states and tribes through efforts such as E-Enterprise, and with other entities in a variety of ways to ensure that the Agency advances appropriate technologies and stays abreast of emerging technologies.

EPA engages in both domestic and international forums to address the depletion of the stratospheric ozone layer, a global problem that cannot be solved by domestic action alone. Success relies on joint action.

Lastly, there are several emerging issues and external factors that will affect how EPA protects the public from unnecessary exposure to radiation, including evolving policies on radioactive waste management, uranium extraction and processing technologies, a decrease in available radiation expertise, and new science on radiation health effects. The Agency will focus on education, including formal and informal training in the areas of health physics, radiation science, radiation risk communications, and emergency response to fill existing and emerging gaps.

## Objective 1.2

# Provide for Clean and Safe Water

Ensure waters are clean through improved water infrastructure and, in partnership with states and tribes, sustainably manage programs to support drinking water, aquatic ecosystems, and recreational, economic, and subsistence activities.



## Introduction

The nation's water resources are the lifeblood of our communities, supporting our economy and way of life. Across the country we depend upon reliable sources of clean and safe water. Just a few decades ago, many of the nation's rivers, lakes, and estuaries were grossly polluted, wastewater sources received little or no treatment, and drinking water systems provided very limited treatment to water coming through the tap. Now over 90 percent of the population receives safe drinking water from community water systems regulated by EPA or delegated states and tribes, and

many formerly impaired waters have been restored and support recreational and public health uses that contribute to healthy economies.

We have made significant progress since enactment of the Clean Water Act (CWA); Safe Drinking Water Act; and Marine Protection, Research, and Sanctuaries Act. However, serious water resource and water infrastructure challenges remain. Many communities need to improve and maintain both drinking water and wastewater infrastructure and

develop the capacity to comply with new and existing standards. Tens of thousands of homes, primarily in tribal and disadvantaged communities and the territories, lack access to basic sanitation and drinking water.

Over the next five years, EPA will work with states, tribes, territories, and local communities to better safeguard human health; maintain, restore, and improve water quality; and make America's water systems sustainable and secure, supporting new technology and innovation wherever possible.

## Long-Term Performance Goals

LTPG-1.2.1 By September 30, 2022, reduce the number of community water systems out of compliance with health-based standards to 2,700.<sup>5</sup>

LTPG-1.2.2 By September 30, 2022, increase by \$40 billion the non-federal dollars leveraged by EPA water infrastructure finance programs (CWSRF, DWSRF, and WIFIA).<sup>6</sup>

LTPG-1.2.3 By September 30, 2022, reduce the number of square miles of watershed with surface water not meeting standards by 37,000 square miles.<sup>7</sup>

## Strategies for Achieving the Objective

### Invest in Infrastructure to Spur Environmental Benefits and Economic Growth

Supporting state, tribal, and local efforts to modernize the outdated drinking water, wastewater, and stormwater infrastructure on which the American public depends is a top priority for EPA. The Agency will promote construction of infrastructure in tribal and, small, rural, and disadvantaged communities. EPA's state revolving fund (SRF) and Water Infrastructure Finance and Innovation Act (WIFIA) programs will allow the Agency, states, tribes, municipalities, and private entities to finance high-priority infrastructure investments that protect human health and the environment. The revolving nature of the SRFs and the leveraging capacity of WIFIA greatly multiply the federal investment. For the clean water SRF, EPA estimates that every federal dollar contributed thus far has resulted in close to three dollars of investment in water infrastructure. For the drinking water SRF, for every one dollar the federal government has invested, the states, in total, delivered \$1.80 in assistance to drinking water systems. For WIFIA, for every \$1 million in credit subsidy appropriations, EPA could potentially provide approximately \$100 million in direct credit assistance, resulting in an estimated \$200 million in total infrastructure investment.



<sup>5</sup> Baseline is 3,508 community water systems out of compliance with health-based standards as of FY 2017. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

<sup>6</sup> The baseline is \$32 billion in non-federal dollars leveraged from the CWSRF and DWSRF between FY 2013 and FY 2017 (i.e., loans made from recycled loan repayments, bond proceeds, state match, and interest earnings). The baseline does not include WIFIA leveraged dollars because no loans were closed prior to FY 2018. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

<sup>7</sup> Draft baseline is 464,020 square miles of impaired waters as of September 2017, to be updated in FY 2019. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

## Protect Human Health

Sustaining the quality of our water resources is essential to safeguarding human health. More than 300 million people living in the United States rely on the safety of tap water provided by public water systems that are subject to national drinking water standards. EPA will help protect human health and make America's water systems secure by:

- Providing financial assistance to states, tribes, and territories to assist public water systems in protecting and maintaining drinking water quality;
- Strengthening compliance with drinking water standards to ensure protection of public health by enhancing the technical, managerial, and financial capability of those systems;
- Continuing to protect and restore water resources, including sources of drinking water, from contamination;
- Taking actions to address known and emerging contaminants that endanger human health;
- Supporting states, tribes, territories, and local communities in implementing water programs by providing guidance, training, and information;
- Ensuring the security and preparedness of the nation's drinking water supplies by implementing EPA's national security responsibilities for the water sector; and
- Protecting underground sources of drinking water by providing for the safe injection of fluids underground for storage, disposal, enhanced recovery of oil and gas, or minerals recovery.

Recent challenges in Flint, Michigan and elsewhere highlighted the need to strengthen EPA's implementation of the Safe Drinking Water Act to ensure we protect and build upon the enormous public health benefits achieved through the provision of safe drinking water throughout the country. The Agency's highest priorities include reducing exposure to lead in the nation's drinking water systems, ensuring continuous compliance with contaminant limits, responding quickly to emerging concerns, and improving the nation's aging and insufficient drinking water infrastructure to address significant needs. EPA is also collaborating with states and tribes to share more complete data from monitoring at public water systems through the Safe Drinking Water Information System (SDWIS). This will allow for better targeting of funding and technical assistance resources, and improve data quality while increasing public access to drinking water data.

Human health and recreational criteria are the foundation for state, tribal, and territorial tools to safeguard human health. Over the next five years we will improve our understanding of emerging potential waterborne threats to human health; provide technical assistance and resources to help the states, tribes, and territories monitor and prevent harmful exposures; and develop new or revised criteria as needed.

## External Factors and Emerging Issues

Water quality programs face challenges such as increases in nutrient loadings, nonpoint source<sup>8</sup> and stormwater runoff, and aging infrastructure. EPA is carefully examining the potential impacts of and solutions to these issues. Many important water quality problems have complex causes that can only be addressed through strategic use of federal, state, tribal, and local authorities. EPA will work closely with its partners to ensure that these issues are addressed in a coordinated and effective manner, particularly

<sup>8</sup> Read more about nonpoint source pollution: <https://www.epa.gov/nps>

where water quality issues cross jurisdictional lines. The Agency will implement the National Aquatic Resource Surveys to support collection of nationally-consistent data to support these efforts.

EPA is working with external partners and stakeholders to address the barriers to and incentives for ways that technology and innovation can accelerate improvements in water infrastructure and protection and restoration of waters. Some key market opportunities for innovative practices and technology to help address current and emerging water resource issues are identified in EPA's Blueprint for Integrating Technology Innovation into the National Water Program.<sup>9</sup>

## Protect and Restore Water Quality

Protecting the nation's waters relies on cooperation among EPA, states, tribes, territories, and local communities and involves a suite of programs to protect and improve water quality in the country's rivers, lakes, wetlands, and streams, as well as in estuarine, coastal, and ocean waters. EPA will foster strong partnerships with other federal agencies, states, tribes, local governments, and other organizations that facilitate achieving water quality goals while supporting robust economic growth. In partnership with states, tribes, territories, and local governments, EPA core water programs will:

- Develop recommended water quality criteria for protecting designated uses of water;
- Assist states, authorized tribes, and territories in adopting water quality standards that support designated uses;
- Establish pollution reduction targets for impaired waters;
- Improve water quality by financing traditional and nature-based wastewater treatment infrastructure;
- Develop national effluent guidelines that set a technology-based floor;
- Work with partners to protect and restore wetlands and coastal and ocean water resources;
- In cooperation with the Army Corps of Engineers, work with states and tribes interested in assuming the Clean Water Act Section 404 program;
- Prevent or reduce the discharge of pollutants;
- Update analytical methods that enable precise analysis; and
- Conduct monitoring and assessment so we know the status of the nation's waters.

EPA will partner with states and tribes to implement the National Aquatic Resource Surveys (NARS)<sup>10</sup> to provide nationally-consistent and scientifically-defensible assessments of America's waters. These surveys will support EPA and its partners in identifying actions to protect and restore water quality and in assessing whether these efforts are improving water quality over time.

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<sup>9</sup> Read more about the technology blueprint: <https://www.epa.gov/innovation/water-technology-innovation-blueprints>

<sup>10</sup> Read more on NARS: <https://www.epa.gov/national-aquatic-resource-surveys>

## Objective 1.3

# Revitalize Land and Prevent Contamination

Provide better leadership and management to properly clean up contaminated sites to revitalize and return the land back to communities.



## Introduction

EPA works to improve the health and livelihood of all Americans by cleaning up and returning land to productive use, preventing contamination, and responding to emergencies. Challenging and complex environmental problems persist at many contaminated properties, including contaminated soil, sediment, surface water, and groundwater that can cause human health concerns.

One of EPA's top priorities is accelerating progress on Superfund

sites. EPA recently convened a Superfund Task Force that identified 42 recommendations to streamline and improve the Superfund process. Over the next five years, these recommendations and other innovative ideas will be considered and applied to Superfund sites with priority given to addressing National Priority List (NPL) sites.<sup>11</sup>

EPA collaborates with other federal agencies, industry, states, tribes, and local

communities to enhance the livability and economic vitality of neighborhoods. The Agency works with international, state, tribal, and local governments, and other federal agencies to achieve goals and help communities understand and address risks posed by releases of hazardous substances into the environment. EPA's efforts are guided by scientific data, tools, and research that inform decisions on addressing contaminated properties and preparing for and addressing emerging contaminants.

<sup>11</sup> Please see the Superfund Task Force Recommendations at [https://www.epa.gov/sites/production/files/2017-07/documents/superfund\\_task\\_force\\_report.pdf](https://www.epa.gov/sites/production/files/2017-07/documents/superfund_task_force_report.pdf)

## Long-Term Performance Goals

LTPG 1.3.1 By September 30, 2022, make 255 additional Superfund sites ready for anticipated use (RAU) site-wide.<sup>12</sup>

LTPG 1.3.2 By September 30, 2022, make 3,420 additional brownfields sites RAU.<sup>13</sup>

LTPG 1.3.3 By September 30, 2022, make 536 additional Resource Conservation and Recovery Act (RCRA) corrective action facilities RAU.<sup>14</sup>

LTPG 1.3.4 By September 30, 2022, complete 56,000 additional leaking underground storage tank (LUST) cleanups that meet risk-based standards for human exposure and groundwater migration.<sup>15</sup>



## Strategies for Achieving the Objective

### Cleaning Up Contaminated Sites

Over the next five years, EPA will focus special attention on the Administrator's top priority Superfund sites and will implement Superfund Task Force recommendations to accelerate the pace of cleanups and promote reuse, while addressing risks to human health and the environment. Cleanup actions can take from a few months for relatively straight-forward soil excavation or capping remedies to several decades for complex, large, area-wide groundwater, sediment, or mining remedies. NPL sites in the investigation stages will be expedited by developing strategies that apply new technologies and innovative approaches. NPL sites at which remedies already have been selected will be prioritized for faster completion and deletion from the NPL, as will sites that have been on the NPL for five years or longer without significant progress. Finally, the Agency will aim to accelerate cleanup by re-prioritizing some resources to focus on remedial actions, construction completions, ready-for-reuse determinations, and NPL site deletions.

<sup>12</sup> By the end of FY 2017, 836 Superfund sites had been made RAU site-wide.

<sup>13</sup> From FY 2006 through the end of FY 2017, 5,993 brownfield properties/sites had been made RAU. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

<sup>14</sup> From FY 1987 through FY 2017, 1,232 of the universe of 3,779 high priority RCRA corrective action facilities had been made RAU site-wide. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

<sup>15</sup> By the end of FY 2017, 469,898 LUST cleanups had been completed.

In addition, EPA will work with communities to revitalize their brownfield sites and return them to productive use, advancing environmental and human health protection while stimulating economic development and job creation. EPA will award competitive grants to communities, states, and tribes to assess, clean up, and plan reuse of brownfield properties that are contaminated or perceived to be contaminated. To reduce risks from exposure to waste, consistent with RCRA, EPA or authorized states will oversee and manage cleanups by the owners or operators. There are currently 3,779 facilities subject to RCRA corrective action. EPA will support, along with its state and tribal partners, the cleanup of LUST sites and work to revitalize abandoned facilities. These cleanups protect people from exposure to contaminants, and can improve property values<sup>16</sup> and provide redevelopment opportunities.

## Preparedness and Response

EPA prepares for the possibility of nationally-significant incidents and provides guidance and technical assistance to state, tribal, and local planning and response organizations to strengthen their preparedness. During an incident, EPA works to prevent, mitigate, or contain the release of chemical, oil, radiological, biological, or hazardous materials. The Agency will work with industry, states, tribes, and local communities to ensure national safety and security for responses. EPA homeland security research fills critical scientific and technological gaps, enhancing the Agency's ability to carry out its mandated national preparedness and emergency response and recovery obligations, and informing disaster response and guidance. EPA develops the tools, methods, and data needed to implement our environmental statutes effectively and support EPA and local emergency responders in characterizing chemical, biological, or radiological (CBR) contamination; assessing exposure and risks to human health; cleaning up impacted areas; and improving community resilience.

