



Executive Committee

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Marvin Cling
Passamaquoddy Tribe

Josh Paul
Penobscot Nation

Region 2

Steven Smith
Shinnecock Nation

Angela Benedict
Saint Regis Mohawk Tribe

Region 4

Amy Smoker
Eastern Band of Cherokee
Indians

Tiffany Lozada
Poarch Band of Creek Indians

Region 5

Brandy Toft
Leech Lake Band of Ojibwe

Vallen Cook
Grand Portage Band of
Chippewa

Region 6

Tara Weston
Pueblo of Santa Ana

Kristy Lawson
Muscogee Nation

Region 7

Billie Toledo
NTAA Secretary
Prairie Band Potawatomi
Nation

Kurt Lyons
Winnebago Tribe of Nebraska

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

Lisa Gover
Gila River Indian Community

Region 10

Lucas Bair
Wood Smoke Lead
Wildfire Smoke Co-Lead
Spokane Tribe

Caleb Minthorn
NTAA Treasurer
Confederated Tribes of the
Umatilla Indian Reservation

Alaska
Open

July 16, 2024

Honorable Administrator Michael S. Regan
U. S. Environmental Protection Agency
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: The National Tribal Air Association comments on the Proposed Establishment of the National Tribal Caucus Under the Federal Advisory Committee Act.

Dear Honorable Administrator Regan,

The National Tribal Air Association (NTAA) is pleased to submit this letter to provide comments on the U. S. Environmental Protection Agency’s (EPA) proposed reorganization of the National Tribal Caucus (NTC). The NTAA is a member-based organization with 156 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 American Indian and Alaskan Natives 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 that interactions with the organization do not substitute for Nation-to-Nation consultation, which can only be achieved through direct communications between the federal government and American Indian Tribal Governments and Alaskan Natives.

The NTAA is very concerned about the American Indian Environmental Office’s (AIEO) proposed reorganization of the National Tribal Caucus. The NTAA has policy concerns and believes that AIEO failed to follow the 1984 EPA Indian Policy¹ and the EPA Policy on Consultation with Indian Tribes², which require involving the Tribes “early and often” in the development of policy, rules, and programs that impact Tribes. The AIEO gave no warning of this drastic change in the structure of Tribal input until it launched its plan to reorganize the NTC to a

¹ [EPA Indian Policy of 1984.](#)

² [EPA Policy on Consultation with Indian Tribes, December 2023.](#)

Federal Advisory Committee (FAC) under the Federal Advisory Committee Act (FACA). There was no early discussion to determine the impacts on Tribes, Tribal leadership, and the ongoing relationship with Tribes.

The AIEO states that the goal of the effort would be to:

- Increase the proportion of elected or traditionally appointed Tribal Leaders that serve on the NTC.
- Review the characteristics of the NTC to strengthen the operations of the group and increase collaboration with the other EPA Tribal Partnership Groups (TPG).
- Clarify the process by which the EPA receives Tribal leadership recommendations on technical programs and budget planning.
- Elevate the NTC as the preeminent group of Tribal representatives that provides advice directly to EPA leadership on items of national significance under the EPA's purview.
- Strengthen the EPA's ongoing commitment to collaboration and partnership with Tribes and the government-to-government relationship.
- Reflect the commitment of the EPA to engage directly with Tribal Leaders and ensure that Tribal Leaders engage at the highest levels of the Agency on environmental issues that impact Indigenous communities.

AIEO also states that reorganizing the NTC as a FAC would formalize the group's advisory role with the EPA and distinguish the NTC from the almost twenty other TPGs with whom the EPA engages. They state compliance with FACA is necessary and the law applies whenever a federal agency seeks collective advice from an external group. As the NTC provides advice on an ongoing basis to the EPA Administrator and other senior leadership regarding budget recommendations and the implementation of environmental programs in Indian Country, reorganizing the group as a FAC would formalize an advisory structure that ensures transparency, public access, and public participation, and compliance with FACA.

