2 Introduction and Purpose of the STAR

The Status of Tribal Air Report (STAR) is an annual report by the National Tribal Air Association (NTAA) to provide a national overview of Tribal air quality programs for decision makers in Indian country, Federal Government, including the Administration, and allies. The STAR contains information about the success and struggles facing Tribal air programs. In this year's report we will highlight the results of the Baseline Needs Assessment (BNA) conducted by NTAA. This report was commissioned to have a greater understanding of the growing need of Tribal Air Programs. From the needs assessment the STAR reviews the status, struggles and resource gaps identified in the BNA, barriers to Tribes in accessing resources and support, and makes recommendations on growing support for Tribal Air Programs. It is important to note that although there are approximately 120 with Tribal air grants, there are Tribes that conduct air quality work using other resources. So, the STAR and the BNA reflect not only the efforts and needs of Tribes with air grants but also other Tribes with air quality concerns.

The National Tribal Air Association

The National Tribal Air Association (NTAA) is a Tribal membership organization currently with 156 Member Tribes whose mission is to advance air quality management policies and programs consistent with the needs, interests, and unique legal status of federally recognized Tribes. The NTAA's membership grows yearly; to learn more about the NTAA and to become a member, please visit www.NTAATribalAir.org.

Additionally, the NTAA serves as a communication liaison and information conduit between Tribes, EPA, and other federal agencies. The NTAA exists to assist Tribes in air quality policy work while respecting and supporting Tribal sovereignty and the Tribes' rights to a government-to-government relationship with the federal government.

All federally recognized Tribes are eligible to become member Tribes of the NTAA. Tools, such as the policy resource kits, developed by the NTAA are available online for download and are readily accessible by members of the public. These PRK's include template letters for Tribes to respond to EPA rulemakings and proposals as well as relevant fact sheets to print and distribute.

The NTAA's Goals:

To advocate for and advance the development of Tribal air policy for the protection of environmental, cultural, and economic interests at all levels of government (Tribal, federal, state, local, and international).

To promote the development, funding, and capacity building of Tribal air management programs.

To promote and facilitate air quality policy and technical information that may include research, scientific and/or medical studies.

To advance the recognition and acceptance of Tribal sovereign authority by conducting effective communication with and outreach to state, local, federal, and international agencies, and to the public; and

To encourage and support appropriate consultation of state, local, federal, and international agencies with all Tribal governments in accordance with Tribal structures and policies.

NTAA Executive Committee

	Primary Representatives	Alternate Representatives
Region 1	Marvin Cling, Sr. Passamaquoddy Tribe at Pleasant Point	Open Seat
Region 2	Angela Benedict, Saint Regis Mohawk Tribe	Steven Smith, Shinnecock Nation
Region 3	Open Seat	Open Seat
Region 4	Scott Hansen, Catawba Indian Nation	Tiffany Lozada, Poarch Band of Creek Indians
Region 5	Brandy Toft, *NTAA Vice Chair* Leech Lake Band of Ojibwe	Vallen Cook, Grand Portage Band of Lake Superior Chippewa
Region 6	Craig Kreman, *NTAA Treasurer* Quapaw Nation	Open Seat
Region 7	Billie Toledo, *NTAA Secretary* Prairie Band Potawatomi Nation	Joseph Painter, Winnebago Tribe
Region 8	Janice Archuleta, Ute Mountain Ute Tribe	Randy Ashley, Confederated Salish & Kootenai Tribes
Region 9	Syndi Smallwood, *NTAA Chairwoman* Jamul Indian Village of California	Leonard Bruce, Gila River Indian Community
Region 10	Lucas Bair, Spokane Tribe of Indians	Caleb Minthorn, Confederated Tribes of the Umatilla Indian Reservation
Alaska	Rosalie Kalistook, Association of Village Council Presidents	Shannon Melton, Native Village of Buckland

Table 1 NTAA Executive Committee Members

2.1 Background

Since the promulgation of the Tribal Authority Rule (TAR) in 1998, Tribal air programs across the country have seen both successes and challenges. Tribes, using the modular approach provided by the TAR have identified their own needs and priorities and established programs reflect those needs and priorities. As a result, there are Tribes that have approved Tribal Implementation Plans, approved permitting programs, conducting regulatory monitoring, Class I redesignations, working with the states on reviewing permits and state implementation plans, developing emissions inventories, indoor air programs, programs to address radon, programs to protect natural and cultural resources impacted by climate change, and many more. In support of the Tribes, ITEP and NTAA have built a support infrastructure that provides technical support and capacity building as well as policy analysis and review to help Tribes grow their programs and impact EPA policy and guidance.

