



NATIONAL TRIBAL AIR ASSOCIATION

FY2018 Tribal Air Quality Budget Analysis

May 2016

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The National Tribal Air Association (NTAA) was founded in 2002 through a grant from the US Environmental Protection Agency's Office of Air and Radiation.

Mission

The mission of the NTAA is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of American Indian Tribes and Alaska Natives.

Goals

1. Advocate for and advance tribal environmental, cultural, and economic interests in the development of air policy at all levels of government (tribal, local, state, regional, federal, and international).
2. Promote the development, funding, and capacity building of tribal air management programs.
3. Promote and facilitate air quality policy and technical information that may include research and scientific and medical studies.
4. Advance the recognition and acceptance of tribal sovereign authority by conducting effective communication and outreach to local, state, federal, and international agencies, as well as the general public.
5. Encourage and support appropriate consultation with all tribal governments in accordance with Tribal structures and policies.

The NTAA is a Tribal member organization with over 100 principal member Tribes. The organization serves as a resource to all 566 federally recognized Tribal Nations. The NTAA's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the NTAA always seeks to represent consensus perspectives on any given issue, it is important to note that all Tribes may not agree upon its expressed views. Further, it is important that USEPA understand interactions with the NTAA do not substitute for government-to-government consultation, which can be achieved only through direct communication between the federal government and the Tribes. For more information, please visit www.ntatribalair.org and www.tribalairquality.org.



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Introduction

Over the last few years, the National Tribal Air Association (NTAA) has developed a snapshot of air quality funding gaps in Indian Country. This year, in recognition of the approaching 20th anniversary of the promulgation of the Tribal Authority Rule (TAR) (FR Vol. 63, No. 29, February 12, 1998), the NTAA would like to take a slightly different approach by providing a brief summary of the history of the rule and the impact it has had on air quality management in Indian Country.

The Story of Air Quality Management in Indian Country under the Clean Air Act

Background

Beginning in the 1960s, the U.S. Congress recognized the pervasive nature of ambient air pollution and passed the initial federal statutes to begin controlling air pollution emissions from their sources. Through a series of amendments (1970, 1977, and 1990), the Congress refined its approach and clarified authorities for implementing the statute.

Although states had long been recognized as partners with the Federal government in developing strategies to control air pollution, federally recognized Tribes were first authorized to implement elements of the Clean Air Act (CAA) under the 1977 amendments. In establishing the Prevention of Significant Deterioration program under Title I of the CAA, the Congress authorized appropriate ‘Indian Governing Bodies’ to redesignate lands within the exterior boundaries of the Reservation to be more or less protective of air quality. This initial, limited recognition of tribal authority to manage their air quality, however, did not extend beyond the PSD program. In spite of these limitations a number of Tribes expressed interest in the program and between 1977 and 1990, four Tribes (the Tribes of the Northern Cheyenne, the Fort Peck, and the Flathead Reservations in Montana and the Spokane in Washington) redesignated their Reservation lands to Class I, thereby asserting their authority to be more protective of their air sheds.

In 1990 the CAA was amended once again and, in addition to a number of significant changes to strengthen air pollution control under the Act, the Congress granted authority to Tribes to implement the CAA in the same manner as states “within the exterior boundaries of the Reservation” and over other areas where the Tribe can demonstrate jurisdiction. The statute provided significant flexibility to the USEPA Administrator to determine how these provisions would be implemented and directed that final implementing regulations be promulgated within 18 months of the passage of the amendments.



Development of the Tribal Authority Rule

The USEPA undertook development of the implementing regulation for section 301(d) of the Act early in the 1990s. Because the statute granted considerable flexibility in developing the rule, the USEPA early on engaged leaders in Indian Country in a conversation about what kind of approach would be useful to the Tribes. The initial rule was proposed in 1994 and the final TAR was promulgated in February 1998. Although the TAR falls into that large compendium of implementing regulations developed by the USEPA to guide state and local programs, Congressional statutory clarity and some regulatory innovations on the part of USEPA make this rule unique for Indian Country.

Congressional Delegation of Authority – The CAA provides federal statutory authority for eligible Tribes to implement approved CAA programs. This means that the authority derives directly from the statute and may extend beyond areas where the Tribe normally exercises its inherent authority. In the words of the CAA, eligible Tribes have authority to manage air resources “within the exterior boundaries of the Reservation or other areas within the Tribe’s jurisdiction.” (CAA Section 301(d)(2)(B)) This language assures eligible Tribes that they will be able to exercise regulatory authority over all sources within the Reservation boundaries, including those on non-Indian owned fee lands, under an approved CAA program.

