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June 5, 2014

Daniel Gogal
U.S. EPA Office of Environmental Justice
1200 Pennsylvania Avenue, NW
Washington, DC 20004

RE: NTAA Comments on U.S. EPA's proposed Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples.

Dear Mr. Gogal:

The National Tribal Air Association (NTAA) is pleased to submit these comments regarding the U.S. Environmental Protection Agency's (EPA)'s proposed *Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples* (Proposed Policy).

Introduction

The NTAA is an autonomous organization with 80 principal member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of Indian 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 organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important that EPA understands interactions with the organization do not substitute for government-to-government consultation, which can only be achieved through direct communication between the federal government and Indian Tribes.

NTAA generally supports the EPA's recognition of environmental justice (EJ) concerns within tribal communities as well as the imperative to ensure fair and equitable treatment and meaningful involvement of all peoples, particularly overburdened¹ indigenous communities. Executive Order 12898, directs federal agencies, including EPA, to integrate environmental justice in their mission and implement policies and practices to achieve this important goal.

NTAA agrees that EPA needs a policy on environmental justice that clarifies and integrates EJ principles and practices in a consistent manner throughout EPA's work with federally recognized Tribes and indigenous peoples. NTAA's comments are submitted in an effort to help EPA implement this important policy.

Training and Implementation

NTAA requests clarification from EPA on (1) the steps being taken to ensure that the EJ trainings offered to staff are culturally competent and appropriate (i.e. are tribal instructors being utilized during these trainings; has the EPA composed an advisory team of Tribal members to inform the curriculum design; is the EPA EJ training curriculum being developed on a regional level to adequately encapsulate the diverse cultural customs, norms, and values characterized by the over 567 federally recognized tribes in the U.S.); and (2) the EJ training requirements for EPA staff. Several NTAA members have noted that the duration of trainings for EPA staff working with tribes has decreased markedly over the years.

NTAA recommends formal consultation from a tribal advisory committee on EJ policies and staff trainings to ensure that all regional and national EPA staff are educated appropriately on tribally focused EJ policy. This type of tribally informed cultural competency curriculum would be an excellent resource for EPA staff, for instance community involvement coordinators, who must help to educate and empower Tribal communities despite high staff turnover and low tribal representation. If EPA adopts and incorporates tribal guidance like that proposed above, it will allow tribal communities to focus on more prescient issues like providing substantive comments and participating in the rulemaking process, rather than educating EPA staff in the field on culturally-competent engagement.

Radon Funding

NTAA supports and encourages Federal Agencies to fulfill the commitments lined out in the Federal Radon Action Plan. NTAA asks that EPA work with the Bureau of Indian Affairs (BIA) and other agencies to ensure EJ principles are implemented through the Federal Radon Action Plan and this is a specific example of how EPA can help encourage other federal agencies in implementing EJ principles.

SIRG Funding

The U.S. Surgeon General and the EPA estimate that radon causes more than 21,000 lung cancer deaths each year. Since the passage of 1988 Indoor Radon Abatement Act, EPA has partnered with Tribes through State Indoor Radon Grants (SIRG) to help monitor, test and mitigate radon exposure. SIRG funds have helped over 30 Tribes raise awareness and mitigate radon exposure in Tribal communities.

Nearly 100 Tribes and/or Tribal consortia have utilized services provided by U.S. EPA's Radiation and Indoor Environments National Laboratory. Through EPA's Radon Testing Program, this lab has provided radon-testing kits to educate the public and safeguard tribal communities from the dangers of radon exposure. Tribes desperately require an infusion of SIRG funding, yet in recent years, funding discussion has suggested cuts or even the termination of radon funding for Tribes.

This represents only one area where Tribes have access to limited resources to address radon exposure concerns and have to compete with States for funding. The required 40% match for Tribes associated with the funding can be a major barrier for implementation. Exceptions to this match requirement would ensure equitable access for all Tribal communities.

Another serious concern is that SIRG funds cannot be used to support mitigation efforts. An educational demonstration project, which *can* be sponsored using SIRG monies, will protect only one home. A better use of resources would be the development of radon mitigation training programs for Tribes.

