

OFFICE OF INTERNATIONAL AND TRIBAL AFFAIRS

National Program Manager Guidance
Fiscal Year 2018-2019

September 2017

NSCEP Number – 190F17002

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I. INTRODUCTION

The Office of International and Tribal Affairs (OITA)'s NPM Guidance (NPG) describes how the Environmental Protection Agency (EPA) will work to protect human health and the environment by:

1. Advancing U.S. national interests through international collaboration and,
2. Strengthening EPA and federally recognized Indian tribe (tribe) implementation of environmental programs in Indian country.

This Guidance addresses both the Tribal and International Programs and provides direction to the Agency on programmatic priorities for FY 2018-2019 consistent with the FY 2018 President's Budget. Our tribal and international partnerships extend to all aspects of the Agency's work and involve every NPM and Region. The guidance is a *guide*, not a comprehensive compendium of activities and requirements. OITA works collaboratively to identify priorities, assuring alignment with national and international priorities. Specific expectations and deliverables will be established through negotiations in grant agreements between EPA regions and tribes.

OITA plays a crucial role in advancing the Agency's relationship and environmental priorities with sovereign nations outside and within the United States. Working with leaders and experts from EPA's program and regional offices, other government agencies, tribal governments, foreign governments, and international organizations, OITA identifies international environmental issues that may affect the United States and helps implement technical and policy options to address such issues. OITA also ensures that EPA protects human health and the environment in Indian country in the United States according to principles established through federal Indian law, as outlined in EPA's 1984 *Policy for the Administration of Environmental Programs on Indian Reservations* (1984 EPA Indian Policy).¹

The EPA Overview to the NPM Guidances communicates agency-wide information as well as other applicable requirements critical to effective implementation of EPA's environmental programs for FY 2018 and FY 2019 and should be reviewed in conjunction with this Guidance. The Overview is available at: <https://www.epa.gov/planandbudget/national-program-manager-guidances>.

¹ Available at <https://www.epa.gov/sites/production/files/2015-04/documents/indian-policy-84.pdf>.

II. KEY PROGRAMMATIC ACTIVITIES

TRIBAL PROGRAM – STRENGTHENING HUMAN HEALTH AND THE ENVIRONMENT IN INDIAN COUNTRY

The 1984 EPA Indian Policy provides the framework for EPA’s relationship with federally recognized Indian tribes (tribes) and identifies the mechanisms EPA will use to implement environmental programs in Indian country under federal environmental laws. EPA will continue to embrace the principles found in the 1984 EPA Indian Policy and work to incorporate the principles into the media-specific priorities, goals, and measures that EPA implements. This approach helps EPA ensure that tribes have the opportunity to build the capacity to implement programs on their own and/or meaningfully participate in the Agency’s policy making, standard setting, and direct implementation activities under federal environmental statutes that may affect their tribal interests.

Under the EPA priority of promoting intergovernmental collaboration and cooperative federalism, EPA will work with each tribe to develop and implement an EPA-Tribal Environmental Plan (ETEP), which supports the 1984 EPA Indian Policy by setting the stage for stronger environmental and human health protection in tribal communities. ETEPs are jointly developed documents outlining how the EPA and each tribe will work together to protect human health and the environment for that tribe’s lands within the context of EPA programs. Understanding the needs and priorities of each tribe allows for a focused government-to-government discussion on actions to meet short-term and long-term tribal program development milestones. This joint planning process also identifies areas where EPA may need to prioritize its direct implementation responsibilities and resources for a particular tribe based upon the tribe’s own priorities, environmental protection needs, and available resources. Although often developed using funding from the OITA-administered Indian Environmental General Assistance Program (GAP), ETEPs encompass the full range of EPA tribal programs and the tribe’s human health and environmental priorities, which are not limited to GAP-eligible activities. This is consistent with the description of ETEPs in the 2013 GAP guidance, which provides, in part, “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 using ETEPs to identify priorities and then map how and when the priorities will be addressed and by whom, EPA and tribes can then work together to identify technical and other resources that may be necessary to implement the ETEP. This assistance may be beyond GAP funding.

Implementation of Federal Environmental Programs

EPA will continue to work directly with tribes to achieve implementation of federal environmental programs in Indian country. This is achieved in several ways under Agency authorities:

- EPA direct implementation refers to activities performed directly by EPA to implement federal environmental laws. In general, unless and until a tribal government has assumed full

responsibility for a delegable program, the applicable federal environmental regulatory programs are directly implemented by EPA in Indian country;

- Tribal implementation occurs when the federal program is implemented by the tribe itself. This occurs after a formal process of program delegation, approval, or authorization from EPA to the tribe authorizing the tribe to implement the federal environmental program;
- EPA uses Direct Implementation Tribal Cooperative Agreements (DITCAs), where appropriate, to provide opportunities for tribes to assist in EPA direct implementation by performing EPA program implementation activities; and
- Tribes are encouraged to participate in policy-making and to assume, if available, appropriate roles in the implementation of programs. For example, tribes may play a role in helping to ensure compliance by regulated entities, including through information distribution, identification of regulated entities, providing tips and complaints, and compliance assistance/assurance support.

