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January 10, 2020

Ms. Anne Idsal
OAR Acting Assistant Administrator
EPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: NTAA Recommendations for the Tribal DERA Program

Dear Acting Assistant Administrator Idsal:

The National Tribal Air Association (NTAA) Executive Committee (EC) and their Mobile Sources Work Group (MSWG) have long been aware that the Tribal Diesel Emissions Reduction Act (Tribal DERA) program is an under-utilized grant program. The EC and MSWG therefore are pleased to provide input to you with recommendations for improving the program such that the goals of the Tribal DERA program can be more fully realized.

The NTAA is a member-based organization with 149 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 to understand 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.

The following six points are the primary recommendations of the EC and the MSWG, and will be expanded upon below:

1. Eliminate or reduce matching funds requirement
2. Provide more informational, educational, and technical support for Tribes
3. Expand the qualifying categories and/or allow for flexibility
4. Remove the minimum operating hours constraint
5. Allow for hardship waivers and provide capacity support
6. Include options for electric vehicle (EV) infrastructure



1. Eliminate or reduce matching funds requirement

Between the years 2009 and 2017, the Tribal cost share (combined mandatory and voluntary) amounted to an average of 36% (or \$167,891), with a range from an average low of 22% in 2011 to an average high of 60% in 2013, and a low absolute dollar amount of \$12,489 to a high absolute dollar amount of \$699,797. These might be reasonable amounts for larger Tribes or Tribes with access to significant income. However, for Tribes that have fewer financial resources, these amounts are often prohibitive. Less wealthy Tribes are better served in holding onto vehicles for as long as possible and replacing parts as needed, and often are unable to anticipate which vehicle should be prioritized for upgrades, as highlighted by the following examples from the Red Cliff Band of Lake Superior Chippewa and the Fond du Lac Band of Lake Superior Chippewa:

Red Cliff:

Replacing an engine in a dilapidated vehicle does not change the fact that the remainder of the vehicle is essentially unusable. Doing so would be money wasted. Most smaller Tribes have 3rd, 4th, and 5th hand vehicles that take thousands of dollars just to keep in service. If the hydraulics, drive train, axles, frame, braking system, and frame/body are dilapidated, replacing the exhaust controls would mean nothing. Many small Tribes cannot afford to replace a vehicle as the allowable funding through DERA for replacement is set at 50%.

Fond du Lac:

The Band is not always able to have a vehicle replacement budget in place ahead of time. It is hard to commit a year or more in advance to replacing a certain vehicle when there are additional vehicles that may require replacement before that one vehicle.

Furthermore, the Tribal Authority Rule¹ states:

EPA agrees with the commenters that tribal resources generally are not adequate to warrant the level of match required of states and that equivalent resources are unlikely to become available in the foreseeable future. A high match requirement would likely discourage interested tribes from developing and implementing air programs. It is not appropriate to compare the resources available for the development of state programs to that of tribes because tribes often lack the resources or tax infrastructure available to states for meeting cost share requirements. Furthermore, a low match requirement, with a hardship waiver, is consistent with federal Indian policy which encourages the removal of obstacles to self-government and impediments to tribes implementing their own programs.

While this statement is in reference to developing and implementing air programs, the same reasoning holds true for projects that have historically required a minimum match of 20%. The

¹ EPA Indian Tribes: Air Quality Planning and Management, Vol. 63, No. 29 (February 12, 1998), page 7265



Tribal DERA RFA for FY2018/19² included an option to replace the full vehicle/equipment on page 13 at I.B.2.g.1. However, the cost share ranged from 40%-50%, depending on the type of vehicle, which is a prohibitive cost for most Tribes. The EPA uses match requirements to determine if the resources and ability of a Tribe are sufficient for the Tribe to see a grant through to completion. However, many of the Tribes that would benefit most from the availability of such important funding are excluded due to this match requirement, which can and should be reduced or eliminated.

Apart from eliminating or reducing the match requirement such as through a hardship waiver (as described below in point 5), EPA should allow Tribes to utilize awards from the Volkswagen Settlement fund as their non-federal match requirement. This would ease the financial burden and potentially allow for greater penetration rates of the Tribal DERA program, as well as give Tribes the same rights states are given in the use of Volkswagen Settlement funds.

