

American Indian Environmental Office



Working Effectively with Tribal Governments

2014

Training Overview

Welcome! This training will provide EPA employees with the skills and knowledge to more effectively work with federally recognized tribal governments. It will introduce you to the terms necessary for understanding EPA's work with tribal governments, as well as how the Agency develops and maintains an effective working relationship with our tribal government partners.

This year's training focuses on two important topics: the federal trust responsibility and the Indian Environmental General Assistance Program (GAP).

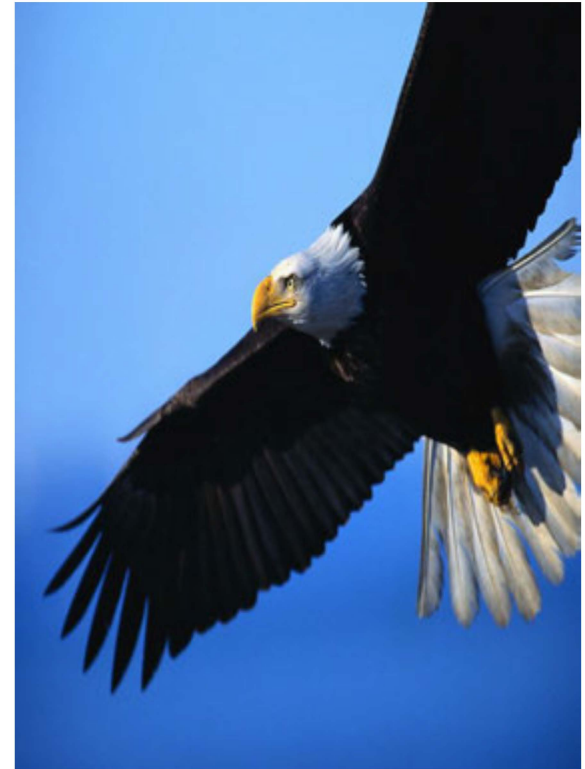
If you spend all or part of your time working with tribes, or have an interest in learning more about tribes, we recommend contacting EPA's [American Indian Environmental Office \(AIEO\)](#) at 202-564-0303 to be directed to additional resources.



Training Goals

This year's Working Effectively with Tribal Governments (WETG) training has the following goals:

- Provide an understanding of the basic terms and concepts that guide the EPA – tribal government relationship;
- Describe the federal trust responsibility and provide information on the Indian Environmental General Assistance Program (GAP);
- Outline the basic structure of EPA's tribal program and how to get assistance on tribal issues; and
- Briefly touch on Native American culture.



Course Outline

Section I: Indian Tribes and Terms

Section II: Federal Trust Responsibility
Indian Environmental General
Assistance Program (GAP)

Section III: EPA Tribal Program Structure

Section IV: Cross-Cultural Communications and
Partnership



Section I: Indian Tribes and Terms

There are [566 federally recognized tribes](#) spread throughout the United States. Over 200 of these federally recognized tribes are located in Alaska and are often referred to as Alaska Native Villages. For this training, when we use the term “tribe” we are referring to a federally recognized Indian tribe.

According to the 2010 Census, 5.2 million people self-identified as Native American either alone or in combination with one or more other races. Roughly 1.1 million people identifying as Native American live in tribal statistical land areas. Another 3.5 million people, who did not identify as Native American, also live in these same areas.

Many self-identified Native Americans live in other areas. Anchorage, Alaska (12.4%) and Tulsa, Oklahoma (9.2%) have the highest percentage of Native American residents, and New York City has the largest population at over 110,000 people.



Indian Country on the Map

Here are some facts to consider:

- Tribal lands consist of 55 million acres or roughly 2.3% of the United States land base. This is an area larger than New England.
- Individual reservation sizes vary from 16 million acres (roughly the size of West Virginia) to under 10 acres.

Nine of EPA's regions include federally recognized tribal governments*:

Region 1 – 10 tribes

Region 2 – 8 tribes

Region 3 – 0 tribes

Region 4 – 6 tribes

Region 5 – 35 tribes

Region 6 – 66 tribes

Region 7 – 9 tribes

Region 8 – 27 tribes

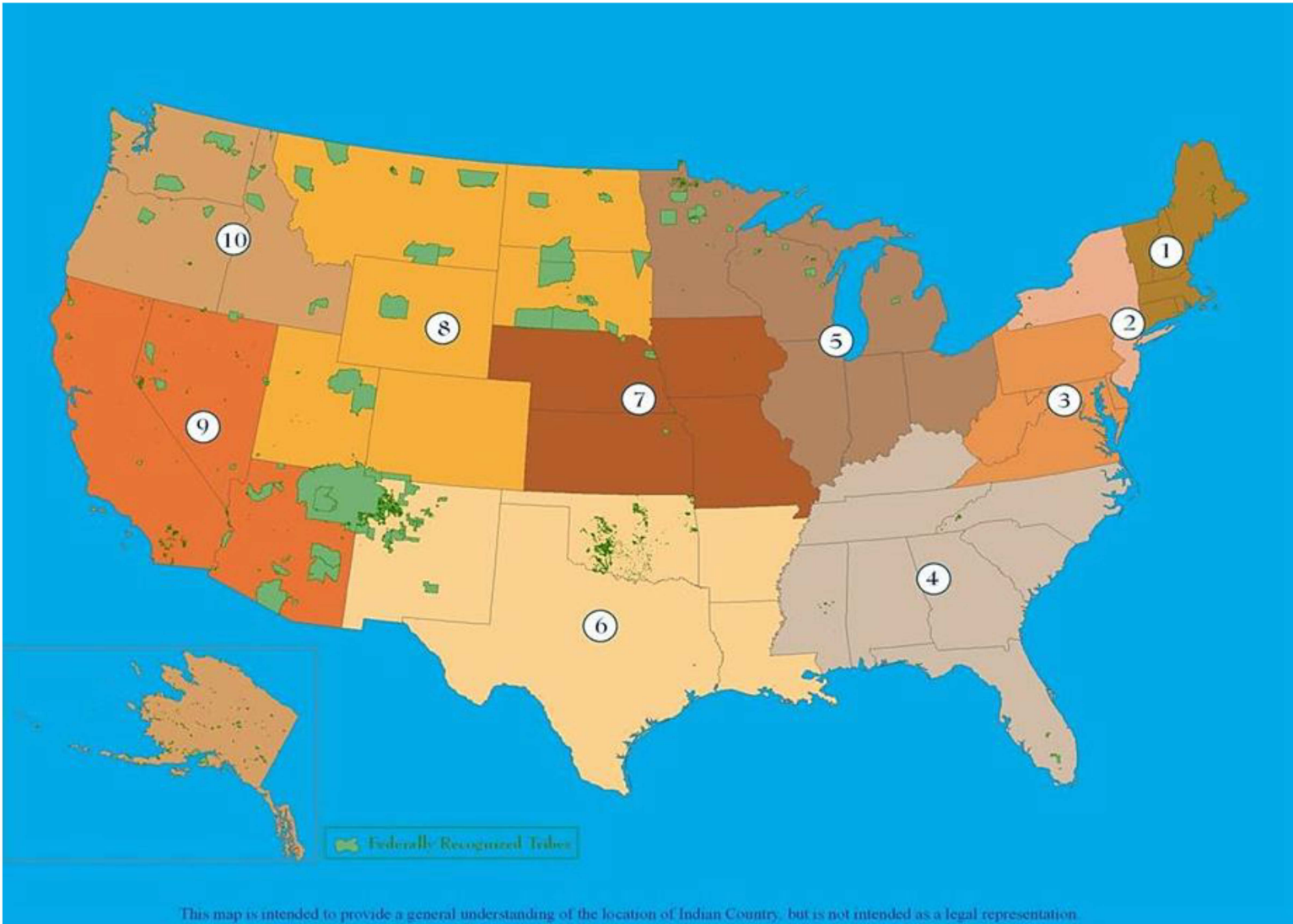
Region 9 – 145 tribes

Region 10 – 271 tribes

**You may notice that these numbers add up to more tribal governments (577) than the number of tribes (566) listed on the previous page. Good catch! Both numbers are correct since some federally recognized tribes have more than one separately elected tribal government that EPA works with to protect human health and the environment.*



Indian Lands in the 10 EPA Regions



Important Terms

The following terms are essential to understanding the EPA tribal program. A WETG training goal is to provide a basic understanding of each term and to provide an in-depth discussion on one or more terms each year. The two terms this year's WETG training focuses on are 1) the federal trust responsibility, and 2) the Indian Environmental General Assistance Program (GAP).

- Federally Recognized Indian Tribe
- Indian Country
- EPA Policy for the Administration of Environmental Programs on Indian Reservations, or the EPA Indian Policy
- Tribal Consultation and Coordination
- Tribal Jurisdiction
- Environmental Justice
- Direct Implementation
- American Indian Environmental Office.



Federally Recognized Indian Tribe

Why do we partner with tribes at all? It is because the United States government has a unique and longstanding legal and political relationship with Indian tribes as provided by the United States Constitution, treaties, statutes, executive orders, and court decisions. No other group in the United States has a similar legal status.

Federally recognized Indian tribes are those tribes that have met criteria established by the Department of the Interior or are named by Congress as eligible to receive federal benefits, federal services, and federal protections. The special relationship federally recognized tribes have with the United States is known as the **government-to-government relationship**.

Treaties with tribes remain significant in our current time because they established the foundation of many federal-tribal relationships, typically reserved certain lands, generally called reservations, and recognized rights of tribes. *Treaties are still valid and still the law!*



Indian Country

Indian country is another unique term in federal Indian law, and is one of the most important terms for EPA's work. The term "Indian country" is defined by federal statute as: "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States..., (b) all dependent Indian communities within the borders of the United States..., and (c) all Indian allotments." You may also hear the terms such as "tribal lands" or "Indian lands" used interchangeably with Indian country.

In Indian country, the federal government, rather than a state, normally has jurisdiction and authority to carry out federal law. Under certain circumstances tribes may receive authority from EPA to carry out federal laws. Additionally, tribes have inherent authority to enact and enforce their own laws in Indian country.