EPA works to ensure national environmental programs are as effective in Indian country as they are throughout the rest of the Nation. A continuing emphasis on ensuring federal program implementation in Indian country is the highest priority of the EPA tribal program and the most proactive manner in which the Agency acts to protect human health and the environment for tribes.

OITA also administers the National Tribal Operations Committee (NTOC) consisting of the Administrator and EPA senior leadership and 19 tribal representatives known as the National Tribal Caucus (NTC) to improve communication and build stronger partnerships with the tribes. The NTOC meets to discuss implementation of the environmental protection programs for which EPA and the tribes share responsibility as co-regulators. The National Tribal Caucus advises EPA on tribal environmental issues that are cross-media, cross-agency or that may be emerging or urgent.

Tribal Capacity Building

EPA provides financial and technical assistance to tribes to create and maintain effective environmental program capacity. OITA coordinates across EPA's national programs to ensure effective delivery of EPA tribal capacity building programs. Effective delivery includes engaging with tribes to negotiate ETEPs that reflect short-term and long-term goals for developing, establishing, and implementing environmental and human health protection programs in accordance with EPA administered statutes.

Tribes receive a variety of financial and technical assistance from EPA to meet capacity building needs including the OITA-administered Indian Environmental General Assistance Program (GAP).² GAP is the largest of EPA's tribal grant programs. As authorized under the Indian Environmental General Assistance Program Act,³ EPA provides GAP grant funds to assist tribes

² For more information, see <https://www.epa.gov/tribal/indian-environmental-general-assistance-program-gap>.

³ Indian Environmental General Assistance Program Act of 1992, as amended, 42 USC section 4368b.

in planning, developing, and establishing the capacity to implement federal environmental programs administered by the EPA.

Beginning in FY 2018, OITA will work with the EPA regions to incorporate standard language into all GAP solicitation packages to ensure national consistency in approach, communication, and the application of the following guiding principles in awarding GAP grants:

- Ensure tribes the opportunity to build capacity to implement federal environmental programs through EPA delegations, authorizations, and primacy designations, and to meaningfully participate and engage in EPA direct implementation activities;
- Promote tribal self-governance by accomplishing mutually agreed upon environmental program goals found in the tribe's ETEP, supporting development of tribal core environmental program capacities for programs administered by EPA, and fostering tribal capacity to assume the authority to implement programs administered by EPA;
- Promote intergovernmental collaboration and cooperative federalism among EPA, tribes, states, and other federal partners;
- Support implementation of established solid and hazardous waste regulatory programs in accordance with applicable provisions of law, such as the Resources Conservation and Recovery Act; and
- Maintain strong national program management practices to produce compelling results that align with EPA's statutory authorities.

Regions should work with OITA to develop their GAP solicitation packages. To promote national consistency in program implementation, regions should allow for a 30-day OITA review of any draft solicitation, such as a Notice of Funding Availability, that includes language beyond the standard language used by all regions.

The GAP guiding principles are intended to underscore GAP's role in fostering partnerships between EPA and tribes through collaboration and shared accountability. OITA remains committed to using GAP resources to assist in building tribal capacity to implement delegable federal programs and meaningfully participate and engage in EPA direct implementation activities. For more information about GAP, see Appendix B of this NPG.

[Implementation of EPA's Policy on Consultation and Coordination with Indian Tribes](#)

The *EPA Policy on Consultation and Coordination with Indian Tribes* (Consultation Policy)⁴ states that EPA will “consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests.” EPA tribal consultation efforts include discussions of tribal treaty rights and treaty-covered resources in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights*. EPA makes consultation opportunities available on the Tribal Consultation Opportunities Tracking System (TCOTS) available at <http://tcots.epa.gov>.

⁴ Available at <https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf>.

EPA Assistant Administrators and Regional Administrators implement EPA's Consultation Policy and ensure it is appropriately implemented for actions in their respective offices.

INTERNATIONAL PRIORITIES- STRATEGIC APPROACH TO ENGAGEMENT WITH GLOBAL PARTNERS

The primary purpose of EPA's international program is to protect human health and the environment by working with other countries and international organizations to address global environmental problems and risks. To achieve our domestic environmental and human health objectives, work with international partners is essential to successfully address transboundary pollution adversely impacting the United States. Strengthening environmental protection abroad so that it is on par with practices in the United States helps build a level playing field for industry while supporting foreign policy objectives outlined by the White House, the National Security Council, and the Department of State. This 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. OITA works with NPMs and Regional Offices to formulate U.S. international policies and to implement EPA's international programs that provide policy and technical assistance to other countries. OITA will continue to link anticipated and achieved outcomes to the Agency's Strategic Goals. In FY 2018-2019, OITA will strengthen its focus on prioritizing, allocating resources, and managing assistance agreements to advance the Agency's Strategic Goals and international priorities while maximizing limited resources most effectively and efficiently.

