



EPA Office of Compliance Sector Notebook Project

Profile of Tribal Government Operations
Chapters I and II

April 2007

Office of Compliance
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
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<http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/tribal.html>

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

March 2007

Dear Environmental Professional:

The Environmental Protection Agency's (EPA) Office of Enforcement and Compliance Assurance (OECA) is pleased to provide you with the *Profile of Tribal Government Operations (Tribal Profile)*. We hope that you will use the *Profile* and share it with your colleagues. EPA revised the *Tribal Profile* after seeking and receiving comments from tribes and tribal organizations.

The *Tribal Profile* presents information on the environmental regulations that may apply tribal government operations and related pollution prevention opportunities. Additionally, the *Tribal Profile* provides tribes with key information needed to ensure compliance with federal and tribal environmental regulations and simultaneously build tribal environmental program capacity for environmental compliance. The *Tribal Profile* is part of EPA's National Tribal Compliance Assurance Priority (Tribal Priority) and one of thirty-five EPA sector notebooks. Information on the Tribal Priority is available at EPA's at <http://www.epa.gov/compliance/data/planning/priorities/tribal.html>.

A Tribal Compliance Assurance Web Site <http://www.epa.gov/compliance/tribal/assistance>, containing up-to-date information and links to EPA and non-EPA resources and personnel will be available in February 2007. If you have any questions about the *Profile* or the Tribal Priority, please feel free to contact Jonathan Binder at (202) 564-2516, binder.jonathan@epa.gov, or by mail (EPA, 1200 Pennsylvania Avenue, N.W., Mail Code 2224A, Washington, DC 20460).

I hope you find the *Tribal Profile* to be a useful tool in helping you ensure environmental compliance in Indian Country.

Sincerely,

/s/

James Edward
Director
Compliance Assistance and Sector Programs Division
Office of Compliance

PREFACE

The *Profile of Tribal Government Operations (Tribal Profile)* is one in a series of volumes published by the United States Environmental Protection Agency (EPA) to provide comprehensive information of general interest regarding environmental issues associated with specific sectors, including federal facilities and local governments. There are currently thirty-five Sector Notebooks.

The *Tribal Profile* orients readers to the environmental responsibilities and challenges facing tribal governments. The *Tribal Profile* is especially useful in providing information on the complex and wide array of tribal government operations and applicable and relevant environmental regulations and pollution prevention opportunities. The *Tribal Profile* also offers references to more detailed information to facilitate compliance and pollution prevention.

OBTAINING THE TRIBAL PROFILE AND OTHER SECTOR NOTEBOOKS

Complimentary copies are available to tribal governments and certain other groups, including public and academic libraries, federal, state, and local governments, and the media.

All Sector Notebooks are available in hardcopy by calling (800) 490-9198, reference 310-R-05-001 and in electronic format at <http://www.epa.gov/compliance/sectornotebooks.html>.

THE SECTOR NOTEBOOK PROJECT AND SECTOR NOTEBOOK CONTACTS

EPA's Office of Compliance developed the *Tribal Profile* and each Sector Notebook. Appendix I contains information on, and contacts for, each Sector Notebook. For questions on the *Tribal Profile*, contact Jonathan Binder, Tribal Program Manager Office of Enforcement and Compliance Assurance, at binder.jonathan@epa.gov or (202) 564-2516. You can direct general questions about the Sector Notebook Project to Seth Heminway, Coordinator, Sector Notebook Project, at heminway.seth@epa.gov or (202) 564-7017.

UP-TO- DATE INFORMATION AND PEOPLE TO CONTACT

EPA's Tribal Compliance Assistance Web Site at www.epa.gov/compliance/tribal/assistance contains up-to-date information on ensuring compliance in Indian country and EPA Headquarters and Regional personnel who can offer you assistance.