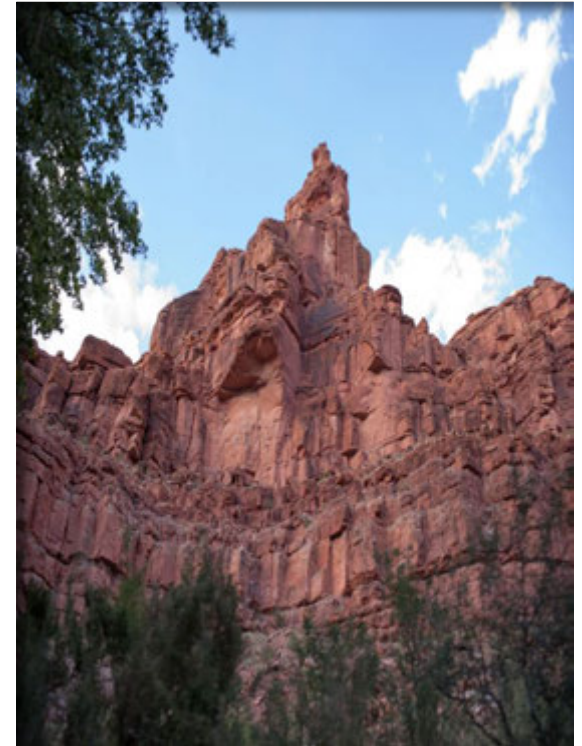


EPA Indian Policy

The 1984 [EPA Indian Policy](#), formally known as the *EPA Policy for the Administration of Environmental Programs on Indian Reservations*, was the first formal Indian policy adopted by a federal agency – we are very proud of this fact!

The EPA Indian Policy outlines nine principles that guide the Agency in interacting with tribes and administering environmental programs in Indian country:

- EPA works directly with tribal governments;
- EPA recognizes the primary role of the tribal government on tribal lands consistent with federal authorities;
- EPA assists tribes in assuming regulatory and program management responsibilities;
- EPA removes barriers to working with tribes;
- EPA considers tribal concerns and interests in EPA decisions;
- EPA encourages cooperation between tribal, state, and local governments;
- EPA coordinates with other federal agencies to support tribes;
- EPA works to ensure compliance with federal environmental laws on tribal lands; and
- EPA incorporates these principles in planning and management activities.



EPA Indian Policy Anniversary

Over the past three decades EPA Administrators have repeatedly reaffirmed the EPA Indian Policy, demonstrating the continuing importance of the nine principles listed on the previous page to EPA's daily work.

In November 2014, the Agency will celebrate the 30th anniversary of the EPA Indian Policy. To commemorate the 30th anniversary EPA has scheduled a number of celebrations and educational opportunities that we hope you are able to attend.



Tribal Consultation and Coordination

Tribal Consultation is a process through which EPA interacts with tribal governments when EPA actions and decisions may affect tribal interests. As appropriate, it may be a one-time or ongoing dialogue. EPA's tribal consultation activities are guided by two separate authorities: [Executive Order 13175](#) [Consultation and Coordination with Indian Tribal Governments \(2000\)](#), and [EPA Policy of Consultation and Coordination with Indian Tribes \(2011\)](#), which we call the Consultation Policy in this training.



All EPA consultation (even consultation required under the Executive Order) is guided by the Consultation Policy. Consultation is triggered whenever an Agency decision, activity, or action “may affect tribal interests.” As a process, consultation may include several methods of interaction that may occur at different levels and in different forms – anything from requests for comments, letters, phone calls, webinars and conference calls to group or individual meetings. The Consultation Policy is often supplemented by detailed office or regional consultation plans.

To navigate the complexities of tribal consultation, each region and program office has a Tribal Consultation Advisor (TCA) to help you with any consultation questions.

Jurisdiction

No training on working with tribes is complete without discussing **jurisdiction**. Jurisdiction is the power of a government to exercise legal authority over a specified territory and residents of that territory.

Most of the United States is an overlapping patchwork of federal, tribal, state, and local authority. Frequently a city, county, state, or the federal government may simultaneously have authority over various daily activities of its residents. In Indian country, federal and tribal governments normally have authority, while state and local governments may not.

The federal government retains authority to carry out *federal law* within Indian country. Tribes may carry out tribal law in Indian country. Therefore, both tribes and the federal government have responsibilities within Indian country. Even though a tribe may seek and be delegated federal environmental program authority, at this point in time EPA directly implements the vast majority of the federal environmental laws applicable to Indian country.

When jurisdictional questions are raised regarding EPA activities in Indian country, it is highly advisable to involve the Indian law specialists in the Offices of Regional Counsel and the Office of General Counsel.

Environmental Justice

EPA's **environmental justice** concerns touch upon our work with tribes and also with indigenous peoples – remember for this training “tribes” refers to federally recognized tribal governments. Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

On July 24, 2014, Administrator Gina McCarthy signed the [*EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples*](#). This Policy clarifies how EPA works with federally recognized tribes, indigenous peoples and others living in Indian country to provide fair treatment and meaningful involvement in EPA decisions that may affect their health or environment.



Direct Implementation

EPA works to assist tribes in assuming regulatory and program management responsibilities. Until a tribe has assumed responsibility for a federal program on their land, the programs are implemented by EPA. This is known as **Direct Implementation**. The vast majority of federal environmental programs are directly implemented by EPA in Indian country.

