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October 26, 2012

## GENERAL MEMORANDUM 12-124

### EPA Consultation on Plan to Provide Solid Waste Management Capacity Assistance to Tribes

The Environmental Protection Agency (EPA) announced in a July 12, 2012, Dear Tribal Leader Letter that it is seeking review and comment on a draft EPA Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes (the Plan). A second EPA letter to tribal leaders dated September 24, 2012, extended the deadline for submission of written comments to *November 8, 2012*. A copy of each tribal leader letter is attached. The Plan is available at:

[www.epa.gov/epawaste/wyl/tribal/capacityassist.htm](http://www.epa.gov/epawaste/wyl/tribal/capacityassist.htm).

EPA's stated purpose for the Plan is to implement recommendations made in the March 21, 2011, EPA Office of Inspector General (OIG) Evaluation Report *EPA Needs an Agency-Wide Plan to Provide Tribal Solid Waste Management Capacity Assistance*. The Report and recommendations generally focused on internal EPA program management issues and can be found at:

<http://www.epa.gov/oig/reports/2011/20110321-11-P-0171.pdf>.

The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6901-6992k, which amended the Solid Waste Act, established programs governing the disposal of solid and hazardous waste. RCRA Subtitle D (Solid Waste) requires states to establish State Solid Waste Plans, for approval by EPA. RCRA requires EPA to establish guidelines for state solid waste plans and criteria for the operation of solid waste landfills but does not specifically establish a federal solid waste permit program in the absence of a state program. RCRA does not authorize EPA to treat tribes in the same manner as states. EPA's position is that it is not authorized under RCRA to implement solid waste programs for states or tribes.

The result is that there is no federal solid waste regulatory program in Indian Country, except EPA's criteria for solid waste landfills. Currently, tribes must rely entirely on their inherent jurisdiction to regulate solid waste disposal within Indian Country. As noted in the OIG report, tribes often find it difficult to regulate waste management activities on lands owned by nonmembers.

Given the lack of a federal regulatory program for solid waste in Indian Country and limited tribal authority, there has been a proliferation of open dumps. In 1994, after Congress found at least 600 open dumps on Indian lands, it enacted the Indian Lands Open Dump Cleanup Act of 1994, 25 U.S.C. § 3901-08, which directs the Indian Health

Service (IHS) to work with tribes to inventory and close open dumps on Indian lands. The initial IHS inventory of open dumps in 1998 listed approximately 1200 sites; the OIG report states that as of 2010, nearly 4,000 open dumps are listed. The OIG report expressed concern with several aspects of EPA's solid waste program in Indian Country.

EPA's draft Plan has very modest goals. EPA identifies the Plan's primary mission as assisting tribes to develop and implement an Integrated Waste Management Plan (IWMP), since IHS has the lead in closing open dumps. The Plan cites two goals from EPA's Strategic Plan: 1) to increase by 78 the number of tribes covered by an IWMP (134 tribes now have an IWMP, out of 566 federally recognized tribes); and 2) close, clean up or upgrade 281 open dumps on Indian lands (647 open dumps have been closed, cleaned up, or upgraded, with almost 4,000 open dumps still listed). The Plan proposes to modify these goals to focus on developing IWMPs.

While the Plan emphasizes providing training and resources to help tribes develop an IWMP, EPA notes that its Solid Waste Program budget is severely constrained. The Plan describes how funding from the Indian General Assistance Program (GAP) can be used by tribes to develop and implement solid waste programs, and to clean up open dumps. Of course, tribes rely on GAP funds for a variety of environmental activities, and OIG reports that many tribes will not have sufficient funds to perform all of the work they plan and also develop an Integrated Waste Management Plan.

Neither the Plan nor the OIG report mentions steps that EPA could take to establish an enforceable federal solid waste program in Indian Country. One option would be to seek legislation amending RCRA to specifically provide for a federal program when no state program applies and to authorize EPA to treat tribes in the same manner as states for implementing solid waste programs, with federal enforcement as a backup. Another option would be for EPA, as the agency charged with administering RCRA, to interpret the Act as authorizing EPA to establish a federal program in Indian Country. With a federal program, EPA could authorize tribes to administer EPA's regulatory program through Direct Implementation Cooperative Agreements or delegation agreements. Since the draft Plan is described as a dynamic document that will be refined as priorities and resources change, tribal comments on the draft Plan could suggest alternatives for improving how solid waste is regulated in Indian Country and request that EPA devote more resources to this effort.