2. Provide more informational, educational, and technical support for Tribes

Many Tribes are limited in staffing capacity to address the request for applications (RFA) in the depth necessary to apply for funding for projects that are both relevant for their Tribe and within the boundaries of the RFA. There are some misconceptions among Tribal environmental staff about what projects qualify under DERA. For example, many Tribes mistakenly believe there is an upper age limit for the vehicles that can be replaced, and are therefore not applying for funding to replace those vehicles, when in reality the RFA does not specify an upper age limit. Other Tribes are under the impression there is a minimum allowable project cost. Adding to the confusion are inconsistencies between the Tribal DERA and Volkswagen Settlement funding qualification process, despite those having a formal nexus. Without strong outreach and education on each year's RFA, Tribal staff may be unaware of options that might make it worthwhile for them to apply, or misconstrue that their project does not meet the minimum requirements. While the informational sessions offered by EPA are helpful, they seem to be insufficient, as evidenced by the persisting misconceptions.

One of the reasons for the success in the application rate of the Volkswagen Settlement is that dedicated funds from the Settlement were set aside in order to ensure a Technical Assistance Provider was established. The Institute for Tribal Environmental Professionals (ITEP) was awarded this role, and continues with efforts to ensure that exceptional outreach and technical guidance are provided for Tribes. Additionally, fillable forms and templates are made available through ITEP with consultation and review processes in place to ensure forms are completed correctly, which aids Tribes in streamlining the process before submitting documents to the agency.

3. Expand the qualifying categories and/or allow for flexibility

A major problem that Tribes encounter is that they often have vehicles or engines that need replacement but are not listed in the program category options, and therefore do not qualify for

² <https://www.epa.gov/sites/production/files/2019-02/documents/tribal-clean-diesel-funding-assistance-program-fy-2018-rfa.pdf>



replacement. It is important then that options are unrestricted by categorical definitions so that Tribes can retire old vehicles, replace the polluting vehicles as quickly as possible, and accordingly realize the emissions reductions intended by the program.

As the “Questions and Answers: Tribal Clean Diesel funding Assistance Program FY 2018”³ document states at C.1 and the FY2018/19 RFA² states at III.D.8, vehicles that will be retired within three years are not eligible for funding. However, these are the very vehicles that Tribes need financial support in replacing, and are the very vehicles that are polluting Tribal communities and are otherwise in need of upgrading. Additionally, the three-year point to attrition could be indeterminable or uncontrollable or occur while the vehicle is still running. The three-year cut-off is something that perhaps looks good on paper, but in fact does not work in reality. EPA is not meeting its own diesel emissions reduction goals that form the DERA program by disallowing the replacement of diesel vehicles that Tribes need in their fleet and intend to replace.

Tribes (and, more broadly, other rural communities) often have a different inventory of vehicles or engines than do urban centers or marine-proximate communities. In order to fully support Tribal sovereignty (as is federally-mandated), the EPA should allow Tribes to determine their own needs for diesel engine and vehicle replacement.

Additionally, the DERA Programmatic Priorities prioritize areas of non-attainment over locations in attainment. However, since many Tribes live in rural areas that are in attainment, this program focus creates bias against Tribes: who is to say that replacing diesel engines in a non-attainment area is of more value than replacing diesel light-duty trucks driven on a Tribal elementary school campus or that are otherwise impacting a local population? The DERA program needs to recognize Tribal interests as distinct from non-attainment designations and, more broadly, leave equipment decisions to each Tribal community, so that each may exercise its federal rights of self-determination.