However, this success has been limited and undermined by the lack of financial and technical support for Tribes for air quality programs. Since 1998, the CAA funding, has not significantly changed, with initial funding levels in 1998 at $11 million, rising to $12.49 million in 2012 and declining to $12.43 in 2021 and again in 2022. Yet, in the new 2023 budget the funding for Tribal Air Programs remained stagnate while the state program budget received an additional $1.9 million. NTAA continues to call out this stagnation as an untenable funding scenario moving forward. EPA needs to demonstrate their trust responsibility and update this idle budget. Earlier this year and through the publication of NTAA's BNA, NTAA has provided the National Tribal Caucus (NTC), Tribal leaders, and the Biden Administration with clear and factually based numbers detailed in this report.

Summary of Needs

In 2022, the NTAA celebrated its 20th anniversary, established through Tribal leadership and EPA funding. Just two years earlier, in 2020, the United States celebrated the 50th anniversary of the Clean Air Act (CAA), arguably one of the most successful pieces of public health legislation ever adopted in the United States. These two anniversaries mark important air quality milestones in the mission to protect public health, natural and cultural resources. These anniversaries also provide an opportunity to reflect on Tribal air quality achievements to date, along with unmet and emerging air quality issues.

Summary of the Baseline Needs Assessment

The BNA is a new report that provides the first-of-its kind assessment that demonstrates the need for increased funding for Tribal Nations to address air quality and climate change on and around Tribal Lands. NTAA Executive Committee Members, Janice Archuleta, and Tribal Healthy Homes Network Director, Gillian Mittelstaedt presented on the BNA's important key findings. Watch the Informational Webinar Here. An electronic survey was distributed nationally, to obtain baseline information from among the 574 federally recognized Indian Tribes. The 59-question survey collected both quantitative and qualitative data from a total of

169 individual Tribal respondents. A total of 136 individual Tribes participated, representing 24% of all federally recognized Tribes.

A little over half of the Tribes who completed the survey are current recipients of a CAA Section 103 or Section 105 grant funding from the U.S. EPA (58%), with the remaining 42% of Tribal respondents not receiving any CAA funding (nationally, 22% of all Tribes receive CAA funding).

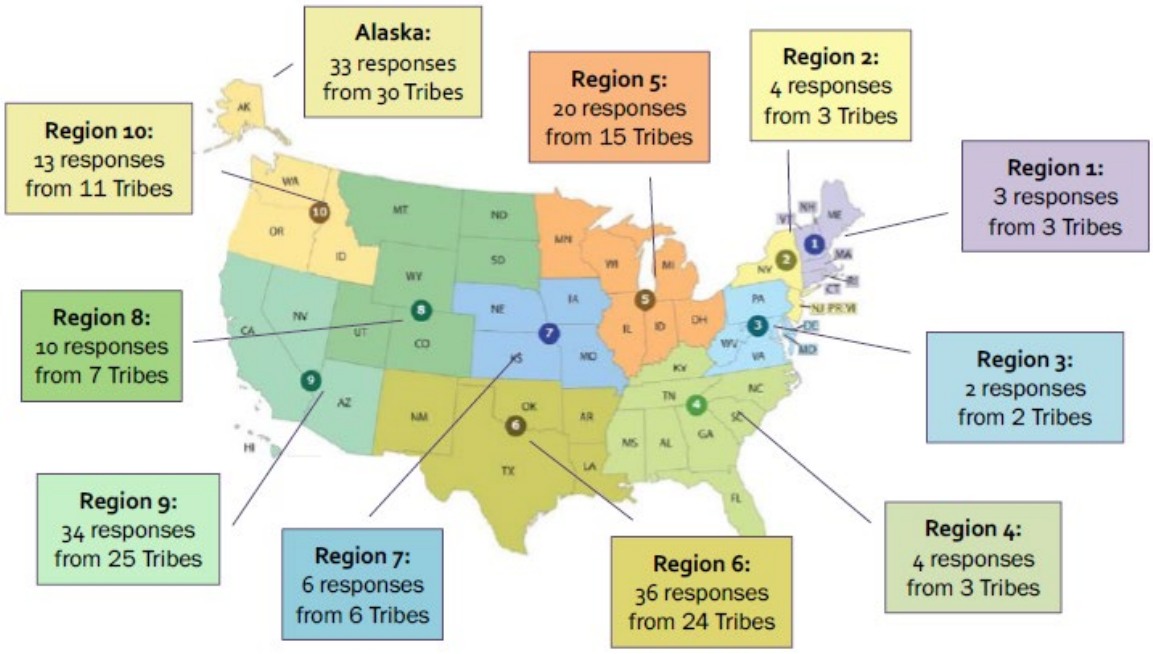

Figure 1 Tribal Responses to the 2021 NTAA Baseline Needs Assessment. There's a total of 169 individual Tribal respondents.