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DISCLAIMER

The *Tribal Profile* is for employees of EPA and the general public for informational purposes only. The *Tribal Profile* was reviewed inside EPA, but its contents do not necessarily reflect the views or policies of EPA or any other organization mentioned within. Mention of organizations, trade names commercial products, or events does not constitute endorsement or recommendation for use. The statutory provisions and regulations described in the *Tribal Profile* contain legally binding requirements. The *Tribal Profile* is not a regulation itself, nor does it change or substitute for those provisions and regulations. Thus, the *Tribal Profile* does not impose legally binding requirements on EPA, tribes, states, or the regulated community. In addition, the *Tribal Profile* is not intended and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States.

Note: EPA’s Office of Enforcement and Compliance Assurance, Compliance Assistance and Sector Programs Division developed the *Tribal Profile*. Special thanks to the many individuals inside EPA who reviewed the *Tribal Profile* and provided valuable comments, particularly Jonathan Binder, Jeffrey Brown, Joe Edgell, Dan Martin, Catherine Tunis, Elizabeth Wendt, and Barbara Wester. Additional thanks go to Mary Andrews, Jenny Beilanski, Jeff Besougloff, Steve Clark, Darrell Harmon, Ken Harmon, Jim Havard, William Lienesch, Trish McKenzie, Nick Nichols, Kris Range, and Martin Topper. The Inter Tribal Council of Arizona, Inc. provided initial contract (PR-DC-01-02451/YDC-049) support and the Northwest Indians Fisheries Commission and Robert Pojasek, Pojasek and Associates, provided additional material. Abt Associates provided subsequent contract support (EP-W-04-058, WA 02-OPT1).

CHAPTER 1. INTRODUCTION

1.1 WHY A TRIBAL PROFILE

The mission of the United States Environmental Protection Agency (EPA or Agency) is to protect human health and the environment. EPA works with federally-recognized Indian tribes (tribes) to protect human health and the environment, in a manner consistent with EPA's trust responsibility to tribes and the government-to-government relationship.

The *Profile of Tribal Government Operations (Tribal Profile)* presents information on many aspects of tribal government operations that affect the environment and human health. As such, the *Tribal Profile* provides environmental professionals working with tribes key information needed to effectively understand the environmental regulations that may apply to such tribal operations and related pollution prevention opportunities. The *Tribal Profile* also offers material related to building tribal compliance capacity and achieving environmental compliance. To this end, the *Tribal Profile* gives the reader information on:

- The different types of tribal governments;
- The types of tribal government operations that have the potential to significantly affect human health and the environment;
- The potential environmental impacts of those operations;
- Opportunities to reduce environmental impacts through pollution prevention;
- The regulatory requirements with which tribal governments must comply; and
- Information on federal and non-federal resources available to achieve compliance and potential pollution prevention opportunities.

U.S. Environmental Protection Agency Strategic Plan

EPA's work with tribes is based on the recognition that tribes have unique cultural, jurisdictional, and legal issues that must be considered when coordinating and implementing environmental programs in Indian country. One of their cultural distinctions is a longstanding commitment to environmental stewardship. Native Americans recognize the importance of not only protecting the environment, but of pursuing a longer-term goal of sustainability – a perspective that has much to offer as EPA pursues stewardship efforts.

EPA works with each tribe on a government-to-government basis. The Agency's 1984 Indian Policy formally recognizes the uniqueness of tribes and their rights as sovereign governments. In keeping with that policy, EPA will pursue innovative and coordinated programs that complement tribal government structures and incorporate tribal priorities to protect human health and the environment in Indian country.

1.2 HOW THE TRIBAL PROFILE IS ORGANIZED

The *Tribal Profile* presents general information on many aspects of tribal governments that affect the environment. In addition to this introductory chapter, the *Tribal Profile* contains three additional chapters:

- **Chapter 2** presents an overview of tribal governments, including the types, numbers, and sizes of tribal governments in the United States.
- **Chapter 3** identifies the major operations conducted by tribal governments, the environmental impacts of these operations, the applicable environmental requirements, and pollution prevention opportunities.
- **Chapter 4** provides an overview of the federal statutes and regulations that may affect the major operations conducted by tribal governments, including information on EPA authorization of tribal governments to implement federal environmental programs.
- **Appendices** provide comprehensive support material, including information on EPA's media and Indian programs, references to compliance and technical assistance documents, financial assistance resources, and green building and pollution prevention opportunities.