A few examples of EPA directly implemented activities currently occurring in Indian country include:

- Source permitting under the Clean Air Act;
- NPDES permitting under the Clean Water Act;
- Remediation of hazardous waste sites placed on the National Priority List;
- Certification of applicators of restricted use pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act; and
- Ensure public water systems comply with the Safe Drinking Water Act.



American Indian Environmental Office

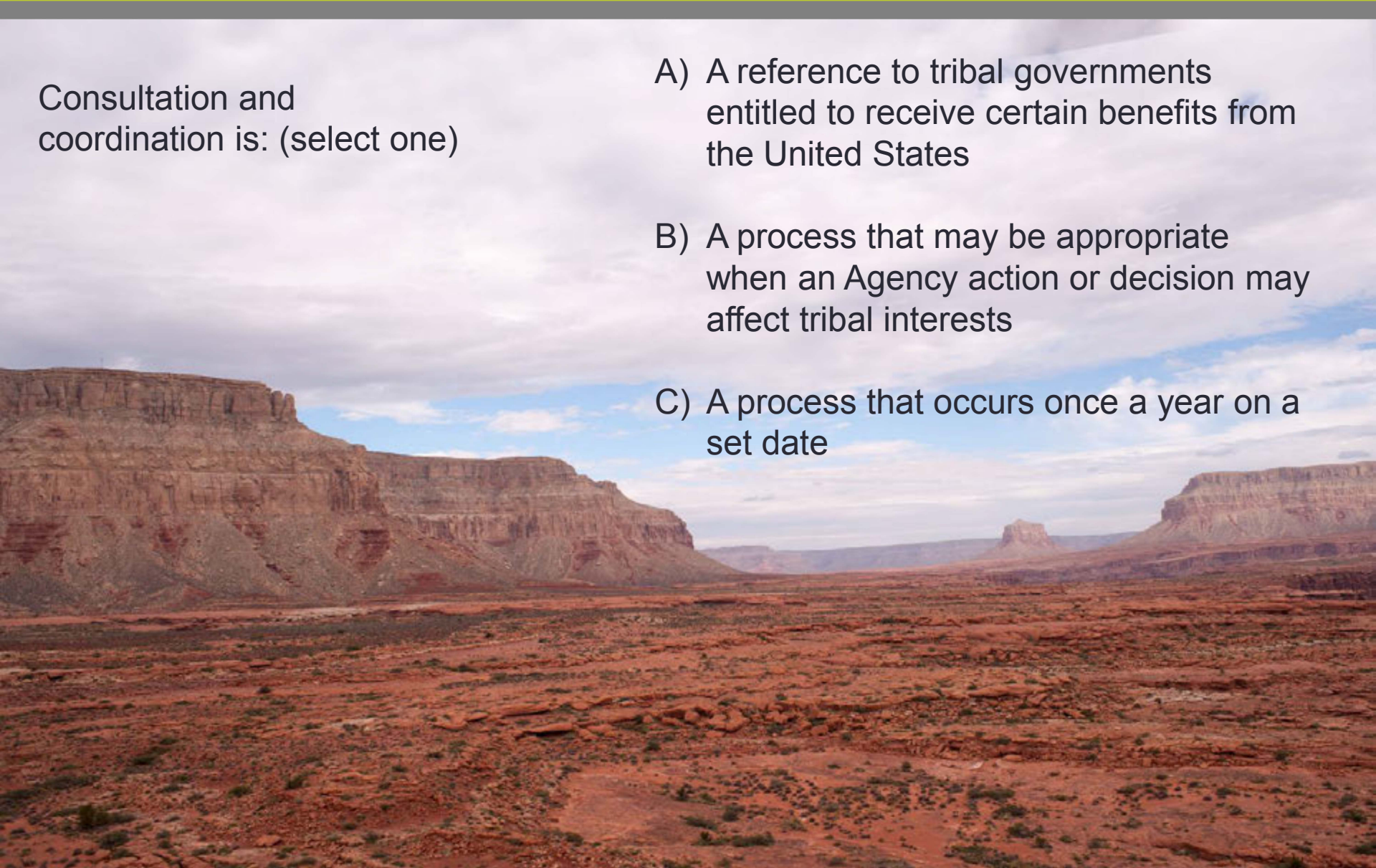
The American Indian Environmental Office (AIEO) was created in 1994 to lead EPA efforts to protect human health and the environment for federally recognized tribes. AIEO achieves its purpose by supporting implementation of federal environmental laws in Indian country consistent with the EPA Indian Policy. AIEO is located within the Office of International and Tribal Affairs (OITA).



Section I Test

Consultation and coordination is: (select one)

- A) A reference to tribal governments entitled to receive certain benefits from the United States
- B) A process that may be appropriate when an Agency action or decision may affect tribal interests
- C) A process that occurs once a year on a set date



Section I Test

Which of the following is NOT a principle of the EPA Indian Policy:
(select one)

- A) EPA considers tribal concerns and interests in EPA decisions.
- B) EPA assists tribes in assuming regulatory and program management responsibilities.
- C) EPA recognizes the primary role of the tribal government on tribal lands consistent with federal authorities.
- D) EPA engages states to take on a regulatory role in Indian country.

