



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

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**MEMORANDUM**

**SUBJECT:** Response to Final Report, EPA Should Improve the Reliability of Data on National Priorities List Sites Affecting Indian Tribes (GAO-19-123)

**FROM:** Barry N. Breen  
Acting Assistant Administrator

**TO:** Jeanne Conklin, Controller  
Office of the Controller  
Office of the Chief Financial Officer

The purpose of this memo is to provide the U.S. Environmental Protection Agency's (EPA's) response to the findings and recommendations in the U.S. Government Accountability Office's (GAO's) final report, *EPA Should Improve the Reliability of Data on National Priorities List Sites Affecting Indian Tribes* (GAO-19-123; January 2019). The report: (1) examines the extent to which EPA has reliable data identifying National Priorities List (NPL) sites that are located on tribal property or that affect tribes; (2) examines the extent to which EPA has reliable data on the agency's consultation with tribes regarding NPL sites; and (3) describes the actions EPA has taken to address the unique needs of tribes when making decisions about NPL cleanup actions.

The Office of Land and Emergency Management (OLEM) and the Office of International and Tribal Affairs (OITA) jointly reviewed the report and coordinated the development of the agency's response, which reflects EPA's general agreement with the GAO's findings, conclusions, and recommendations. To that end, OLEM offers the following responsive actions, with which OITA concurs:

GAO Recommendation 1

The Director of EPA's Office of Superfund Remediation and Technology Innovation [OSRTI] should develop a regular review process to ensure the quality of SEMS [Superfund Enterprise Management System] data identifying NPL sites on tribal property and revise automated reports used to check the accuracy of SEMS data to include on tribal property data.

### EPA Response

EPA agrees with this recommendation. During the GAO engagement, SEMS tribal data were reviewed for quality control and corrections were made to existing data. OSRTI will create a schedule to review tribal data in SEMS.

To support fulfilling the first recommendation, OSRTI is planning the following action:

- Annual dissemination of SEMS tribal data to Superfund regional tribal coordinators for quality assurance/quality control review (April 2019 and annually thereafter).

### GAO Recommendation 2

The Assistant Administrator of EPA's Office of Land and Emergency Management should clarify guidance to regional offices on how to determine whether sites have a Native American Interest (NAI), including by adding criteria for when a site should be designated as having NAI in the SEMS database and how, if at all, to adjust SEMS data if a tribe is no longer interested in a site.

### EPA Response

EPA generally agrees with this recommendation. The Superfund Program Implementation Manual (SPIM) (OLEM 9200.3-152) provides guidance regarding NAI. There are a variety of circumstances under which a tribe may have interest in an NPL site, including instances where a site may not be on tribal lands. OLEM/OSRTI will identify relevant criteria that may be used to support the NAI indicator in the SPIM.

To support fulfilling the second recommendation, OLEM/OSRTI is planning the following actions:

- OSRTI has created a headquarters/regional workgroup to review and update tribal data collected in SEMS.
- The workgroup will (no later than December 2019):
  - Provide guidance to clarify the NAI determination, including:
    - Identification of criteria for when a site should be designated as having NAI; and
    - As needed, identify a process to update SEMS when a tribe is no longer interested in a site.

### GAO Recommendation 3

The Director of EPA's Office of Superfund Remediation and Technology Innovation should clarify agency guidance regarding tribal consultation for the Superfund program to clearly identify the circumstances under which the agency should consider consulting with tribes.

### EPA Response

EPA agrees with the recommendation, and the OSRTI Director will clarify circumstances under which Regions may consider tribal consultation for the Superfund program.

To support fulfilling the third recommendation, OSRTI is planning the following action:

- In consultation with the OLEM Tribal Coordinator and EPA's Office of International and Tribal Affairs, OSRTI will issue a memo to the Regions that clarifies circumstances under which regions may consider tribal consultation for the Superfund program (no later than March 2020).

#### GAO Recommendation 4

The Assistant Administrator of EPA's Office of International and Tribal Affairs should develop or revise existing guidance to clearly direct regional officials to document all invitations to consult with tribes in the TCOTS database and provide the guidance to those officials.

#### EPA Response

OITA agrees with the fourth recommendation. Overall, OITA sees the GAO report as an opportunity to engage on the importance of consultation and to gain greater consistency and reliability in EPA's consultation efforts.

To support the fourth recommendation's fulfillment, OITA is planning the following actions:

- Issue a memorandum from OITA's Assistant Administrator or OITA's Principal Deputy Assistant Administrator to EPA Regional Administrators on the importance of following EPA's Tribal Consultation and Coordination Policy and documenting consultation actions into TCOTS (April 2019).
- Begin to issue a monthly TCOTS report to Deputy Assistant Administrators/Regional Assistant Administrators on the status of consultations recorded in TCOTS (May 2019).
- Initiate joint OLEM-OITA trainings specifically targeted to EPA's Regional Superfund staff on when and how to document consultation actions into TCOTS (April - September 2019).
- Conduct OITA and Agency's designated Tribal Consultation Advisors-led training on tribal consultation topics, with a specific emphasis on entering consultation information into TCOTS (April - September 2019).

The agency appreciates the GAO's work on this subject as well as the collegial EPA-GAO working relationship. We understand the need for complete and accurate data, both for tracking sites on tribal property or with NAI and for tracking tribal consultations. Better documentation of EPA's extensive tribal coordination and consultation at Superfund sites across the country is in the interests of both EPA and tribes. We believe the agency's planned actions will strengthen EPA's efforts to work with tribes within the Superfund program.

If you have any questions or need additional information, please contact Christine Poore (OSRTI) at 703-603-9022, Amanda Van Epps (OSRTI) at 703-603-8855, or Dona Harris (AIEO) at 202-564-6633.

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