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
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

- 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
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!!