



The White Paper on Tribal Air Program and EPA Priorities October, 2017

Background

Tribes and Alaskan Native Villages (Tribes) have participated in air programs since the mid-seventies through ambient air quality monitoring, but were limited in their role in the program because the Clean Air Act (CAA) initially envisioned state implementation. The 1984 U.S. Environmental Protection Agency (EPA) Policy for the Administration of Environmental Programs on Indian Reservations changed that by laying the ground work for implementation via the rule of law, cooperative federalism and public participation that EPA's Tribal Air Program embodies. It identifies the following as the Agency and Tribes move forward to address air quality and environmental protection in Indian Country:

- The Agency stands ready to work directly with Indian Tribal governments on a one-to-one basis rather than as subdivisions of other governments.
- 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.
- The Agency will take affirmative steps to encourage and assist Tribes in assuming regulatory and program management responsibilities for Reservation lands.
- The Agency will take appropriate steps to remove existing legal and procedural impediments to working directly and effectively with Tribal governments on Reservation programs.
- 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.
- The Agency will encourage cooperation between Tribal, state and local governments to resolve environmental problems of mutual concern.
- The Agency will work with other federal Agencies which have related responsibilities on Indian Reservations to enlist their interest and support cooperative efforts to help Tribes assume environmental program responsibilities for Reservations.
- The Agency will strive to assure compliance with environmental statutes and regulations on Indian Reservations.

In the 1990 Clean Air Act Amendments, section 301(d) of the act enabled EPA to "Treat Tribes in a Manner Similar to a state" thereby allowing the Tribes to participate more fully in air quality programs. In 1992, the Tribes, Northern Arizona University's Institute for Tribal Environmental Professionals (ITEP) and EPA began a partnership that has, over time, facilitated the ability of implementing air quality

programs in Indian Country that fully embrace the current Agency priorities. The following highlights key aspects of EPA's Tribal Air Program that demonstrate these priorities:

I. Rule of Law:

"EPA's work won't go anywhere if it constantly faces legal challenges. By administering laws enacted by Congress and issuing environmental rules tethered to those statutes, EPA can achieve so much more for the protection of human health and our environment"- EPA

- The CAA section 301(d) allows EPA to treat Tribes in a manner similar to a state. Section 110(o) allows Tribes to develop implementation plans to achieve the National Ambient Air Quality Standards (NAAQS).
- The Tribal Authority Rule was promulgated in 1998 to implement section 301(d) of the CAA – since that time, Tribes' air programs have accomplished:
 - 149 Tribes manage air quality on their lands.
 - Approximately 120 have air grants.
 - 50 Tribes have Treatment as State (TAS) status:
 - 7 for developing Tribal Implementation Plans (TIP's); 30 for 505(a) reviewing Title V permits.
 - 9 for 126 "good neighbor provisions."
 - 4 for other provisions.
 - 6 Tribes have TIP's and 2 Tribes implement Title V programs.
 - Over 300 permits have been issued for major and minor sources of air pollution.
 - 5 Tribes with Class I redesignation under the Prevention of Significant Deterioration (PSD) program.
 - 9 Tribes with delegation of Federal rules to implement them in Indian Country.
- Regional Offices assist Tribes through grants, technical assistance and direct implementation where the Tribes need EPA support.
- Supporting implementation of Tribal Treaties per the EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights.
- Guidance and Regulation development that support Tribal air quality, including Tribal New Source Review (NSR). For example, EPA's Office of Radiation and Indoor Air (ORIA) developed a National Emission Standards for Hazardous Air Pollutants (NESHAP) for uranium mining.

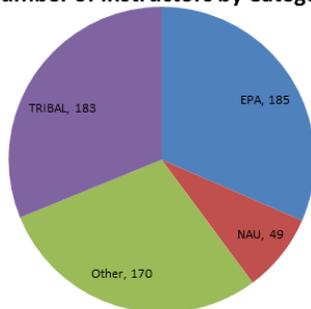
II. Cooperative Federalism

"States and Tribes are our partners in enforcing environmental laws and programs – EPA wants to build trust and a strong working relationship with these partners to get results for all Americans."- EPA

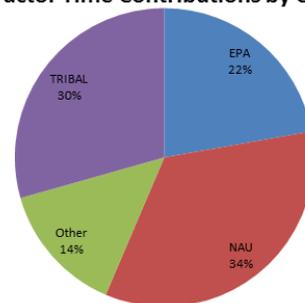
- U.S. EPA's Office of Air and Radiation's (OAR) air program to support the Tribes implementing the CAA has grown from several HQ staff to staffing a Tribal representative in each program office. Across office duties include:
 - Trains EPA staff on Tribal issues and partners with ITEP and other Tribal organizations to provide training, capacity-building and other support to Tribes.
 - Conducts outreach and consultation on rules.
- In 2016, OAR conducted 65 outreach sessions and 13 government to government consultations.
- EPA's Office of Air Quality Planning and Standards' (OAQPS') Tribal program started formally in 2000 with one staff person, now we have a team. Activities include:

