



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

OFFICE OF INTERNATIONAL
& TRIBAL AFFAIRS

July 14, 2021

Raymond Paddock
Co-Chair, Region 10 Tribal Operations Committee

Dear Co-Chair Paddock:

On behalf of Administrator Michael Regan and the U.S. Environmental Protection Agency (EPA), I would like to thank you for transmitting the March 29, 2021, correspondence on behalf of the Tribal Caucus members of the EPA Region 10 Tribal Operations Committee (RTOC). In your letter you provide a list of actions that you recommend EPA take to advance certain goals outlined by the Biden-Harris Administration. The EPA has reviewed each of your recommendations and has provided your recommendations to the appropriate offices and is glad to provide the following response.

1. Strengthen Tribal Consultation Procedures

The RTOC's correspondence referenced President Biden's January 26, 2021 *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* and listed six specific suggestions for EPA's consideration regarding tribal consultation:

- *Commit to obtain free, prior, and informed consent as part of the consultation process*
- *Invite tribal leaders to contribute to the formulation of the EPA tribal consultation plans*
- *To the extent possible, tribal consultations should be held in-person, include EPA decision-makers, and be conducted between a tribal government and EPA*
- *Require written responses to issues raised in tribal consultations*
- *Increase flexibility of the length of comment periods for Tribes*
- *Tribal consultation should occur before any decisions by the Agency are acted upon, made permanent, or made final*

EPA thanks the RTOC members for the detailed input provided to the Agency. In response to the President's memorandum, EPA held a consultation and coordination process from March 1 – 31, as recommended by the RTOC members in their correspondence and similar to the Department of the Interior's series of tribal consultation sessions. Consultation input received during this period was used by the EPA in drafting a *Plan for Implementing the Policies and Directives of Executive Order 13175: Consultation and Coordination with Indian Tribal Governments* (attached). The plan calls for two specific actions: (1) convening an Agency workgroup to identify options and recommendations to address key comments raised by tribes during the

consultation and coordination process; and (2) providing enhanced consultation training for EPA Tribal Consultation Advisors to improve implementation of our current consultation practices. The comments provided in the RTOC's correspondence will be used to inform this recently convened workgroup and ensure that EPA is fulfilling the objectives of the *EPA Policy on Consultation and Coordination with Indian Tribes* and the Biden Executive memorandum.

2. Reaffirm and Update Principles of the 1984 EPA Indian Policy

The RTOC urged EPA to consider reaffirming the important principles outlined in its 1984 Indian Policy and amend or expand that policy to address the important role Alaska Native Villages play in the management and stewardship of resources in and around their communities. EPA agrees wholeheartedly with the recommendation for current EPA leadership to reaffirm the 1984 EPA Indian Policy and is currently working with Administrator Regan and the National Tribal Caucus to identify an appropriate time to reaffirm this landmark document. EPA appreciates the further suggestion by the RTOC to expand upon the existing principles of the Policy.

3. Reverse Bad Trump Administration Environmental Action

The RTOC provided a list of eight specific actions that the EPA should prioritize, most of which would require a reversal of policies or regulations put in place under the previous administration. The EPA would again like to thank the RTOC for the precise input provided. The RTOC's request for each of these specific actions has been shared with the relevant EPA office.

On January 20, 2021, President Biden signed Executive Order 13990 on [*Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*](#). Section 2 of this Executive Order orders the heads of all federal agencies to immediately review all regulations, orders, guidance documents, policies, and any other similar agency actions that were promulgated or adopted between January 20, 2017, and January 20, 2021. A non-exclusive supporting [*fact sheet*](#) of federal actions to be reviewed by the agencies was also distributed by the Biden Administration. Of the eight actions listed by the RTOC, five are referred to in the supporting fact sheet provided by the White House as actions to be reviewed or reconsidered:

- (1) *Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations*, 84 Fed. Reg. 32520 (July 8, 2019).
- (2) *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks*, 85 Fed. Reg. 24174 (April 30, 2020)
- (3) *The Navigable Waters Protection Rule: Definition of 'Waters of the United States'*, 85 Fed. Reg. 22250 (April 21, 2020).
- (4) *Clean Water Act Section 401 Certification Rule*, 85 Fed. Reg. 42210 (July 13, 2020).

- (5) *Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hardrock Mining Industry*, 83 Fed. Reg. 7556 (February 21, 2018).

While the other three actions suggested by the RTOC are not specifically listed in the fact sheet accompanying the Executive Order, EPA is aware of public interest regarding these actions and thanks the RTOC for their input.

- (1) Reinstate the 2014 Proposed Determination Pursuant to Section 404c of the Clean Water Act for Pebble Deposit Area, Southwest Alaska.
- (2) Reincorporate Climate Change into the EPA Strategic Plan.
- (3) Reinstate human health water quality criteria applicable to waters in the State of Washington by revoking the actions in the “Withdrawal of Certain Federal Water Quality Criteria Applicable to Washington,” 85 Fed. Reg. 28494 (May 13, 2020).

4. Require Alaska to Update Water Quality Standards to Incorporate Tribal Fish and Shellfish Consumption Rates

The RTOC recommended that EPA require Alaska to update water quality standards to incorporate tribal fish and shellfish consumption rates, adding that “It is long past time that the FCR in Alaska be updated.” The RTOC also provided supporting information from a 2019 EPA-funded study that found that Alaska fish and shellfish consumption is significantly higher than Alaska’s current fish consumption rate of 6.5 grams / person / day. EPA thanks the RTOC for providing this recommendation and the supporting information regarding the fish consumption rates of Alaska rural communities.

As you may know, the State of Alaska has identified human health criteria as a high priority in the most recent 2021-2023 Triennial Review cycle. EPA strongly supports adoption of human health criteria that are derived using the best available science-based data on fish consumption and other relevant scientific information, such as the 2019 EPA-funded study of fish harvest data in Alaska rural communities. We will work closely with the State in the coming months to ensure continued focus on this important issue and look forward to engaging further with the RTOC regarding updates to Alaska’s human health criteria. EPA will provide the opportunity for tribal consultation prior to taking action on any updated water quality standards submitted to EPA by the State of Alaska.

5. Increase Funding and Flexibility for Tribal Programs

The RTOC recommended flexibility for EPA tribal grant programs as well as increased grant funding, with specific requests to include flexibility and increased funding for the Indian Environmental General Assistance Program (GAP). GAP is the largest EPA tribal capacity building program, funded annually by Congressional appropriations. In recent years, Congress has provided approximately \$66M, supporting more than 500 tribes and intertribal consortia in capacity building and solid waste implementation activities. This summer, EPA will initiate a 120-day consultation with tribal governments on the national

GAP allocation and will be seeking input on how the agency may change the allocation to address the broad diversity and depths of tribal environmental needs.

Additionally, EPA has taken next steps in the evaluation of the 2013 GAP Guidance, establishing five EPA/tribal workgroups to collaboratively develop several components of Guidance revisions. The Agency is revising the Guidance to reflect input from tribes during Guidance consultation in 2018, including clarity, flexibility and reduced administrative burden. We look forward to hearing from Region 10 tribes in both the revision and allocation processes.

Again, thank you for your time and dedication in providing this detailed input on these matters of the utmost importance.

Sincerely,



Jane Nishida
Principal Deputy Assistant Administrator

cc: Michelle Pirzadeh, Acting Regional Administrator, EPA Region 10
JoAnn Chase, Director, American Indian Environmental Office
Rick Eichstaedt, Policy Analyst, Region 10 Tribal Operations Committee