Flexibility must be added to the qualifying criteria, consistent with the Tribal community profile. The following example from the White Mountain Apache Tribe exemplifies this situation:

White Mountain Apache Tribe

The White Mountain Apache Tribe (WMAT) owns and operates a ski resort as a wholly Tribal enterprise. That venture requires that the WMAT utilize snowcats and other snow-related equipment, all of which have very high price points and can be highly polluting. The WMAT is challenged to upgrade to newer or less polluting equipment because of the purchase costs, and this type of equipment is not encompassed in the DERA program. Instead of purchasing, then, the WMAT is compelled to lease such equipment. The WMAT then remains in the disadvantaged position of limited vendor leasing term options, rather than utilizing the Tribal competitive bidding process that purchasing would involve. This then perpetuates the WMAT being shut out of the DERA program, as it may have no equipment to retire should the “qualifying” categories be

³ https://www.epa.gov/sites/production/files/2019-03/documents/fy18-tribal-faq_03_25_19.pdf



expanded. Finally, such a cascade then perpetuates a state of disadvantage that a better-structured DERA program could have alleviated.

4. Remove the minimum operating hours constraint

Many Tribes use older diesel generators for backup power in critical infrastructure facilities such as emergency management facilities that comprise, for example, casinos/resorts, hospitals, or EMS buildings, to name a few. These backup generators likely do not meet the minimum requirement of 500 operational hours, required under section III.D.14 in the 2018/19 RFA. Removing the minimum operating hours requirement would allow Tribes to upgrade or replace older back-up diesels with cleaner energy options (such as fuel cells, renewable generation, batteries, or microgrids) that are more reliable, cheaper to operate, and promote environmentally appropriate Tribal resiliency goals. It would also allow Tribes to pair the Tribal DERA program with other federal or state programs that promote climate resiliency solutions, such as the Department of Energy's Tribal Energy Deployment Grant, FEMA's Resiliency Grant, and the California Energy Commission's EPIC grant program.

Similar to point 3 above, removing the minimum operating hours constraint would allow Tribes to determine their own needs, and therefore exercise their sovereignty.

5. Allow for hardship waivers and provide capacity support

Although the NTAA's EC and its MSWG prefer that the match requirement be eliminated, another approach would be to allow Tribes to submit hardship waivers. A Tribe recently applied for a hardship waiver for their 5% non-federal match for their §105 Program, and was successfully granted a reduction to 0%. This application included statistics on the per capita income and unemployment rate of the Tribe: by percentage, their per capita income is lower than both the state and national per capita incomes, and the Tribal unemployment rate is higher than the national average. This information exemplified the true hardships Tribes face in being able to afford match requirements, and the benefit to all when those matches are waived or eliminated. Allowing Tribes to submit hardship waivers for the match requirements of the Tribal DERA program might encourage more Tribes to apply. However, the caveat is that small Tribes often are not only limited by funds, but also by capacity to complete the grant development and reporting processes. Therefore, in addition to allowing for hardship waivers, providing technical assistance and contract management resources would expand Tribes' capacity and capability in applying for and implementing grants (as stated above in point 2).

6. Include options for electric vehicle (EV) infrastructure

The Volkswagen Settlement has had far greater reach and utilization among Tribes than the Tribal DERA program. While this is due to more than one factor, one of the options that some Tribes have utilized is the option to use Volkswagen funds for establishing EV infrastructure such as charging stations. Tribes may have an interest in disposing of older diesel vehicles and purchasing EVs, if they were simultaneously able to establish the necessary charging infrastructure as they are under the Volkswagen Settlement.




That said, although EVs are becoming a more widely used technology, at this point in time repairs and maintenance of EVs may be cost prohibitive for Tribes in more remote areas. Additionally, quick charging stations require a three phase electrical source, which requires installing a three phase power line, which is, again, cost prohibitive for most Tribes or communities in rural areas. Therefore, while having EV infrastructure as an option might be useful for some Tribes and should be considered, many Tribes may find this option to be unfeasible.

The NTAA EC and MSWG appreciate your consideration in this matter. Tribes are excellent co-regulators of air quality, and strive to reduce diesel emissions to the best of their abilities. The Tribal DERA program has great potential to achieve the goals set forth in the statute. Adoption of the recommendations in this letter would move the needle towards meeting the needs of Tribes and the goals of the DERA program.

On Behalf of the NTAA EC and the Mobile Sources Work Group,


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NTAA EC Chairman


Craig Kreman
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Cc: Sarah Dunham, OTAQ
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