

Federal Agency Tribal Policies

The staff examined tribal policies in place at several Federal agencies. Although each policy reflects the specific mandate of each agency, all of the policies emphasized the trust responsibility of the Federal government, tribal rights to self-government and tribal sovereignty. Additionally, the policy and practices in place underscore the fact that interaction with tribes takes place on a government-to-government level.

The policy statements and tools of implementation at the following agencies were particularly useful for NRC purposes because of their regulatory function, mission or independent nature: Environmental Protection Agency (EPA), Department of Energy (DOE), Federal Energy Regulatory Commission (FERC) and Federal Communications Commission (FCC).

Discussion of EPA

Since establishing its Indian policy in 1984, the EPA has reaffirmed its commitment to tribes on a regular basis and has developed a comprehensive tribal program that is present in program offices throughout the agency and has designated staff in both headquarters operations and regional offices. EPA last reaffirmed its policy in July 2009. The agency's policy recognizes the Federal Trust responsibility and commits to protecting the environmental interests of Indian tribes.¹ The policy underscores the importance of working with tribes on a government-to-government basis and recognizes tribal governments as the primary party for setting standards, making policy and managing programs for reservations consistent with EPA standards. The policy also emphasizes the EPA's commitment to encouraging and assisting tribes in assuming such regulatory and program management responsibilities. The EPA established the American Indian Environmental Office (AIEO) to manage the EPA National Indian Program. The agency's tribal program has evolved greatly since its inception and offers resources to both EPA employees and tribal governments.

Headquarters Staff – The EPA's central point of contact for tribes is the AIEO. The office oversees grant funding for tribal environmental programs, provides policy guidance and provides training to employees regarding tribal-related issues. The EPA also established the National Tribal Operations Committee (NTOC) whereby the EPA administrator and senior-level management represent the EPA while 19 elected tribal leaders represent tribal interests. The committee helps shape policy and budget to meet the needs of Indian Country.

Regional Staff – Each of the 10 EPA regions has a designated Tribal Office, addressing tribal issues within the region. Additionally, many of the regions have published practices and protocols specific to the region that govern interaction with tribal governments. Regional Tribal Operations Committees also exist that serve as the regional equivalent of the NTOC.

Training and Resources – The EPA offers a wide array of resources related to tribal-issues. The agency developed the American Indian Tribal Portal, offering information to tribes regarding EPA contacts, environmental laws and regulations, tribal organizations, maps, grants and training opportunities.² Training opportunities are not only available to tribal members, but to EPA employees. The agency offers tribal-related classroom training for employees along with online training that is easily accessible.

¹ EPA Indian policies and reaffirmations can be viewed on the EPA website at <http://www.epa.gov/tribalportal/basicinfo/epa-policies.htm>.

² The EPA American Indian Tribal Portal is located at <http://www.epa.gov/tribal/>.

The EPA's FY 2010 budget request of \$10.5 billion in discretionary budget authority and 17,384 Full Time Employees included \$62.9 million to fund the Tribal General Assistance Program that helps 572 Federally-recognized tribes and intertribal consortia to develop, implement and assume environmental programs.³ The EPA tribal program is comprehensive and penetrates regional and program offices that go beyond the agency's central tribal office established at headquarters.

Discussion of DOE

The Department of Energy's (DOE) central mission is to advance the national, economic and energy security of the United States. Additionally, DOE promotes scientific and technical innovation in support of that mission and ensures the cleanup of the national nuclear weapons complex. The FY 2010 budget request asked Congress for \$26.4 billion in discretionary funding and 16,971 full time employees.⁴ DOE's interaction with tribes takes place in most of the Department's programs, including: fossil fuels, energy efficiency and renewables, energy deregulation, energy education and environmental management and cleanup. The Department maintains cooperative agreements with tribal nations that are directly affected by DOE operations.

In 1992, DOE issued its first American Indian Policy along with DOE Order 1230.2 that established the responsibilities and roles of DOE management in carrying out its policy. In 1998, at the request of Indian nations, the Policy was revised. In 2006, the American Indian Policy was replaced with and superseded by the DOE American Indian and Alaska Natives Tribal Government Policy. The 2006 policy is intended to ensure an effective implementation of a government-to-government relationship with American Indian and Alaska Native tribal governments. It recognizes the Federal trust relationship and responsibilities of the Federal government. The policy also demonstrates a commitment to the following: government-to-government relations with tribes, ensuring an integration of Indian nations into the decision-making process and compliance with Federal laws and Executive Orders that assist in the preservation and protection of historic and cultural sites and religious practices.⁵

Each DOE program office has a point of contact for Indian issues.⁶ Additionally, the Department offers a variety of resources for both tribes and staff, including web-based materials, publications, training and outreach. Nuclear waste is just one example of issues that fall within DOE's jurisdiction that requires government-to-government interaction with tribes. The Office of Environmental Management (EM) is involved in the cleanup of nuclear wastes at sites and facilities throughout the country. As a result, EM frequently interacts with tribal communities located near nuclear weapons production sites. The EM program includes tribes in pertinent cleanup decisions through cooperative agreements, agreements-in-principle and memorandum-of-understanding. EM engages in several cooperative agreements and special initiatives with tribes.⁷ In 1989, DOE established the State and Tribal Government Working Group (STGWG)

³ The EPA's FY 2010 Budget Request can be viewed online at <http://www.epa.gov/ocfo/budget/2010/2010bib.pdf>.