U.S. Environmental Protection Agency Strategic Plan

EPA's work with tribes to "[p]rotect human health and the environment on tribal lands by assisting federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, implement environmental programs in Indian country.

Chapter 3 is the heart of the *Tribal Profile* and focuses on eleven specific types of operations:

- Public safety;
- Healthcare programs;
- Land use management;
- Tribal government enterprises;
- Construction and construction management;
- Water resource management;
- Water supply;
- Wastewater management;
- Pesticides application and regulation;
- Solid waste management; and
- Vehicle/Equipment maintenance.

Although this list may not include all operations conducted by tribal governments, it is representative of the operations that present the most significant environmental impacts. The *Tribal Profile* intentionally omits other operations with significant environmental aspects and impacts in Indian country, such as agriculture, mining, pulp and paper industry, and power generation, because they are the subjects of other EPA sector notebooks that offer comprehensive information on environmental concerns common to similar operations. A complete list is available at: <http://www.epa.gov/compliance/sectornotebooks.html>.

It should be noted that tribal environmental laws, in addition to federal environmental laws, may regulate many operations conducted by tribal governments and private entities within a reservation. As such, tribal governments may also play the role of the regulator for many facilities in Indian country. The regulatory authority is discussed in Chapter 2 and Chapter 4.

1.3 SCOPE OF THE TRIBAL PROFILE – EVERY TRIBE IS DIFFERENT

It is impossible to describe every aspect of tribal governments, tribal government operations, or Native American history and culture. Tribes and native communities are numerous and diverse as well as culturally rich and unique, and have differing perspectives on, and interests in, environmental protection. A tribal government may not have each (or any) of the operations described in Chapter 3. However, it is possible to provide general insight into tribes and more specific insight into the range of environmental issues encountered. Of course, a tribal government's facilities may have unique characteristics that are not fully captured in the *Tribal Profile*. The *Tribal Profile* serves, therefore, as an effective guide to tribes and EPA personnel to help them understand and address environmental issues.

To produce a manageable document, the *Tribal Profile* focuses on providing summary information for each topic. This format provides a synopsis of each issue, and references where more in-depth information is available. Text originated from a variety of sources, and was usually condensed from detailed sources pertaining to specific topics. This approach allows for a wide coverage of activities that can be further explored using the references listed throughout the *Tribal Profile*.

1.4 THE TRIBAL PROFILE IS ADAPTABLE TO PARTICULAR NEEDS

EPA encourages tribal governments and other groups to supplement or re-package the information contained in the *Tribal Profile* to include more specific information that may be available. EPA plans to make the information contained in the *Tribal Profile* available online at: <http://www.epa.gov/compliance/tribal/assistance>.

CHAPTER 2. OVERVIEW OF TRIBAL GOVERNMENTS

2.1 TRIBAL GOVERNMENTS – OVERVIEW OF HISTORY AND STRUCTURE

There are three distinct types of sovereign governments within the United States – the federal government, tribal governments, and state governments; the federal government is also responsible for fourteen insular areas, including Puerto Rico and the Virgin Islands.

Tribes possess significant powers of governance. The relationship between the United States and tribes is of one government to another government. This principle has shaped the entire history of dealings between the federal government and the tribes, and is lodged in the Constitution. Because the United States Supreme Court has recognized that the Constitution vests authority over Indian affairs in the federal government, generally, states have no authority over tribal governments. Tribal governments are not subordinate to state governments.

