

RESPONSE TO COMMENTS - FY 2023-2024 NATIONAL PROGRAM GUIDANCE

Office of International and Tribal Affairs

The EPA Publication number for this item is 160S22001

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>The US EPA can provide the best service to federally recognized Indian tribes in implementing environmental programs in the Indian country if an office is designated to carry out that mission. Currently, the Office of International and Tribal Affairs (OITA) focuses on international initiatives and tribes across the United States. Recommendation to establish a stand-alone office to carry out tribal initiatives.</p>	<p>The Navaho Nation</p>	<p>Introduction</p>	<p>EPA’s American Indian Environmental Office (AIEO) was created to ensure implementation of EPA’s Indian Policy and all necessary related actions across EPA offices and regions. Its sole focus is tribal matters. AIEO is located in the larger Office of International and Tribal Affairs (OITA) and is a separate office from the Office of International Affairs (OIA) which is also located in OITA. The OITA NPG has separate sections for its tribal and for its international offices.</p>	<p>No NPG change necessary</p>
<p>What is an “NPM”? Unfortunately, there is no specific definition in the document.</p>	<p>The Navaho Nation</p>	<p>Pg 3 of 22, 2nd paragraph</p>	<p>“NPM” is an acronym for National Program Managers which are leads for the major EPA program offices. Each NPM develops a National Program Guidance (NPG).</p>	<p>Change to: National Program Manager (NPM)</p>
<p>Which “federal Indian law”? The US EPA can strive to be specific and list which laws they would implement. However, the US EPA’s laws and regulations are not all uniform or current to principles established through federal Indian law.</p>	<p>The Navaho Nation</p>	<p>Pg 3 of 22, 3rd paragraph</p>	<p>EPA administers EPA programs in compliance with federal environmental laws and Federal Indian law. The reference in the NPG is to the body of Federal Indian Law as a whole.</p>	<p>No NPG change necessary</p>

Comment	Comment(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>Navajo Nation supports the “Cross-Agency Strategy” to strengthen tribal partnerships. The “Cross-Agency Strategy” should also be at a federal level to ensure that complex problems endured by tribes receive a comprehensive response from all federal partners.</p>	<p>The Navaho Nation</p>	<p>Pg 8 of 22, bullet #3</p>	<p>EPA agrees that Agency actions to strengthen tribal partnerships will at times require the involvement of other federal agencies. At those times, EPA actively engages those agencies to formulate a coordinated response. Two notable EPA efforts in this regard are EPA’s work with the Indian Health Service on tribal solid waste cleanups and EPA’s work with several other federal agencies to ensure a coordinated effort on water and wastewater infrastructure in Indian country.</p>	<p>No NPG change necessary</p>
<p>There are only 4 Acts that tribes can pursue to receive the delegation of the US EPA. Is OITA or US EPA working for additional programs to be delegated to tribes? The recommendation is that other US EPA Acts be opened to tribes for delegation. The federal Indian policy of late has been self-determination. In that spirit, most US EPA programs should be considered for delegation to tribes to implement on sovereign lands. On that note, tribes are also not states. The current TAS process allows tribes to exercise sovereignty, but the US EPA cannot treat tribes as states, especially when the Federal government does not.</p>	<p>The Navaho Nation</p>	<p>Pg 9 of 22, second to the last paragraph</p>	<p>Several EPA statutes, and subparts of those statutes, are legally available for delegation of authority from EPA to tribes. Over 100 such programs have been delegated since EPA worked with Congress and tribes in the 1990’s to allow tribes to receive delegated programs under EPA Administered statutes. OITA continues to support efforts by tribes to received delegated program authority.</p>	<p>No NPG change necessary</p>

Comment	Comment(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>NOTE: Comment directed to OECA for response</p> <p>Are there baseline statistics to show the number of inspections per tribe for the OITA office to share?</p>	The Navaho Nation	Pg 10 of 22, second paragraph	<p>OECA response</p> <p>EPA can provide information on the number of inspections conducted in Indian country. EPA is not currently able to provide baseline statistics on the number of inspections conducted per tribe.</p>	No revision to the National Program Guidance.
<p>Cultural sensitivity training would be helpful. All DI programs that carry out an inspection or enforcement should coordinate with the tribe and their environmental departments.</p>	The Navaho Nation	Pg 10 of 22, third paragraph	<p>OITA is currently training EPA headquarters and regions on its direct implementation efforts. Cultural sensitivity is an important aspect of all EPA work with tribes, and EPA continues to weave this awareness into its tribal trainings.</p> <p>EPA coordinates with the tribal governments as appropriate on the wide range of EPA direct implementation efforts either under the EPA Tribal Consultation Policy or as other engagements.</p>	No NPG change necessary
<p>Many tribes, including the Navajo Nation, have favored revising the ETEPs requirements. Nevertheless, for example, discussions in RTOC meetings do not support the idea that “ETEPs set the stage for stronger environmental and human health protection in tribal communities.</p>	The Navaho Nation	Pg 11 of 22, first paragraph	<p>EPA disagrees with the comment and believes that working with tribes on a government-to-government basis that purposefully allows for each government to express their priorities and for the parties to work together to meet the mutually identified environmental priorities within EPA’s authorities promotes stronger environmental and human health protection for each individual tribe. Over time, EPA has worked to improve and refine the ETEP process and will continue to do so.</p>	No NPG change necessary