AIEO further discusses that FACA requires committees provide advice that is independent, relevant, and developed using a process that is open to the public, and FACs serve an invaluable function in informing the operations of the EPA. AIEO continues that the transition to a FAC would allow for greater awareness of the work of the group while following a formal, defined process for elected Tribal Leaders to transmit recommendations to EPA leadership. A number of federal agencies have previously formed FACs or similar advisory groups comprised of Tribal Leaders and representatives, and since January 2021, the U.S. Department of Veterans Affairs and the U.S. Department of Agriculture have created new Tribal FACs under the FACA.³

However, the NTAA believes that because of the requirements of a FAC as directed by the Federal Advisory Committee Act, changing the NTC to a FAC would have detrimental impacts on Tribal

³ April 11, 2024, Consultation and Coordination Plan Proposed Reorganization of the National Tribal Caucus (NTC) Under the Federal Advisory Committee Act (FACA)

involvement with the EPA. Congress passed the Federal Advisory Committee Act (5 U.S.C. 10) in 1972 to create an orderly procedure by which federal agencies may seek collective advice from “diverse customers, partners, and stakeholders.”

Information from the Agency’s FACA website and the OPM guidance states that FACA establishes procedures for the management of federal advisory committees, ensures transparency of advisory committee decision-making, and ensures balanced representation.

The guidance further states that FACA ensures the federal advisory committees convened to give group advice are accountable to the public by maximizing public access to advisory committee deliberations and minimizing the influence of special interests through balanced committee membership. FACA seeks to reduce wasteful expenditures and improve the overall administration of federal advisory committees. FACs can be created by the president, Congress, or federal departments or agencies and must meet these basic requirements:

- Meetings must be open to the public and the public must be permitted to present their views.
- All meeting minutes and reports must be available for public access.
- The public must be notified of meetings by advertisement in the Federal Register.
- Committee membership must be balanced by points of view.

The guidance goes on with further information on FACA which calls upon federal agencies to carefully consider the necessity of a new committee before establishing it. Under FACA, discretionary and non-discretionary committees are terminated after two years unless the agency renews the committee's charter prior to the two-year expiration date. Further, FACA requires agencies to terminate a committee once it has completed its function.

The NTAA has the following concerns with the proposed Reorganization:

- The current Charter for the NTC establishes that the NTC is exempt from FACA. What law or fact has changed to modify that exemption?
- By establishing a FAC, the NTC would be driven by the EPA. The EPA would appoint members to the FAC, whereas currently Tribes (via the RTOCs) determine the composition of the NTC organization.
- Under FACA the EPA would provide the “charge” to the FAC so that the EPA determines the issues they want recommendations on, whereas now the Tribes identify issues for discussion with the EPA. This not only reduces the opportunity for on-going dialogue on issues that are important to Tribes but also undermines the government-to-government relationship with the EPA as equal partners in the dialogue.
- Because the FAC must represent balanced viewpoints, the EPA can determine the representation of the FAC to include other entities. Currently, the EPA is focused on

Tribal leadership and partnership groups. However, FACs could allow for Tribal leadership to include Tribal Consortia or Alaska Native Corporations, established by the Alaska Claims Settlement Act. These Corporations and Consortia may have different mandates than those that represent the needs of the Tribal leadership and citizens.

- Additionally, given the current Agency emphasis on Environmental Justice, the FAC could include state recognized Tribes and Tribal advocacy organizations, further diminishing the American Indian Nations as Sovereign.
- Historically, the NTC was composed of Tribal leadership. However, given the overwhelming workload and demands on Tribal leadership's time, many of these positions were eventually delegated to their environmental directors. Even still, currently approximately half of the members of the NTC are Tribal leaders. Establishing a FAC does not resolve the issue of competing demands on leadership's time. In addition, Tribal leaders have such an array of responsibilities, that having a mix of Tribal leadership and environmental program representatives helps provide support in the understanding of the technical environmental issues that are being discussed.
- Currently, the NTC has TPG Liaisons who meet regularly with each TPG. Meetings are coordinated to offer communication between the NTC and the TPGs. If the NTC was a FAC and only Tribal leadership was on the NTC, it is unreasonable to expect Tribal leaders to liaise with the TPGs. As such, a valued mechanism for communication between the NTC and TPGs would be lost.
- EPA has other examples of ongoing dialogue with other government organizations outside of the FACA process, such as the Environmental Council of States (ECOS). Creating a FAC of the NTC further erodes the government-to-government status of Tribes as co-regulators if the NTC is treated inconsistently with that of the state organizations.
- FAC meetings are open to the public and the public has time to express its views, meaning that States, Industry, and others will be able to sit in the meetings and make public statements during the public comment. This could have a chilling effect on open dialogue between Tribes and the EPA on sensitive issues and allow the introduction of topics that could be detrimental to Tribes.
- The FAC can be dissolved after the two-year Charter expires leaving the Tribes with further limited access to EPA management.