## Preventing Contamination

With its state and tribal partners, EPA works to prevent releases of contamination, allowing the productive use of facilities and land and contributing to communities' economic vitality.<sup>17</sup> In partnership with tribes, the Agency directly provides training, compliance assistance, and inspection support to implement the updated underground storage tank (UST) regulations in Indian country. EPA also helps to prevent chemical releases by reviewing approximately 12,500 risk management plans (RMPs) and delivering RMP inspector training for federal and state inspectors. EPA seeks to prevent and prepare for accidental releases from chemical facilities that store hazardous chemicals by requiring chemical facilities that store a certain amount of hazardous chemicals to analyze the potential for accidental releases and possible consequences, develop an accident prevention program, and coordinate with communities to ensure that all are prepared to respond to a release.

EPA will update and improve the efficiency of the RCRA hazardous waste regulations to meet the needs of today's business and industry to ensure protective standards for managing hazardous waste. To prevent future environmental contamination and to protect the health of the estimated 20 million people living within a mile of a hazardous waste management facility,<sup>18</sup> EPA will support states to issue, update, or maintain RCRA permits for the approximately 20,000 hazardous waste units (such as incinerators and landfills) at these facilities. EPA also will issue polychlorinated biphenyl (PCB) cleanup, storage, and disposal approvals, since this work cannot be delegated to states or tribes.

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<sup>16</sup> A 2016 study found that high profile UST releases decrease nearby property values by 4% - 6%. Once cleanup is completed, nearby property values rebound by a similar margin. (Guignet, Dennis, Robin Jenkins, Matthew Ranson, and Patrick Walsh (2016), "Do Housing Values Respond to Underground Storage Tank Releases? Evidence from High-Profile Cases across the United States," U.S. EPA National Center for Environmental Economics Working Paper, 2016-01, Washington, DC, March.) Available at: <https://www.epa.gov/sites/production/files/2016-05/documents/2016-01.pdf>

<sup>17</sup> This work will be done consistent with the government-wide National Response Framework and the National Disaster Recovery Framework.

<sup>18</sup> U.S. EPA, Office of Land and Emergency Management Estimate. 2014. Data collected includes: (1) site information as of the end of FY 2011 from RCRAInfo, and (2) census data from the 2007-2011 American Community Survey.

EPA will improve and modernize hazardous waste transportation and tracking by implementing the Hazardous Waste Electronic Manifest Establishment Act, enacted on October 5, 2012. The fee-based e-Manifest system will provide better knowledge of waste generation and final disposition, enhanced access to manifest information, and greater transparency for the public about hazardous waste shipments. It will also reduce the burden associated with paper manifests by between 300,000 and 700,000 hours.<sup>19</sup>

As authorized in the Water Infrastructure Improvements for the Nation Act of 2016, EPA will help states develop plans, work to approve state permit programs for coal ash disposal, coordinate closely with the states on guidance for evaluating state permit programs, and implement a coal ash permit program in Indian country.

Over the next five years, EPA will provide technical assistance, assets, and outreach to industry, states, tribes, and local communities as part of its effort to ensure national safety and security for inland oil incidents. There are approximately 580,000 spill prevention, control, and countermeasure facilities, including a high-risk subset of 4,600 facility response plan facilities required to ensure that resources will be available to respond in the event of a discharge.



## External Factors and Emerging Issues

A number of factors may delay cleanup timelines. For example, new scientific information (such as new toxicity information or a new analytical method) can call previous determinations into question. In general, cleanup standards have become more stringent over the years, and discovery of new pathways and emerging contaminants (such as vapor intrusion and per- and polyfluoroalkyl substances [PFAS]) have made remediation of remaining Superfund sites more challenging. Many of the Superfund sites remaining on the National Priorities List—including sediment, mining, and large groundwater sites—are large, contain multiple areas of contamination, and require more complex remediation efforts. Discovery of new sites, newly detected contamination, or emerging contaminants can also impact cleanup schedules.

Several external factors and emerging issues may affect the overall success of EPA's waste management and chemical facility risk programs. Rapidly changing technology, emerging new waste streams, and aging infrastructure present challenges, as does the complexity of issues and consideration of specific solutions for varying waste streams and situations.

The Agency recognizes that our state, tribal, local, and regional government partners face challenges in fully characterizing environmental outcomes associated with land. Over the next five years, EPA will emphasize the importance of engaging stakeholders at all levels and from all perspectives in making cleanup and land revitalization decisions.

<sup>19</sup> From a 2009 programmatic estimate, cited in Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Electronic Manifests; Final Rule. 40 CFR § 260, 262, 263, 264, 265, and 271.

## Objective 1.4

# Ensure Safety of Chemicals in the Marketplace

Effectively implement the Toxic Substances Control Act, and the Federal Insecticide, Fungicide, and Rodenticide Act, to ensure new and existing chemicals and pesticides are reviewed for their potential risks to human health and the environment and actions are taken when necessary.

## Introduction

Chemicals and pesticides released into the environment as a result of their manufacture, processing, use, or disposal can threaten human health and the environment. EPA gathers and assesses information about the risks associated with chemicals and pesticides and implements risk management strategies when needed. EPA's research efforts will help advance the Agency's ability to assess chemicals more rapidly and accurately.

In 2016, TSCA was amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act. The amendments give EPA significant new, as well as continuing, responsibilities for reviewing chemicals in or entering commerce to prevent unreasonable risks to human health and

the environment, including unreasonable risks to potentially exposed or susceptible subpopulations. Proper implementation, as Congress intended, of the TSCA amendments is one of EPA's top priorities.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is the primary federal law governing oversight of pesticide manufacture, distribution, and use in the United States. FIFRA requires EPA to register pesticides based on a finding that they will not cause unreasonable adverse effects on people and the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide. Each time the law was amended, Congress strengthened FIFRA's safety

standards while continuing to require consideration of pesticide benefits. In addition to FIFRA, the Federal Food, Drug, and Cosmetic Act (FFDCA) governs the maximum allowable level of pesticides in and on food grown and sold in the United States. The legal level of a pesticide residue on a food or food item is referred to as a tolerance. FFDCA requires that the establishment, modification, or revocation of tolerances be based on a finding of a "reasonable certainty of no harm." When evaluating the establishment, modification, or revocation of a tolerance, EPA tries to harmonize the tolerance with the maximum residue levels (MRLs) set by other countries to enhance the trade of agricultural commodities.

## Long-Term Performance Goals

LTPG 1.4.1 By September 30, 2022, complete all EPA-initiated TSCA risk evaluations for existing chemicals in accordance with statutory timelines.<sup>20</sup>

LTPG 1.4.2 By September 30, 2022, complete all TSCA risk management actions for existing chemicals in accordance with statutory timelines.<sup>21</sup>

LTPG 1.4.3 By September 30, 2022, complete all TSCA pre-manufacture notice final determinations in accordance with statutory timelines.<sup>22</sup>

LTPG 1.4.4 By September 30, 2022, complete all cases of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)-mandated decisions for the pesticides registration review program.<sup>23</sup>

LTPG 1.4.5 By September 30, 2022, reduce the Pesticide Registration Improvement Act (PRIA) registration decision timeframe by an average of 60 days.<sup>24</sup>

## Strategies for Achieving the Objective

### Chemicals

Over the next five years, EPA will focus on meeting the statutory requirements and mandatory deadlines of the amended TSCA and ensuring that the reviews are efficient, effective, and transparent to EPA's stakeholders. EPA will ensure that decisions are based on science, are transparent, use methods and tools that are based on the weight of scientific evidence, are consistent with the best available scientific information, and are reasonable and consistent with the intended use of the information.

Under the chemical data reporting (CDR) rule, EPA collects basic exposure-related information from manufacturers (including importers) on the types, quantities, and uses of chemical substances produced domestically or imported into the United States. Since the enactment of TSCA in 1976, many new chemicals have entered commerce following review by EPA under the TSCA new chemicals program. Once in commerce, these chemicals are considered existing chemicals in commerce. The amended

<sup>20</sup> There is no baseline for this measure, as the program is operating under new statutory authority.

<sup>21</sup> There is no baseline for this measure, as the program is operating under new statutory authority.

<sup>22</sup> Baseline is 58.4% of determinations made within 90 days in FY 2018. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

<sup>23</sup> Baseline is 239 decisions completed by the close of FY 2017 out of the known universe of 725. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

<sup>24</sup> Baseline is an average timeframe of 655 days (range: 93-2,086 days) for PRIA decisions for 68 new active ingredients completed in FY 2015-2017.



EPA works closely with public health officials, researchers, and agricultural experts to identify emerging pests; and, with industry, to expeditiously register pesticides that address issues while ensuring pesticide safety.



TSCA provides a framework for making progress in understanding and managing the risks associated with existing chemicals to prevent unreasonable risk posed by their manufacturing, processing, distribution, use or disposal. The Act requires EPA to identify high- and low-priority existing chemicals and evaluate high-priority chemicals against a new risk-based safety standard. By December 2019, EPA must complete risk evaluations for the first ten high-priority chemicals, ramp up the risk evaluation process so that 20 high-priority chemicals are under evaluation at all times, and identify 20 low-priority chemicals which will not undergo further evaluation at this time. Chemical risk evaluations of existing chemicals must be completed within three years. Transparency and stakeholder engagement are vital parts of the process, as they help inform EPA's prioritization and risk evaluation of existing chemicals.

The Agency has two years to address unreasonable risks identified as warranted for action by the findings of the chemical risk evaluations.<sup>25</sup> Risk management actions may include prohibiting, restricting, or modifying the manufacture, processing, distribution in commerce or commercial use, modifying the labeling, recordkeeping, and other restrictions.

For new chemicals, EPA reviews and takes action on approximately 1,000 new chemical notices --including exemption notices-- submitted by industry annually, including pre-manufacture notices (PMNs), to ensure that the chemicals are not likely to pose unreasonable risk before being allowed to commercialize. To prevent such risk, EPA may establish risk reduction/management requirements through the new chemical review process to protect workers, consumers or the environment. The 2016 TSCA amendments created additional new requirements for positive determinations of chemical safety, which have resulted in changes to EPA's assessment process for new chemicals. In particular, for each new chemical notice, EPA now has 90 days to make an affirmative determination of safety based on whether the chemical substance will present, may present, or is not likely to present an unreasonable risk to human health or the environment, or that the available information is insufficient to enable the Agency to make any of the above determinations. All four of these outcomes constitute final determinations on pre-manufacture notices and thus count toward EPA's strategic target of completing 100% of such determinations within statutory timelines. Under the TSCA amendments, if EPA makes an "insufficient information" determination, the Agency will work with the submitter to conduct testing needed to make a determination or will impose restrictions on the substance that prevent exposure from occurring.

EPA will protect legitimate claims of confidentiality of the identity of chemicals. With limited exceptions provided by statute, the Agency will review within 90 days all chemical identity confidential business information (CBI) claims requiring substantiation under TSCA Section 14(c)(3) and a representative subset, comprising at least 25 percent, of all other CBI claims. Timely review of CBI claims will help to increase transparency of chemical data. Additionally, EPA is developing guidance required by TSCA, as amended, to address how states, tribes, and medical professionals in an emergency situation may gain access to CBI information.

The Agency uses a variety of tools and approaches to assess, prevent, and reduce chemical releases and exposures, and empowers stakeholders by ensuring access to chemical data and other information and expertise. EPA annually publishes the Toxics Release Inventory (TRI), a public database that contains release and other waste management information (e.g., recycling) and pollution prevention data on over 650 toxic chemicals from approximately 20,000 industrial and federal facilities.

<sup>25</sup> TSCA section 6(c)(1) requires final regulatory action within 2 years of publication of the final risk evaluation but allows for an extension to this deadline "for not more than 2 years."

## Pesticides

EPA is responsible for licensing (registering) and periodically reevaluating (registration review) pesticides to protect consumers, pesticide users, workers who may be exposed to pesticides, children, and other sensitive populations, while considering the benefits associated with the use of the pesticide. EPA seeks public input on all pesticide reevaluations; all new active ingredients; first food uses; and the establishment, modification, or revocation of tolerances. For example, the rules governing the registration review program<sup>26</sup> typically provide for three distinct comment periods at various stages of the review process. In making pesticide decisions, the Agency often seeks input from stakeholders to address specific information, such as real-world use patterns and benefits to the user community.

EPA works with other federal, state, and tribal agencies, trade organizations, industry, and non-governmental organizations to ensure the effective and safe use of pesticides. EPA also has long provided financial support and expertise to states and tribes so that they can provide training, education, and outreach to pesticide applicators about the safe, proper, and legal use of pesticides. States and tribes work with farmers, businesses, and public agencies to protect human health and the environment and serve as a critical part of job training and business growth in rural areas.

## External Factors and Emerging Issues

The amended TSCA provides EPA the authority to collect user fees designed to defray 25 percent of the Agency's costs to administer TSCA Sections 4, 5, 6, and 14. While EPA is directed by the statute to design the fees to collect 25 percent of the costs of administering these sections, it has no control over exactly how much revenue the fees will generate. That will be determined in large part by how the fee-paying community responds to the new fees in terms of their number of fee-related submissions or requests.

New pests and disease vectors carried by pests create challenges for managing pesticides. EPA works closely with public health officials, researchers, and agricultural experts to identify emerging pests; and, with industry, to expeditiously register pesticides that address issues while ensuring pesticide safety. Assessing and appropriately addressing risks is complex. The Agency must determine safe, effective methods of pesticide use, weighing differing risks for humans and ecosystems. For example, one pesticide may have lower risks for humans than do other pesticides, but have increased risks for pollinators or endangered species. Similarly, a pesticide may have risks for humans, but may be appropriate to fight mosquitos that carry diseases that also pose risks to humans.