Section II: The Federal Trust Responsibility

The **federal trust responsibility** is a doctrine defining the United States' unique relationship with federally recognized tribes. In simple terms, it includes both moral obligations and legal duties that lead the federal government to consult with tribes and consider tribal interests and welfare when performing government tasks.

To very briefly summarize, tribes gave up or “ceded” certain rights and vast territory to the United States government through treaties. In those treaties, the federal government made promises to tribes regarding the protection of lands and rights that they did not give up. The federal trust responsibility arises from treaties, statutes, executive orders and the ongoing historical relations between the United States and tribes.

The federal trust responsibility is normally described as having two distinct parts – a general component and a specific component.



The General Trust Component

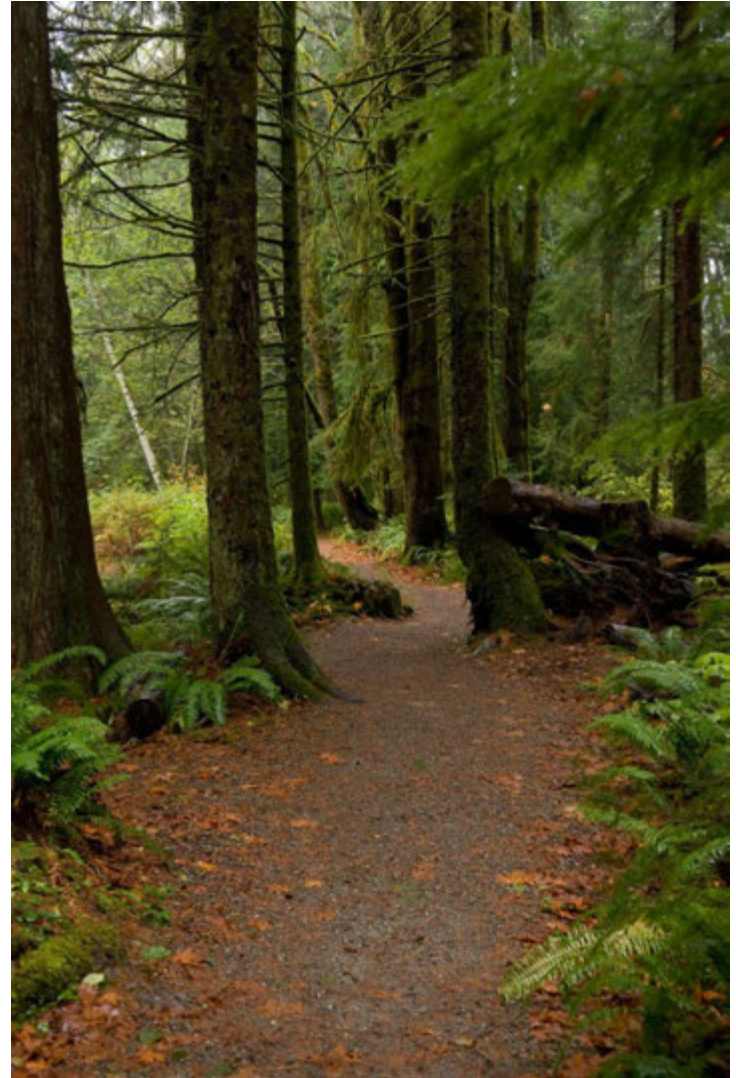
The general trust component informs federal policy and means the federal government consults with and considers the interests and welfare of tribes when taking actions that may affect tribes or their resources. Courts have not called for particular actions or procedures to be taken; instead, courts have looked to see whether federal agencies have sought the views of tribes and considered their interests. The United States Supreme Court has described the trust responsibility as imposing “moral obligations of the highest order” upon the federal government.



Specific Trust Component

In contrast to the general trust component, the specific trust component imposes a legal duty on the federal government. Specific trust duties are often described in terms of the relationship that arises when the federal government assumes extensive control over tribal property such as land, money, or natural resources. In these situations, the government has a legal duty to act in the best interest of the affected tribe or individual Indian.

It is easy to understand specific trust duties where Congress by statute has directed a federal agency to manage particular tribal resources. For example, the United States Supreme Court found that federal timber management statutes and regulations can impose a specific duty to act in the tribes' best interests when the federal government manages tribal forests.



The Federal Trust Responsibility and EPA

EPA respects the trust responsibility and acts consistent with it in implementing its programs. This is part of the 1984 EPA Indian Policy.

The trust responsibility informs how EPA uses its discretion to protect tribal health and environments. EPA consults with tribes on proposed actions that may affect tribes or their resources. EPA works to ensure that its actions are consistent with the protection of tribal rights arising from treaties, statutes, and executive orders.

EPA statutes and regulations have not been interpreted as creating specific tribal rights or trust duties. The courts have found that EPA meets the trust responsibility when it complies with its statutes and regulations.



The Federal Trust Responsibility and Tribes

Like EPA, tribes regard the trust responsibility as a serious obligation of the federal government, including EPA. In tribes' interactions with EPA, tribes often do not distinguish the general trust component from specific trust duties and may view the distinction as unimportant or nonexistent.