Other Issues and Concerns

- The AIEO failed to follow the EPA's Consultation process and the EPA's Indian Policy which require involving the Tribes "early and often" in the development of policy, rules

and programs that impact Tribes. The AIEO gave no warning that this drastic change in the structure of Tribal input was even being considered until it launched its reorganization plan changing the NTC to a FAC. There was no early discussion to determine the impacts on Tribes, Tribal leadership, and the ongoing relationship with Tribes.

- As stated above, the AIEO states that the reorganization of the NTC as a FAC would formalize the group's advisory role with the EPA and distinguish the NTC from the almost twenty other TPGs with whom the EPA engages. However, this goal could be accomplished without making NTC a FAC. Additionally, in its plan, the AIEO says that the Tribal Program Groups will be part of the FAC, which would have the opposite effect of "distinguishing the NTC from almost twenty other TPGs."
- In addition, this would add work to the TPGs that is not currently covered in workplans and would demand already limited resources of the groups to address the work for which they are currently responsible.
- Many FACs include other interested entities, such as industry and states with issues or interest in Indian Country. How does the EPA plan to protect Tribal interest in developing the FAC?
- In discussions with some EPA staff which support the partnership groups, it has been implied that the partnership groups may also be reorganized as FACs. This is very concerning and will dilute the access and support for Tribes in both working with the EPA as well as providing technical and policy support to Tribal Environmental Programs. As a result, how would the policy groups that provide policy support to Tribes identify priorities independently if they are "restructured to a FAC"? They would only be allowed to develop policy review in areas of the EPA's charge.

This is particularly inappropriate for NTAA which was created by resolution of the National Congress of American Indians in 2000 and the Bylaws which were approved by NCAI in 2002. In addition, NTAA is a membership organization with 156 member Tribes representing Tribal Environmental Programs from across the country. Priorities and policy direction are determined by the Executive Committee and informed by Tribes.

In closing, thank you for the opportunity to comment on this proposal. The NTAA is very disappointed in AIEO's proposal for the reorganization of the NTC since it will undermine important ongoing dialogues with Tribes, erodes Tribal Sovereignty and an equitable partnership with EPA. In addition, the announcement of this proposal did not follow the Agency's guidance on working with Tribes. The NTAA believes the problems that the reorganization was designed to address can be addressed through the existing structure of the NTC. NTAA agrees that communications between the NTC and the TPGs can be improved, however this can be accomplished outside of a FAC. The NTAA strongly encourages that this ill-advised and arbitrary



“proposal” be immediately withdrawn. Until then, there are clarifications and further discussions with Tribal Leaders, the NTC, the RTOCs, and the other impacted Partnership Groups, including the NTAA that need to take place.

Respectfully,

Syndi Smallwood

Chair

Executive Committee, National Tribal Air Association

Cc: Janet McCabe, Deputy Administrator, EPA
Jane Nishida, Assistant Administrator, OITA
Raphael DeLeon, Principal Deputy Assistant Administrator, OITA
Kenneth Martin, Director, AIEO
Felicia Wright, Deputy Director, AIEO
Andrew Byrne, Senior Advisor, AIEO
Daniel Vaught, Program Analyst, AIEO
Rose Petoskey, White House Intergovernmental Affairs
Anthony Morgan Rodman, White House Council on Native American Affairs
Karen Martin, Director, Partnerships and Collaboration Division, OEJECR
Theresa Segovia, Principal Deputy Assistant Administrator, OEJECR
Gerald Wagner, NTC, Chair
Tabitha Langston, NTC, Vice Chair
Sharri Venno, R1 RTOC Tribal Co-Chair
Shavonne Smith, R2 RTOC Tribal Co-Chair
Dana Adkins, R3 RTOC Tribal Co-Chair
Jerry Cain, R4 RTOC Tribal Co-Chair
Brandy Toft, R5 RTOC Tribal Co-Chair
Tabitha Langston, R6 RTOC Tribal Co-Chair
Alisha Bartling, R7 RTOC Tribal Co-Chair
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