EPA continues to conduct education and outreach with tribes. One challenge is ensuring that the flow of information on the safe use of pesticides reaches all federally-recognized tribes across the country, and comes in forms that result in protective actions on the ground.

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<sup>26</sup> 40 CFR 155 – Registration Standards and Registration Review



2

More  
Effective  
Partnerships

# Provide certainty to states, localities, tribal nations, and the regulated community in carrying out shared responsibilities and communicating results to all Americans.

The idea that environmental protection is a shared responsibility between the states, tribes, and the federal government is embedded in our environmental laws, which in many cases provide states and tribes the opportunity and responsibility for implementing environmental protection programs. More than 45 years after the creation of EPA and the enactment of a broad set of federal environmental protection laws, most states, and to a lesser extent territories and tribes, are authorized to implement environmental programs within their jurisdictions in lieu of EPA-administered federal programs. Specifically, states have assumed more than 96 percent of the delegable authorities under federal law.<sup>27</sup> EPA retains responsibility for directly implementing federal environmental programs in much of Indian country where eligible tribes have not received delegable authorities. There are also programs that by statute may not be delegated to the states or tribes. Recognizing these evolving

responsibilities, EPA headquarters and regions will facilitate constructive dialogue with states and tribes to ensure maximum utilization of resources. EPA will adapt its practices to reduce duplication of effort with authorized states and tribes, and tailor its oversight of delegated programs.

An effective partnership (or cooperative federalism) between states, tribes and EPA—is not just about who makes decisions, but about how decisions are made and a sense of shared accountability to provide positive environmental results. EPA understands that improvements to protecting human health and the environment cannot be achieved by any actor operating alone, but only when the states, tribes, and EPA, in conjunction with affected communities, work together in a spirit of trust, collaboration, and partnership. Effective environmental protection is best achieved when EPA and its state and tribal partners work from a foundation of transparency, early collaboration—including public participation—and a spirit of shared accountability for the outcomes of this joint work. This foundation involves active platforms for public participation, including building the capacity of the most vulnerable community stakeholders to provide

input. With these public participation opportunities, the beneficiaries of environmental protection—the American people—will be able to more meaningfully engage through their communities, their local governments, and their state and tribal governments. Including the public's voice, particularly the voices of the most vulnerable to environmental and public health challenges among us, in EPA's policy, regulatory, and assistance work is essential to meeting their needs as the Agency implements its statutory responsibilities.

EPA also recognizes that meeting the needs of states, tribes, local governments, and communities, and achieving environmental improvements cannot be done in isolation from economic growth. Opportunities for prosperous economic growth and clean air, water, and land are lost without effective infrastructure investments that align with community needs. This is especially true for infrastructure investments that repair existing systems, support revitalization of existing communities and buildings, take advantage of existing roads, and lead to the cleanup and redevelopment of previously-used sites and buildings. Currently, there is a need for significant infrastructure investments. EPA will play a role in meeting this need by aligning its relevant programs to catalyze other resources, supporting beneficial infrastructure investments, and meeting community needs for thriving economies and improved environmental and human health outcomes.

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<sup>27</sup> Environmental Council of the States (ECOS) Paper, "Cooperative Federalism 2.0," June 2017

# Objective 2.1

## Enhance Shared Accountability

Improve environmental protection through shared governance and enhanced collaboration with state, tribal, local, and federal partners using the full range of compliance assurance tools.



### Introduction

In the spirit of cooperative federalism, EPA and its partners have made enormous progress in protecting air, water, and land resources. EPA recognizes that states and tribes vary in the environmental challenges that they face due to variations in geography, population density, and other factors. EPA will maximize the flexibilities provided by law to take each state's unique situation into account when making regulatory and policy decisions. EPA directly implements the majority of federal environmental programs in Indian country. The Agency actively works with tribes to develop their capacity to administer environmental programs and to enable tribes that choose to implement federal environmental laws and programs for their lands. The unique relationship among

EPA and its co-regulators is the foundation of the nation's environmental protection system; each organization fulfills a critical role based on its expertise, abilities, and responsibilities in protecting and improving human health and the environment.

EPA recognizes the advances states and tribes have made in implementing environmental laws and programs. This Administration will undertake a series of initiatives to rethink and assess where we are and where we want to be with respect to shared governance. These initiatives will clarify the Agency's statutory roles and responsibilities and tailor state and tribal oversight to maximize our return on investment and reduce burden on states and tribes, while ensuring continued progress in meeting environmental laws.

In addition, EPA, with its state, tribal, and local partners, ensures consistent and fair enforcement of federal environmental laws and regulations. The Agency works jointly with its co-regulators to protect human health and the environment, using a full set of compliance assurance tools, such as compliance assistance and monitoring; electronic reporting; traditional enforcement; grants to states and tribes; and tribal capacity building. EPA is building on progress made using E-Enterprise for the Environment, a platform for transformative change that operationalizes cooperative federalism principles. EPA's E-Enterprise partnership with states and tribes modernizes the way we do the business of environmental protection.

# Long-Term Performance Goals

LTPG 2.1.1 By September 30, 2022, increase the number of grant commitments achieved by states, tribes, and local communities.<sup>28</sup>

LTPG 2.1.2 By September 30, 2022, increase the use of alternative shared governance approaches to address state, tribal, and local community reviews.<sup>29</sup>

## Strategies for Achieving the Objective

### Shared Governance

To develop a future model of shared governance that takes into account the progress states and tribes have made in protecting human health and the environment, the Agency will undertake an analysis of EPA's statutory roles and responsibilities to determine what we have to do and assess what we want to do in light of priorities. The Agency will work with states and tribes to find alternative approaches to shared governance, seeking to provide flexibility and streamline oversight of state and tribal programs. As part of this process, the Agency will seek to understand which approaches currently are working well for state, tribal and local co-regulators. EPA will pilot new approaches to oversight (e.g., permit reviews) where we have the legal flexibility to do so and streamline those processes by which EPA reviews and approves state and tribal actions. EPA will continue to work with states and tribes through E-Enterprise, focused on how we work and plan together, agree on priorities, and allocate roles and responsibilities to update processes and programs. Through shared governance—engaging early and meaningfully with states and tribes—the Agency will use E-Enterprise to deliver streamlined processes as well as accessible, reliable information and data that benefit co-regulators and the regulated community.

The National Environmental Performance Partnership System (NEPPS) has long served as a model for advancing cooperative federalism by providing the flexibility needed to address the unique needs of individual states and tribes to achieve the best environmental results. NEPPS is a performance-based approach for organizing working relationships with states and many tribes, providing specific benefits, such as greater flexibility to assess environmental conditions, shared priorities, and strategically leveraged resources, thus improving cooperative federalism, shared governance, and shared accountability. EPA will work with states and tribes to strengthen cooperative federalism principles through NEPPS, and intends to make NEPPS training available for state and tribal stakeholders.

EPA will work closely with states and tribes on NEPPS, Performance Partnership Grants (PPGs), and related policies. PPGs are a financial tool that allows states and tribes to combine separate “streams” of categorical grant funding, from across 20 eligible categorical grants, into one multi-program grant with a single budget. The goal of the review is to understand PPG utilization and outline a course of action addressing the challenges, leveraging lessons learned and progress achieved over the last 22 years.

<sup>28</sup> Universe (number of commitments contained in Performance Partnership Grants) and FY 2020 target will be determined in FY 2019. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

<sup>29</sup> There is no baseline for this measure. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

The intent is to provide states and tribes the flexibility to maximize human health and environmental protection achieved by the funds; further enhance the federal, state, and/or tribal partnership; and promote the goals of NEPPS.

EPA will respect the important role governors play in cooperative federalism and will seek their views and perspectives on compliance assistance and other opportunities to improve EPA-state partnerships. In addition, the Agency will work to strengthen intergovernmental consultation methods to engage stakeholders and hear diverse views on the impacts of prospective regulations.

Local governments also have a unique relationship with EPA as partners and often as innovative problem solvers. EPA works with local governments to build stronger and more robust partnerships and bring local concerns forward into Agency decision making. As part of these efforts, EPA seeks advice from the Local Government Advisory Committee (LGAC), a chartered policy committee comprising elected and appointed local officials, on the impacts of the Agency's regulations and policies on local governments.

Consistent with the 1984 Indian Policy and EPA Policies on consultation and treaty rights,<sup>30</sup> EPA will work on a government-to-government basis to build tribal capacity to implement federal programs through delegations, authorizations, and primacy designations to enable tribes to meaningfully participate in the Agency's policy making, standard setting, and direct implementation activities under federal environmental statutes.<sup>31</sup> EPA will work with individual tribes to develop and implement an EPA-Tribal Environmental Plan (ETEP), a joint planning document for achieving stronger environmental and human health protection in Indian country. ETEPs identify tribal, EPA, and shared priorities, and the roles and responsibilities for addressing those priorities.

EPA will focus its direct implementation efforts on areas of high need for human health or environmental protection, including programs identified in the ETEP for which tribes are not eligible, as well as those for which tribes do not currently anticipate seeking delegation, authorization, or primacy. In carrying out its direct implementation activities, EPA will work closely with tribes to develop tribal capacity for programs for which they do not anticipate seeking delegation, authorization, or primacy. EPA will also encourage tribes to participate in policy making and to assume appropriate partial roles in the implementation of programs, including through the use of Direct Implementation Tribal Cooperative Agreements (DITCAs) or other agreements, as available.

## Compliance Assurance

Over the next five years, the Agency will look for cost-effective ways to enhance the compliance assurance tool box in collaboration with its state, tribal, local, federal, and industry partners. For example, the E-Enterprise Web Portal offers a platform or gateway for making shared services available to states, tribes, and EPA to transact business (e.g., e-permitting and reporting). It also provides information for the regulated community (e.g., compliance assistance information). Tools and services are designed to enhance efficiency, reduce burden on the regulated community, and improve environmental outcomes. EPA will expand its compliance assistance work by continuing to partner with third-party organizations and federal agencies to support the 17 existing web-based, sector-specific compliance assistance centers<sup>32</sup> and developing new centers. In general, an expanded and modernized compliance assurance tool box will enhance EPA's ability to tailor compliance assurance approaches to the differing needs and challenges among states and regulated entities. EPA is also working closely with states and tribes to develop new compliance tools and approaches to make programs more effective and efficient in promoting compliance and remediating violations. Some of the

<sup>30</sup> There is no baseline for this measure. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

<sup>31</sup> The Tribal Consultation Opportunities Tracking System (TCOTS) publicizes upcoming and current EPA consultation opportunities for tribal governments and can be located here: <https://TCOTS.epa.gov>.

<sup>32</sup> For more information on compliance assistance centers, see <https://www.epa.gov/compliance/compliance-assistance-centers>.

Agency's ongoing collaborative efforts with the Environmental Council of the States (ECOS) include<sup>33</sup> producing webinars to help identify new compliance approaches that EPA could pilot and evaluate, increasing availability of training, and preparing for advances in pollution monitoring technology.<sup>34</sup>

A key component of EPA's overall compliance assurance program is compliance monitoring. Compliance monitoring allows the regulatory agencies to detect noncompliance and promote compliance with the nation's environmental laws. Effective targeting of compliance monitoring plays a central role in achieving the goals EPA has set for protecting human health and the environment. EPA, state, and tribal inspectors often provide regulated entities with compliance assistance during the inspection process. On a national level, EPA works closely with individual states, tribes, and state and tribal associations to develop, modernize, and implement national compliance monitoring strategies to ensure a level playing field for regulated entities across the country. EPA principally focuses compliance monitoring activities, such as field inspections, electronic reporting, and data analysis tools, for those programs that are not delegated to states and tribes. The Agency provides monitoring, program evaluations, and capacity building to support and complement authorized state, tribal, and local government programs. The Agency will work with its state and tribal partners to enhance compliance monitoring tools and increase the use of Lean practices. Through E-Enterprise for the Environment, EPA, states, tribes, and territories will collaborate to develop smart mobile tools to enhance the effectiveness and efficiency of state, tribal, and EPA inspectors, and support advanced monitoring technology.

## International Partnerships

To achieve the Agency's domestic environmental and human health objectives, the EPA will work with international partners to address international sources of pollution, as well as the impacts of pollution from the United States on other countries and the global environment. Pollution impacts air, water, food crops, and food chains, and can accumulate in foods such as fish. EPA efforts will include working with international partners to strengthen environmental laws and governance to more closely align with U.S. standards and practices and to help level the playing field for U.S. industry.

## External Factors and Emerging Issues

Advances in the field of information technology and social science research may offer innovative ways to promote compliance. EPA is partnering with states to help prepare for and use these technologies and research to carry out our statutory obligations. The Agency also is working with the academic community on additional research to develop innovation in promoting compliance. EPA also will work closely with ECOS; the National Tribal Caucus; state and tribal program associations; and individual states, tribes, and territories to implement the Administrator's vision for cooperative federalism. In partnership with ECOS, EPA plans to develop principles and best practices for enhancing collaboration among EPA and states on compliance assurance work. In addition, EPA will continue to work with ECOS, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), and individual states to develop an integrated hardware/software solution that supports documenting and conducting inspections.

<sup>33</sup> For more information on OECA's collaboration with ECOS via E-Enterprise, see Article: Advanced Monitoring Technology: Opportunities and Challenges. A Path Forward for EPA, States, and Tribes.

<sup>34</sup> For more information on a broader range of collaborations between OECA and ECOS, see Compendia of Next Generation Compliance Examples in Water, Air, Waste, and Cleanup Programs.

# Objective 2.2

## Increase Transparency and Public Participation

Listen to and collaborate with impacted stakeholders and provide effective platforms for public participation and meaningful engagement.



