

The Role of Tribes in SIP Development



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Tribal Issues Trust Responsibility and Legal Framework



- Federal Government has a trust responsibility to protect the “interests of the Tribes”
- EPA Tribal Policy – support tribal government self determination
- Executive Orders 13175: Require EPA work with the Tribes Government to Government

Tribal Issues Trust Responsibility and Legal Framework



- 1990 CAA Section 301(d): Congress recognized our obligation to treat Tribes in “a manner similar to a State”
 - Allows the tribes to take delegation of CAA programs but does not require they take delegation
 - Requires us to implement where the tribes don't
- 1998 Tribal Authority Rule

Tribal Authority Rule




- Recognizes states generally DON'T have jurisdiction in Indian country
- Allows for a modular approach
 - Recognizes tribes have limited resources and capacity
 - Where tribes don't take on the program EPA implements
- Identifies where Tribes will be treated in a manner similar to states.
 - Includes all aspects of the CAA except:
 - Schedules and deadlines
 - Sanctions
 - Criminal enforcement

Other options for Tribal Governments



- A Tribe may seek "treatment in the same manner as a state" (TAS) status for most programs (TAR, 40 CFR part 49)
- TAS for Section 505(a)(2)
 - TAS for Section 126

All EPA Rulemakings

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- MUST go through public comment – Proposed rules are published in the Federal Register and EPA maintains a rulemaking docket (section 307(d))
 - Citizens can petition the Court of Appeals for review of EPA rules (section 307(d)) -- courts can overturn EPA rules that are:
 - Unsupported by the record
 - Arbitrary, capricious, an abuse of discretion, or otherwise NOT in accordance with the law.
 - Contrary to constitutional right power, privilege or immunity
 - In excess of statutory authority
 - Without observance of procedures required by law.
 - NOTE: SIP approvals are rulemaking actions and must undergo public comment

Federal and EPA Policies



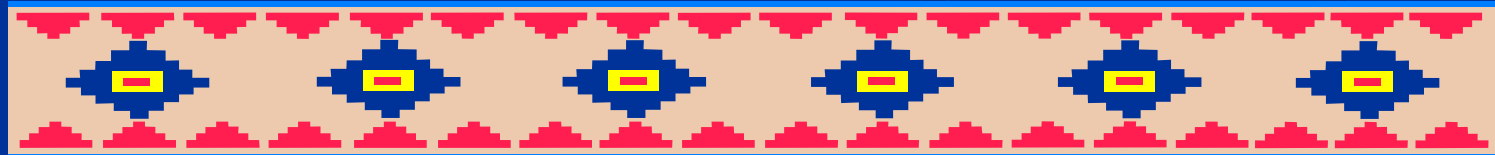
- EO 13175 on Consultation and Coordination with Indian Tribal Governments
- Presidential Memo Gov-to-Gov Relations w/ Native American Tribes
- EPA Indian Policy
- EO 12898 and Memorandum on Environmental Justice
- *Bottom Line -- we are suppose to provide for meaningful Government to Government consultation on anything that has Tribal Implications.*

So What Does this Mean to the States



- EPA must consult with the tribes prior to approval of the SIP
- States would benefit from early tribal involvement on the SIPs that impact the tribes
- Tribes have a different status than other stakeholders particularly if they have TAS

How Does the Tribe Work with the State to Achieve Targeted Reductions



Relationships,... Relationships



- Build ongoing relationships with the staff Build ongoing relationships at the political level as appropriate
- Work with other organizations and know what others are doing
 - Environmental groups
 - Businesses
 - Tribal organizations
- Get support from EPA RO and OAQPS and others

Focus on *Community*, as well as Air Quality – *tell your story*



- Holistic approach
 - Bring in as much information that the state may not be aware of
 - Cumulative risks, multimedia, subsistence or cultural issues
 - Consider current health issues and economic conditions
 - Provide data the data may not have from tribal health department or other sources

Compliance issues



- Check for compliance issues with sources of concern
- Check for inspection and enforcement actions

Are there existing Health Related Vulnerabilities?



- Compare Tribal Health factors with State or national data
 - Cancer mortality, cancer incidence
 - Infant mortality
 - Low birth weight rate
 - Asthma
 - Childhood lead poisoning

What is the Quality of the Community's Environment?



- Data may establish community is already living with conditions that affect their health
 - GIS can be a valuable tool for representing your concerns
 - Nonattainment
 - NATA
 - 305(b) stream data
 - Traffic information

What are the Demographics of your Community that make it more Vulnerable



- # of very young or very old
- Age of homes
- Use of coal, coke, wood for heating or cooking
- Subsistence lifestyles

Economic Conditions that Impact Vulnerability



- Access to health care
- Access to safe drinking water
- Sewage Treatment
- Public Transportation
- Income level or poverty

Where to Get Data



- Internet
- EPA, State, Local
- Tribal data
- IHS
- Census
- Local Health departments

Summary



- Be prepared to work with the state
 - Have your information ready
 - Be prepared to do additional work to support the state
 - Know the limitations of the data
- Tell your story!!