2.2 Summary of the Tribal Air Program (TAP) Resources and Status

Given this large unmet need, it is important to provide context of the success and additional barrier for TAPs. Much of TAPs success comes from the Tribal Portion of the State and Tribal Air Grants (STAG) provided under the authority of section 103 and 105 of the CAA. Since the STAG grants remain unchanged, Tribes have been able to supplement 103 and 105 funding with other grant programs including GAP, DERA, SIRG, Climate Resiliency grants and others. In addition, there were one-time funds available this year through the American Rescue Plan (ARP) that provided additional resources. NTAA has consistently advocated to EPA and other federal agencies to remove all barriers to accessing these grants including limited administrative capacity. Unlike 103 and 105 funding, many of these grants are project specific rather than programmatic in nature, so they often will not contribute to the overall funding for TAP needed to develop and sustain the adequate administrative capacity needed to apply and implement many of these grants for the Tribes.

Despite these barriers, the following is a discussion of the status of Tribal program achievements to date.

Current Program Status

Over the past several years, TAPs have experienced the following indicators of success and setbacks:

1. The Treatment as a State (TAS) statute authorizes Tribes to manage programs under the CAA, including regulatory development, reviewing authority for Title V permits, the opportunity for Prevention of Significant Deterioration (PSD) Redesignation of Reservation lands, air quality monitoring, etc. Between FY2012 and FY2022, the number of Tribes with non-regulatory TAS status increased from 34 to 61, and the number with regulatory TAS increased from 7 to 11 in FY2020, before declining to 10 in FY2021.

2. The number of Tribes currently operating air monitors, monitoring for criteria pollutants, hazardous air pollutants, and other pollutants under the National Atmospheric Deposition Program, grew from 81 in FY2012 to 88 in FY2020, but declined to 86 in FY2022.

3. The number of Tribes with completed Emissions Inventories ranged from 74 in FY2012 to a peak of 86 in 2015 but decreased to 80 in FY2022.

4. The number of Tribes with §103 grants has varied from year to year but reached a peak of 96 in FY2014. This number fell to 66 in FY2022.

5. The number of Tribes with §105 grants has increased steadily from 25 in FY2012 to 51 in FY2022.

6. The interest in Indian Country to address radon has grown, however there is little awareness of how SIRG grants can be used in Indian Country.

7. The previous EPA Administration de-emphasized using 103/105 grant funding to address climate change. Therefore, so many Tribes are having to rebuild their climate change and resiliency programs even with an infusion of climate funds for this year. However, like all one-time funding opportunities, there is insufficient funding for staffing or for a long-term sustained program. NTAA provided climate change funding recommendations to the National Tribal Caucus earlier this year with specific recommendations on how to provide additional climate change funding to Tribal Air Programs.

8. Twenty-five Tribes submitted applications for Volkswagen Settlement funds in the first round, which disbursed approximately $6 million in funding. The second round disbursed $15.5 million to 45 Tribes. The third round disbursed $16.5 million to 50 Tribes. The fourth, and possibly final round disbursed $18.1 million to 63 Tribes. The funds have

been used to replace certain older diesel engines with updated technology, as well as to purchase electric vehicle charging stations. The Trustee and the U.S. Department of Justice are currently considering whether there are enough funds left for a fifth and final funding cycle, or if not, how the remaining funds can be dispersed.

9. In 2022, NTAA provided comment to the U.S. Department of Justice regarding Supplemental Environmental Projects like the VW Settlement Environmental Mitigation Trust. NTAA provided recommendations that encourages flexible use of settlement money like the VW SEP for Tribal Nations and Tribes without reservations to build Tribal air quality program capacity.

2.3 Summary of Recommendations

Tribes and Tribal air programs have specific priorities related to each of the programmatic areas in the Office of Air and Radiation, as well as non-programmatic priorities. These priorities are outlined in Section 4: Tribal and National Priorities and illustrated by the stories submitted from Tribes and TAPs across the country. The following list is intended to serve as a summary of recommendations for decisionmakers and those working with TAPs.

1. **Uphold Tribal Sovereignty:** Federal and state agencies need to demonstrate their commitment to Tribal sovereignty through:
   - Appropriately allocating funding for Tribal Air Quality Programs.
   - Engaging proactively in government-to-government consultation with Tribal Nations.
   - Upholding Trust Responsibility by developing and implementing air programs that are responsive to the individual needs of Tribes.
   - Responding to Tribal requests and recommendations in a timely manner.

2. **Substantial investment in TAPs both in financial resources for air programs and capacity building:**
   - As presented in the BNA, the total outstanding need is $64.2 million. However, because there would be a need to invest in capacity building for new Tribal programs and in helping mature programs to continue to grow, we are recommending a step wise investment of an increase in the Tribal 103 and 105 funding to be **$54.7 million** in FY 2024 and then reaching the **$64.2 million** in FY 2025.
   - Because of the continuing demand for capacity building and technical support we are recommending a comparable growth in separate funding for the training infrastructure to include an increase of **$1 million** in FY 2024 and another increase to $2 million in FY 2025.