## Introduction

EPA will strengthen its community-driven approach, which emphasizes public participation to better partner with states, tribes, and communities and to maximize the support and resources of the entire Agency to create tangible environmental results. The Agency will deploy its collective resources and expertise to collaborate with states, tribes, and communities and support locally-led, community-driven solutions to improved environmental protection and economic growth. EPA will increase transparency with industry, environmental groups, and other

stakeholders, and will facilitate public participation, emphasizing cooperation and collaboration, especially at the early stages of Agency actions. This will provide a more comprehensive understanding of community needs.

The Agency also will coordinate better across its programs and with federal partners to ensure mutual efforts are aligned. EPA will include consideration of vulnerable groups and communities in decisions, and will reflect community needs in its actions and investments, recognizing that the needs of rural

communities may not be the same as urban areas. Increasing transparency and public participation in EPA's work with other agencies will enhance the Agency's ability to partner with states, tribes, and local governments and increase responsiveness to the needs of their most vulnerable communities. EPA will serve as a convener and leverage resources with new and existing partners to deliver services more efficiently and effectively. The Agency also will engage with regulated entities to identify reforms to more efficiently and effectively meet the nation's environmental goals.

## Long-Term Performance Goal

LTPG 2.2.1 By September 30, 2022, eliminate the backlog and meet statutory deadlines for responding to Freedom of Information Act (FOIA) requests.<sup>35</sup>

### Strategies for Achieving the Objective

Over the next five years, EPA will meet community needs through public participation and will build community capacity through grants, technical assistance, partnering, and meaningful engagement. The Agency will leverage recommendations provided by federal advisory committees, such as the National Environmental Justice Advisory Council (NEJAC), LGAC, and Children's Health Protection Advisory Committee (CHPAC), and focus on partnerships representing vulnerable populations, such as youth, the elderly, and low-income communities. Specifically, the Agency will engage with the focus communities identified by EPA regions to understand each community's goals and identify its environmental priorities and needs, recognizing that rural communities and more urban areas may have different priorities.

EPA will continue to provide loans and grants to states and tribes to improve infrastructure. Given that investment in infrastructure is necessary for economic growth and environmental protection and that EPA investments are catalytic to both, the Agency's efforts will be used to support private and public investment in economic revitalization and improved environmental outcomes across the country. This requires that EPA strengthen its infrastructure and community assistance programs (e.g., the clean water SRF, drinking water SRF, Water Infrastructure Finance and Innovation Act, environmental justice, community revitalization, and brownfields area-wide planning grant programs) to better align EPA investments with each other and with other federal investments in pursuit of economic revitalization and improved environmental outcomes. At the same time, EPA will ensure that it is serving disadvantaged communities, leveraging private investment to improve the economy, and protecting human health and the environment.

EPA will work in a focused manner to make infrastructure and public health protection investments in communities with and through partners such as states and tribes. To further integrate and implement community environmental considerations within EPA programs, the Agency will create tools to facilitate incorporation of community understanding, needs, and concerns across program activities, and advance more systematic incorporation of existing tools and needs, such as use of the Environmental Justice Screening and Mapping Tool (EJSCREEN) and EnviroAtlas. EPA will develop a cross-Agency communities team to lead regional involvement in and resourcing of community-based environmental work through a fully-integrated resource platform.

The Agency will coordinate across the federal government—EPA regions partnering with federal agencies in focus communities—to deliver services more efficiently and effectively. EPA will utilize such partnerships to leverage resources and expertise from across EPA and a range of outside partners to advance economic revitalization through the environmental and health goals of communities. EPA will look for opportunities for early engagement with state, local, and tribal co-regulators through existing advisory committees and other forums. The Agency will also continue leadership of and involvement in the Office of Management and Budget (OMB) Community Solutions Taskforce to better access and leverage resources from across federal agencies, and will strengthen coordination with the Interagency Working Group on Environmental Justice to better integrate EPA priorities and support and engage communities. In addition, EPA will support and align its work with the activities and priorities of the President's Task Force on Environmental Health Risks and Safety Risks to Children.

<sup>35</sup> As of April 2018, there were 2,537 overdue FOIA requests in the backlog. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)



The Agency will seek to increase the number and type of public participation platforms it has to ensure that the public can meaningfully participate in all of EPA's work—including policy making, regulatory development, outreach, education, and community engagement.



EPA will work on the E-Enterprise Web Portal's Assistance Gateway, which provides tools and resources for communities to facilitate two-way communication between the public and environmental agencies. The Agency will determine how EPA, states, and tribes can most effectively harness and benefit from the recent, rapid development of environmental monitoring technologies that are smaller, more portable, and less expensive than traditional methods. EPA will pursue innovative technologies without compromising the accuracy of the information collected. In consultation with state, tribal, and local partners, EPA will make monitoring data publicly available, providing context and relevancy. EPA will support the E-Enterprise Assistance Gateway that will enhance collaboration and communication with communities. The Agency will seek to increase the number and type of public participation platforms it has to ensure that the public can meaningfully participate in all of EPA's work—including policy making, regulatory development, outreach, education, and community engagement.

EPA will also focus on reducing the FOIA backlog the Agency has built up over the years, and enhancing the FOIA process. The complexity and volume of electronic documents required to be searched, collected, and reviewed has increased over time. The Agency will ensure that it can support the timely searching and collection of electronically-stored information for purposes of responding to FOIA requests and other information needs in a cost-effective, sustainable manner. This should not only help the Agency provide the public information requested, but also reduce the fees and lawsuits the Agency incurs from missing FOIA response deadlines.

## External Factors and Emerging Issues

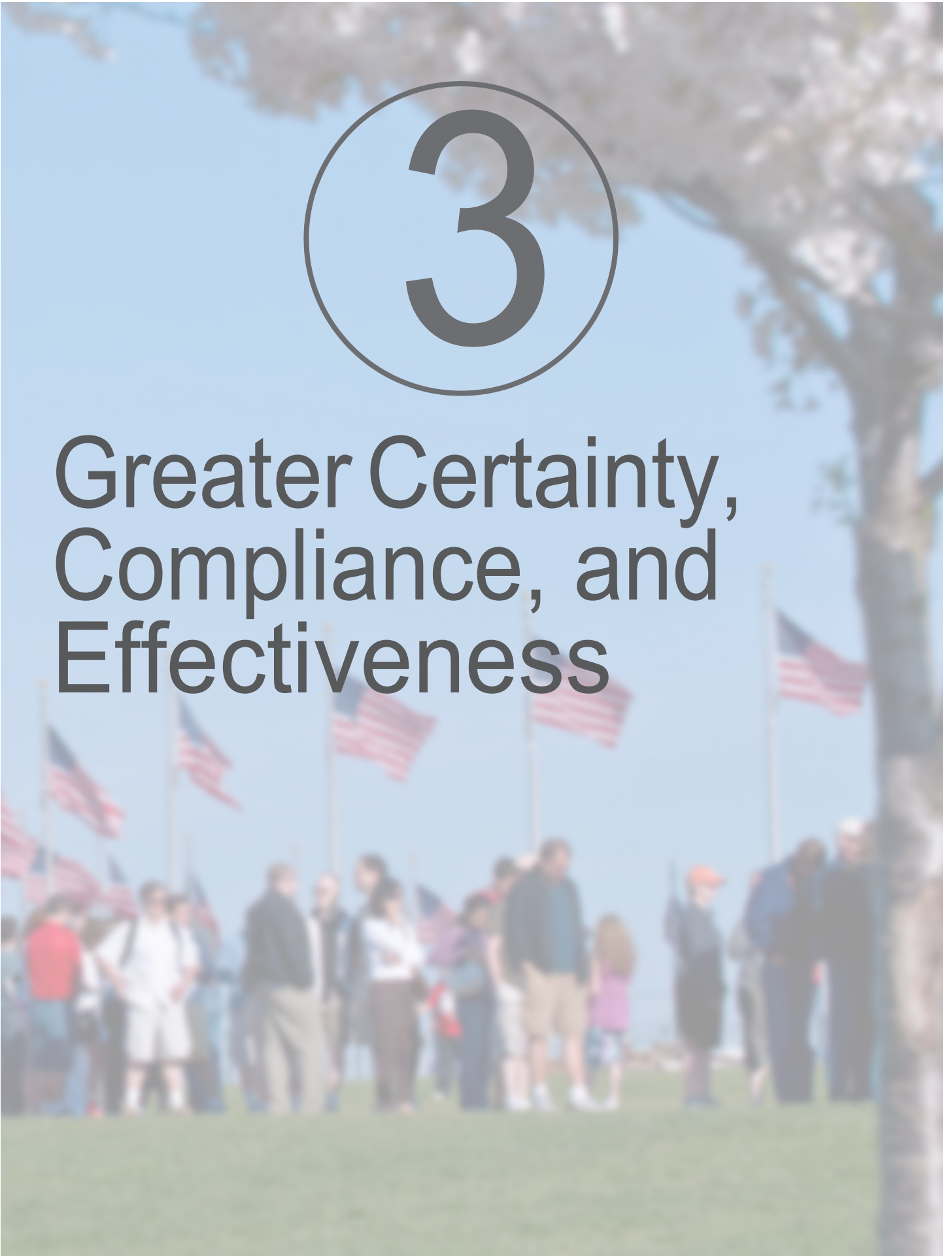
Resources are critical to the expansion of technical assistance directed at communities and state, tribal, and local government partners that support community-focused engagement and collaboration. Staff must be available for a wide variety of implementation activities such as direct community engagement and support, intra- and inter-agency coordination, and partnering effectively with states and tribes.

In addition, the challenges of coordinating across offices within EPA and with other federal agencies can inhibit the identification and delivery of creative solutions and services that can lead to tangible results for communities and a more effective leveraging of government resources. EPA recognizes the need to communicate successes and achievements related to this work, both to market its effectiveness and to teach new partners and practitioners how to replicate successful models and approaches.



3

# Greater Certainty, Compliance, and Effectiveness



# Increase certainty, compliance, and effectiveness by applying the rule of law to achieve more efficient and effective agency operations, service delivery, and regulatory relief.

EPA will seek to increase certainty, compliance, and effectiveness. To accomplish this, EPA will work cooperatively with states and tribes to ensure compliance with the law, as well as to create consistency and certainty for the regulated community. Of course, EPA will take civil or criminal enforcement action against violators of environmental laws.

A robust enforcement program is critically important for addressing violations and promoting deterrence, and supports the Agency's mission of protecting human health and the environment. Ensuring compliance with the law also ensures consistency and certainty for the regulated community so it has a complete understanding of the impact of proposed actions on

human health, the environment, and the economy, and a clear path and timeline to achieve that compliance. EPA's policies and rules will reflect common sense, consistent with the Agency's statutory authorities, and provide greater regulatory and economic certainty for the public. EPA will enforce the rule of law in a timely manner and take action against those that violate environmental laws to the detriment of human health or the environment.

One of EPA's highest priorities must be to create consistency and certainty for the regulated community. Consistency in how the laws and regulations are applied across the country is part of that process. EPA will undertake a variety of efforts to ensure that consistency in application of laws and regulations is evaluated and addressed, while respecting the unique circumstances of each state and tribe.

EPA recognizes the importance of applying rules and policies consistently as well as creating certainty by meeting the statutory deadlines that are required for EPA's actions. The rule of law must also be built on the application of robust science that is conducted to help the Agency meet its mission and support the states and tribes in achieving their environmental goals. Research, in conjunction with user-friendly applications needed to apply the science to real-world problems, will help move EPA and the states forward in making timely decisions based on science.

Carrying out this goal requires that EPA improve the efficiency of its internal business and administrative operations. First, EPA's business operations, specifically the vast permitting processes established by the different environmental statutes, are key to ensuring economic growth and human health and environmental protection. Over the next five years, EPA will modernize its permitting practices to increase the timeliness of reviews and decisions, while working more collaboratively, transparently, and cost effectively to achieve the Agency's mission. The second part of improving internal operations includes reducing EPA's overhead and creating more efficient and effective administrative processes (e.g., acquisition) that allow EPA to accomplish its core mission work.

# Objective 3.1

## Compliance with the Law

Timely enforce environmental laws to increase compliance rates and promote cleanup of contaminated sites through the use of all of EPA's compliance assurance tools, especially enforcement actions to address environmental violations.

### Introduction

For decades, the protections mandated by federal environmental laws have been essential to the growth of American prosperity. Noncompliance with those laws diminishes shared prosperity and unfairly tilts the field of economic competition in favor of those that skirt the law. To carry out its mission to protect human health and the environment, EPA, in collaboration with state and tribal partners, relies on a strong national compliance assurance and cleanup enforcement program. An effective enforcement program is key to ensuring that the ambitious goals of the nation's environmental statutes are realized.

EPA's enforcement priorities remain focused on cleaning up hazardous waste sites and addressing the most significant violations consistent with

EPA's statutory authorities. EPA takes the overwhelming majority of its enforcement actions in programs that are: (1) not delegable to a state or tribe; (2) in states or tribes that have not sought authorization to implement a delegable program; or (3) in states or tribes that do not have the resources or expertise, or that seek assistance from the Agency—and these actions are taken in coordination with the states and tribes. For states and tribes with authorized programs, EPA, states, and tribes share enforcement responsibility, with primary enforcement responsibility residing with the state<sup>36</sup> or tribe. Further, EPA is responsible for addressing violations that occur in Indian country in the absence of an approved program.

