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**Strategy for Implementing
the Clean Air Act
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Strategy for Implementing the Clean Air Act in Indian Country

The imminent promulgation of the Tribal Authority Rule has forced us to take a look at how well EPA has prepared itself to take on the task of implementing the Clean Air Act in Indian country, whether the implementation be by a tribe or by the Federal government in the absence of a tribal program. Regional and headquarters staff have been working together to develop a common understanding of the nature of the potential air quality problem in Indian country and outline a plan to address those problems, either directly through federal implementation or indirectly through building tribal capacity to assume the task.

Below is a brief summary of the problem and the approach the work group is proposing to adopt to solve it. The details of this strategy have not yet been shared with Tribal representatives.

However, the Tribal Implementation workgroup intends to do the following to obtain Tribal input: share a draft of this document with Tribes at a February 1997 conference, share a draft of this document with the Tribal Operations Committee, invite Tribes to participate in the committees that will address each of the four major prongs of the strategy outlined below (development of federal regulatory authority, development of Regional capacity, development of Tribal capacity, and technology/information transfer).

Problem summary

1. Lack of concrete information

Air quality - no real reservation-specific data to quantify/qualify air quality problem. More than 80 of the 562 federally recognized tribes (based on a 1992 study) are located in non-attainment areas (50 of these in California).

Emissions data - No reason to believe that there are more than approximately 100 major sources of air pollution on tribal lands. However, some regional surveys indicate that minor sources and area/categorical sources could be a problem.

2. Incomplete Federal regulatory authority

Minor New Source Review Program - Since it appears that a significant part of the air quality problem in Indian country is related to the cumulative effect of minor sources, the Agency needs regulatory authority to address those sources.

Major source New Source Review Program in Non-Attainment Areas - the Agency has no broad regulatory authority to impose pre-construction controls on sources in non-attainment areas. The

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current approach requires doing Federal Implementation Plans for individual sources.

Area/categorical sources - The NSPS and MACT programs provide national limits for a number of categorical/area sources. However, some sources that broadly pose problems for Indian country (e.g., re-entrained dust, open burning, etc.) could be addressed on a region-by-region basis.

3. Need for increased technical support in the regions

Staff support - By and large, Regions have had limited staff to address Tribal air quality issues.

Not all regions have the technical skills to assist tribes with the detailed monitoring and emissions assessment work that must precede program development. Because state program staff attend to these details outside of Indian country, regions have not needed to maintain these skills.

Contractor support - The last of OAQPS's LOE contracts will be expiring at the end of this year and there is no plan to compete for a follow-on contract. Without a central contract to provide this kind of support, each region will be faced with the need to compete its own contract if alternative solutions are not identified.

4. Variable tribal capacity

Tribal environmental professionals - Tribal air programs vary in their levels of experience and expertise, ranging from sophisticated to no program at all. Where Tribes lack adequate capacity, progress in recruitment, training, and retention is slow, caused in part by the inconsistency of resources for implementation.

Air grants - Although grant resources have increased in the last two years, the regions have indicated that still more grants are need to address the needs expressed by the tribes.

Strategic solution

The Tribal Implementation Work Group is proposing a dual-track strategy to address these problems and assure adequate CAA implementation in Indian country. The dual track will focus on developing in priority order those tools needed to expand direct federal implementation at the same time that it works with those tribes who have already developed their air quality management programs and are ready to apply for eligibility and program approval. This dual approach will ensure that no tribe moving forward to develop its own programs will be delayed while the agency develops its federal implementation priorities. EPA will also continue to assist Tribes just beginning to develop air programs.

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The first new program that EPA will directly implement in Indian country will be the Federal operating permits program (applicable to major sources), which will become effective in Indian country in November 1997. Because no Tribal part 70 programs are expected to be approved by that date, Regional Offices will be implementing the program throughout Indian country.

Regions will do outreach to Tribes, States, and industry to explain the program. At the same time, in addition to increased technical assistance and grant assistance provided by the Regional offices, EPA plans to provide the following tools to assist Tribes in developing part 70 programs:

- introductory training on title V (summer 1997)
- training on development of part 70 program submittals (fall 1997)
- model permit program regulations, model Tribal implementation agreement, model delegation agreement (fall 1997)

In addition to administering new programs, it is important that the EPA implement and enforce existing Federal standards, such as MACT, NSPS and NESHAP. At the same time, EPA should develop a delegation strategy for Tribes to implement these programs, where appropriate.