3. **NTAA is recommending an additional infusion of $80 to $120 Million increase** to support rebuilding capacity for Tribal climate programs in this first year with an

increase to provide an additional $80 to $120 in future years to continue to allow new Tribes to participate as well as provide for sustaining existing programs.

4. **<u>Support the growing Tribal programs, EPA needs to invest in TAPs for:</u>**
   - *Regional Grant Officers* – this will ensure that EPA staff have the time and resources to invest in the Tribes they support.
   - *Headquarter Staff* – because of high turnover rates and changing priorities, there is disinvestment in supporting Tribal air programs. For example, having to shift staff to support EJ programs disinvests from technical support (i.e., reviewing permits and technical analysis), and limits access that Tribes must have to meaningful consulting in EPA regulatory and policy development.
   - *Ongoing Capacity Building* – for EPA staff on/for understanding Tribal sovereignty and the Nation-to-Nation relationship with Tribes.
   - *Grant and Program Review* – Efforts to provide consistency in grant and program review and approval.

5. **<u>Remove Match Requirements:</u>** As grant programs are made available via Tribal set asides, removing match requirements will improve access to Tribes to these programs. Budget and grants need to respond to the new policy (e.g., funding to meet QA/QC obligations) so these new policies do not become an unfunded mandate and/or preclude Tribes from self-governance.

3 Baseline Needs Assessment

In late 2021, the NTAA Executive Committee commissioned a BNA, to quantify and characterize unmet and emerging air quality needs. The electronic survey was distributed by NTAA, Partnership for Air Matters, Tribes, Tribal partners, and Tribal consortia. The survey was open for 4 months, with a total of 339 responses. Partial responses were excluded from the final data set if they did not answer whether their Tribe had an air quality program or department or not. Data was validated through the confirmation of each Tribe's existence, IP addresses, and respondent locations to check for BOTs. Participants who had multiple responses were contacted for confirmation of most accurate data. If they did not reply, their most recent response was kept in the sample and their original submission was removed. After data cleaning and validation, there were a total of **169 responses**. All 10 regions were represented from 129 Tribes and 4 organizations across 28 states. (*See Appendix D for a list of all the Tribes, by region, that participated in the BNA).*

From this survey population, the following key themes emerged:

1. **The federal investment in Tribal air quality programs is, in magnitudes of order, smaller than the federal investment in Tribal natural resources and environmental management.** Presently, 22% of all Tribes receive some level of CAA funding, which is a valued EPA investment in Tribal capacity. Yet the $12.5 million average annual EPA funding for Tribal

CAA programs is minor relative to the federal investment in Tribal natural resource and environmental programs. To illustrate, the Bureau of Indian Affairs provided $395.8 million to Tribes under the "Within Trust—Natural Resources Management" Program[1]. The $12.5 million EPA investment in Tribal air quality represents just 3% of this total.

2. **The modest allocation of $12.5 million for Tribal air programs places a strain on some Tribes such as over-burdened air quality staff, all while leaving other Tribes without any air quality presence.** 42% of survey respondents who receive CAA funding reported that their CAA 103 or CAA 105 grant does not fully fund their air quality needs. Tribes reported that they seek non-EPA grants to support their air quality work, yet 85% of the time, Tribes reported that outside funding was insufficient to fund their air quality needs. 3 out of 4 Tribes reported that they have other environmental program responsibilities besides air quality, while 1 in 3 Tribes reported that they are lacking experienced air quality staff which made them less competitive when applying for grants. Tribes who currently have an Air Quality program reported that while they have access to technical training and equipment, their work is adversely impacted by staff turnover, lack of competitive pay, or difficulty finding candidates in remote and rural areas.

3. **EPA's investment in Tribal air programs is impactful, yet most of the Tribe's report that limited funding has far-reaching impacts.** 78% of Tribes surveyed agreed or strongly agreed that insufficient air quality funding impacts the health and welfare of their people. 79% agreed or strongly agreed that insufficient air quality funding affects their Tribe's capacity to prevent adverse health impacts, such as asthma, allergies, lung, and heart disease. 69% agreed or strongly agreed that insufficient air quality funding impacts their Tribe's ability to test for and mitigate radon gases and lead contamination, which contribute to lung cancer and learning disabilities. 71% agreed or strongly agreed that insufficient air quality funding impacts their Tribe's ability to address the ecological consequences of air pollution on their Treaty-Protected Natural and Cultural Resources. Finally, 67% agreed or strongly agreed that insufficient air quality funding impacts their Tribe's ability to assert and exercise their sovereignty and our government-to-governmental relationships.

