



## U.S. Environmental Protection Agency – November 2004 Compliance and Enforcement National Priority: Tribal

The United States Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA) has established national priorities for federal fiscal years (FY) 2005 through 2007. OECA and the EPA's 10 Regions will make the following issues priorities for monitoring, compliance assistance, enforcement and cleanup actions over the next three years:

1. Clean Air Act: Air Toxics
2. Clean Air Act: Prevention of Significant Deterioration and New Source Review
3. Tribal
4. Clean Water Act: Wet Weather, including:
  - Concentrated Animal Feeding Operations
  - Combined Sewer Overflows
  - Sanitary Sewer Overflows
  - Storm Water
5. Resource Conservation and Recovery Act: Mineral Processing and Mining

After evaluating the Safe Drinking Water Act (SDWA) Microbial Rules as a national priority, the Agency determined that it was more appropriate to address the microbial non-compliance problems, which occur predominately at very small drinking water systems, through the SDWA core program. The Petroleum Refining national priority is near goal and will be assessed during the coming year to determine if sufficient progress has been made to return this priority to the core program.

The tribal strategy summary that follows provides clear goals to achieve maximum compliance with environmental regulations in order to protect human health and the environment.

### **Background**

Tribal was selected as a national enforcement and compliance assurance priority for the FY 2005 - FY 2007 period because it met the selection criteria: (1) increased national attention could lead to significant environmental benefits; (2) there were patterns of non-compliance; and (3) EPA was well-suited to take action in this area.

To regulate facilities in Indian country, federally-recognized Indian tribes (tribes) can seek to implement their own environmental protection programs and can seek program approval for certain federal environmental programs. Generally, EPA directly implements federal environmental laws in Indian country until tribes are able to implement approved programs. Under federal environmental laws, state programs are generally not applicable in Indian country. The potential impact of trans-boundary pollutants (pollutants moving across local and state borders) in Indian country and other tribal areas can, however, make state and local governments important partners in solving regional problems. Other federal agencies, with different

implementation responsibility and present or past involvement at federal facilities, are also important partners. EPA undertakes this priority consistent with the federal government's trust and consultation responsibilities to tribes, the government-to-government relationship with such tribes, and EPA's authorizing statutes and implementing regulations.

## **The Environmental Problems**

Tribal members face significant threats to human health and the environment posed by pollution of the air, water and land in Indian country and other tribal areas, including in Alaska, where federally-recognized tribes and tribal members have recognized rights and interests protected by treaty, statute, judicial decisions and other authorities.

A diverse spectrum of regulated facilities exists in Indian country, including drinking water and waste water treatment systems, manufacturing facilities, facilities discharging pollutants into the air or water, facilities storing, treating or disposing of solid or hazardous waste, abandoned waste sites and other pollution sources. Facilities near Indian country may also affect the air, water and land that tribes depend on.

## **Goals**

The primary goal of the tribal strategy is to significantly improve human health and the environment in Indian country and other tribal areas through EPA working with tribes on compliance assistance, compliance monitoring and enforcement activities. Through building tribal capacity and direct implementation, EPA will initially focus national attention on three areas: drinking water, schools and waste management.

Specifically, the goals are:

- Goal 1:** Enhance the ability of EPA and tribes to monitor compliance with federal and tribal laws in Indian country through analysis of readily available, accurate and reliable data.
- Goal 2:** Significantly expand tribal compliance assurance through development of tribal compliance assurance programs with specific emphasis on training tribal inspectors and other tribal environmental professionals.
- Goal 3:** Improve compliance at facilities that are in or affect Indian country through integrated use of compliance assistance, compliance monitoring and enforcement, including addressing facilities in significant noncompliance.

## **Strategic Tools**

### ***Capacity Building***

1. **Improving compliance assurance data** – Maintain and distribute accurate compliance and enforcement information on regulated facilities in Indian country. This information

will also cover regulated facilities outside of Indian country that affect Indian country.

2. **Improving EPA and tribal compliance assurance** – Significantly expand federal and tribal monitoring presence by developing tribal compliance assurance programs with specific emphasis on training tribal inspectors. By working with interested tribes, making an inventory of training needs and making appropriate training available, EPA will increase in three years the number of tribal inspectors authorized to conduct federal environmental inspections.
3. **Improving tribal training and access to relevant tools** – Increase the number of tribal environmental professionals, judges and law enforcement personnel who attend EPA's compliance and enforcement training and use EPA's compliance assurance tools.

### ***Compliance Monitoring and Enforcement***

1. EPA inspectors and EPA-authorized tribal inspectors will carry out compliance monitoring inspections, initially focusing on schools, drinking water and waste management. EPA Regions can identify other areas for targeted compliance assurance work.
2. EPA will use the inspection results to take appropriate enforcement actions in Indian country.

### ***Monitoring Progress***

EPA will collect, analyze and distribute data and information necessary to measure the results of building tribal compliance assurance capacity and focusing attention on EPA's compliance monitoring and enforcement presence in Indian country.

OECA and the EPA Regions will communicate with tribes, the Tribal Caucus of EPA's Tribal Operations Committee, the Regional Tribal Operations Committees, inter-tribal consortia and other tribal organizations about the national tribal strategy. EPA will also engage other federal agencies and communicate with other affected stakeholders.

### **Performance Measurement**

By the end of FY 2007, EPA anticipates that tribes should have significantly improved their ability to detect and resolve non-compliance by regulated facilities in Indian country. EPA, tribes, and other stakeholders should have much better data to target compliance assurance efforts at facilities that could significantly impact human health and the environment in Indian country. Increased EPA compliance monitoring and enforcement should substantially improve compliance among regulated entities in Indian country.

Because many tribal compliance assurance and enforcement programs are in the early stages of development, attention and resources will, in all likelihood, be required well beyond the three-year span of this priority. EPA Regions will continue to conduct direct implementation

activities, including inspections, compliance assistance and, as appropriate, enforcement in Indian country unless and until tribes implement approved federal programs.

OECA and the Regions will continue to analyze trends and significant noncompliance inside and outside of Indian country in order to evaluate our long-term progress. OECA and Regional strategies will, when needed, be adjusted to target non-complying business or industrial sectors or geographic areas, that disproportionately affect Indian country. Respectful consultation and dialogue with tribes and other affected stakeholders are an important part of progress monitoring and making the adjustments necessary to significantly improve human health and the environment in Indian country and other tribal areas.