Further, HQ should provide guidance to assure that where necessary, Regions develop Federal Implementation Plans to achieve NAAQS attainment and maintenance. Where major sources are not subject to limits and controls, it may be necessary to develop FIP's or TIP's, particularly where the source is causing non-attainment.

In order to address air quality issues within Indian country in a comprehensive manner, the group proposes that EPA undertake a four-pronged strategy, as follows:

1. Development of the following regulatory authorities

Existing Major Sources - Pollution from existing major sources in Indian country without Federally-enforceable emission limits is a problem that cannot be effectively managed through a national rulemaking. To address concerns about these sources in Indian country, the regions, in consultation with the appropriate tribes, will have the discretion to develop tribe-specific, state-wide, or region-wide FIPs to establish Federally-enforceable emission limits for these sources. Working with the tribes in developing these limits, the regions could consider emission limits that had purportedly been applicable through State Implementation Plans.

Minor New Source Review rule - The tribes have expressed concerns about the cumulative effects of minor sources in Indian country and want to control them in the same way that states do. Since no current federal regulatory authority exists for such a program, we are proposing to adopt a federal rule that would authorize EPA to impose limits on these sources in the absence of a tribe's capacity to do so. This authority could also be used to limit a sources potential to emit (PTE) in order to keep it below title V thresholds. This rule could also serve as a template

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for tribes to develop their own minor source control programs.

Major Source Limits in Non-attainment areas - Although the federal PSD program at 40 CFR 52.21 provides federal authority to issue preconstruction permits for sources in attainment areas, no analogous authority exists for sources in non-attainment areas. We are proposing to reactivate a draft rule at 40 CFR 52.10 that would provide for federal review of new major sources and modifications to existing major sources in non-attainment areas and transport regions.

Categorical Limits for Sources of Concern in Indian Country - Federal NSPS, MACT, rules provide emissions limits for many categorical/area sources. However, tribes have expressed concern that they may not cover certain emissions sources that tend to predominate in Indian country. We are proposing to work with the tribes to identify those source categories that are a priority concern and will develop a rulemaking strategy to address them.

2. Build regional capacity

A concern expressed by both regional and tribal staff has been a lack of appropriate resources to support CAA implementation in Indian country, whether it be numbers of staff or training and technical support. Building this kind of regional capacity can become an important bridge from federal to tribal implementation. OAR's allocation of 19 FTE's for Tribal air work constitutes a good start towards meeting the need for additional personnel, but the need for Regional FTE's devoted to Tribal air issues should grow as the Region moves into more direct implementation and increased assistance to Tribal program development. Some additional areas that need to be addressed:

Enhancing EPA Staff Capacity - As EPA moves to implement the CAA more aggressively in Indian country, a broader spectrum of EPA staff will need to become involved in program development (beyond the current tribal coordinators and grant project officers). It will be necessary to identify people with the right skills mix to work with the tribe and to give them, as they begin working with new clients, the appropriate training to do their job. The American Indian Environmental Office, in cooperation with the Office of General Counsel, has developed a training course, *Working Effectively with Tribal Governments*, that should be made available to all staff who will be working with tribes.

Technical support - One of the greatest of the new demands that will be placed on EPA staff will be to provide the kind of detailed technical support that will allow tribes to evaluate their air quality problems and decide on appropriate air programs. Regional staff have been involved in this kind of support in only a limited way, particularly in the area of monitoring (since states have moved well beyond this stage in the implementation of their own programs) and we will have to develop strategies for filling the gaps in in-house expertise. Some options include:

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Contract support - awarding regional contracts to replace the headquarters LOE contracts.

Senior Environmental Employee Program - target recruitment to fill skills gaps in the region.

State/local cooperation - encourage information/ technology transfer at the state/local level where working relationships can be most productive.

Clarify expected results - Under the current OAR Implementation Plan, some mention is made of the need for a consistent approach to developing Tribal programs. However, under the revised draft Plan for 1997-8, a Tribal program area has been added. That program area encompasses all aspects of this strategy document on which Regions are expected to take action.