4. **Wildfire smoke is an emerging concern, but long-standing air quality issues continue to impact Tribes, including but not limited to road dust, diesel emissions, woodsmoke, and air toxics.** Given their geographic diversity, Tribes contend with a range of air pollution sources and types. The most pervasive air quality issue, affecting 80% of Tribes responding to the BNA, was road dust. Wildfire smoke, as anticipated, was reported as a priority concern, with 62% of Tribes reporting that wildfire smoke has become impactful to their community. Other major sources of particulate matter impacting Tribes included diesel

1 FY 2022 Interior Budget in Brief, Bureau of Indian Affairs

emissions (reported by 63% of Tribes) and residential wood-burning devices (54%). Air toxics, including Hazardous Air Pollutants (HAPs) were reported as a concern by 21% of Tribes, with qualitative responses indicating significant Tribal concern around uranium, and uranium tailings, polychlorinated biphenyls (PCBs), mercury, asbestos, radon, radon progeny, styrene, and 2-butanone.

5. **When asked about indoor air pollution, Tribes were nearly unanimous in reporting that mold and moisture was a factor, with woodsmoke and radon also among high priority issues.** Within Tribal housing, mold and moisture ranked as the most concerning at 90.1% (n = 118). Mold and moisture also had the most responses for Tribal public/community buildings in (82.6%). Tribes expressed that funding to mitigate these pollutants was a moderate to urgent need, varying by issue.

3.1 Results of BNA Survey

Characteristics and Prevalence of Tribal Air Quality Programs

As demonstrated by Figure 1 in the BNA, not all Tribes have an air quality program. Among the 169 responses to this survey question, 53.2% (n = 90) responded that they do have an air quality program or department, 22.5% (n = 38) responded that they did not, and 24.5% (n = 41) expressed that they do not have an air quality program but would like to.

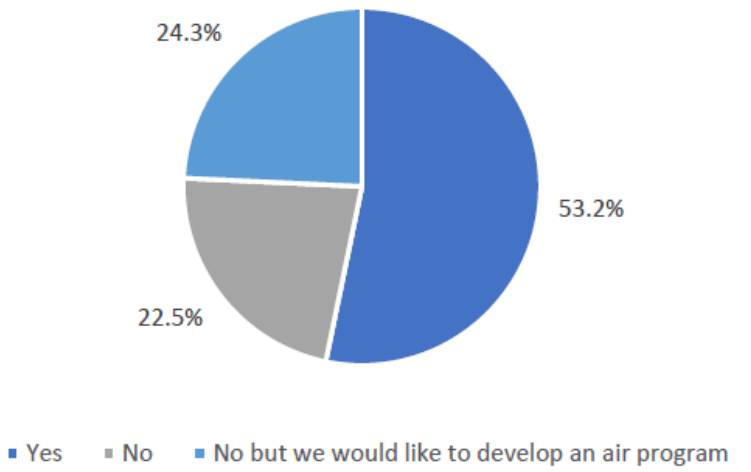

Figure 2 Number of Tribes that currently have an air quality department or program. (n = 169)

Human Resources to Address Air Quality

Figure 3 below provides a deeper insight into the three department's responsibilities. Oftentimes, air quality activities are conducted under different departments because they have more capacity and resources, such as Environment/Environmental Protection or Natural

Resources. Table 2 depicts the estimated amount of personnel per program in which air quality has the least number of responses and staff.

Of the 138 Tribes identified that work on air quality, 73.2% (n = 101) of staff work on a combination of air quality, environmental, and other activities, whereas only 26.8% (n = 37) are solely dedicated to air quality work.

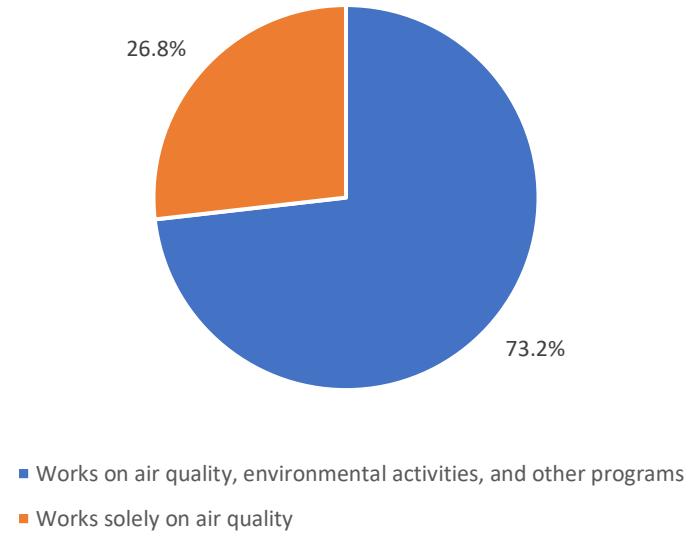

Figure 3 Air quality staff responsibilities. (n = 138)

	Environment/ Environmental Protection		Natural Resources		Air Quality	
	n	%	n	%	n	%
1-5	90	66.7%	50	41.3%	76	69.7%
6-10	22	16.3%	19	15.7%	8	7.3%
11-15	5	3.7%	10	8.3%	4	3.7%
16-20	3	2.2%	2	1.7%	0	0.0%
21 or More	6	4.4%	16	13.2%	0	0.0%
Don't Know	9	6.7%	24	19.8%	21	19.3%
Total	135	100.0%	121	100.0%	109	100.0%

Table 2 Amount of people employed in each Tribal department.