Flexibility and Modularity - Early in the consultation process with Tribes on how this regulation should be structured, tribal leaders urged USEPA to recognize Tribes’ limited capacity to implement all the provisions of the CAA and to adopt a flexible approach that would allow Tribes to build programs incrementally. As a result, the TAR encourages Tribes to assess their air quality and develop programs that focus on their specific air quality concerns. These programs can be as narrow as “affected state” standing under section 505(a)(2) of the Title V operating permits program or as broad as a comprehensive Tribal Implementation Plan under Title I that provides full regulatory authority for the Tribe within the exterior boundaries of the Reservation. Recognizing that states were 20 to 30 years ahead of the Tribes in implementing the CAA, USEPA adopted an approach that allows the Tribes to grow their programs, starting small and incrementally adding elements as the Tribe builds its capacity.

Financial Assistance – Tribes have been receiving grant funding under section 103 of the CAA for many years to undertake initial assessments and program development work. Tribes, as provided by section 302(a)(5) of the CAA, have been eligible to receive financial assistance under section 105 of the CAA to implement CAA programs since the 1990 amendments. Section 105 authorizes financial assistance for “implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.” (Section 105(a)(1)(A)) Several Tribes applied for and received grants under this authority prior to the 1990 amendments but most other Tribes considered the statutory match (25-40%) requirement an insurmountable barrier. Using the authority found in section 301(d)(4) of the CAA, USEPA revised its grant regulations (40 CFR Part 35) to authorize USEPA to provide financial assistance under CAA section 105 authority for up to 95% of the cost of running a tribal air program for the first two years, and up to 90% thereafter. Tribes may apply



for waivers of this requirement based on financial hardship. These changes have largely eliminated a significant barrier to Tribes considering developing CAA programs.

Initial Challenges Tribes Faced in Implementing the CAA under the TAR

Awareness of the challenges facing the Tribes in implementing CAA programs didn't suddenly materialize on February 12, 1998. From the early 1990s USEPA and its partners began laying the groundwork for implementing the CAA in Indian Country. Noting that the states had been in the business of implementing the Act for more than 30 years, the USEPA recognized that the Tribes would need assistance on many fronts to acquire expertise and capacity to implement their own programs. The Preamble to the TAR laid out the three areas of significant concern for building tribal capacity: (1) a needs assessment; (2) communication; and (3) training. A fourth component not mentioned in this initial triad would be financial assistance, a key barrier to any jurisdiction implementing such a complex program.

Addressing those Challenges

By 1998 a number of these challenges were being addressed. Staff in USEPA's Regional Offices were working with Tribes to develop a better understanding of the air quality and the sources of air pollution on tribal lands. In 1992, USEPA began funding the Institute for Tribal Environmental Professionals (ITEP) at Northern Arizona University, which began offering introductory workshops on air quality program management to tribal environment professionals. Recognizing that Tribes would need financial assistance to begin doing preliminary assessments for implementing air quality management programs, USEPA requested and received in its 1996 Congressional appropriation grant funding of nearly \$6.0 million to support tribal air quality programs. At that time, fewer than a dozen Tribes were managing air quality programs, mostly those Tribes monitoring air quality to support their PSD Class I designations.

However, by the time the TAR was promulgated in 1998, nearly 60 Tribes were receiving air grant funding, ITEP had developed a core curriculum to support tribal environmental professionals in air quality management, including a workshop on the Tribal Authority Rule, which was presented nine (9) times beginning in 1998 throughout the country, including Alaska, and USEPA regional and headquarters staff were being trained to work more effectively with tribal governments. Within a few years of promulgation of the TAR, significant progress had been made:

- Tribal funding had increased to over \$10.0 million dollars;
- Nearly 120 Tribes were receiving air grant funding;
- Several dozen Tribes were implementing air quality monitoring for PM_{2.5}, PM₁₀, acid rain, and visibility;
- USEPA and ITEP had partnered to establish the Tribal Air Monitoring Support Center (TAMS) at USEPA's Las Vegas laboratory, and;



- ITEP training had expanded to reach over 200 Tribes with nearly two dozen unique workshops on implementing the CAA in Indian Country.

Successes and On-going Challenges since 1998

Significant progress has been made in supporting Tribes in the implementation of the CAA over the last 20 years. Strides have been made in capacity building, program development, and program implementation. However, significant challenges remain. This section will address both.

Capacity Building

As mentioned above, the Institute for Tribal Environmental Professionals (ITEP) at Northern Arizona University has been a critical factor in helping Tribes to build their capacity to develop programs. Since 1992 through USEPA funding and staff support, ITEP has developed nearly 400 unique workshops to present to tribal professionals on topics ranging from *Introduction to Air Quality Management* and *The Fundamentals of Air Monitoring* to *Air Pollution Modeling* and *Introduction to Title V Permits and Permit Review*. These workshops have reached over 4,500 participants. ITEP routinely assesses progress and strives to identify additional needs for training so that Tribes can continue to develop their programs. Through its training programs, ITEP has reached over three quarters of all federally recognized Tribes (430 out of a total of 566 Tribes). As another measure of its success, ITEP engages nearly 150 tribal environmental professionals as instructors in its workshops; these instructors have provided nearly 9,000 hours of instruction to other tribal professionals over the last 20 years. The Tribal Air Monitoring Support (TAMS) Center has provided technical assistance to 260 Tribes through courses and hands on professional assistance; the Center has served nearly 1500 tribal environmental professionals.

