




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 6, 2023

OFFICE OF
INTERNATIONAL & TRIBAL AFFAIRS

MEMORANDUM

SUBJECT: Indian Country Direct Implementation Initiatives

FROM: Jane Nishida, Assistant Administrator 

TO: Assistant Administrators
Regional Administrators
Deputy Assistant Administrators
Deputy Regional Administrators

The purpose of this memorandum is to facilitate cross-program coordination and regional involvement in the Agency's work to: 1) outline EPA's direct implementation (DI) responsibilities; 2) describe Office of International and Tribal Affairs (OITA) and Region 9 actions to ensure Agency compliance with these obligations; and 3) request EPA program and regional offices actions to support this work.

Direct Implementation

EPA is responsible for implementing federal environmental statutes in Indian country. The Agency describes our DI responsibilities and activities in the [*EPA's Direct Implementation of Federal Environmental Programs in Indian Country*](#) document for nine major federal environmental statutes and emergency response activities. Direct implementation is EPA's responsibility and authority to administer environmental protection programs in the absence of an EPA approved state, territorial, or tribal program. While some federally recognized tribal governments (tribes) may apply to administer eligible EPA programs in Indian country through the Treatment as a State (TAS) process, most tribes have not done so for any number of reasons. As such, where a tribe lacks authorized or delegated program implementation approval or where EPA lacks authority to authorize a tribe to administer a program, EPA carries out those responsibilities in Indian country through direct implementation.¹ Direct implementation activities may also include programmatic activities not expressly articulated in a statute but that are necessary for administering a regulatory program – namely, the administrative functions necessary for effective environmental regulatory program implementation.

In furtherance of this responsibility, OITA is doubling its efforts to assist all divisions of EPA in achieving the Administrator’s commitment to ensure that the programs it administers inside Indian country achieve a similar degree of protection from environmental and health hazards as those it administers outside Indian country. As described below, OITA will be working closely with your office/region to focus on the following three (3) actions to strengthen EPA’s DI program:

- Meeting EPA Strategic Plan commitments on DI;
- Advancing the work of EPA’s cross-agency Indian Country Direct Implementation Work Group; and
- Establishing a new Regional-HQ DI Center of Excellence.

The overall goal is for these combined actions to achieve equitable implementation in Indian country, improve EPA Indian country environmental program implementation, and establish a national program performance review framework for EPA-administered Indian country programs that can serve as a foundation for EPA program oversight into the future.

Meeting EPA Strategic Plan DI Commitments

EPA’s 2022-2026 Strategic Plan (SP) states that, “Equity principles and equal protection require that implementation of federal environmental law protections be as robust inside Indian country as EPA requires these protections to be outside of Indian country.” Accordingly, OITA will collaborate with each of your offices/regions in taking actions to meet EPA’s commitment to advance environmental justice and equity through effective direct program implementation. These commitments are stated in Objective 2.1: “Promote Environmental Justice and Civil Rights at the Federal, Tribal, State, and Local Levels” and the accompanying Long-Term Performance Goal (LTPG). Under this LTPG, OITA is tracking four (4) significant direct implementation improvement actions:

1. Train EPA Direct Implementation Staff. [Ongoing²]
2. Contribute to an initial EPA Direct Implementation Barriers and Opportunities Report. [NPM Data Submission by August 2023]
3. Place EPA regulated facility/entity locational information into EJSCREEN. [Ongoing in 2023 through September 2026]
4. Contribute to a follow-up EPA Direct Implementation Report: Barriers Removed, Continuous Improvement Plan. [By October 2025]

Advancing the Work of EPA’s Cross-agency Indian Country Direct Implementation Work Group (IC-DI-WG)

Concurrent with the above actions to implement the remaining Strategic Plan commitments, OITA will develop an initial DI Program Performance Review Framework by the end of FY23. The purpose of the framework is to support management of EPA performance in the DI area.