Even in states or tribes authorized to implement a program, EPA serves a critical role in addressing serious national noncompliance problems, such as those affecting multiple states or tribes, and in serving as a backstop for instances when a state or tribe does not timely or appropriately address serious noncompliance. EPA also may assist a state or tribe in remedying noncompliance problems when the state or tribe is unable to address the problem because it lacks the capability or resources, such as in actions against other federal or state agencies. For some serious violations, the Agency and states or tribes may decide that the best approach is a joint enforcement action. Further, EPA will take immediate action when there is an environmental emergency, such as an oil spill or chemical

<sup>36</sup> See e.g., ECOS Resolution 98-9, U.S. EPA Enforcement in Delegated States (revised September 28, 2016), describing the EPA and state roles in enforcement in authorized states: "WHEREAS, U.S. EPA and the States have bilaterally developed policy agreements which reflect those roles and which recognize the primary responsibility for enforcement action resides with the States, with U.S. EPA taking enforcement action principally where the State requests assistance, is unwilling or unable to take timely and appropriate enforcement actions, or in actions of national interest, or in actions involving multiple state jurisdictions."

accident. Through the State Review Framework (SRF), EPA periodically reviews authorized state compliance monitoring and enforcement programs, using criteria agreed upon by states, to evaluate performance against national compliance monitoring or enforcement

program standards. When states do not achieve standards, the Agency works with them to make progress. However, EPA may also take a lead implementation role when authorized states have a documented history of failure to make progress toward meeting

national standards. In all of its work, EPA's enforcement program strives to address noncompliance in an efficient and timely manner, applying a broad range of enforcement and compliance tools to achieve the goal of reducing noncompliance.

## Long-Term Performance Goals

LTPG 3.1.1 By September 30, 2022, reduce the average time from violation identification to correction.<sup>37</sup>

LTPG 3.1.2 By September 30, 2022, increase the environmental law compliance rate.<sup>38</sup>

## Strategies for Achieving the Objective

### Civil Enforcement

The overall goal of EPA's civil enforcement program is to maximize compliance with the nation's environmental laws and regulations to protect human health and the environment. The Agency works closely with the U.S. Department of Justice, states, tribes, territories, and local agencies to ensure consistent and fair enforcement of all major environmental statutes. EPA will seek to strengthen environmental partnerships with its state and tribal partners, encourage regulated entities to correct violations rapidly, ensure that violators do not realize an economic benefit from noncompliance, and pursue enforcement to deter future violations.

EPA recognizes that significant environmental progress has been made over the years, much of it due to enforcement efforts by EPA, states, tribes, and local communities. To maximize compliance over the next five years, the Agency will refocus efforts toward areas with significant noncompliance issues and where enforcement can address the most substantial impacts to human health and the environment. EPA also recognizes the role of states and tribes as the primary implementers, where authorized by EPA to implement the federal statutes, and will focus compliance assurance and enforcement resources on direct implementation responsibilities, addressing the most significant violations, and assisting authorized states and tribes in meeting national standards. For example, the Agency will provide expertise and implement compliance monitoring strategies that will ensure a level playing field. EPA is responsible for direct implementation for programs that are not delegable or where a state or tribe has not sought or obtained

<sup>37</sup> Baseline will be determined in FY 2018.

<sup>38</sup> This concept will be piloted by focusing initially on decreasing the percentage of Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permittees in significant noncompliance with their permit limits. The baseline and targets will be determined in FY 2019. Other program areas may be included in this long-term performance goal during the FY 2018-2022 timeframe. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

the authority to implement a particular program (or program component). Examples of non-delegable programs include the CAA mobile source program, pesticide labeling and registration under FIFRA, virtually all compliance assurance and enforcement in Indian country, enforcement of the federal Superfund cleanup program, and enforcement of non-delegated portions of various other laws, including RCRA, the CWA, and stratospheric ozone under the CAA. EPA also will pursue enforcement actions at federal facilities where significant violations are discovered, will ensure that federal facilities are held to the same standards as the private sector, and will provide technical and scientific support to states and tribes with authorized programs.

## Criminal Enforcement

EPA's Criminal Enforcement program enforces the nation's environmental laws through targeted investigation of criminal conduct committed by individual and corporate defendants that threaten public health and the environment. Over the next five years, EPA will collaborate and coordinate with the U.S. Department of Justice and state, tribal, and local law enforcement counterparts to ensure that the Agency responds to violations as quickly and effectively as possible. EPA enforces the nation's environmental laws through targeted investigation of criminal conduct committed by individual and corporate defendants that threatens human health and the environment. The Agency plays a critical role across the country since states and tribes have limited capacity to prosecute environmental crimes. The Agency will focus resources on the most egregious environmental cases (i.e., those presenting significant human health and environmental impacts).

## Cleanup Enforcement

Through the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund), EPA will facilitate prompt site cleanup and use an "enforcement first" approach that maximizes the participation of liable and viable parties in performing and paying for cleanups. The Agency will protect communities by ensuring that potentially responsible parties (PRPs) conduct cleanups at Superfund sites, preserving federal taxpayer dollars for sites where there are no viable contributing parties, and by recovering costs if the EPA expends Superfund-appropriated dollars to clean up sites. EPA also will address liability concerns that can be a barrier to potential reuse. Addressing the risks posed by Superfund sites and returning them to productive use strengthens the economy and spurs economic growth.

Over the next five years, EPA will focus its resources on the highest priority sites, particularly those that may present an immediate risk to human health or the environment. In accordance with the Superfund Task Force Report, the Agency will improve and revitalize the Superfund program to ensure that contaminated sites across the country are remediated to protect human health and the environment, and returned to beneficial reuse as expeditiously as possible. At federally-owned sites, EPA will also focus on resolving formal disputes under the federal facility agreements.

## External Factors and Emerging Issues

Advanced monitoring technology and information technology are rapidly evolving, and advances in these fields offer great opportunities for improving the ability of EPA, states, and tribes to ensure compliance. EPA, states, and tribes do, however, face challenges in keeping up with the rapid pace of change in these technologies. In addition, social science research and knowledge may offer innovative ways to promote compliance. EPA is partnering with states and tribes to help prepare for and use these advanced monitoring technologies, consistent with statutory and regulatory obligations. The Agency will collaborate with ECOS and state associations to maximize the use of these technologies and modernize programs. EPA, in collaboration with states, is working with the academic community to identify new ways to improve compliance. For example, EPA will work with states and academics to pilot and evaluate innovative compliance methods.<sup>39</sup> EPA will work with states to integrate advanced pollution monitoring and information technology into Agency work.

<sup>39</sup> ECOS Resolution 17-2: On the Value of Diverse and Innovative Approaches to Advance Compliance (2017)

## Objective 3.2

# Create Consistency and Certainty

Outline exactly what is expected of the regulated community to ensure good stewardship and positive environmental outcomes.

## Introduction

The regulatory framework is inherently dynamic. As part of its statutory obligations, EPA is required to publish many regulations within a set timeframe each year that implement environmental programs and assist the Agency in meeting its core mission. These regulations address newly mandated responsibilities as well as updates and revisions to existing regulations. As EPA meets its obligations to protect human health and the environment

through regulatory action, it must also meet another key responsibility – minimizing “regulatory uncertainty” that unnecessarily causes businesses and communities to face delays, planning inefficiencies, and compliance complexities that impede environmental protection, economic growth, and development. EPA will employ a set of strategies to reduce regulatory uncertainty while continuing to improve human health and environmental

outcomes consistent with the Agency’s authorities as established by Congress and while considering unique state, tribal, and local circumstances. These strategies, which reflect EPA’s commitment to cooperative federalism and commitment to the rule of law, will also help advance Agency goals for streamlining and modernizing permitting and enhancing shared accountability.

## Long-Term Performance Goals

LTPG 3.2.1 By September 30, 2022, meet 100% of legal deadlines imposed on EPA.<sup>40</sup>

LTPG 3.2.2 By September 30, 2022, eliminate unnecessary or duplicative reporting burdens to the regulated community by 10,000,000 hours.<sup>41</sup>

## Strategies for Achieving the Objective

As EPA issues new or revised regulations, businesses and individuals can find it challenging to know which rules apply to them and to adjust their compliance strategies. Over the next five years, EPA will reinvigorate its approach to regulatory development and

<sup>40</sup> Baseline will be determined in FY 2019. (No footnote in FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

<sup>41</sup> Baseline is estimated at 173,849,665 information collection and reporting hours.

prioritize meeting its statutory deadlines to ensure that expectations for the regulated community and the public are clear and comprehensive and that Agency actions are defensible and consistent with its authorities. The Agency will use new approaches and flexible tools to minimize regulatory uncertainty and will communicate more comprehensively to realize more consistent and better environmental outcomes, while centering work on statutory and regulatory obligations. EPA will strengthen working relationships with industry sectors to better understand their needs and challenges in implementing Agency requirements and with communities to understand their concerns. This knowledge will enable the Agency to develop better policies and regulations to protect human health and the environment in line with the authorities given to EPA by Congress.

On average, the EPA faces approximately 20 legal challenges under the various environmental statutes each year that assert that the Agency missed a statutory or regulatory deadline for taking an action or unreasonably delayed taking an action. In addition, the Agency faces nearly the same number of legal challenges under FOIA for failure to comply with the deadlines in that law. Responding to these challenges often diverts significant EPA resources away from priority activities, and could impact the Agency's ability to fulfill its commitments. In order to facilitate achievement of this goal, EPA will undertake a systematic mapping of the processes associated with these obligations and implement improvements where needed.

In addition, EPA will develop and engage stakeholders in reviewing a draft base catalog of responsibilities that statutes require EPA to perform in programs delegated to states and tribes. The base catalog, to be complete by 2019 and subsequently updated as necessary, will provide EPA a foundation to make decisions that reduce contradictory policy determinations at headquarters and across regions. It will also support EPA cooperative federalism commitments aimed at minimizing duplication and overlap among regions, headquarters, states, and tribes. This effort also leverages the commitment that EPA is making under cooperative federalism to identify, for all environmental media, an inventory and timeline for state-led permits that EPA reviews.

The Agency will ensure consistent implementation of policies across all regions. EPA will also work towards more cooperative decision making between EPA's regions and headquarters, when necessary. EPA will review regulatory guidance documents to



identify key opportunities and will clarify and realign Agency approaches to improve consistency and clarity. EPA will strengthen working relationships with states, tribes, and local communities to transfer knowledge, leveraging its commitments under cooperative federalism, such as collaboration under E-Enterprise for the Environment. EPA will make available to states and tribes tools or services designed by other federal agencies, states, tribes, or local communities that enhance efficiency and reduce burden on the regulated community while ensuring protection of human health and the environment.

EPA will work with states and tribes to achieve this objective without overburdening those entities with costly unnecessary reporting systems and technology. Building on efforts to date, such as under E-Enterprise, EPA will collaborate with its partners on systems and services, including but not limited to:

- E-reporting: A systematic digital approach that enables states, tribes, and the regulated community to move from paper-based to electronic reporting.
- The Environmental Information Exchange Network: Managed under the collaborative leadership of EPA, states, territories, and tribes, a communication, data, and services platform for submitting and sharing environmental information among partners to foster informed decision making.
- SPeCS for SIPs (State Plan Electronic Collection System for State Implementation Plans): A web-based system for authorized state, tribal, and local governments to submit and manage SIPs under the Clean Air Act.

## External Factors and Emerging Issues

A number of factors and emerging issues may impede the Agency's ability to meet this strategic objective. Sustainable resource levels and a strong workforce are critical to success. Proposing and finalizing regulations is often a multi-year process, which can be challenged by lawsuits causing further delays. For example, technical complexity also creates challenges in meeting aggressive deadlines.



## Objective 3.3

# Prioritize Robust Science

Refocus the EPA's robust research and scientific analysis to inform policy making.



## Introduction

EPA will identify, assess, conduct, and apply the best available science to address current and future environmental hazards, develop new approaches, and improve the scientific foundation for environmental protection decisions. EPA conducts problem-driven, interdisciplinary research to address specific environmental risks, and is committed to using science and innovation to reduce risks to human health and the environment, based on needs identified by EPA's program and regional offices and as well as state and tribal partners. Specifically, over the next five years, the Agency will strengthen alignment of its research to support EPA

programs, regions, states, and tribes in accomplishing their top human health and environmental protection priorities for improved air quality, clean and safe water, revitalized land, and chemical safety.<sup>42</sup> Working closely with ECOS and its subsidiary, the Environmental Research Institute of the States (ERIS), the Agency will strive to connect state research needs with Agency priorities, and work to improve communication of research results. Through the public-private coalition Interstate Technology and Regulatory Council,<sup>43</sup> EPA will encourage the adoption of innovative technologies and solutions. The Agency

will also emphasize the translation of its work products for end user application and feedback.

EPA research will be reviewed by various scientific advisory boards (e.g., Board of Scientific Counselors) that are made up of recognized experts in various scientific, engineering, and social science fields and may be from industry; business; public and private research institutes or organizations; academia; federal, state, tribal, and local governments; nongovernmental organizations; and other relevant interest areas.

<sup>42</sup> EPA research under Homeland Security supports efforts outlined in A Cleaner, Healthier Environment (Goal 1) objectives.

<sup>43</sup> For more information on the Interstate Technology and Regulatory Council, go to <http://www.itrcweb.org/>.

## Long-Term Performance Goal

LTPG 3.3.1 By September 30, 2022, increase the percentage of research products meeting customer needs.<sup>44</sup>

### Strategies for Achieving the Objective

#### Air Quality

EPA's research will advance the science and provide the information critical to improve air quality and to inform stationary source regulations; vehicle and fuel standards and certification; emission inventories; air quality assessments; and domestic ozone actions. The results of Agency research to support air quality program priorities will inform EPA programs; state, tribal, and local air programs; communities; and individuals about measures and strategies to reduce air pollution. Researchers will publish peer-reviewed scientific journal articles to disseminate research findings as appropriate and consistent with resource and program needs.

#### Over the next five years, the Agency will:

- Deliver state-of-the-art tools for states and tribes to use in identifying effective emission reduction strategies to meet national ambient air quality standards and enhance air quality measurement methods used to ascertain compliance with NAAQS.
- Assess human and ecosystem exposures and effects associated with air pollutants on individual, community, regional, and global scales.
- Develop and evaluate approaches to prevent and reduce pollution, particularly sustainable, cost-effective, and innovative multi-pollutant and sector-based approaches.
- Provide human exposure and environmental modeling, monitoring, metrics, and information needed to inform air quality decision making at the state, tribal, and local level.