Of the 101 respondents that indicated that their staff works on a combination of air quality and environmental activities, 100 described the percentage of staff time spent on air quality (Figure 16). An overwhelming 45.0% spend less than a quarter of their time on air quality, 29.0% work about a quarter to a half, 14.0% spend about a half to three-quarters, and only 12.0% work on air quality for more than three-quarters of their time.

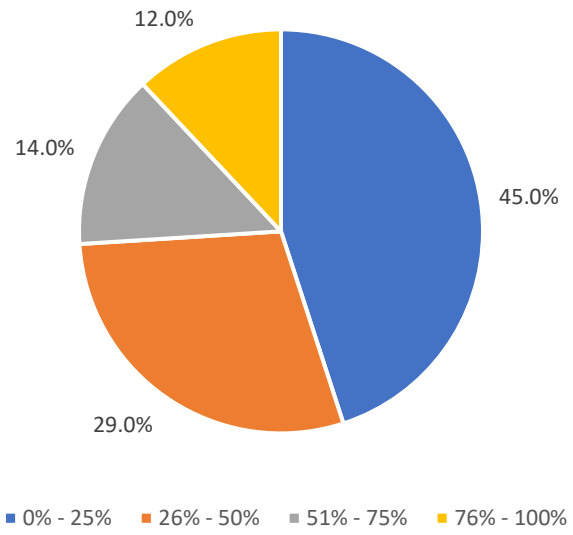

Figure 4 Percentage of staff time spent exclusively on-air quality. (n = 100)

See Appendix D for more notable figures from the Baseline Needs Assessment.

3.2 BNA Key Findings

The federal investment in Tribal natural resource and environmental protection programs is appreciable, originating in part from the federal trust responsibility to Tribes. This federal funding, while not ever able to compensate for the ecological and cultural impacts of colonization, has enabled many Tribes to become highly skilled, autonomous, and culturally led natural resource stewards and co-managers, paralleling the capacities of local and state governments. Though CAA funding is comparatively young relative to other federal grant programs, Tribes with CAA grants have built impressive air quality management capacities and programs. CAA-funded Tribes exhibit a high degree of air quality technical, scientific, and program management capacities.

The federal investment in Tribal air programs is accelerated and expanded by the national reach of Tribal consortia and training organizations, including the NTAA, ITEP, and the TAMS. Alaskan Tribes are supported by air quality training from the Alaska Native Tribal Health Consortium (ANTHC), and Tribes receive indoor air/healthy homes support from the Tribal Healthy Homes Network (THHN).

Yet despite the visible and valuable impact of the federal investment in Tribal air quality, chronic underfunding is evident. In this BNA, key findings on the overall federal investment include:

1. In 2021, **22% of Tribes** (127 out of 154) received CAA Funding (103, 105) where 100% of the states receiving CAA funding.

2. In 2022, **3% of Federal Investment in Tribal Air Quality** Programs came from CAA funding as compared to BIA $395.8 million in "Within Trust"—Natural Resources Management Program vs $12.5 million of CAA funding.

3. In 2021, **2% of Federal Investing in Tribal Air Quality Programs** came from the housing and Urban Development (HUD) providing $450 million to the Indian Block Grant (IHBG) program and another $100 Million IHBG Competitive Program. For EPA, a total of $12.5 million was provided to Tribes in 2022 for funding under 103 and 105[2].

4. In 2021, **42% of Tribes who reported receiving CAA funding**, the grant does NOT fully fund their air quality work or future needs. In the BNA, 33 of the 79 Tribes reported that they currently receive CAA[3].

5. Of the Tribes that receive non-CAA funding, **85% of Tribes reported having this type of funding:** EPA Performance Partnership Grants, BIA, Administration for Native Americans, DOE, HUD, CARES (American Rescue Plan), EPA Diesel Emissions Reduction Act (DERA), Volkswagen Settlement Act or Settlement Agreement Funds.

6. Of the 169 respondents (89 currently have air funds and 76 are unfunded) a **$21.9 million shortfall** was seen in meeting the needs of the responding Tribe. This shortfall represents an **average** of $132,726.35 across all responding Tribes.

7. If you extrapolate $132,726.35 for all 574 federally recognized Tribes, there is a total need of $76.2 million, larger than the current short fall of **$64.2 million**. It's important to note that NTAA is not advocating a one size fits all budget for all Tribes, some Tribes may need more to run a successful program, and some may need less. This value represents only the average of the need, not as an allocation formula.