Comment	Comment(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>The OITA must keep in mind that there are different interpretations of Traditional Ecological Knowledge among tribes, and all documents or knowledge shared in TEK discussion should be protected and tribes allowed to be owners of any TEK knowledge.</p>	<p>The Navaho Nation</p>	<p>Pg 12 of 22, bulleted items</p>	<p>The United States government's position on TEK/IK is currently undergoing final development by the White House Council on Native American Affairs (WHCNAA) after tribal consultation. EPA eagerly awaits receiving direction from the WHCNAA to federal agencies to allow these efforts to continue and for coordination across federal agencies.</p>	<p>Change to:</p> <p>Incorporate Indigenous Traditional Ecological Knowledge (ITEK) into Agency decision making as guided by the White House Council on Native American Affairs (WHCNAA) Interagency Workgroup and provide training to EPA staff.</p>
<p>Keep in mind that all tribes are in different stages of development. For some tribes, climate change is a priority when many tribal members do not have running water, to begin with. Tribes are also not the largest greenhouse gas producers, and finding viable projects on reservations will be difficult.</p>	<p>The Navaho Nation</p>	<p>Pg 12 of 22, bulleted items</p>	<p>EPA is aware of the uniqueness of each tribe and the various levels of development a tribes' environmental program may be in at any point in time. EPA strives to make our resources, technical assistance, and other activities accessible to all tribes for the shared goals of human health and environmental protection.</p>	<p>No NPG change necessary</p>

Comment	Comment(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
Technical assistance will be needed.	The Navaho Nation	Pg 12 of 22, bulleted items	EPA believes technical assistance is an important and effective manner of interaction with tribes. EPA supports continued use of technical assistance by OITA and other program offices for this and other program areas as appropriate.	No NPG change necessary
The Navajo Nation would need assistance to take advantage of the IIJA.	The Navaho Nation	Pg 12 of 22, Infrastructure	EPA believes IIJA is a unique and beneficial opportunity for tribes. EPA has ensured that tribal participation in the IIJA funded EPA programs is available and known to tribes. Specific questions can be directed to the individual programs or OITA.	No NPG change necessary
The communication with tribes should begin early and continue throughout the duration of a project or action.	The Navaho Nation	Pg 13 of 22, tribal partnership	In addition to EPA's Tribal Consultation Policy which encourages early meaningful involvement with tribes on matters that may affect tribes, EPA encourages close communication and engagement with tribes on all EPA activities affecting tribes and of tribal interest.	No NPG change necessary
In favor of the cross Agency Strategy and recommends that the US EPA should look at their guidance documents, regulations, and other relevant documents and align them with tribal treaty rights.	The Navaho Nation	Subject Area: Tribal Treaty Rights	As evidenced in the EPA's new Strategic Plan and OITA's NPG, EPA is working to provide the EPA staff with the knowledge and tools to be able to properly consider tribal treaty rights during EPA tribal consultations and as EPA conducts its activities.	No NPG change necessary

Comment	Comment(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>The document has hotlinks for various relevant topics and sites. This is good if the document will be strictly electronic. But because some may receive the document in a paper form, all hotlink URLs should be provided as reference either within the text itself, or be footnoted, and have then have the provided URL be hot-linked.</p>	<p>Mille Lac Band of Ojibwe</p>	<p>Throughout NPG</p>	<p>Appreciate the feedback.</p>	<p>URLs were added to footnotes</p>
<p>There is a sentence that begins, “At the same time, , OITA works to protect human health...” where the extra comma needs removal.</p>	<p>Mille Lac Band of Ojibwe</p>	<p>Pg 3 of Introduction</p>	<p>Thank you</p>	<p>Comma removed</p>
<p>In the discussion regarding how OITA would ensure domestic environmental and human health objectives would be met, it states that OITA work with international partners is essential to successfully address transboundary pollution adversely impacting the United States. However, nowhere in the discussions is how OITA would facilitate discussions on how the United States can successfully address transboundary pollution adversely impacting international partners. There should be a proactive statement on this.</p>	<p>Mille Lac Band of Ojibwe</p>	<p>Pg 4, Section II. Program Priorities, Strategies, and Activities.</p>	<p>How OITA plans to successfully address transboundary pollution is described in Section II, subsection titled “Addressing Transboundary Pollution in North America and Around the Globe”. The section now includes language about addressing transboundary pollution in shared watersheds such as Kootenai.</p>	<p>Modified NPG change language on Pg 6</p>