Reduce Transboundary Pollution

Pollution does not stop at national borders. Transboundary flows of pollutants occur between the United States, Mexico, and Canada. EPA works with its immediate neighbors through the [North America Commission for Environmental Cooperation](#) (CEC). In addition to working with key countries bilaterally, EPA works to address global and international flows and sources of pollution through various international forums. This work addresses atmospheric mercury, emissions from maritime transport, persistent organic pollutants, and Arctic contaminants.

- EPA will continue technical and policy assistance for global and regional efforts to address international sources of harmful pollutants, such as mercury. Because 70% of the mercury deposited in the U.S. comes from global sources, both domestic efforts and international cooperation are important to address mercury pollution.
- EPA will continue to engage collaboratively with Canada to advance environmental protection, human health on issues such as oil spill prevention, preparedness, and response coordination along our joint border.
- The EPA will contribute to the CEC, which provides regional and international leadership to advance environmental protection, human health and sustainable economic growth with our closest neighbors Mexico and Canada.

Advance U.S. Interests Abroad

OITA protects human health and the environment while advancing U.S. national interests through international environmental collaboration. Working with the experts from EPA's other programs

and regional offices, other government agencies, and other nations and international organizations, OITA identifies international environmental issues that may adversely impact the United States and helps to design and implement technical and policy options to address them. Environmental cooperation with partner countries can advance U.S. goals on environmental challenges such as , air pollution, mercury, and marine pollution. This work also protects Americans as they are exposed to toxins in food products, pesticides, and other goods that are traded globally.

- EPA will engage with key priority countries like China to address air pollution that contributes significant pollution to the domestic and international environment. For example, China is implementing national air quality monitoring, planning and control strategies with advice and lessons learned from the United States. Environmental policies adopted and implemented in China will improve competitiveness for U.S. businesses, drive demand for U.S. emissions control technologies, and expand exports of U.S. environmental goods and services to China.
- EPA will engage with Canada and Mexico to achieve a consistent North American approach to reducing emissions of air pollutants (i.e., SO_x, NO_x, PM, etc.) from marine vessels through the implementation of MARPOL Annex VI in Mexico, the adoption of a Mexican Emissions Control Area (ECA), and building Mexico's compliance and enforcement capacity required for MARPOL Annex VI and the ECA. This work will achieve the desired emissions reductions that is estimated to save 20,000 lives per year in Mexico while greatly improving air quality in U.S. airsheds.

Promote Good Environmental Governance

Countries need strong institutional structures to develop sound environmental policies and enforce environmental protections. EPA will engage on trade policy development and with countries to build capacity for good governance, including judicial and legal frameworks and public participation approaches. OITA coordinates with EPA's Office of Enforcement and Compliance Assurance and Office of General Council in conducting trainings, hosting study tours, and managing bilateral programs on good governance. Governance issues span environmental media. OITA will coordinate with NPMs and regions in promoting good environmental governance policies internationally.

- Through existing agreements with the China Ministry of Environmental Protection, Indonesia Ministry of Environment, and Chile public participation to strengthen environmental governance frameworks such as environmental impact assessments, environmental law and enforcement; develop effective environmental information management structures; and build regional expert networks and advance regional knowledge.

APPENDICES

Appendix A: FY 2018 NPM Guidance Measures.

OITA continues efforts to develop GAP measures that track tribes' progress in developing and implementing environmental programs in Indian country. EPA also internally tracks tribal consultation and EPA direct implementation activities in Indian country and will continue to look for opportunities to track progress under the new EPA strategic plan.

Appendix B: Grants Guidance—Implementation of the Indian Environmental General Assistance Program (GAP)

GAP is the primary resource to support the development of tribal environmental programs and tribes' implementation of solid and hazardous waste programs in accordance with the [Solid Waste Disposal Act](#). Following extensive consultation and coordination with tribal governments, OITA released the [Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortia](#), (GAP Guidance) in May 2013, which supersedes prior GAP guidance. Consistent with the GAP Guidance, substantive changes to the program management are ongoing, including the identification of short-term and long-term indicators of tribal environmental program capacity and supporting the development of ETEPs. ETEPs support a range of core EPA programs and tribal environmental and human health program priorities, including aligning GAP, and other program, work plan activities with short and long-term goals and priorities. The fundamental concept of joint planning was originally developed by the first EPA Tribal Operations Committee (NTOC) in 1994 in coordination with the National Tribal Caucus of the NTOC.

Appendix C: Point of Contact for More Information

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