The framework components are a DI assessment plan and an assessment tool for each program. The DI assessment plan will include:

- Defining the scope of the assessment tool and approach to evaluate known practices through a variety of lenses (e.g., environmental justice, efficiency, effectiveness, regulated universe, areas of excellence and areas for growth or coverage) and lay out a schedule for assessment, reporting, and sharing findings;
- Establishing a project communication plan to assure close coordination with regions and national program offices; and
- Reporting DI performance, including longer term measures for DI implementation and permitting efficiencies.

OITA will work closely with the existing cross-agency EPA IC-DI-WG, and NPM/regional management to develop the framework, including the assessment tool for all EPA divisions. We will build upon past analyses and reporting by the IC-DI-WG, including information members shared with us during FY22 to inform this work.

Establishing a New Regional-HQ DI Center of Excellence

OITA, in partnership with EPA Region 9 (the incoming OITA Lead Region for FY24-26), will establish a Regional-HQ Center of Excellence that will provide EPA the ability to coordinate, assess and report on EPA direct implementation in Indian country. OITA has committed IRA resources to create a shared DI Center of Excellence that will be housed in Region 9 and supported by IRA-funded FTE in OITA and Region 9. This Center will play a central role in completing a national assessment of Indian country direct implementation program performance (with a particular focus on permitting), identify best management practices, and identify Indian country facility and environmental data management improvement opportunities. This IRA-based assessment will assist setting up a long-term DI Program Performance Review Framework for DI performance measurement, transparency, accountability, and collaborative engagement. Through this Center, EPA will further design and conduct the DI program performance assessment of directly implemented programs in all 10 EPA Regions, including regional processes for planning and conducting direct implementation activities at facilities in Indian country. OITA and Region 9 will directly engage with NPMs and regions in the establishment of the Center and in planning and executing the above activities.

Next Steps

OITA has two requests (outlined below) and will be reaching out to your offices and regions to provide additional information on the specific actions, timelines and contacts to assist you in completing the requests.

1. The first request is for information for the EPA Direct Implementation Barriers and Opportunities Report as a Strategic Plan commitment. Each program office, working with their regional program counterparts, is requested to contribute to this report by identifying barriers and opportunities for improving Indian country program

implementation. OITA is developing a template for this report for use by EPA NPMs in May 2023. This information will be used to respond to #2 in the 2.1 LTPG (above).

2. The second request is for all regional programs to participate in the review, revision, and strengthening of, as appropriate, EPA-Tribal Environmental Plans (ETEPS), with a particular focus on DI, in accordance with the five-year ETEP revision schedule. As evidenced in OITA's National Program Guidance and the 2022 Indian Environmental General Assistance Program (GAP) Guidance, We are committed to utilizing ETEPs as tools to inform and establish an understanding of shared roles and responsibilities in the context of EPA authorities, including direct implementation. Establishing clarity on EPA's direct implementation responsibilities in ETEPs assists EPA to prioritize its responsibilities and resources based on agreed upon priorities, environmental protection needs, and available resources. It may also be beneficial to tribes in identifying where they have interest in seeking federal authorities or assuming specific roles and responsibilities to partner with EPA. In addition, EPA can use ETEPs to help inform direct implementation program performance assessments based on tribal environmental program engagement.

Looking Forward

Taken together, we believe that these actions will result in improved environmental protection and public health in Indian country. Additionally, these actions will benefit EPA leadership by helping to identify EPA direct program implementation priorities in Indian country through active inquiry and sharing of best practices. They will also lead to timely, streamlined, and internally coordinated delivery of EPA direct implementation activities in Indian country. The steps outlined here will also provide EPA management officials with a roadmap to improve EPA internal operations through the sharing of assessment results, recommendations, and streamlining processes and to land on nationally consistent criteria for measuring EPA's DI achievements and outcomes. Through these shared actions, a culture of continuous improvement for EPA's DI performance will be established and resulting benefits into the future.

If you have any comments or questions, please feel free to contact Felicia Wright, Acting Director, AIEO at wright.felicia@epa.gov or Luke Jones, Staff Lead at jones.luke@epa.gov.

cc: Associate Administrators
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Felicia Wright, Acting Director, AIEO