Section II: The Indian Environmental General Assistance Program (GAP)

The Indian Environmental General Assistance Program Act of 1992 (GAP) is the largest single source of EPA funding to tribes. In FY 2014, GAP funding amounted to \$65 million.

GAP grants build tribal government capacity to implement environmental protection programs that are consistent with the environmental statutes administered by EPA. In addition to developing tribal capacity to implement programs under applicable environmental laws, GAP also allows EPA to fund tribes to implement solid and hazardous waste programs.

Tribes and EPA are celebrating more than 20 years of success under this important legislation!



GAP and the EPA Indian Policy

GAP has been a cornerstone of EPA's tribal program for more than 20 years and continues to advance important EPA Indian Policy principles that were discussed earlier in this training. Although many of these principles are well-established in EPA today, they were not in 1992 when the GAP statute became law. At that time, the EPA Indian Policy was relatively new and not well incorporated into EPA's work. GAP firmly integrated EPA Indian Policy principles into EPA's ongoing operations and helped create the EPA tribal program that we have today.

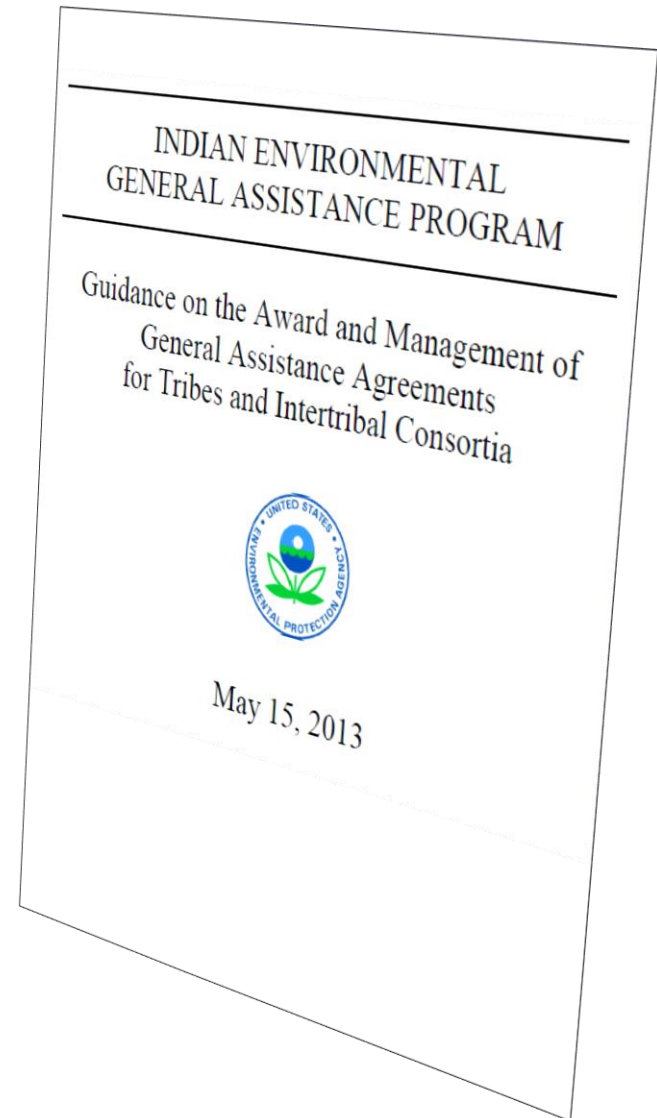


The GAP Guidance

In May 2013, EPA released the most recent GAP grant guidance - *Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortia*. The new GAP guidance provides a consistent national framework for building tribal environmental program capacity and is designed to improve the management of GAP resources. The guidance also clarifies the use of GAP funding for solid waste and hazardous waste activities, which are the only implementation activities that GAP can fund.

The GAP guidance contains details on the process of building tribal program capacity to implement environmental protection programs. It also provides both tribes and EPA a greater understanding of the paths to success.

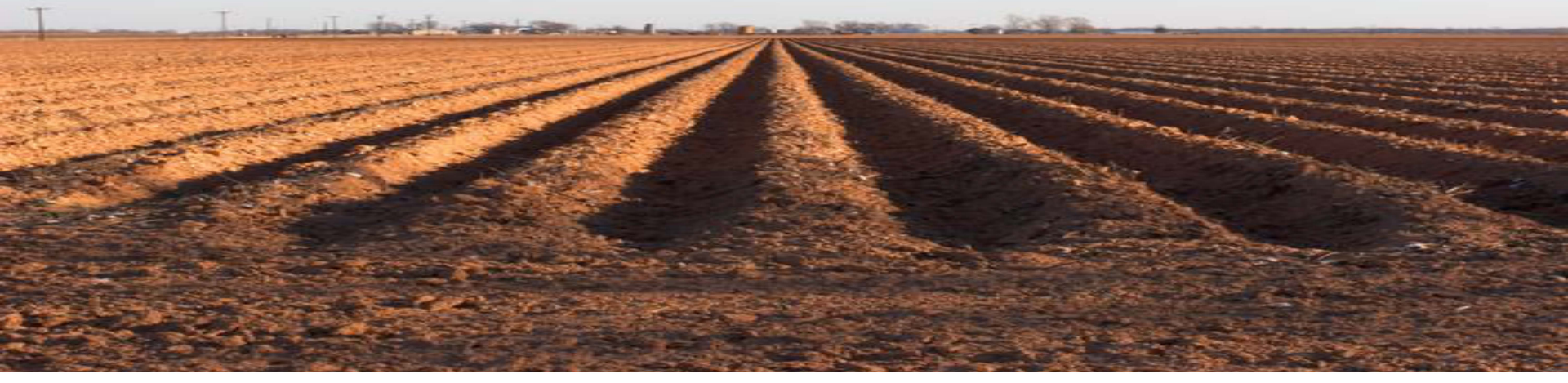
This new guidance requires that a joint EPA-Tribal Environmental Plan (ETEP) be in place with each tribe receiving GAP funding. An ETEP outlines EPA and tribal roles and responsibilities for program implementation in Indian country and includes tribal environmental priorities and the long-range tribal program development goals.