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[2] Survey question #28 asked those Tribes who do currently receive CAA 103 or 105 air quality grants to estimate their total estimated annual grant amount (the sum of their current funding plus their unmet funding needs). A total of 89 survey respondents answered this question, selecting from a value range. Respondent count for each range: $25k-$49k (n=6), $50k - $74k (n=6), $75k - $99k (n=17), $100k - $124k (n=16), $125k - $149k (n=13), $150k - $174k (n=4), $175k - $199k (n=8), $200k - $224k (n=4), $225k - $249k (n=3), $250k - $274k (n=1), $275k - $299k (n=1), $300k or greater (n=10). The mid-point value in each range was used, then multiplied by the number of respondents in that range. As example, 6 respondents indicated a total grant need of $25,000 - $49,000. The mid-point value in this range, $37,499.50, was multiplied by 6 (number of respondents in this value range), for a total of $224,997.00 This formula was then applied to all of the value ranges, for a combined total of $12,937,461.

[3] Survey question #26 asked those Tribes who do not receive CAA 103 or 105 air quality grants to estimate their estimated annual grant amount. A total of 76 survey respondents answered this question, selecting from a value range. Respondent count for each range: $25k-$49k (n=4), $50k - $74k (n=13), $75k - $99k (n=14), $100k - $124k (n=18), $125k - $149k (n=11), $150k - $174k (n=5), $175k - $199k (n=5), $200k - $224k (n=0), $225k - $249k (n=3), $250k - $274k (n=0), $275k - $299k (n=0), $300k or greater (n=3). The mid-point value in each range was used, then multiplied by the number of respondents in that range. As example, 4 respondents indicated a total grant need of $25,000 - $49,000. The mid-point value in this range, $37,499.50, was multiplied by 4 (number of respondents in this value range), for a total of $149,998.00. This formula was then applied to all of the value ranges, for a combined total of $9,087,464.

8. If Congress provided this funding increase, it would still only represent **19%** of the total funding provided by BIA and **14%** of HUD funding for Tribes in comparison to current funding levels for Tribal Air Programs.

4 Tribal Sovereignty

4.1 Protection of Tribal Sovereignty and Self Determination

Tribal sovereignty is the inherent right of American Indians and Alaska Natives to self-governance and regulation of internal affairs. The U.S. Constitution recognizes this inherent right existed long before the arrival of Europeans on this continent. As such, Tribes are rightful stewards of air quality within Tribal lands and can regulate air quality as needed to protect human health and the environment.

In 1984, the EPA issued the Policy for the Administration of Environmental Programs on Indian Reservations that affirms the authority of Tribal Governments over reservation populations and lands and the effort to work with Tribes on a government-to-government relationship. Consistent with this policy originally signed in 1984 by President Reagan, it directs the EPA to work in close coordination with the Tribes and respect Tribal self-determination and sovereignty. Specifically, the EPA's Policy for the Administration of Environmental Programs on Indian Reservations is as follows:

> *In carrying out our responsibilities on Indian Reservations, the fundamental objective of the Environmental Protection Agency is to protect human health and the environment. The keynote of this effort will be to give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting Reservation lands.*

Tribal governments are *not* equivalent to Environmental Justice Communities

Tribes are seeing great strides from the Biden Administration regarding **Tribal Concerns, Impacts, Environmental Justice and Jurisdiction,** and eager to take the next steps towards addressing these issues and concerns. Funding, that at times comes with use limitations, have assisted in creating new partnerships, though so much more needs to be done. The integration of EJ policy is needed at the program staff level for daily work and in on-the-ground projects where it has been to date lacking or fledgling. Incorporation of EJ must be the practice of talking-the-talk and walking-the-walk, not an affirmation that there is a policy for that. The lack of policy integration and implementation stems from the top hierarchy of management to those who carry out the programs, is a problem for many Tribes. More importantly it's important to recognize that each Tribe addresses Environmental Justice concerns in their own way. So, the Federal definition might not meet all situations. Additionally, it's inappropriate to equate Tribal nations and the Nation-to-Nation consultation

status with EJ communities. The moves to improve the EJ programs within the Agency have resulted in a tendency to combine support for Tribal programs with support for EJ communities. The result has been reducing the technical and policy support for Tribes.

4.2 EPA's 1984 Indian Policy

The program focus areas for each topic area have significant overlap, particularly regarding the importance of upholding the 1984 Indian Policy, maintaining strong regulations, improving monitoring capacity, and increasing funding.

Pursuant to the 1984 Indian Policy, EPA must take Tribal interests into consideration whenever policy or environmental management decisions are proposed that affect Indian Country. To reaffirm that policy, the Biden Administration recognizes that American Indian and Alaska Native Tribal Nations are sovereign governments recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. It is a priority of their Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy.