⁴ This number includes 1,528 FTEs for the Federal Energy Regulatory Commission (FERC) who submit their budget through DOE.

⁵ The U.S. Department of Energy American Indian and Alaska Native Tribal Policy can be found online at: http://apps1.eere.energy.gov/tribalenergy/pdfs/dae_indian_policy2006.pdf.

⁶ See Appendix 2 of *A Guide for DOE Employees: Working with Indian Tribal Nations* (December 2000). This publication can be viewed online at: <http://www.em.doe.gov/pdfs/tribal.pdf>.

⁷ Additional information regarding the DOE's Office of Environmental Management's tribal programs can be found online at: <http://www.em.doe.gov/tribalpages/initiatives.aspx>.

to help ensure that DOE facilities comply with all applicable Federal and State laws and regulations and tribal rights. EM has also incorporated tribal governments in several different initiatives related to the transport of hazardous, particularly radioactive, materials.⁸

Discussion of FERC

The Federal Energy Regulatory Commission (FERC) is an independent regulatory agency that oversees the interstate transmission and sale of electricity, natural gas and oil. Additionally, the agency licenses and inspects private and state hydroelectric projects. FERC is similar to the NRC in both its regulatory responsibilities and independent nature. The FY 2010 Budget request asked for \$298,000,000 in funding and 1,528 full time employees.⁹ The agency issued its Policy Statement on Consultation with Indian Tribes in Commission Proceedings in 2003, in order to facilitate tribal involvement in areas that fall within FERC's regulatory jurisdiction. The Statement stemmed from tribal issues related to hydroelectric licensing, recognizing the sovereignty of tribal nations and reinforcing the agency's trust responsibility to Indian tribes. The policy also established a Tribal Liaison position along with certain required actions for the hydroelectric licensing program.

FERC has one Tribal Liaison position that is part of the Office of General Counsel and there is no designated Tribal Office. Consultation with tribal governments takes place during the hydroelectric licensing process when necessary and typically occurs during the early stages. FERC notifies tribes no later than 30 days after the receipt of the notice of intent and pre-application for hydroelectric projects. Currently, there are no tribal publications or designated web pages on the FERC website. The Tribal Liaison does not serve as an advocate of tribes, but acts as a bridge between the agency and the tribal community.

Discussion of FCC

The Federal Communications Commission (FCC) was established by the Communications Act of 1934 and regulates interstate and international communications by radio, television, wire, satellite and cable. The FY 2010 Budget request asked Congress for \$335,794,000 and 1924 full time employees.¹⁰ In June of 2000, The FCC adopted the Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes. The policy reaffirms the principles of tribal sovereignty and the Federal trust responsibility. Additionally, the FCC identified several goals and principles which would promote a regulatory process that involves the establishing working relationships with tribal governments, consultation with tribal governments along with coordination to which they were committed in the agency's interaction with tribal governments including, but not limited to: working on a government-to-government basis to ensure adequate access to communications services, consulting with tribal Governments prior to regulatory action or policy implementation affecting tribal land and resources, establishing a working relationship with tribal governments, coordinating with tribal governments and establishing procedures to educate agency staff about tribal governments and culture. The FCC has taken several steps to address the lack of telecommunications deployment throughout Indian Country.

⁸ Please consult *Transportation Resources for Tribes* (July 2003) for additional information. This booklet can be viewed online at: http://www.em.doe.gov/PDFs/transPDFs/tribal_booklet803.pdf.

⁹ The FERCs FY 2010 Budget Request can be viewed online at: <http://www.ferc.gov/about/strat-docs/FY10-budg.pdf>.

¹⁰ The FCC's FY 2010 Budget Request can be viewed at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-290641A1.pdf.

The FCC has one Tribal Liaison position that is part of the Intergovernmental Affairs Office and there is no designated Tribal Office. The Liaison's budget requests are submitted to Intergovernmental Affairs. There is no mention of tribes in the agency's governing statutory authority. Each program office has a designated tribal contact, but these individuals have several additional responsibilities. The FCC does not have a tribal contact in any of its five Bureaus. The agency has a tribal page on the FCC website dedicated to tribal initiatives.¹¹ Tribal-related training for employees is available online utilizing a program developed by the EPA. The Tribal Liaison conducts outreach to the tribal community on an ongoing basis by visiting individual tribes and attending tribal conferences and events.

¹¹ The FCC's Tribal Homepage can be viewed at: <http://www.fcc.gov/indians/>.