#### Safe and Sustainable Water Resources

EPA will develop innovative, cost-effective solutions to current, emerging, and long-term water resource challenges for complex chemical and biological contaminants. Using a systems approach to develop scientific and technological solutions for protecting human health and aquatic ecosystems, EPA researchers partner with program experts; federal and state agencies; tribes; local communities; academia; nongovernmental organizations; and private stakeholders.

<sup>44</sup> Measure text updated from "By September 30, 2022, increase the number of research products meeting customer needs." Based on a pilot survey, 77% of products were delivered in FY 2018 that met customer needs. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

## Over the next five years, the Agency will:

- Support safe drinking water by focusing research on assessing the distribution, composition, remediation, and health impacts of known and emerging chemical and biological contaminants.
- Improve methods for fast and efficient waterborne pathogen monitoring in recreational waters.
- Investigate health impacts from exposure to harmful algal/cyanobacteria toxins, and develop innovative methods to monitor, characterize, and predict blooms for early action.
- Support states and tribes in meeting their priorities and setting water quality and aquatic life thresholds.
- Assist states, tribes, communities, and utilities in addressing stormwater and wastewater infrastructure needs through applied modeling, technical assistance, and capture-and-reuse risk assessments.
- Provide water reuse research support on potable and non-potable use guidance for states and tribes.

## Sustainable and Healthy Communities

EPA will conduct research to support regulatory activities and protocol development for the National Oil and Hazardous Substances Pollution Contingency Plan and provide on-demand technical support at cleanup sites managed by federal, state or tribal governments, as well as assistance during emergencies. The Agency conducts health, environmental engineering, and ecological research and prepares planning and analysis tools for localities nationwide to use in facilitating regulatory compliance and improving environmental and health outcomes.

## Over the next five years, EPA will:

- Provide technical support to the states and tribes through technical support centers for remediating CERCLA-designated contaminated sites and returning them to productive use.
- Assist regional, state, tribal, and local leaders in reducing costs and setting science-based cleanup levels in areas designated under CERCLA.
- Characterize sites and contaminants released from leaking underground storage tanks identified under the LUST Trust Fund.
- Work with the ECOS/ERIS to evaluate the causal relationships between ecosystem goods and services and human health, and to document these relationships using EnviroAtlas.
- Assess the impact of pollution (e.g., health impact assessments) on such vulnerable groups as children, tribes, environmental justice communities, and other susceptible populations.

## Chemical Safety

EPA will evaluate and predict impacts from chemical use and disposal, and provide states and tribes with information, tools, and methods to make better informed, more timely decisions about the thousands of chemicals in the United States. The Agency will produce innovative tools that accelerate the pace of data-driven evaluations, enable knowledge-based decisions that protect human health, and advance the science required to anticipate and solve problems.

## Over the next five years, EPA will:

- Provide tools to more efficiently and cost-effectively evaluate the biological activity and health risks of chemicals and reduce the use of toxicity tests to animals.
- Use ToxCast/Tox21 data to develop high-throughput risk assessments, particularly for chemicals for which adequate risk assessment information has been historically unavailable.
- Develop online software tools to provide information on thousands of chemicals and integrate health, environmental, and exposure data to support regulatory and prioritization decisions.
- Explore how high-throughput exposure and hazard information can be combined to predict the potential for exposure and risk to susceptible subpopulations.
- Conduct nanoparticle research by using life-cycle analyses, evaluating impacts on ecosystem health, and supporting the development of safer nanomaterials in private industry.

## Human Health Risk Assessment

EPA also will focus on the science of assessments that inform Agency, state, and tribal decisions and policies. These risk assessments provide the research and technical support needed to ensure safety of chemicals in the marketplace, revitalize and return land to communities, provide clean and safe water, and work with states and tribes to improve air quality.

## Over the next five years, EPA will:

- Develop a portfolio of chemical evaluation products that use the best available science for use by EPA, states, tribes, and other federal agencies.
- Provide research and scientific support for proper TSCA implementation, as Congress intended.
- Develop assessment products, peer-reviewed toxicity values, and advanced exposure assessment tools to help inform Superfund and hazardous waste cleanups as required by RCRA and CERCLA.
- Provide scientific support to the risk and technology reviews conducted under the CAA.
- Provide integrated science assessments (ISAs) to support decisions to retain or revise the national ambient air quality standards. ISAs also inform benefit-cost and other analyses conducted by state, tribal, and local officials to support implementation of air quality management programs.
- Provide research and technical support to deliver safe drinking water by evaluating exposures to and health impacts of known and emerging chemical and biological contaminants.
- Work with states and tribes on research and development of new assessment technologies.

## External Factors and Emerging Issues

EPA faces a number of challenges in its commitment to conducting robust science. For example, aging information technology infrastructure presents a risk to information security and limits the capacity for information management. Recruiting and maintaining a strong workforce with appropriate scientific and technical skillsets are also critical to EPA's research efforts.

# Objective 3.4

## Streamline and Modernize

Issue permits more quickly and modernize our permitting and reporting systems.

### Introduction

EPA implements a host of environmental statutes that affect the regulated community. Permitting requirements under these statutes can impose a variety of costs, including direct costs and opportunity costs related to uncertainty, delay, and cancellation. Delays in the approval of permits and modifications by federal, state, or tribal permitting authorities can postpone or prevent manufacturers from building,

expanding, or beginning operations, even if the affected operations ultimately may be deemed suitable as proposed. Delays can also impact construction of major infrastructure projects. EPA is committed to speeding up the processing of permits and modifications to create certainty for the business community, leading to more jobs, increased economic prosperity, and streamlined permit renewals, which incorporate up-to-date information and

requirements more quickly, thereby improving environmental protection. Further, EPA will continue to convert permit applications and reports that rely on paper submissions to electronic processing in order to reduce burden, shorten the wait for approval decisions, and increase the opportunity for public transparency.

### Long-Term Performance Goal

LTPG 3.4.1 By September 30, 2022, reach all permitting-related decisions within six months.<sup>45</sup>

### Strategies for Achieving the Objective

Over the next five years, EPA will systematically collect and report permitting data for each of its permitting programs. The Agency will employ business process improvement strategies, such as Lean, to increase efficiencies in all permitting processes and meet our commitments. The Agency will also work with states and use Lean techniques to streamline the review of state-issued permits. Solutions may include conducting earlier triage and communications, conducting Agency reviews in parallel with public reviews, and/or focusing reviews where they add the most value.

EPA will consider where policy changes can improve permitting efficiency without sacrificing environmental results. Examples include expanding the scope of minor permit modifications to reduce the number of permit reviews required, reinvigorating the use of plant-wide applicability limits (PALs) to reduce unnecessary permitting transactions, and increasing states' ability to incorporate federal regulations by reference, enabling them to adjust quickly and efficiently to new regulatory provisions.

<sup>45</sup> Baseline and FY 2020 target will be determined in FY 2019. (No footnote in FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

EPA will modernize permitting and reporting processes through efforts such as E-Enterprise for the Environment, a shared governance model with EPA, states, and tribes. EPA will work with states and tribes to achieve this objective without overburdening those entities with costly unnecessary reporting systems and technology. Building on efforts to date, EPA will collaborate with its partners on the following systematic process improvements:

- E-Enterprise Web Portal: A web portal that allows the states, tribes, regulated community, and EPA to transact business, such as permitting and reporting, and provides easy access to needed information.
- E-permitting: An online system to ensure the ability to apply for, track the status of, and receive a permit electronically.

## External Factors and Emerging Issues

Sustainable resource levels for states, tribes, and EPA are critical to efforts to streamline and modernize permitting processes. Support from states and tribes, including state and tribal capacity for maintaining and increasing delegation, is also critical to streamlining and modernizing permitting processes. The global shift to digital services for communication and transaction raises expectations of EPA stakeholders and provides more robust approaches and technologies for developing electronic services.



EPA will modernize permitting and reporting processes through efforts such as E-Enterprise for the Environment, a shared governance model with EPA, states, and tribes.

# Objective 3.5

## Improve Efficiency and Effectiveness

Provide proper leadership and internal operations management to ensure that the Agency is fulfilling its mission.

### Introduction

To support its mission to protect human health and the environment, EPA will improve the efficiency and effectiveness of its business processes. Focus areas will include financial, facility, human resource, contract, grant, and information technology/information management. EPA will improve its future

workforce, modernize and streamline its business practices, and take advantage of new collaborative and cost-effective tools and technologies. The Agency will build a modern and secure work environment that will protect critical information and support its efforts to address the environmental problems

of the 21<sup>st</sup> century. EPA will work to alleviate challenges associated with outdated or non-existent policies, tension between centralized and decentralized approaches, myriad federal acquisition and grants requirements, complex processes, and fluctuating levels of expertise across Agency programs.

### Long-Term Performance Goals

LTPG 3.5.1 By September 30, 2022, reduce unused office and warehouse space by 850,641 sq. feet.<sup>46</sup>

LTPG 3.5.2 By September 30, 2022, reduce procurement processing times by achieving 100% of procurement action lead times (PALT).<sup>47</sup>

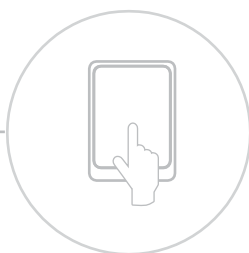
LTPG 3.5.3 By September 30, 2022, improve 250 operational processes.

LTPG 3.5.4 By September 30, 2022, increase enterprise adoption of shared services by four.<sup>48</sup>

<sup>46</sup> Baseline is 5,264,846 square feet as of FY 2017.

<sup>47</sup> Baseline, as of September 30, 2018 is 77% for all contract actions awarded within PALT. (Footnote updated from FY 2018-2022 EPA Strategic Plan published February 12, 2018.)

<sup>48</sup> Baseline is 5 administrative systems/operations shared services in FY 2017.



## Strategies for Achieving the Objective

EPA will modernize and improve business processes and operations to promote transparency, efficiency, and effectiveness; enhance collaborative, results-driven partnerships with internal and external business partners; recruit, develop, and maintain a highly-skilled, diverse, and engaged workforce; and improve the capabilities and cost-effectiveness of its information technology (IT) and information management (IM) systems.

EPA will apply Lean principles and will leverage input from customer-focused councils, advisory groups, surveys, workgroups, acquisition partnership initiatives, technical user groups, portfolio reviews, and federal advisory committees to identify business process streamlining opportunities. To improve the efficiency and cost effectiveness of its operations, EPA will standardize and streamline internal business processes in its acquisition and grants processes and systems, and use additional federal and/or internal shared services when supported by business case analysis.

EPA will ensure its workforce is positioned to accomplish the Agency's mission effectively by providing access to quality training and development opportunities that will improve staff's and managers' skills, knowledge, and performance, and prepare them to capitalize on opportunities that advance progress. EPA will improve its workforce planning and management, strengthen its Senior Executive Service, and focus on developing and maintaining a highly-skilled technical workforce.

EPA also will transform and modernize its information systems, tools, and processes to improve how the Agency collaborates both internally and with external stakeholders. EPA will enhance the power of information by delivering on-demand data to the right people at the right time. To enable the Agency, its partners, and the public effectively to acquire, generate, manage, use, and share information—a critical resource in protecting human health and the environment—EPA will improve its IT/IM capabilities and customer experiences. EPA will employ enterprise risk management and financial data analytics to support data management decision making, using the enterprise risk management framework mandated by OMB Circular A-123.

To ensure that critical environmental and human health information is adequately protected, EPA will strengthen its cybersecurity posture. The Agency will focus on implementing two key cybersecurity priorities—the mandated federal-government-wide Continuous Diagnostics and Mitigation (CDM) effort, and the complementary EPA-specific Cyber Risk Mitigation Projects (CRMPs). These two priorities introduce or improve upon dozens of cybersecurity capabilities, enhance the Agency's ability to respond to threats, and improve EPA's privacy posture via the Privacy Act of 1974. EPA will work closely with the Department of Homeland Security and other partners in implementing CDM capabilities.

To better understand complex interactions between pollutants and the environment and address the environmental problems of the 21<sup>st</sup> century effectively and efficiently, EPA and its partners analyze large volumes of data. EPA will develop a comprehensive data management strategy that addresses the collection, management, and use of data generated both internally and from external partners including states, tribes, grantees, the regulated community, and citizen science. The Agency will deploy new data analysis, data visualization, and geospatial tools in a Cloud-based framework to enable analysis and provide the basis for informed decision making.

Environmental decision making across media programs requires access to high-quality data and analytics. EPA will build shared IT services, maximizing the benefits of our investments and ensuring consistency and scalability in tools and services. Over the next five years, EPA programs that receive submissions from outside the Agency, whether from the reporting community, states, tribes, or local governments, will rely increasingly on centrally-developed and maintained information services, decreasing the volume of computer code each program must develop and maintain. Shared services will reduce reporting burden for submitting entities and improve data quality for EPA. EPA programs, states, and tribes must establish a common catalog of shared services and agree to a minimum set of common standards and practices.