The United States has made solemn promises to Tribal Nations for more than two centuries. Honoring those commitments is particularly vital now, as our Nation faces crises related to health, the economy, racial justice, and climate change—all of which disproportionately harm Native Americans. History demonstrates that we best serve Native American people when Tribal governments are empowered to lead their communities, and when Federal officials speak with and listen to Tribal leaders in formulating Federal policy that affects Tribal Nations.

4.3 Protection of Tribal Treaty Rights

Treaty Rights are legal protections which safeguard Tribal citizens' manner of having their chosen lifeway, which is depended upon access to natural and cultural resources. For Region 5 Tribes, this means in order to safeguard treaty rights, all media containing those resources need protection as well, because without them, not only would this become an Environmental Justice issue but also a human rights issue. Air quality and air pollutants impact the health and environment of animal and plant species harvested under Treaty Rights which need to thrive and be present for the next seven generations. Tribes need EPA to respect, protect, and uphold treaty protected rights for our resources. For example, you can see by the map below, all of Minnesota, Wisconsin and Michigan composed of Ceded Territories.

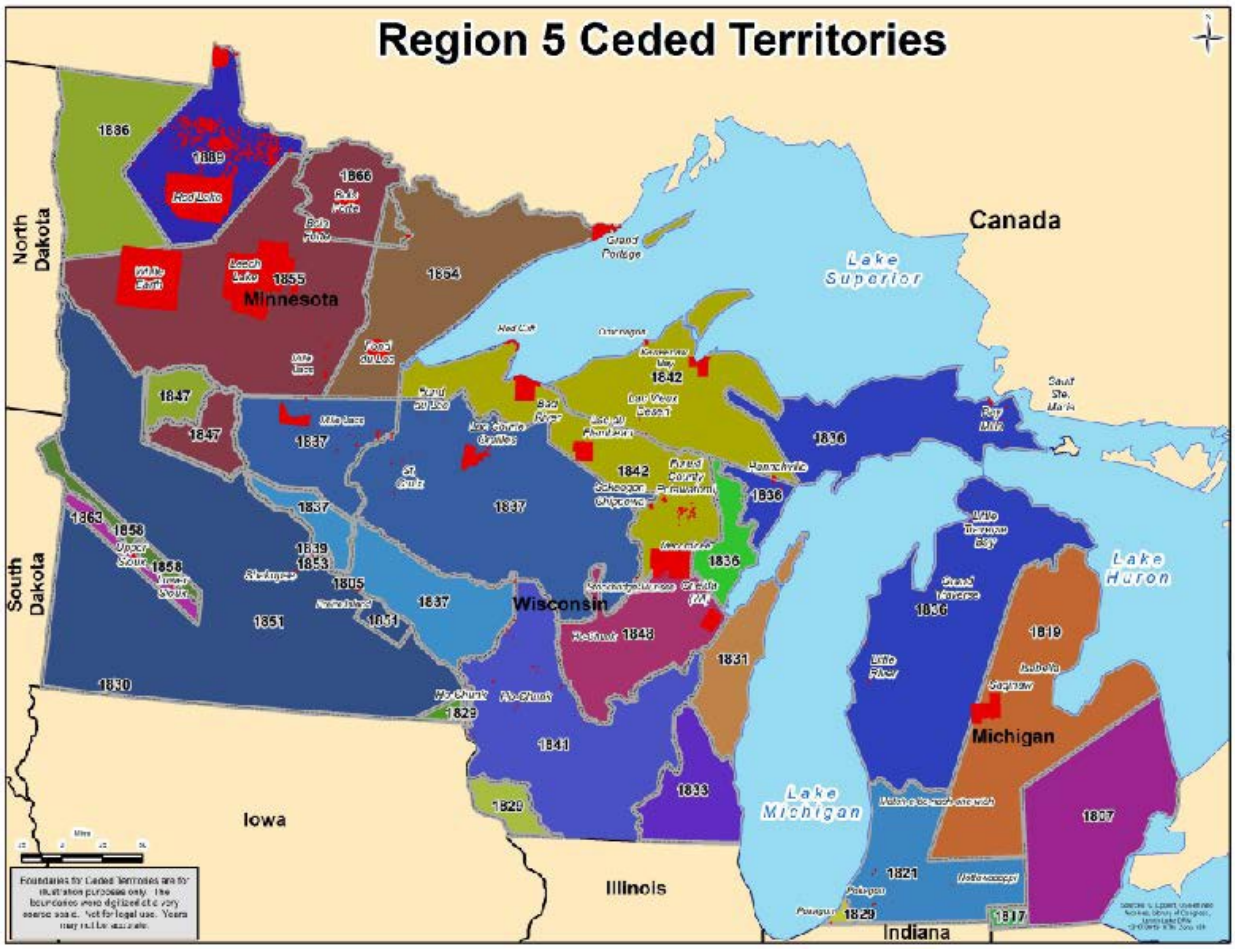

Figure 5 This map shows Ceded Tribal Territories in Region 5. Boundaries marked in red are Tribal Reservation Lands.