For the purposes of the Profile, the term *tribal government* means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that appears on the list of federally-recognized tribes published annually by the United States Department of the Interior [<http://www.doi.gov>].

Most tribal governments exercise jurisdiction over a single reservation and portions of a reservation may not be contiguous. Some tribes, however, share a reservation but maintain separate tribal governments. Other tribes share a reservation and govern together in a confederation, and some tribes lack any reservation. There is one formal reservation in Alaska and over 200 Alaska Native village corporations and 13 regional for-profit corporations in Alaska.

Tribes have the inherent right to choose the form of government that best suits their practical and cultural needs. Many tribes adopted constitutions patterned loosely on the Constitution after passage of the Indian Reorganization Act (IRA) of 1934. Other tribes operate under Articles of Association or other bodies of written law. Still other tribes have retained their traditional forms of government, which are codified in tribal customs and have added nontraditional elements, as appropriate. Thus, tribal governments are complex systems that vary from tribe to tribe. In each case, tribal governments are responsible for the people, resources, and activities within their jurisdictions except those aspects that have been withdrawn or modified by treaty, case law or by the United States Congress. IRA tribes and those tribes with written laws exercise this responsibility by making and enforcing laws and adjudicating cases, though not necessarily through separate branches of government.

The chief executive of a tribe, if one exists, is generally called the tribal chairperson, but may also be called principal chief, governor, president, administrator, or other name. The chief executive usually presides over what is typically called the tribal council or tribal business committee. Therefore, many tribal governments are like parliamentary bodies in that they combine executive and legislative functions. Typically, the tribal council performs the legislative function for the tribe, although some tribes require a referendum of the membership to enact laws. Tribal legislative authority includes, but is not limited to, regulation of commercial and business relations, environmental protection, land use regulation, regulation of domestic relations among members, some police powers, and chartering of business organizations. Tribes typically establish departments or agencies with responsibility for both regulating activities and providing services. The most common departments are listed below:

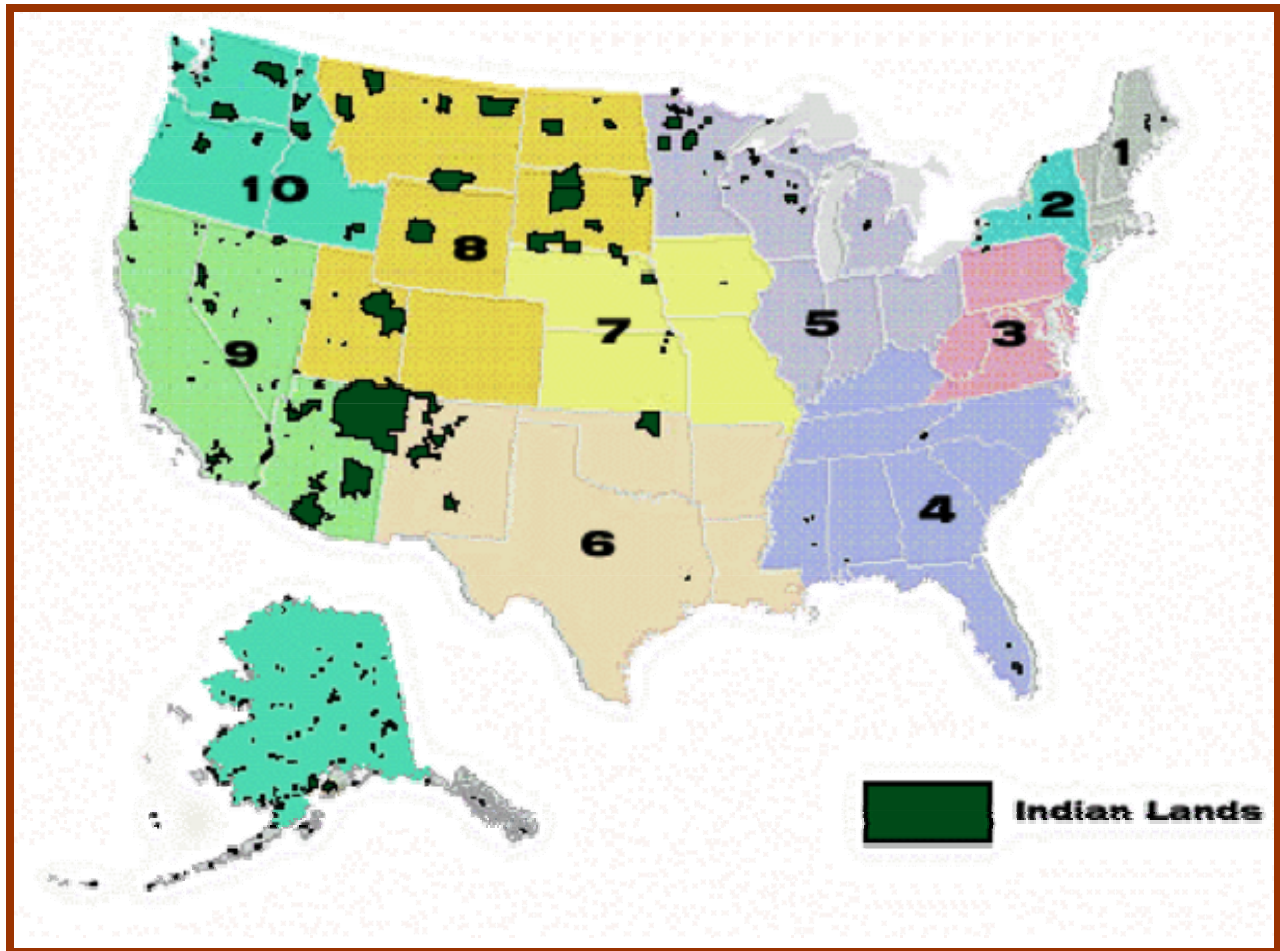
- Environment and/or natural resources;
- Health and welfare;
- Law enforcement;
- Education; and
- Housing.

Tribal governments may also establish a formal judicial structure that can ultimately seek tribal administrative or judicial sanctions to enforce tribal laws. Of course, some tribes retain traditional community-based forms of jurisprudence that conduct the same activities and provide the same services.

The Secretary of the Interior is responsible for acknowledging tribes pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 USC 479a. When federal recognition exists, the result is a trust responsibility flowing from the federal government to the tribe as a beneficiary. The Secretary publishes a list of federally-recognized tribes each year. To date, the Secretary of the Interior has acknowledged 562 tribal governments; no Alaska Native Village corporations are recognized. These federally-recognized tribes are disbursed throughout the United States. The heaviest concentration of tribes is in Alaska (227 tribes), California (106 tribes), Oklahoma (38 tribes), and Washington (29 tribes). There are over 55.7 million acres (approximately 3% of the United States) of tribal trust lands in the United States. In addition, Alaska Native Corporations retain title to 44 million acres, and individual tribes also own additional non-trust lands. In the 2000 Census, 4.1 million people identified themselves as American Indian and Alaska Natives (1.5 percent of the total United States population). Of that number, 2 million reported their enrollment in a particular tribe.

Exhibit 2-1 provides a national map of federally-recognized tribes and each Environmental Protection Agency (EPA) Region.

Exhibit 2-1. National Map of Federally Recognized Indian Tribes



The remainder of this chapter offers a broad overview of how tribes approach providing services and environmental regulations, and the role of public participation in tribal governments.