Program Development

A real measure of success, however, is how all this training translates into work on the ground. Examples of putting the theory learned in these workshops into practice can be found throughout Indian Country. In the body of this report, a number of Tribes have reported on their successes. One example can be seen in the write-up of the Confederated Tribes of the Colville Reservation and their response to the catastrophic wildfires they experienced in 2015. The air monitoring systems they had in place, the experience and data they had compiled over the years of operations, and their education and outreach program were used to keep the community informed of the hazards and allowed many in the community to mitigate the potentially serious health effects related to exposure to these extreme smoke conditions. Another example of success in building capacity is the Gila River Indian Community in Arizona, which now has an approved Air Quality Management Plan and routine ambient air monitoring with data reported through AirNow so that community members can be kept apprised on air quality issues on the Reservation. Furthermore, four Tribes have approved Tribal Implementation Plans, two Tribes implement Title V Permitting programs (one via delegation



and one with an approved Tribal program), and nine (9) Tribes have delegation of the Federal Rules for Reservations (FARR).

The Tribes in USEPA Region V (i.e., Minnesota, Wisconsin, and Michigan) have come together to publish annually a report, *The Tribal Air Resources Journal*, that now represents all 35 Tribes in the region. The Journal documents program successes and challenges and is used to keep the tribal communities informed of the air quality activities and issues in the region. The Fond du Lac Band of Lake Superior Chippewa, for instance, recently announced their intention to redesignate their Reservation to Class I under the Prevention of Significant Deterioration Program. The Bois Forte Band of Chippewa and a number of other Tribes, on the other hand, announced that the Tribe's air quality activities have been suspended due to lack of funding to support the programs. As another example, the Mille Lacs Band of Ojibwe discovered through their monitoring efforts that the Reservation was a down-wind recipient of air pollution from the Minneapolis-St. Paul area. Subsequently, the Tribe has been working in partnership with the Minnesota Pollution Control Agency (MPCA) to assess PSD permits issued by MPCA that may impact the tribal community and its resources.

Below are a number of indicators of success in implementing air quality management programs in Indian Country:

- 50 Tribes have been approved for Treatment as State (TAS) under the Tribal Authority Rule; two (2) Tribes have applications pending approval. These approvals authorize Tribes to manage programs under the CAA, including regulatory development, Title V permits, PSD redesignations, air quality monitoring, etc. (Appendix F)
- 62 Tribes manage 81 monitoring sites, monitoring for criteria pollutants, hazardous air pollutants, and other pollutants under the National Atmospheric Deposition Program (NADP). (Appendices D & E)
- Tribes have issued over 300 permits for major and minor sources of air pollution under the New Source Review program, the FARR, and Title V. (Appendix G)
- Over 70 Tribes have submitted over 140 emission inventories; data from 34 of these Tribes are now included in the National Emission Inventory database. (Appendices H & J)
- 149 Tribes manage nearly 800 grants under various authorities for air quality management. (Appendix I)

Tables with additional information can be found at Appendices D through K.

Program Sustainability

As was stated above, it has been long recognized that Tribes, unlike states, undertake implementation of the CAA at a significant disadvantage because of the limitation of funding available to them. USEPA addressed this issue to some extent by providing relief to Tribes from the 25-40% match required to receive section 105 grant funding under the Act. However, some factors inherent to the tribal fiscal situation leave Tribes much more vulnerable to the up and down swings of federal funding availability. It is much more difficult for Tribes to



respond, even to small cuts in federal funding, with infusions of tribal funds. When funding cuts happen, Tribes' responses are limited: eliminate program services; reduce staff; suspend programs. One Tribe in the Northwest, for example, currently manages a very complex program, including delegation from the region for managing the FARR. The program is faced with a funding cut in 2016 that will mean some of their program will suffer. Whatever choice is made will weaken the overall program; at this point, there are no alternative sources of funding.

Part of the problem can be attributed to the fact that funding for tribal programs has not kept pace with the increase in the number of Tribes seeking to implement programs. In 2000, funding available for grants to tribal program was approximately \$11.0 million; in 2016, grant funding available for tribal programs through the STAG appropriation is \$12.8 million, an increase of about 16%. In those 16 years, while funding has increased by only 16%, the number of Tribes seeking funding to support their programs has grown by 25%. This number, of course, does not include those Tribes who have sought funding and have been denied or Tribes who have lost funding and have suspended or terminated their programs.

