

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 84

Date Signed: February 16, 1996

MEMORANDUM

SUBJECT: Guidance on the Process for Review of Enforcement Actions Against Tribal Facilities

FROM: Steven A. Herman, Assistant Administrator  
Office of Enforcement and Compliance Assurance

TO: Deputy Regional Administrators  
  
Jonathon Z. Cannon, General Counsel

Robert Perciasepe, Assistant Administrator  
Office of Water

The purpose of this memorandum is to clarify the process to be used for seeking Headquarters concurrence on proposed enforcement actions against tribal facilities (stemming from the Indian Policy Implementation Guidance, November 1984, signed by Alvin L. Alm, Deputy Administrator; see WSG 23 of this manual). This clarification is necessary because of the reorganizations of the Enforcement and Indian Programs at EPA Headquarters.

The 1984 Indian Policy Implementation Guidance states that Regional Administrators proposing to initiate EPA actions against Tribal facilities through the judicial or administrative process should first obtain concurrence from the Assistant Administrator for Enforcement and Compliance [Monitoring], who will act in consultation with the Assistant Administrator for External Affairs and the General Counsel. In emergency situations, the Regional Administrator may issue emergency Temporary Restraining Orders, provided that the appropriate procedures set forth in Agency delegations for such actions are followed.

At the time of the Implementation Guidance, External Affairs and its Office of Federal Activities housed EPA's Indian program. Since that time, responsibility for the program has moved to the American Indian Environmental Office (AIEO). Additionally OECA's Office of Federal Activities no longer has overall tribal enforcement responsibility for EPA. Therefore, I am asking the Office of Regulatory Enforcement (ORE), or where appropriate, the Office of Site Remediation Enforcement (OSRE), on my behalf, to consult with the Office of General Counsel and AIEO, to coordinate policy and management issues of proposed enforcement actions against facilities owned and managed by tribal governments.

ORE, or OSRE, will, prior to making enforcement recommendations to the Assistant Administrator, directly communicate and coordinate with the Office of Criminal Enforcement,

Forensics, and Training (OCEFT). ORE, or OSRE, will then, in a timely manner, make appropriate recommendations and advise the Assistant Administrator regarding options for civil actions. Nothing herein is intended to infringe upon the delegated authority of OCEFT to determine which alleged environmental violations warrant investigation or referral to the Department of Justice.

cc: OECA Office Directors  
Regional Counsels  
Terry Williams, AIEO