The deadline of November 8, 2012 is approaching. Tribes might simply ask for more time to address this very important topic. Please let us know if we may provide additional information regarding EPA's draft Plan and/or assist you in responding.

###

Inquiries may be directed to:

Rich McAllister ([rncallister@hobbsstrauss.com](mailto:rncallister@hobbsstrauss.com))

Dean Suagee ([dsuagee@hobbsstrauss.com](mailto:dsuagee@hobbsstrauss.com))



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

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

July 12, 2012

Notification of Consultation and Coordination on “The Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes”

Dear Honorable Leader:

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with federally-recognized Indian tribes on the draft document entitled: *The Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes* (the Plan). The draft document is designed to develop and implement an Agency-wide approach for providing effective tribal solid waste management capacity assistance that is consistent with EPA’s authority.

The Plan implements recommendations made in the March 21, 2011, U.S. EPA, Office of Inspector General (OIG) Evaluation Report *EPA Needs an Agency-Wide Plan to Provide Tribal Solid Waste Management Capacity Assistance*. The Report and recommendations generally focused on internal EPA program management issues and can be found at: <http://www.epa.gov/oig/reports/2011/20110321-11-P-0171.pdf>. EPA agreed with the OIG’s recommendations and has committed to developing a draft Plan that includes the following:

- A detailed description of the roles and responsibilities for each headquarters program office, as well as the regional counterparts to each program office;
- Resource information for each headquarters program office and their regional counterparts, which will include both staffing and funding information;
- Proposed new performance measures for consideration in the next EPA Strategic Plan. EPA intends to focus on outcome oriented measures and ensure that internal controls are a significant factor in selecting new proposed measures. EPA will also attempt to align the proposed measures with the Tribal Decision Maker’s Guide and the Guidebook for Building Tribal Environmental Capacity (currently in draft form);
- Specific procedural requirements for open dump assessment, and the associated data collection and data entry. EPA will ensure that consistent technical information is available to EPA staff and tribal program managers by evaluating all of EPA’s information products relating to tribal solid waste management programs, and then making commensurate revisions to EPA’s web pages;
- An assessment of all the existing coordination activities. The Plan will propose instituting specific coordination procedures, including when and how program offices and Regions should raise issues for the appropriate input and direction; and
- A specific timeline for all outstanding activities.

The Plan reflects the EPA tribal waste management program priorities and addresses the OIG recommendations. EPA believes that the implementation of the Plan will enhance EPA's ability to provide consistent and effective solid waste management capacity assistance to tribes. The Plan is a dynamic document that is subject to further refinement as priorities and resources change.

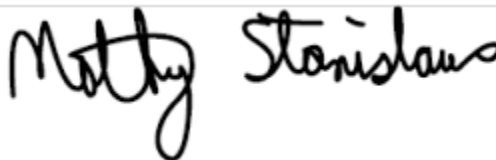
This consultation and coordination process will be conducted in accordance with the EPA Policy on Consultation and Coordination with Indian Tribes (<http://www.epa.gov/tribal/consultation/consult-policy.htm>). EPA invites you and your designated consultation representative(s) to participate in this process. EPA's anticipated timeline for the consultation and coordination period is expected to extend from July 23, 2012 – September 24, 2012.

Enclosed is a consultation and coordination plan for this action that includes a description of the actions under consultation and the process EPA intends to follow, including a timeline for the consultation and coordination period and information on how you can provide input on this action. This information is also available on EPA's Tribal Portal ([www.epa.gov/tribal/consultation](http://www.epa.gov/tribal/consultation)).

The official EPA contact person for this consultation and coordination process is Michaelle Wilson, Branch Chief of the Federal, State and Tribal Programs Branch, available at (703) 308-8790 or ([wilson.michaelle@epa.gov](mailto:wilson.michaelle@epa.gov)). Your staff may also contact Kim Katonica at (703) 308-6087 or ([agencywideplan@epa.gov](mailto:agencywideplan@epa.gov)) should you have any questions regarding this action.

I look forward to hearing from you on this important matter.

Sincerely,

A handwritten signature in black ink that reads "Mathy Stanislaus". The signature is written in a cursive style and is positioned above a horizontal line.