- Formal Partnership between EPA and ITEP to provide technical support and training to Tribes working with our partners at the Tribal Air Monitoring Support (TAMS) Center on monitoring, emissions inventories, modeling and GIS.
- Guidance to Tribes on implementing CAA programs including: participating in designations for the NAAQS, reviewing state permits, issuing permits, developing TIPs, and Tribal NSR.
- U.S. EPA’s Office of Atmospheric Programs (OAP) created a Tribal team comprised of representatives from all four OAP Divisions in 2006.
 - Provides tools and technical assistance to Tribes to help them track their emissions, improve energy efficiency in their communities and businesses, and purchase and generate green power.
 - Partnered with Tribes to train Tribal staff on proper automotive refrigerant management and supported a Tribal pilot project to reduce ozone-depleting substances through an appliance collection program.
- ORIA has a team to promote healthy indoor air quality (IAQ), provide guidance and support for Radon testing and for regulating sources of radiation.
 - Tribal IAQ Healthy Homes Program Strategy – Indoor Environments Division (IED).
 - NTAA conducted the first ever National IAQ Needs Assessment for Indian Country.
 - IAQ is an emerging issue (74% of respondents in the Needs Assessment identified concern but of those only 34% had programs) highlighting the need to build capacity for IAQ.
- EPA’s Office of Transportation and Air Quality (OTAQ) – Identified an EPA Tribal DERA (Diesel Emissions Reduction Act) Coordinator.
 - DERA authorized by Congress in 2005 and 2011 with funds used to reduce emissions from existing diesel engines.
 - Tribal Specific Grant program began in 2008 with 26 Tribal DERA grants given in 2008 – 2016 for approximately 7 million dollars.
- Tribes continue to build capacity to improve air quality:
 - 85 Tribes currently operate air monitoring sites including ambient, Clean Air Status and Trends Network (CASTNET), and National Atmospheric Deposition Program (NADP). The longest operating CASTNET site has been collecting data for 15 years. Many of these monitors support state and regional networks/partnerships.
 - ITEP provides classroom and online courses to support Tribes in developing capacity and maintaining Tribal Air Programs. These courses have trained over 8500 individuals from 483 Tribes. Courses include: technical courses, programmatic courses, and IAQ.
 - Below is a summary pie chart of individual (unique) instructor contributions:

Number of Instructors by Category



Instructor Time Contributions by Category



- Tribes have partnered with EPA, States and others:
 - EPA partnered with Leech Lake Band of Ojibwe to test PM sensor technology.
 - EPA partnered with the Passamaquoddy Tribe to test a fish consumption survey tool to explore mercury exposure through subsistence fishing.
 - The Penobscot Nation collaborated with EPA on a RARE project investigate deposition of air pollutants into the Penobscot River.
 - Tribes in Maine and the state work together on monitoring network design.
 - Southern Ute and Colorado partnered on the implementation of a permitting program.
 - Western Regional Air Partnership and other Regional Planning Organizations.
- National air quality organizations such as the National Association of Clean Air Agencies (NACAA) via the National Tribal Air Association (NTAA).
- Industry and Non-profit organizations:
 - Minnesota quarterly mining meetings.
 - Northern Cheyenne works closely with the Coal Strip power plant that borders its Reservation.
 - Partnerships with the American Lung Association to implement the National Radon Action Plan as well as the National Association of Air Control Agencies and the Tribal Healthy Homes Network.
- Other Federal Agencies (HUD, USDA, HHS, IHS, DOE, VA, Commerce, and US Census).
 - Multiple partners with successful Tribal housing projects that merge federal, state, and local funding: Osage Nation (OK) - use of Energy Star/Indoor air Plus Home (16 homes); St. Regis Mohawk (NY) - Multiple housing projects, multiple Woodstove Change-out Projects.

III. Public Participation and Government to Government Consultation:

“EPA’s authority is derived from the democratic process, and that process is made more credible by engaging with the diverse views of the American public and addressing stakeholder input on the impacts of rules on families, jobs and communities.”- EPA

- In 2016, OAR conducted 65 outreach sessions and 13 government to government consultations.
- NTAA, a Tribal partnership organization with 124 member Tribes and growing, has provided air quality policy support and leadership to Tribes and some states on key issues including:
 - Developed 28 Policy Response Kits to help Tribes respond to important air quality policies and rules including: EO 13777, Clean Power Plan, Regional Haze, National Program Managers’ Guidance, and more.
 - Led the effort to ensure Tribal participation in the historic VW Clean Diesel Settlement through early advocacy for Tribal inclusion and technical support to Tribes in the settlement process. In addition:
 - Consultation with the U.S. DOJ and EPA to ensure fair access to Tribes to settlement funds.
 - Secured the creation of a Tribal Advisory Council to advise the settlement trustee.
 - Organized Work groups with Tribes and EPA on key technical and policy issues: NAAQS Designations; Tribal NSR; NAAQS Implementation; IAQ; Mercury; and the VW Settlement for Tribes.
 - **For More Information:**
 - NTAA - www.ntatribalair.org
 - ITEP - www7.nau.edu/itep/main/home/
 - TAMS - <http://www7.nau.edu/itep/main/tams>
 - EPA - <https://www.epa.gov/tribal-air>