3. Work with tribes to build tribal capacity

Aggressive Support for Tribes Ready to Implement - An effective way to implement the Clean Air Act in Indian country is to have the tribes do it themselves. Several tribes have been developing their own air programs for several years and will be ready to apply for program eligibility and approval as soon as the Tribal Authority Rule is promulgated. We believe that EPA should assist these tribes in every way possible to expedite program approval and provide ongoing technical and financial support for tribal programs. This strategy will help us achieve at least a couple of objectives: (1) We will avoid having to address many of the issues associated with direct implementation on these reservations and be able to focus those resources on other needs; (2) We will begin building a cadre of tribal environmental professionals to serve as models for other tribes interested in developing their own air programs.

For those tribes who are not as far along in the development of air quality management programs or who don't know if they need CAA programs, we are proposing that Regional offices should contact each Tribe in their service area and help the Tribe ascertain whether the Tribe has air issues that justify the development of a Tribal air program by the end of 1997. For Tribes that intend to develop programs, the Region and Tribe should include air issues in the Tribal Environmental Work plans. (spring of 1998)

Develop an outreach and communication plan to announce the Tribal Authority Rule and explain its implications for Indian country - This plan would involve scheduling 3 to 4 meetings at strategic locations throughout the country to assemble tribal representatives and present an overview of the rule. Presentations would be made not only by EPA staff but also by tribal representatives with experience in developing air programs. These meetings may be the first contact for some tribes with air quality issues and we will need to be prepared to assure follow up support.

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Air grants, GAP grants, and other resources for program development - EPA continues to build its tribal grant budgets and tribes need to be made aware of the availability of these resources and provided with the tools to gain access to them. OAR plans to commit in the 1997 Community Based Environmental Protection (CBEP) Action Plan to provide direct HQ support and provide Regional flexibility to enhance and develop Tribal air programs as part of their CBEP efforts.

EPA also expects to be able to help Tribes access new funding for tribal programs (e.g., Environmental Justice, Monitoring Repository, CBEP).

Air Quality Management Training - Training is an important mechanism not only for transferring the necessary expertise to develop and run air quality programs but also as a forum for tribal environmental professionals to share their concerns about environmental protection with their peers and build relationships. While NAU has developed a successful, small scale program, training is not available for a large percentage of Tribal staff. The APTI courses are not appropriate for Tribal representatives, absent some sort of "bridge" such as through NAU. A thorough inventory and review of training (including Regional efforts) shall be completed by summer of 1997.

Peer-to-peer tribal support - Tribes should be able to profit from the experience of other tribes in developing tribal air programs and EPA will facilitate the exchange of information and expertise between tribes by funding the transportation and other expenses of Tribal professionals who donate their time to assisting other Tribes. OAR hopes to be able to set aside funds for this purpose in 1997.

Internship programs - The agency has a number of internship programs, including one with NAU, that work to fill the pipeline for environmental professionals. EPA should expand the availability of these programs and tribes should be provided with access to these interns and internships to build depth in their programs.

IPAs (both tribal to federal and federal to tribal) - The Intergovernmental Personnel Act (IPA) provides a valuable means for facilitating the exchange of program information and expertise between levels of government. Regional offices and HQ office will notify Tribes that Tribal professionals should seek IPA placements. Each Regional and HQ office should set an annual goal of providing at least two months of on-site assistance to Tribes to assist in developing programs.

State/local cooperative agreements - A rich source of expertise and program tools is available through the state and local offices that run air programs. Tribes should be encouraged, where feasible, to profit from these resources to augment their own capacity.

4. Technology/information transfer

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The Agency has amassed over the years a wealth of information, strategies, and technologies to implement the Clean Air Act and we need to develop a mechanism to (1) make these resources useful for the tribes and (2) provide the tribes with ready access to them. Specifically, we will begin moving toward:

- a. Developing an inventory of manuals, guidelines, model regulations that are applicable to Tribes, etc. by summer of 1997.
- b. Working with tribes to identify where economies of scale might warrant developing models and templates of rules and programs (in addition to minor source review and operating permits) by fall of 1997.
- c. Developing cross-links for electronic transfer of documents and information through the OAR web site by fall of 1997 (e.g., through Indianet).
- d. Coordinating with AIEO to better integrate air program concerns into their multi-media efforts .
- e. Adding "Tribal Programs" area to OAQPS web site.