2.2 APPROACHES FOR PROVIDING SERVICES

Tribal governments have a special responsibility to their members. Tribes provide essential services and participate in the reservation economy both as a government (regulator) and as an entrepreneur and service provider because the tribe is typically a major business/facility owner within its own jurisdiction. Tribal businesses and services are as diverse as the tribal governments providing them. With respect to services, the mechanisms through which tribal governments provide the services are also diverse. Tribal governments often provide services through their own employees. A tribe, for example, may hire and retain its own personnel and equipment (*e.g.*, dumpsters, trucks) to collect solid waste within its boundaries. In contrast, a tribe may negotiate a contract with a private waste management company to collect solid waste. Through either mechanism, the tribal government is providing the service. It should also be

noted that even though a tribal government may not actually conduct the operation (*e.g.*, collect solid waste) when contracting with a private company, the tribal government may still be responsible for the environmental compliance of that operation and contractor. Tribal governments may be responsible for meeting environmental requirements of its operations, whether they actually conduct them or not.

Tribal governments may also provide tribal members with services through federal grants, contracts, compacts, and cooperative agreements through the Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended). This statute allows tribes to assume programs provided for federally-recognized tribes by the Interior and Health and Human Services Departments, especially those of the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS). Examples of such programs include the operation of healthcare facilities for IHS or schools operated by the BIA. Tribes may also operate federally-funded housing programs through block grants provided under the Native American Housing Assistance and Self Determination Act of 1996. Under these programs, tribes operate and maintain physical assets, infrastructure, and services initially funded with federal resources, including highways and roads, schools, water and sewerage facilities, and solid waste disposal systems. In these cases, the tribal government usually has the responsibility for environmental compliance. The federal government may also provide these and other services directly to tribal governments and tribal members. When the federal government provides the service, depending on the nature of federal involvement, the federal government may be responsible for environmental compliance, under federal and applicable tribal laws.

In certain situations, tribal governments may choose to enter into agreements with state and local governments to provide or share services. For example, a tribe and a local government may agree to allow the local government to collect solid waste within the tribe's boundaries. These agreements may be used to conserve financial resources or when a tribal government chooses not to provide these services itself. In other situations, individual tribal members can select the service provider(s) of choice (*e.g.*, pest control, phone service).

2.3 REGULATION OF TRIBAL GOVERNMENT OPERATIONS

Federal and tribal environmental statutes and regulations are major tools to protect the environment and human health in Indian country. Federal environmental statutes are enacted into law by the United States Congress and, in accordance with these statutes, EPA and other federal agencies develop corresponding regulations. Tribal environmental statutes are put into place by tribal governments. Both federal and tribal environmental statutes may contain enforcement mechanisms to deter and punish noncompliance.

Federal and tribal environmental laws and regulations apply to many tribal government operations. In the case where a tribe is a provider of a service or the owner and/or operator of a business, the tribe is both the regulator of the operation and the regulated entity, generally with different parts of the tribal government carrying out the separate functions. Under certain circumstances, tribal governments may implement federal environmental programs in the same manner as states. In these instances, the tribe is again both the regulator of the operation and the regulated entity. EPA-approved state programs generally do not apply in Indian country. EPA is responsible for ensuring compliance with federal environmental laws in Indian country, even when a tribe is operating a federal environmental program. Chapter 4 contains additional information on federal statutes and regulations applicable to tribal government operations.

The Government-to-Government Relationship

Under EPA's 1984 *Indian Policy*, 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.

2.4 TRIBES AND ENVIRONMENTAL PROTECTION

Tribes' interest in, and authority over, environmental protection can arise from statutes, federal executive orders, Indian treaties, agreements with the United States and/or state and local governments, or as a result of aboriginal title. Tribes generally exercise exclusive jurisdiction over civil claims arising in Indian country that implicate tribal interests. While, as a general rule, federal courts have held that tribes do not have inherent jurisdiction over non-members, the federal courts have established important exceptions to this general rule. In Montana v. United States, the United States Supreme Court held that a tribe "may regulate...the activities of non-members who enter consensual relationships with the tribe or its members [or] the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." Montana v. United States, 450 U.S. 544 (1981).