Table 1 State and Tribal Assistance Grant (STAG) Allocations for Fiscal Years 2012-2016

Annual State and Tribal Assistance Grant (STAG) Allocations					
Region	2012	2013	2014	2015	2016
1	\$657,063	\$613,577	\$622,967	\$621,504	\$594,273
2	\$440,175	\$424,265	\$424,983	\$417,874	\$403,087
4	\$330,964	\$312,481	\$316,989	\$313,173	\$315,674
5	\$1,263,752	\$1,145,597	\$1,179,144	\$1,226,435	\$1,228,784
6	\$1,305,009	\$1,174,439	\$1,176,253	\$1,181,133	\$1,141,449
7	\$465,216	\$434,188	\$499,756	\$524,625	\$534,917
8	\$2,109,888	\$2,002,337	\$2,096,474	\$2,070,039	\$2,001,325
9	\$3,259,737	\$2,933,750	\$2,974,502	\$2,885,487	\$2,967,439
10*	\$2,657,197	\$2,421,367	\$2,466,932	\$2,443,631	\$2,464,053
Total	\$12,489,000	\$11,462,001	\$11,758,000	\$11,683,901	\$11,651,001

* Includes Alaska

In the context of new programs needing to be implemented (e.g., the Minor New Source Review program, Climate Change-Clean Power Plan, etc.) and additional Tribes interested in taking on programs, additional funding will be needed if these programs are to be sustained.

Future Funding Needs

As is evident in the above description, Tribal Air Programs have made a lot of progress in the 20 years that Tribes have been implementing the CAA. However, the limited availability of financial resources has been a significant barrier to more Tribes developing more programs. Had the 1996 appropriation of \$11.0 million merely kept pace with the 2.2% rate of inflation,



the current appropriation would be nearly \$17.0 million. The NTAA is requesting that USEPA consider the following budget initiatives, totaling \$9.0 million, to fund new, on-going, and expanding Tribal Air Programs.

New and Expanding Existing CAA Programs \$3.0 million – The Minor New Source Review, the newly revised Ozone NAAQS and the Clean Power Plan (CPP) represent new opportunities for Tribes to develop programs particularly addressing their needs. As noted above, many Tribes are already involved in permitting programs (i.e., FARR, Title V, PSD, etc.) and need additional resources to review and implement permits. This proposed funding increase would also support additional Tribes that have an interest in developing programs (TIPs, permitting, etc.) Many Tribes that are already experiencing or anticipating the impact of climate change are interested in participating in the CPP or developing their own adaptation plans. Tribes impacted by the changing Ozone NAAQS require resources to assess their air shed appropriately if state and local monitoring sites do not provide adequate coverage. These resources represent a down payment for Tribes to begin developing these new programs.

Monitoring Infrastructure \$2.5 million – Tribes are currently managing 81 monitoring sites for various pollutants throughout the country. Some of the sites have been in place for many years; others are more recent. Many of the sites are outmoded or are in need of repair. This initiative would undertake a comprehensive assessment of the tribal air monitoring network and replace or upgrade equipment where necessary. This initiative would also provide additional base funding to support other Tribes interested in implementing air quality monitoring programs.

Supporting Alaska Natives \$2.0 million – Alaska Natives, because of their geographic location and cultural values, bear a disproportionate share of the pollution burden placed on Alaska's environment. Air pollution, both ambient and indoor, threatens both human health and food security. Climate change is already taking its toll on Alaska's environment and effort needs to be focused on adaptation planning. These resources will be targeted to assist Tribes in Alaska conduct assessments and develop plans that address the wide ranging air quality issues and associated risks facing Alaskan Native people. The 229 distinct federally recognized Tribes in Alaska represent over 40% of federally recognized Tribes in the U.S.

Indoor Air and Radon Programs \$1.0 million – Tribes throughout the country are finding it difficult to address indoor air quality issues such as radon, mold and other indoor air contaminants. In recent years federal funding for radon programs have been cut, which places greater stress on Tribal Air Programs to find alternative funding scenarios to continue such work. Recent engagement with the USEPA Office of Radiation and Indoor Environments has been positive; however, resources to Tribes have been lacking and are required in order to make meaningful improvements for tribal communities.

Needs Assessment \$500,000 – The USEPA recognized early in its deliberations on developing regulations for implementing the CAA in Indian Country and clearly stated in the preamble to the final TAR a need to do a needs assessment for Indian Country. Needs assessments have



been done to address narrow programmatic issues (e.g., capacity building, indoor air, etc.), but no one has ever undertaken a comprehensive assessment of the air quality management needs in Indian Country. This proposal provides funding for such an initiative.