EPA Radiation and Indoor Environmental National Laboratory

The closure of the EPA radon lab in Las Vegas signifies an important loss of valuable services that were provided not only to Tribes, but to other environmental justice communities as well. In the words of the Center for Indoor Environments Director, the support and services provided through the R&IENL lab were “an integral component of the overall environmental justice activities being conducted by the EPA’s Office of Radiation and Indoor Air in Washington, DC.” (See Appendix A). The NTAA is compelled to ask how the EPA lab closure conforms to or supports EPA's Environmental Justice goals for 2014?

Bringing EJ concerns into the rule-making process

NTAA recommends (1) greater Tribal consultation on *how to integrate* EJ principles into the rule-making process, and subsequently, (2) increasing EPA staff training on *how to implement* EJ principles into the rule making process. All too often, EJ considerations are not taken into account in the design of regulatory standards. For example, on April 24th, an EPA official presented, “The proposed 1-Hour Sulfur Dioxide (SO₂) NAAQS Implementation: Proposed Data Requirements Rule” on a NTAA/EPA Air Policy Update call. In the presentation, a slide showed several alternate proposals to measure SO₂ source thresholds based on core-based statistical areas (CBSA). In EPA’s preferred option, SO₂ pollution in CBSA’s with populations > 1 million people would have a lower pollution threshold (1000 tons per year) and CBSA’s with populations < 1 million people would have a higher threshold (2000 tons per year). While many factors went into creating this threshold, including proximity to monitors and non-attainment areas, EJ principles do not seem to have informed the development of these thresholds.

The vast majority of Tribal lands exist in CBSA’s with a population size <1 million. The discrepancy in pollution thresholds that are being proposed based on population density necessarily afford individuals in urban centers greater protections than those living in rural communities. Had the EPA authors of this rule possessed a greater awareness of the demographic configuration of EJ communities and Indian country as a whole, it’s highly doubtful that this inappropriate provision would be included.

Permitting Sources within EJ Communities

When Tribal communities are faced with commenting on permitting pollution sources like power plants and refineries, EPA has an obligation to empower these overburdened communities by providing tools and resources to facilitate the submittal of meaningful comments. In doing so, EPA will meaningfully engage with impacted EJ communities as well as form lasting partnerships to protect public health. NTAA recommends that EPA host public meetings within EJ communities to (1) help educate these communities on the specific air quality burdens in their airshed and (2) train community members on how to develop comments on source permitting. In order to increase environmental policy literacy within EJ communities, it’s critical that EPA return specific feedback to comments submitted by EJ community members during source permitting processes.

Consultation

NTAA encourages clarification by EPA on how EPA approaches Tribes and indigenous peoples in terms of government-to-government consultation versus information sharing. Recently, EPA used both terms, “consultation sessions” and “informational sessions” when

hosting a conference call for Tribal members on May 22nd, 2014 on the proposed requirement to have all EPA grant applications be submitted through grants.gov by October 1st, 2014 (http://www.epa.gov/ogd/training/grats_gov_informational_sessions_for_tribes.htm).

Several NTAA members noticed the use of both terms and determined this was confusing to EPA's intended audience. These were clearly not consultation sessions given that individual Tribes were not contacted and invited to consult with EPA on the matter. Rather, they were information-sharing conference calls meant to present the proposed requirement and answer questions. Consultation, as NTAA understands the use of the term, is considerably different and this difference should be clear to all staff within EPA if EJ principles are to be implemented agency-wide.

Conclusion

The NTAA is pleased to provide the aforementioned comments regarding the U.S. Environmental Protection Agency's (EPA)'s proposed *Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples*. Please contact us if you have any questions or need clarification.

Sincerely,



Bill Thompson
Chairman, NTAA

ⁱ As defined in the EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples, Revised Draft April-2014 - Consultation Version:
<http://www.epa.gov/tribal/consultation/pdf/consultation-and-coordination-on-revised-draft-epa-policy-on-ej-for-working-with-federally-recognized-tribes-and-indigenous-peoples-24APR14.pdf>