Under their own inherent tribal authorities, many tribes are developing environmental protection programs and exercising jurisdiction over tribal members and, in some cases, non-members. There is great variation in the scope and in the issues addressed by tribal environmental protection programs. These variations are due to multiple factors, including a tribe's location, the environmental conditions faced by each tribe, a tribe's individual relationship with the United States (by way of treaty, executive order, statute, or other situation), a tribe's relationship with surrounding state governments, and a tribe's size and financial and technical expertise. Because

each tribe is unique and has a unique history, a specific tribe's environmental program may cover some but not all environmental regulatory areas and may include a broad variety of regulations associated with planning, monitoring, permitting, and licensing. Ensuring compliance with the tribe's regulations is achieved through providing compliance assistance, conducting inspections, and taking enforcement actions.

A number of federal Indian treaties and federal laws explicitly reserve rights pertaining to the environment. These rights include rights to fish, hunt, and gather, rights to mineral estates and water rights. Some treaties explicitly reserve such rights within Indian reservations. Other treaties, particularly in the Pacific Northwest and the Great Lakes regions, reserve such rights both within reservation areas and also within ceded territories where the tribes traditionally maintained "usual and accustomed" hunting, fishing, or gathering places. Some treaties do not contain any explicit reservation of hunting, fishing, or gathering rights. Nonetheless, courts have held that treaties carry those rights necessary to realize the primary purposes of the treaty. How these off-reservation reserved rights or tribal resource claims in ceded areas may impact federal environmental program implementation should be addressed on a case-by-case basis.

2.5 TRIBAL ASSUMPTION OF FEDERAL ENVIRONMENTAL PROGRAMS

EPA recognizes tribal governments as the primary parties for setting standards, making environmental policy decisions, and managing programs for Indian reservations, in a manner consistent with Agency standards and federal regulations. Tribal governments may assume full or partial responsibility for a variety of EPA programs; EPA retains aspects of certain enforcement programs even when a tribe gets delegation of the whole program.

Federal environmental statutes that allow for EPA authorization of tribal assumption of federal programs or a substantial role for tribes are:

- Federal Insecticide, Fungicide, and Rodenticide Act;
- Safe Drinking Water Act;
- Comprehensive Environmental Response, Compensation, and Liability Act;
- Clean Water Act; and
- Clean Air Act.

In addition, eligible tribes may apply for approval to run certain federal environmental programs under two additional statutes:

- Toxic Substances Control Act; and

- Emergency Planning and Community Right-to-Know Act.

To assume regulatory program responsibility and be treated “in the same manner as a state,” tribes must generally meet the following criteria:

- The tribe must be federally-recognized;
- The tribe must have or be able to exercise substantial governmental powers;
- The tribe must have or have been delegated jurisdiction over the area in question; and
- The tribe must be reasonably expected to have the capability to effectively implement a program.

One important criterion for EPA’s evaluation of a tribal application for assumption of an environmental program is whether the functions to be exercised are within the applicant tribe’s jurisdiction. EPA asks tribes that are applying for regulatory program eligibility to demonstrate that they have adequate authority over the activities to be regulated. Demonstrating jurisdiction over activities on trust lands or lands owned by a tribe is usually relatively straightforward. Under principles of federal Indian law, tribes generally have inherent sovereign authority to regulate both their members and land held in trust (although specific federal statutes may have affected this general principle for some tribes).

As part of the evaluation, EPA examines whether a tribe has jurisdiction over non-member activities on non-member-owned fee lands within the boundaries of an Indian reservation, where a tribe seeks approval for such activities. EPA generally analyzes whether a tribe has jurisdiction over non-member activities on fee lands with respect to two potential sources of authority: 1) a tribe may have inherent authority over these activities; or 2) Congress may, by statute, delegate federal authority to a tribe.

In general, once a tribe has established one of the criteria, above, it need not reestablish that same criteria for subsequent programs. It must only establish that it has jurisdiction and capability for each subsequent program. If a tribe does not have capability, it must have a plan for acquiring capability over time. This capability is required because each program may require different skills and activities to provide the level and type of protection required by specific statutes and regulations.