Mathy Stanislaus  
Assistant Administrator

Enclosure

## **Tribal Consultation and Coordination Process and Timeline**

As part of the tribal consultation and coordination process, EPA is announcing a review and consultation period for the draft document entitled: *The Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes* (the Plan). Consultation on the draft Plan is an important step in an ongoing partnership in which EPA is committed to working with the tribes to protect human health and the environment. The goal of consultation and coordination is to ensure that tribal officials have the necessary information to provide valuable input on the draft Plan.

We request your consultation and coordination input on the draft Plan by September 24, 2012. In addition, EPA welcomes suggested alternatives and/or substitute language that best reflects your input. Input may be submitted electronically to Kim Katonica at (agencywideplan@epa.gov). Written input can be sent to EPA at the following address:

Kim Katonica, U.S. EPA  
Office of Resource Conservation and Recovery  
1200 Pennsylvania Avenue, NW  
Mail Code 5303P  
Washington, DC 20460

In addition, input may also be faxed to Kim Katonica at (703) 308-8433. To view the draft Plan, please visit the following website: <http://www.epa.gov/epawaste/wyl/tribal/capacityassist.htm>.

To begin the consultation and coordination process, EPA scheduled one national conference call and one webinar to discuss the draft Plan with you. The table below lays out the schedule and timeline for government-to-government consultation and coordination during this process. The national conference call and webinar will each include two segments. The first segment will be used to coordinate and share information between EPA and tribal representatives. The first segment will also provide an opportunity for clarifying questions to be asked and discussed. The second segment will provide an opportunity for consultation input from tribal leaders or their authorized representatives. In addition, EPA is seeking other opportunities (e.g., National Tribal Caucus Conference Calls, Regional Tribal Operation Committee Meetings, other national tribal conferences and/or meetings) to coordinate with tribes on the draft Plan.

Date	Event	Contact Information
July 23, 2012 – September 24, 2012	Review and Consultation Period – Deadline: September 24, 2012	Kim Katonica Phone: (703) 308-6087 Fax: (703) 308-8433 E-mail: <a href="mailto:agencywideplan@epa.gov">agencywideplan@epa.gov</a>
August 16, 2012 2:00 – 3:30pm (EDT)	National Conference Call	<b>Call-in Information:</b> Conference Call Line: (866) 299-3188 Conference Call Code: 703 307 6087
September 12, 2012 2:00 – 3:30pm (EDT)	National Webinar Conference	Webinar Address and Information: To register for this webinar, please go to: <a href="https://www2.gotomeeting.com/register/794276090">https://www2.gotomeeting.com/register/794276090</a>
September 24, 2012	Deadline for Submitting Comments	Kim Katonica Phone: (703) 308-6087 Fax: (703) 308-8433 E-mail: <a href="mailto:agencywideplan@epa.gov">agencywideplan@epa.gov</a>

For questions or additional information on the draft Plan, you may contact members of the *Agency-Wide Plan Workgroup* (see the list below). **Note: The list only includes members of the RCRA Tribal Waste Management Program.**

EPA HEADQUARTERS/ REGION	STATES	CONTACT NAME	PHONE NUMBER	E-MAIL ADDRESS
Headquarters		Kim Katonica	(703) 308-6087	<a href="mailto:Katonica.kim@epa.gov">Katonica.kim@epa.gov</a>
Region 1	ME, NH, VT, MA, RI, and CT	Juiyu Hsieh	(617) 918-1646	<a href="mailto:Hsieh.juiyu@epa.gov">Hsieh.juiyu@epa.gov</a>
Region 2	NY, NJ, PR, and VI	Lorraine Graves	(212) 637-4099	<a href="mailto:Graves.lorraine@epa.gov">Graves.lorraine@epa.gov</a>
Region 4	KY, TN, NC, SC, MS, AL, GA, and FL	Davy Simonson	(404) 562-8457	<a href="mailto:Simonson.davy@epa.gov">Simonson.davy@epa.gov</a>
Region 5	MN, WI, IL, MI, IN, and OH	Dolly Tong	(312) 886-1019	<a href="mailto:Tong.dolly@epa.gov">Tong.dolly@epa.gov</a>
Region 6	NM, TX, OK, AR, and LA	Roger Hancock	(214) 665-6688	<a href="mailto:Hancock.roger@epa.gov">Hancock.roger@epa.gov</a>
Region 7	NE, KS, IA, and MO	Gayle Hubert	(913) 551-7439	<a href="mailto:Hubert.gayle@epa.gov">Hubert.gayle@epa.gov</a>
Region 8	MT, ND, WY, SD, UT, and CO	Susanna Trujillo	(303) 312-7008	<a href="mailto:Trujillo.susanna@epa.gov">Trujillo.susanna@epa.gov</a>
Region 9	CA, NV, AZ, and HI	Nancy Sockabasin	(415) 972-3772	<a href="mailto:Sockabasin.nancy@epa.gov">Sockabasin.nancy@epa.gov</a>
Region 10	WA, OR, ID, and AK	Fran Stefan	(206) 553-6639	<a href="mailto:Stefan.fran@epa.gov">Stefan.fran@epa.gov</a>