Section II Test

Which of the following statements about the federal trust responsibility is true: (select one)

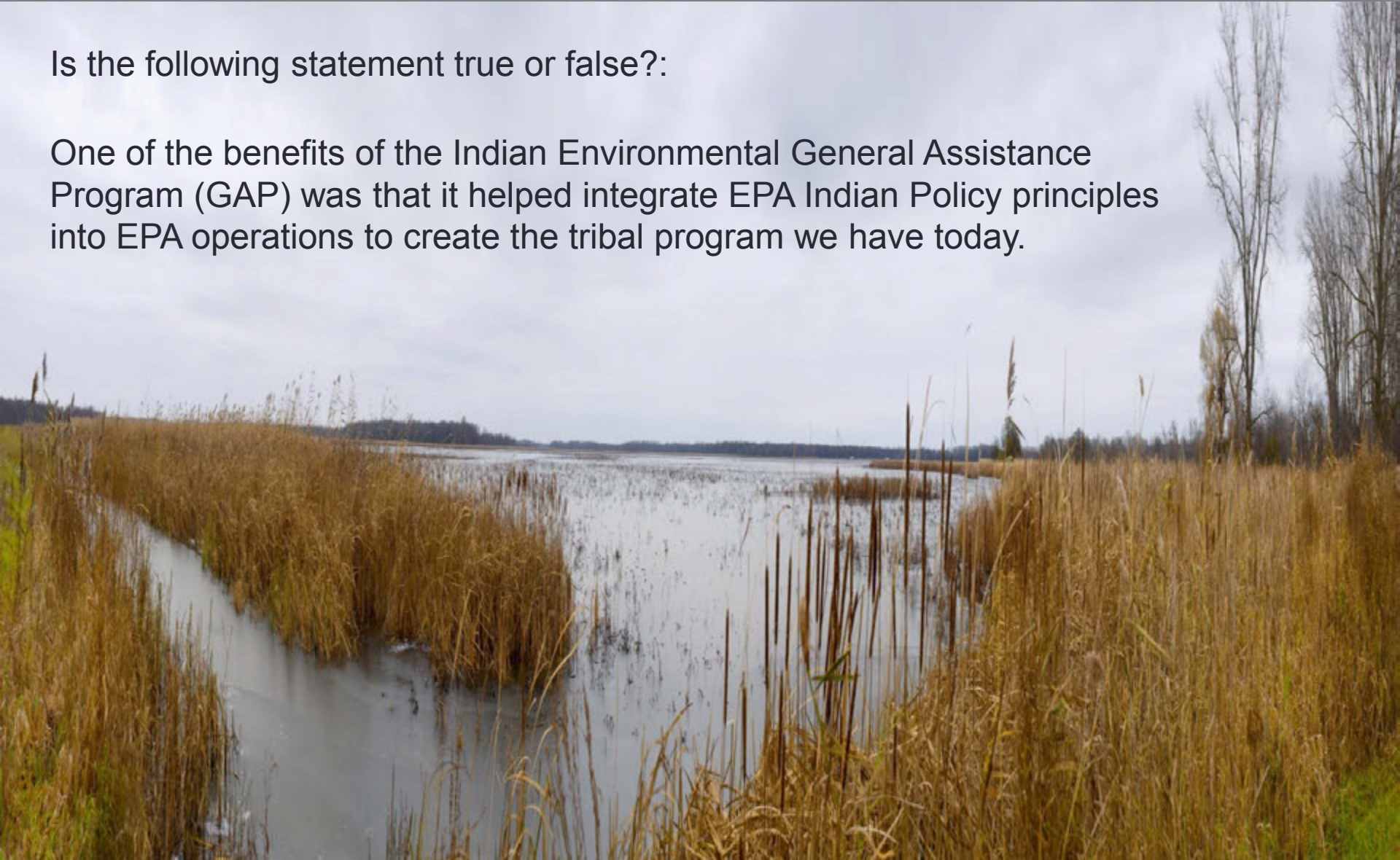
- A) EPA acts consistently with the federal trust responsibility when it complies with the statutes and regulations applicable to its actions
- B) The federal trust responsibility arises from treaties, statutes and executive orders
- C) The federal trust responsibility is very important to tribes
- D) All of the above



Section II Test

Is the following statement true or false?:

One of the benefits of the Indian Environmental General Assistance Program (GAP) was that it helped integrate EPA Indian Policy principles into EPA operations to create the tribal program we have today.