Chapter 4 provides additional information on tribal regulatory programs, including which programs are eligible for treatment in the same manner as a state.

2.6 DIRECT FEDERAL IMPLEMENTATION IN INDIAN COUNTRY

In general, when tribal governments are unwilling or unable to assume full responsibility for federal environmental programs, EPA retains authority for directly implementing and enforcing these programs in Indian country. Given that environmental program responsibility requires capability and significant resources, tribes do not always find it practical to assume full responsibility for federal environmental programs.

Based upon a variety of factors, including program costs, availability of technical expertise, availability of technical assistance and maintenance costs, tribal governments may select certain high-priority activities, but may decide not to assume an entire regulatory program. When tribes decide not to undertake certain activities under federal environmental programs or when tribes do not to apply for entire programs, EPA retains direct implementation and enforcement of those environmental management programs.

The following is an illustrative selection of some tools that can provide assistance to tribal programs in situations where EPA directly implements programs in Indian country:

- Establish Tribal-EPA Environmental Agreements (TEAs) that identify tribal priorities and help with budget development;
- Develop Regional and National Environmental Work plans based on TEAs;
- Fine-tune Regional strategies so that direct implementation is consistent with tribal priorities; and
- Establish Direct Implementation Tribal Cooperative Agreements (DITCA) which allows tribes and eligible intertribal consortia to assist EPA in meeting its statutory obligations.

2.7 TRIBAL CAPACITY TO MANAGE FEDERAL ENVIRONMENTAL PROGRAMS

Tribal governments relate to the reservation environment both as a government and as a participant because they are often regulators, major landowners, and business owner/operators within their own jurisdictions. The diversity of tribal governments – structure, number, geography, environmental issues, and financial resources – affects their capacity to manage federal environmental programs and ensure regulatory compliance.

EPA and a variety of other federal agencies provide resources to support tribal capacity to manage environmental programs. The Indian Environmental General Assistance Program (GAP) Act (42 USC 4368(b)) provides a significant source of grants to build tribal capacity to

administer environmental programs and to provide technical assistance from EPA in the development of multimedia environmental management and/or regulatory programs. Capacity-building activities eligible for GAP funding include planning, hiring staff, environmental monitoring, and assessing environmental resources and pollution threats. In addition, many EPA program-specific grants help to build tribal environmental capability and can be used in concert with GAP grants to establish integrated tribal environmental programs.

Tribal governments must ensure that resources are available to operate and maintain regulated activities. In this situation, tribal governments operate like any government, business, organization, or household and manage cash inflow and outflow, savings accounts, investments, and debt. There may be a wide range of revenue sources available to tribes. These revenue sources include tribally owned or operated businesses, taxes, natural resource severance fees, royalties, and federal funds. For many tribal governments, like other government entities, revenue sources do not always cover expenses. Limited revenue sources may impact the services provided and environmental performance.

2.8 PUBLIC PARTICIPATION

Public participation can help ensure that tribal members and non-tribal members who reside in Indian country are afforded opportunities to meaningfully participate in the decision-making processes on issues which may impact their environment and public health. From planning a project or activity through implementation, such participation should involve the people who will be most affected in decision-making processes. This helps mitigate conflicts and misunderstandings and prevent consequent delays in operations.

Public participation activities can be divided into two basic categories: 1) public outreach and education; and 2) public involvement. Public outreach and education tools are designed to increase the public's awareness of environmental issues pertaining to government operations. Public involvement tools are designed not only to inform the public, but also to encourage activism and involve the public in decision-making processes. Public involvement is also important in fostering good relationships and open communication among operators of tribal government facilities, tribal governments, tribal members, non-tribal members, and other stakeholders. Examples of non-member involvement in tribal government processes include administrative procedures like processes for tribal regulation or inclusion of non-tribal members on regulatory boards.