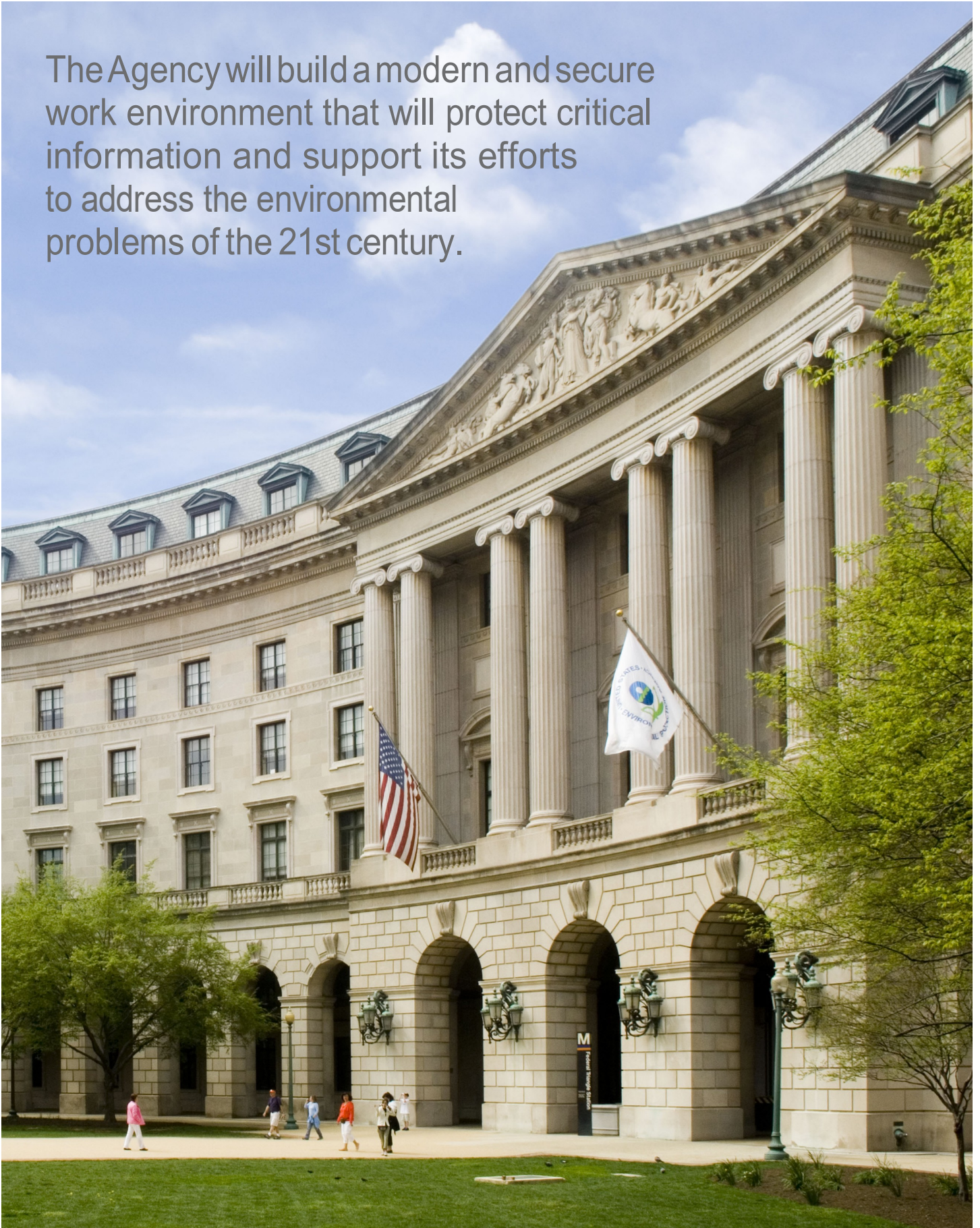
The Agency will enhance its extensive information resources by designing an enterprise-wide information architecture that will facilitate the electronic management of data and information, as well as multimodal access, effective searching, and ease of use. The Agency's future information management architecture will support official recordkeeping requirements, as well as daily document management, business processes, information access, and legal needs of EPA employees and organizations, while also being flexible, scalable, and cost effective.

## External Factors and Emerging Issues

EPA faces a number of factors that may impede its ability to promote effective and efficient internal operations. The Agency's ability to attract and retain staff skilled in human resources, IT/IM, cybersecurity, and acquisition management and staff with scientific and technical expertise is a continuing challenge in improving Agency operations. A lack of category-focused skills and business acumen can negatively affect strategic sourcing decisions. Myriad federal acquisition and grant requirements, complex processes, and varying levels of expertise across Agency programs often prevent the timely awarding of contract and grant vehicles to meet Agency demands. EPA must increase its competencies in these areas through a robust training program for staff and managers.

Without standard business processes, EPA cannot achieve its objectives. For example, tension between local needs and Agency-wide strategies may result in missed opportunities to make effective strategic sourcing decisions. This not only impedes Agency efforts to modernize business processes and streamline IT infrastructure, but also affects the ability of government shared service providers to serve additional customers and use standard software to achieve efficiencies and cost savings. Furthermore, continually changing IT/IM and security requirements and variation among states and tribes require development of a holistic "Enterprise-Level Vision and Data Strategy" that optimizes both business processes and solutions; aligns all data programs, resources, and budgets; and strengthens the Agency's enterprise risk strategies. Demands for IT/IM services will continue to grow, due to the increasing volume of environmental data and increased expectations of other agencies, regulated entities, the public, and EPA staff. As cybersecurity risks evolve, protecting EPA's information assets will continue to be a priority.

The Agency will build a modern and secure work environment that will protect critical information and support its efforts to address the environmental problems of the 21st century.



photos: cover/back	Nate McMichael - Chugach State Park, Alaska
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***EPA POLICY***  
***ON***  
***CONSULTATION AND COORDINATION***  
***WITH***  
***INDIAN TRIBES***

***May 4, 2011***



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## **I. Policy Statement**

EPA's policy is to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests. Consultation is a process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes. As a process, consultation includes several methods of interaction that may occur at different levels. The appropriate level of interaction is determined by past and current practices, adjustments made through this Policy, the continuing dialogue between EPA and tribal governments, and program and regional office consultation procedures and plans.

This Policy establishes national guidelines and institutional controls for consultation across EPA. EPA program and regional offices have the primary responsibility for consulting with tribes. All program and regional office consultation plans and practices must be in accord with this Policy. This Policy seeks to strike a balance between providing sufficient guidance for purposes of achieving consistency and predictability and allowing for, and encouraging, the tailoring of consultation approaches to reflect the circumstances of each consultation situation and to accommodate the preferences of tribal governments. The consultation process is further detailed in Section V of this document.



## II. Background

To put into effect the policy statement above, EPA has developed this proposed *EPA Policy on Consultation and Coordination with Indian Tribes* (Policy). The Policy complies with the Presidential Memorandum (Memorandum) issued November 5, 2009, directing agencies to develop a plan to implement fully Executive Order 13175 (Executive Order). The Executive Order specifies that each Agency must have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.

This Policy reflects the principles expressed in the *1984 EPA Policy for the Administration of Environmental Programs on Indian Reservations* (1984 Policy) for interacting with tribes. The 1984 Policy remains the cornerstone for EPA's Indian program and "assure[s] that tribal concerns and interests are considered whenever EPA's actions and/or decisions may affect" tribes (1984 Policy, p. 3, principle no. 5).

One of the primary goals of this Policy is to fully implement both the Executive Order and the 1984 Indian Policy, with the ultimate goal of strengthening the consultation, coordination, and partnership between tribal governments and EPA.

The most basic result of this full implementation is that EPA takes an expansive view of the need for consultation in line with the 1984 Policy's directive to consider tribal interests whenever EPA takes an action that "may affect" tribal interests.

The Policy is intended to be implemented using existing EPA structures to the extent possible. The use of current EPA business processes, such as the Action Development Process, National and Regional Tribal Operations Committees, and tribal partnership groups is purposeful so that consultation with tribal governments becomes a standard EPA practice and not an additional requirement.

The issuance of this Policy supports and guides the development and use of program and regional office consultation plans and practices consistent with this Policy.

### III. Definitions

A. “Indian tribe” or “tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1944, 25 U.S.C. 479a.

B. “Tribal official” means an elected, appointed, or designated official or employee of a tribe.

C. “Indian country” means:

1. All land within limits of any Indian reservation<sup>1</sup> under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

2. 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

3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

### IV. Guiding Principles

To understand both the purpose and scope of the Policy as well as the integration of the Policy, Memorandum, and Executive Order, it is helpful to list principles found in EPA’s January 2010 *Plan to Develop a Tribal Consultation and Coordination Policy Implementing Executive Order 13175*:


EPA’s fundamental objective in carrying out its responsibilities in Indian country is to protect human health and the environment.

EPA recognizes and works directly with federally recognized tribes as sovereign entities with primary authority and responsibility for each tribe’s land and membership, and not as political subdivisions of states or other governmental units.

EPA recognizes the federal government’s trust responsibility, which derives from the historical relationship between the federal government and Indian tribes as expressed in certain treaties and federal Indian law.

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<sup>1</sup> EPA’s definition of “reservation” encompasses both formal reservations and “informal” reservations, i.e., trust lands set aside for Indian tribes. *See for example* Oklahoma Tax Comm’n v. Sac and Fox Nation, 508 U.S. 114, 123 (1993); 56 Fed. Reg. 64876, 64881 (1991); or 63 Fed. Reg. 7254, 7258 (1998).



EPA ensures the close involvement of tribal governments and gives special consideration to their interests whenever EPA's actions may affect Indian country or other tribal interests.

When EPA issues involve other federal agencies, EPA carries out its consultation responsibilities jointly with those other agencies, where appropriate.

In addition, it is helpful to note the distinction between this Policy, federal environmental laws pertaining to public involvement, and Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. Under this Policy, EPA consults with federally recognized tribal governments when Agency actions and decisions may affect tribal interests. EPA also recognizes its obligations to involve the public as required by federal environmental laws. Finally, EPA recognizes the need to be responsive to the environmental justice concerns of non-federally recognized tribes, individual tribal members, tribal community-based/grassroots organizations and other indigenous stakeholders.

## **V. Consultation**

**A. The Consultation Process.** To the fullest extent possible, EPA plans to use existing EPA business operations to put this Policy into effect.

Tribal officials may request consultation in addition to EPA's ability to determine what requires consultation. EPA attempts to honor the tribal government's request with consideration of the nature of the activity, past consultation efforts, available resources, timing considerations, and all other relevant factors.

Consultation at EPA consists of four phases: Identification, Notification, Input, and Follow-up:

1. **Identification Phase:** EPA identifies activities that *may be* appropriate for consultation, using the mechanisms described in section B.2, below. The identification phase should include a determination of the complexity of the activity, its potential implications for tribes, and any time and/or resource constraints relevant to the consultation process. This phase should also include an initial identification of the potentially affected tribe(s).

2. **Notification Phase:** EPA notifies the tribes of activities that may be appropriate for consultation.

Notification can occur in a number of ways depending on the nature of the activity and the number of tribes potentially affected. For example, EPA may send out a mass mailing to all tribes, may contact the tribal governments by telephone, or provide notice through other agreed upon means. EPA normally honors tribal preferences regarding the specific mode of contact.

Notification includes sufficient information for tribal officials to make an informed decision about the desire to continue with consultation and sufficient information to understand how to provide informed input.

*Notification should occur sufficiently early in the process to allow for meaningful input by the tribe(s).*

3. **Input Phase:** Tribes provide input to EPA on the consultation matter. This phase may include a range of interactions including written and oral communications including exchanges of information, phone calls, meetings, and other appropriate interactions depending upon the specific circumstances involved. EPA coordinates with tribal officials during this phase to be responsive to their needs for information and to provide opportunities to provide, receive, and discuss input. During this phase, EPA considers the input regarding the activity in question. EPA may need to undertake subsequent rounds of consultation if there are significant changes in the originally-proposed activity or as new issues arise.

4. **Follow-up Phase:** EPA provides feedback to the tribes(s) involved in the consultation to explain how their input was considered in the final action. This feedback should be a formal, written communication from a senior EPA official involved to the most senior tribal official involved in the consultation.

## **B. *What Activities May Involve Consultation?***

1. **General Categories of Activities Appropriate for Consultation:** The broad scope of consultation contemplated by this Policy creates a large number of actions that *may* be appropriate for consultation.

The following list of EPA activity categories provides a general framework from which to begin the determination of whether any particular action or decision is appropriate for consultation. The final decision on consultation is normally made after examining the complexity of the activity, its implications for tribes, time and/or resource constraints, an initial identification of the potentially affected tribe(s), application of the mechanisms for identifying matters for consultation, described below, and interaction with tribal partnership groups and tribal governments.

The following, non-exclusive list of EPA activity categories are normally appropriate for consultation if they may affect a tribe(s):

- Regulations or rules
- Policies, guidance documents, directives
- Budget and priority planning development
- Legislative comments<sup>2</sup>
- Permits

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<sup>2</sup> Legislative comments are a special case where, due to short legislative timeframes, consultation in advance of comment submission may not always be possible. Nevertheless, EPA will strive to inform tribes when it submits legislative comments on activities that may affect Indian country or other tribal governmental interests.

- Civil enforcement and compliance monitoring actions<sup>3</sup>
- Response actions and emergency preparedness<sup>4</sup>
- State or tribal authorizations or delegations
- EPA activities in implementation of U.S. obligations under an international treaty or agreement.

2. **EPA's Mechanisms for Identifying Matters for Consultation:** The mechanisms EPA uses for identifying matters appropriate for consultation are as follows:

- a. **Tribal Government-Requested Consultation.** Tribal officials may request consultation in addition to EPA's ability to determine what requires consultation. EPA attempts to honor the tribal government's request with consideration of the nature of the activity, past consultation efforts, available resources, timing considerations, and all other relevant factors.
- b. **Action Development Process (ADP).** Early in the process, the lead program office assesses whether consultation is appropriate for the subject action. Its determination is available to tribes in the semiannual Regulatory Agenda as well as in the subset of rules on the Regulatory Gateway accessed through the EPA website.

This Policy is not intended to subject additional Agency actions to the ADP process for the sole purpose of a consultation analysis. Non-ADP actions are subject to consultation analysis through other mechanisms identified within the Policy.