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

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

September 24, 2012

Extension of Consultation and Coordination Timeline for *The Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes*

Dear Honorable Leader:

The U.S. Environmental Protection Agency (EPA) is pleased to announce a revised timeline for consultation and coordination with federally recognized tribes on *The Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes* (the Plan). The revised schedule is in response to requests we have received for additional time and will accommodate our need for meaningful dialogue and consultation with tribes on this important initiative.

EPA has extended the consultation timeline to November 8, 2012.

**Tribal Consultation Process & Timeline**

As stated in my consultation notification letter of July 12, 2012, EPA is seeking input from tribal governments on the content of *The Environmental Protection Agency-Wide Plan to Provide Solid Waste Management Capacity Assistance to Tribes* (the Plan). Once consultation on the Plan is completed and tribal input has been fully considered, we will continue to engage with tribal governments on implementing the Plan during Fiscal Year 2013.

All consultation information, including a copy of the Plan, is available on the following EPA website:  
<http://www.epa.gov/epawaste/wyl/tribal/capacityassist.htm>.

**\*\*Please note the additional dates associated with this consultation and coordination plan:**

Consultation & Coordination Activity	Date
Consultation Process Begins	July 23, 2012
National Tribal Consultation Conference Call	August 16, 2012
National Tribal Consultation Webinar	September 12, 2012
<b>National Tribal Consultation Conference Call**</b>	<b>October 3, 2012</b>
<b>National Tribal Consultation Webinar**</b>	<b>October 10, 2012</b>
Consultation Process Ends- Tribal Comments Due	November 8, 2012

**National Tribal Consultation Conference Call and Webinar Events**

The national tribal conference call and webinar will each include two segments. The first segment will be used to coordinate and share information between EPA and tribal representatives. The first segment will also provide an opportunity for clarifying questions to be asked and discussed. The second segment will provide an opportunity for consultation input from tribal leaders or their authorized representatives.

**National Conference Call**

The conference call will be held on Wednesday, October 3, 2012, from

- 2:00 - 3:30 pm (EDT)
- 1:00 - 2:30 pm (CDT)
- 12:00 - 1:30 pm (MDT)
- 11:00 - 12:30 pm (PDT) and
- 10:00 - 11:30 pm (AKDT)

and will use the following numbers:

- Conference call line: (866) 299-3188
- Conference call code: (703) 307-6087

**Webinar Registration:**

Wednesday, October 10, 2012, 2:00 - 3:30 pm EDT  
<https://www2.gotomeeting.com/register/987680594>

**Website for Additional Consultation Opportunities:**

Details on any additional consultation opportunities will be made available at the following EPA website:  
<http://www.epa.gov/epawaste/wyl/tribal/capacityassist.htm>

**Official Agency Point of Contact**

Please do not hesitate to contact your regional tribal program office or the following Agency representative with any questions or comments about this action, or if you would like to request alternate arrangements to the process outlined above.

Kim Katonica, U.S. EPA  
Office of Resource Conservation and Recovery  
1200 Pennsylvania Avenue, NW  
Mail Code 5303P  
Washington, DC 20460  
Phone: (703) 308-6087  
Email: [katonica.kim@epa.gov](mailto:katonica.kim@epa.gov)

I look forward to hearing from you on this important matter.

Sincerely,



Mathy Stanislaus  
Assistant Administrator

cc: Tribal Environmental Directors  
Regional Indian Program Coordinators