Section III: EPA Tribal Program Structure

EPA's Tribal Program consists of those EPA individuals, offices, regions, and work groups who work on tribal issues at all levels of the Agency. There are hundreds of headquarters and regional staff who work on tribal issues within EPA in their individual programs and regions or with tribes. This interaction occurs on many levels.

The EPA Administrator is co-chair of the National Tribal Operations Committee (NTOC). This group consists of EPA senior leadership and 19 tribal representatives. The tribal representatives are referred to as the National Tribal Caucus (NTC). Together, they work on implementation of programs for which EPA and the tribes share responsibilities.



EPA Tribal Program Structure

The Deputy Administrator chairs EPA's Executive Management Council which guides the Indian Program Policy Council subcommittee. The Indian Program Policy Council consists of Deputy Assistant Administrators and Deputy Regional Administrators. They address issues of national significance impacting EPA's work with tribes.

Each of the nine regions with federally recognized tribes has a Regional Tribal Operations Committee (RTOC), which is a joint EPA-tribal committee consisting of regional leadership and tribes in that region.

EPA also interacts with tribes through EPA tribal partnership groups such as the Tribal Science Council, Tribal Pesticide Program Council, Tribal Waste and Response Assistance Program, National Tribal Water Council, National Tribal Toxics Committee, Exchange Network Tribal Governance Group, National Tribal Air Association, NEJAC Indigenous People's Subcommittee and other groups.



EPA Tribal Program Structure

The Assistant Administrator for the Office of International and Tribal Affairs (OITA) is the National Program Manager for the EPA Tribal Program, the Agency Designated Official for Consultation, and works to ensure EPA is implementing the EPA Indian Policy and the EPA Consultation Policy.

The American Indian Environmental Office (AIEO) is part of OITA. AIEO maintains the [EPA Tribal Portal](#), which is a terrific resource if you are interested in learning more about the work EPA does with tribes. AIEO also maintains the [Tribal Consultation Opportunities Tracking System \(TCOTS\)](#).

Headquarters Indian Coordinators (HICs) and Regional Indian Coordinators (RICs) work with AIEO and their respective programs and regions on the broad range of tribal issues. You have already learned about the Tribal Consultation Advisors who are your tribal consultation and coordination “in-office” experts. Collectively, these groups are often referred to as the [Tribal Program Managers](#).

EPA Tribal Program Structure

In addition to performing their assigned duties, these individuals and groups are a resource to EPA employees and should be called upon as often as needed.

The most direct way to engage the EPA Tribal Program is to contact AIEO or your headquarters or Regional Indian Coordinator. Staffing and contact information to these groups is linked on the previous slide and always available on the EPA Tribal Portal.



Section III Test

The American Indian Environmental Office: (select one)



- A) Maintains the Tribal Consultation Opportunities Tracking System database for consultation and coordination activities
- B) Maintains the EPA Tribal Portal, an important gateway to EPA environmental information specifically related to tribes
- C) Is located in the Office of International and Tribal Affairs
- D) All of the above

Section IV: Cross-Cultural Communications and Partnership

In Section IV we very briefly touch upon Native American culture. Cross-cultural understanding and communication is an important component of EPA's relationship with tribes.

The **culture** of a people is the total of their living experiences within their own society which includes a vast array of behaviors and beliefs. As an EPA representative it is essential to be sensitive to the importance and uniqueness of the culture of each tribe and the effect this will have on your interaction.



It helps to remember that some people you interact with may have significantly different beliefs and manners of communication and decision-making. Keeping an open mind, being flexible in your opinions, and being receptive to new behaviors and attitudes are keys to successful interaction.

Cross-Cultural Communications and Partnership

The combination of tribes' unique legal status and culture means each tribe may bring different perspectives to EPA's work through concerns about issues such as: preserving subsistence ways of living; protecting natural resources as promised through treaties or laws to support hunting, fishing, or cultural uses; protecting cultural information and locations of religious or sacred significance; and addressing pollution impacts in Indian country from sources outside of Indian country.

While tribal perspectives can be different than EPA's, partnering with tribes can be very informative and beneficial to our work by providing new ideas and fresh looks at human health and environmental protection.



Section IV Test

What word describes a shared way of understanding the world that defines the boundaries of different groups?: (select one)

- A) Jurisdiction
- B) Culture
- C) Consultation

American Indian Environmental Office



Congratulations!

Your training requirement is satisfied and your office will be notified of your success. Continue to the next slide if you would like to print a certificate for your records.

If you have any questions or comments regarding this training please contact Andrew Byrne at byrne.andrew@epa.gov.

Printing Your Completion Certificate

1. Log in to the eLearning home page at <http://epa.skillport.com> and select “My Progress” on the left hand side
2. Select the “Completed Tab” and look for the 2014 Working Effectively with Tribal Governments Training Course
3. Select the certificate icon (under the “Action” column) to print your certificate. You may print your certificate from “My Progress” at any time

Your training is complete. You may close the training window.