- c. **National Program Offices and Regional Offices.** For those actions and decisions not in the ADP process, program and regional offices also determine if consultation is appropriate under this Policy. EPA's Tribal Consultation Advisors, described below, provide assistance with that determination. Such determination includes coordination with national and/or regional tribal partnership groups.
- d. **National and Regional Tribal Partnership Groups.** EPA meets regularly with a number of national and regional tribal partnership groups. These groups assist in the identification of matters that may be appropriate for consultation.

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<sup>3</sup> Primary guidance on civil enforcement matters involving tribes can be found in "Guidance on the Enforcement Priorities Outlined in the 1984 Indian Policy," and "Questions and Answers on the Tribal Enforcement Process." This guidance is intended to work with the Tribal Consultation Policy in a complementary fashion to ensure appropriate consultation with tribes on civil enforcement matters.

<sup>4</sup> The term "response" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) includes removals and remedial actions.

**C. *When Consultation Occurs.*** Consultation should occur early enough to allow tribes the opportunity to provide meaningful input that can be considered prior to EPA deciding whether, how, or when to act on the matter under consideration. As proposals and options are developed, consultation and coordination should be continued, to ensure that the overall range of options and decisions is shared and deliberated by all concerned parties, including additions or amendments that occur later in the process.

**D. *How Consultation Occurs.*** There is no single formula for what constitutes appropriate consultation, and the analysis, planning, and implementation of consultation should consider all aspects of the action under consideration. In the case of national rulemaking, a series of meetings in geographically diverse areas may be appropriate. For more routine operational matters, a less formal process may be sufficient.

## **VI. Managing the Consultation Process**

### **A. Roles and Responsibilities**

The following roles and responsibilities have been defined to allow EPA to effectively implement this Policy. These roles and responsibilities reflect the fact that, while oversight and coordination of consultation occurs at EPA headquarters, as a practical matter, much of the actual consultation activity occurs in EPA's program and regional offices. The responsibility for initially analyzing the need for consultation and then subsequently carrying it out, resides with these offices.

1. **Designated Consultation Official:** In addition to being the EPA's National Program Manager for the EPA Tribal Program, EPA's Assistant Administrator for the Office of International and Tribal Affairs (OITA) is the EPA-Designated Consultation Official under the Executive Order. These responsibilities include coordination and implementation of tribal consultation in accordance with this Policy and Agency compliance with the 1984 Indian Policy.


The Designated Consultation Official has the authority for: (1) defining EPA actions appropriate for consultation, (2) evaluating the adequacy of that consultation, and (3) ensuring that EPA program and regional office consultation practices are consistent with this Policy.

Per the Memorandum, the Designated Consultation Official reports annually to OMB on the implementation of the Executive Order.<sup>5</sup> Further, the Designated Consultation Official certifies compliance with the Executive Order for applicable EPA activities. The American Indian Environmental Office (AIEO) is located within OITA and coordinates the operational details of the Policy and compiles consultation-related information for the Designated Consultation Official.

2. **Assistant Administrators:** Assistant Administrators oversee the consultation process in their respective offices including analysis for potential

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<sup>5</sup> Report is filed annually by August 3<sup>rd</sup>.



consultation and the consultation process. Each program office is directed to prepare a semi-annual agenda of matters appropriate for consultation and a brief summary of consultation that has occurred. The program offices provide this information to AIEO for reporting to OMB. Each office is directed to designate a Tribal Consultation Advisor.

3. **Regional Administrators:** Regional Administrators oversee the consultation process in their respective offices including analysis for potential consultation and the consultation process. Each region is directed to prepare a semi-annual agenda of matters appropriate for consultation and a brief summary of consultation that has occurred. The regions provide this information to AIEO for reporting to OMB. Each region is directed to designate a Tribal Consultation Advisor.

4. **Tribal Consultation Advisors:** Tribal Consultation Advisors (TCAs) assist in identifying matters appropriate for consultation and prepare summary information on consultation activities and provide it to AIEO. TCAs receive and provide advice within their respective program offices and regions on what actions may be appropriate for consultation. TCAs also serve as a point-of-contact for EPA staff, tribal governments, and other parties interested in the consultation process. TCAs are the in-office subject matter experts to assist staff and management in the implementation of the Policy.

#### **B. National Consultation Meeting**

OITA/AIEO may convene a periodic National Consultation Meeting to be chaired by the Designated Consultation Official to review the consultation process across the Agency.

#### **C. Reporting**

Pursuant to the Memorandum, EPA submits annual progress reports to OMB on the status of the consultation process and actions and provides any updates to this Policy.

#### **D. EPA Senior Management Review**

The Designated Consultation Official communicates regularly with the Assistant and Regional Administrators to review the consultation system, to consider any matters requiring senior management attention, and to make adjustments necessary to improve the Policy or its implementation.

EPA plans to receive ongoing feedback on the Policy from all parties to assess its effectiveness and implement improvements.



**THE WHITE HOUSE**

Office of the Press Secretary

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For Immediate Release

November 5, 2009

**MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**

SUBJECT: Tribal Consultation

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship.

My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175. Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency's plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. The Assistant to the President for Domestic Policy and the Director of the OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on more (OVER) 2 the

implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation process more effective, if any, should be included in this report.

The terms "Indian tribe," "tribal officials," and "policies that have tribal implications" as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

BARACK OBAMA

# Presidential Documents

Title 3—

The President

Executive Order 13175 of November 6, 2000

## Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

**Section 1. Definitions.** For purposes of this order:

(a) “Policies that have tribal implications” refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) “Indian tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) “Tribal officials” means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

**Sec. 2. Fundamental Principles.** In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

**Sec. 3. Policymaking Criteria.** In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

**Sec. 4. *Special Requirements for Legislative Proposals.*** Agencies shall not submit to the Congress legislation that would be inconsistent with the policy-making criteria in Section 3.

**Sec. 5. *Consultation.*** (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the

need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

**Sec. 6. *Increasing Flexibility for Indian Tribal Waivers.***

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

**Sec. 7. *Accountability.***

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

**Sec. 8. *Independent Agencies.*** Independent regulatory agencies are encouraged to comply with the provisions of this order.

**Sec. 9. *General Provisions.*** (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

**Sec. 10. *Judicial Review.*** This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

THE WHITE HOUSE,  
*November 6, 2000.*

[FR Doc. **00-29003**

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11/8/84

## EPA POLICY FOR THE ADMINISTRATION OF ENVIRONMENTAL PROGRAMS ON INDIAN RESERVATIONS

### INTRODUCTION

The President published a Federal Indian Policy on January 24, 1983, supporting the primary role of Tribal Governments in matters affecting American Indian reservations. That policy stressed two related themes: (1) that the Federal Government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal Governments on a "government-to-government" basis.

The Environmental Protection Agency (EPA) has previously issued general statements of policy which recognize the importance of Tribal Governments in regulatory activities that impact reservation environments. It is the purpose of this statement to consolidate and expand on existing EPA Indian Policy statements in a manner consistent with the overall Federal position in support of Tribal "self-government" and "government-to-government" relations between Federal and Tribal Governments. This statement sets forth the principles that will guide the Agency in dealing with Tribal Governments and in responding to the problems of environmental management on American Indian reservations in order to protect human health and the environment. The Policy is intended to provide guidance for EPA program managers in the conduct of the Agency's congressionally mandated responsibilities. As such, it applies to EPA only and does not articulate policy for other Agencies in the conduct of their respective responsibilities.

It is important to emphasize that the implementation of regulatory programs which will realize these principles on Indian Reservations cannot be accomplished immediately. Effective implementation will take careful and conscientious work by EPA, the Tribes and many others. In many cases, it will require changes in applicable statutory authorities and regulations. It will be necessary to proceed in a carefully phased way, to learn from successes and failures, and to gain experience. Nonetheless, by beginning work on the priority problems that exist now and continuing in the direction established under these principles, over time we can significantly enhance environmental quality on reservation lands.

### POLICY

In carrying out our responsibilities on Indian reservations, the fundamental objective of the Environmental Protection Agency is to protect human health and the environment. The keynote of this effort will be to give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands. To meet this objective, the Agency will pursue the following principles:

1. THE AGENCY STANDS READY TO WORK DIRECTLY WITH INDIAN TRIBAL GOVERNMENTS ON A ONE-TO-ONE BASIS (THE "GOVERNMENT-TO-GOVERNMENT" RELATIONSHIP), RATHER THAN AS SUBDIVISIONS OF OTHER GOVERNMENTS.

EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as political subdivisions of States or other governmental units.

2. THE AGENCY WILL RECOGNIZE TRIBAL GOVERNMENTS AS THE PRIMARY PARTIES FOR SETTING STANDARDS, MAKING ENVIRONMENTAL POLICY DECISIONS AND MANAGING PROGRAMS FOR RESERVATIONS, CONSISTENT WITH AGENCY STANDARDS AND REGULATIONS.

In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved the interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.

3. THE AGENCY WILL TAKE AFFIRMATIVE STEPS TO ENCOURAGE AND ASSIST TRIBES IN ASSUMING REGULATORY AND PROGRAM MANAGEMENT RESPONSIBILITIES FOR RESERVATION LANDS.

The Agency will assist interested Tribal Governments in developing programs and in preparing to assume regulatory and program management responsibilities for reservation lands. Within the constraints of EPA's authority and resources, this aid will include providing grants and other assistance to Tribes similar to that we provide State Governments. The Agency will encourage Tribes to assume delegable responsibilities, (i.e. responsibilities which the Agency has traditionally delegated to State Governments for non-reservation lands) under terms similar to those governing delegations to States.

Until Tribal Governments are willing and able to assume full responsibility for delegable programs, the Agency will retain responsibility for managing programs for reservations (unless the State has an express grant of jurisdiction from Congress sufficient to support delegation to the State Government). Where EPA retains such responsibility, the Agency will encourage the Tribe to participate in policy-making and to assume appropriate lesser or partial roles in the management of reservation programs.

4. THE AGENCY WILL TAKE APPROPRIATE STEPS TO REMOVE EXISTING LEGAL AND PROCEDURAL IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS ON RESERVATION PROGRAMS.

A number of serious constraints and uncertainties in the language of our statutes and regulations have limited our ability to work directly and effectively with Tribal Governments on reservation problems. As impediments in our procedures, regulations or statutes are identified which limit our ability to work effectively with Tribes consistent with this Policy, we will seek to remove those impediments.

5. THE AGENCY, IN KEEPING WITH THE FEDERAL TRUST RESPONSIBILITY, WILL ASSURE THAT TRIBAL CONCERNS AND INTERESTS ARE CONSIDERED WHENEVER EPA'S ACTIONS AND/OR DECISIONS MAY AFFECT RESERVATION ENVIRONMENTS.

EPA recognizes that a trust responsibility derives from the historical relationship between the Federal Government and Indian Tribes as expressed in certain treaties and Federal Indian Law. In keeping with that trust responsibility, the Agency will endeavor to protect the environmental interests of Indian Tribes when carrying out its responsibilities that may affect the reservations.

6. THE AGENCY WILL ENCOURAGE COOPERATION BETWEEN TRIBAL, STATE AND LOCAL GOVERNMENTS TO RESOLVE ENVIRONMENTAL PROBLEMS OF MUTUAL CONCERN.

Sound environmental planning and management require the cooperation and mutual consideration of neighboring governments, whether those governments be neighboring States, Tribes, or local units of government. Accordingly, EPA will encourage early communication and cooperation among Tribes, States and local governments. This is not intended to lend Federal support to any one party to the jeopardy of the interests of the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals and neighbors often serves the best interests of both.

7. THE AGENCY WILL WORK WITH OTHER FEDERAL AGENCIES WHICH HAVE RELATED RESPONSIBILITIES ON INDIAN RESERVATIONS TO ENLIST THEIR INTEREST AND SUPPORT IN COOPERATIVE EFFORTS TO HELP TRIBES ASSUME ENVIRONMENTAL PROGRAM RESPONSIBILITIES FOR RESERVATIONS.

EPA will seek and promote cooperation between Federal agencies to protect human health and the environment on reservations. We will work with other agencies to clearly identify and delineate the roles, responsibilities and relationships of our respective organizations and to assist Tribes in developing and managing environmental programs for reservation lands.


8. THE AGENCY WILL STRIVE TO ASSURE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS.

In those cases where facilities owned or managed by Tribal Governments are not in compliance with Federal environmental statutes, EPA will work cooperatively with Tribal leadership to develop means to achieve compliance, providing technical support and consultation as necessary to enable Tribal facilities to comply. Because of the distinct status of Indian Tribes and the complex legal issues involved, direct EPA action through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion.

In those cases where reservation facilities are clearly owned or managed by private parties and there is no substantial Tribal interest or control involved, the Agency will endeavor to act in cooperation with the affected Tribal Government, but will otherwise respond to noncompliance by private parties on Indian reservations as the Agency would to noncompliance by the private sector elsewhere in the country. Where the Tribe has a substantial proprietary interest in, or control over, the privately owned or managed facility, EPA will respond as described in the first paragraph above.

9. THE AGENCY WILL INCORPORATE THESE INDIAN POLICY GOALS INTO ITS PLANNING AND MANAGEMENT ACTIVITIES, INCLUDING ITS BUDGET, OPERATING GUIDANCE, LEGISLATIVE INITIATIVES, MANAGEMENT ACCOUNTABILITY SYSTEM AND ONGOING POLICY AND REGULATION DEVELOPMENT PROCESSES.

It is a central purpose of this effort to ensure that the principles of this Policy are effectively institutionalized by incorporating them into the Agency's ongoing and long-term planning and management processes. Agency managers will include specific programmatic actions designed to resolve problems on Indian reservations in the Agency's existing fiscal year and long-term planning and management processes.



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