

National Indian Health Board



Transmitted via e-mail: battin.andrew@epa.gov

April 8, 2016

Andrew Battin
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Mailcode: 2710A
Washington, DC 20460

Re: Tribal Consultation and Coordination on the Draft Governance Charter for E-Enterprise for the Environment

Dear Mr. Battin:

On behalf of the National Indian Health Board (NIHB), I write to submit comments on the Environmental Protection Agency's request for consultation on the draft governance charter for E-Enterprise for the Environment.

Established in 1972, the NIHB is an inter-Tribal organization that advocates on behalf of Tribal governments for the provision of quality health care to all American Indians and Alaska Natives (AI/ANs). The NIHB is governed by a Board of Directors consisting of a representative from each of the twelve Indian Health Service (IHS) Areas. Each Area Health Board elects a representative to sit on the NIHB Board of Directors. In areas where there is no Area Health Board, Tribal governments choose a representative who communicates policy information and concerns of the Tribes in that area with the NIHB. Whether Tribes operate their entire health care program through contracts or compacts with IHS under Public Law 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA), or continue to also rely on IHS for delivery of some, or even most, of their health care, the NIHB is their advocate.

American Indians and Alaska Natives have long experienced lower health status when compared to other Americans and they continue to experience disproportionate disease and health disparities. Poor environmental quality has its greatest impact on those whose health status is already at risk. Environmental crises like water and air pollution, toxic waste contamination, oil spillage in the Mexican Gulf and Alaskan Basin, land forest degradation, and fracking in Montana and the Dakotas, all contribute and certainly don't improve many of the health disparities suffered by AI/AN. As a result, it is essential that the EPA engage with Tribes on actions and policies that will have Tribal implications. As sovereign nations, Tribes are responsible for the overall health and well-being of their members and they have a significant stake in the environmental policies affecting their communities. As a result, NIHB is grateful for the opportunity to comment on the EPA's draft governance charter for E-Enterprise for the Environment below.

Streamlining the environmental monitoring and reporting system is a positive step towards improving efficiency, reducing bureaucracy, and establishing accountability. However, EPA needs to be as intentional as possible in integrating Tribal participation and leadership. More often than not, Tribes are neglected from national surveillance statistics and left behind from advancements in cutting-edge technologies. Additionally, there are significant and pervasive environmental concerns disproportionately affecting Indian Country that have yet to face formal investigative scrutiny. Although the EPA has demonstrated their desire to engage and cooperate with Tribes, they have yet to explicitly demarcate how they intend to do so, and what kinds of capacity building and technical assistance programs are needed before E-Enterprise can be effectively implemented. As a national leader and advocate on behalf of, and representing all federally-recognized Tribes, the National Indian Health Board (NIHB) has assembled a set of questions, concerns and comments about E-Enterprise, all of which are detailed below.

I. Correspondence with Tribes

As mandated by Executive Order 13175 and confirmed in the President's memorandum issued November 5, 2009, federal agencies must consult with Tribes and consider their position on any new legislation and policies that may have an impact on Tribes. E-Enterprise is an overhaul of current methodologies around monitoring and reporting, and requires systematic changes that Tribal governments may not have the critical or technical infrastructure to comply with. As the EPA begins its formal consultations, these concerns need to be taken into strong consideration while procedures are put forth to assist Tribes in making a smoother, more efficient transition.

The EPA has announced that the Leadership Council will be comprised of over 20 members (contingent upon the number of Tribal members who participate) along with 3 co-chairs: one EPA co-chair, one State co-chair, and one Tribal co-chair. While we are grateful that EPA recognizes the need for Tribal representation on the Leadership Council, we do have some concerns. Number one, the EPA explicitly intends to ensure the "...aim of enabling robust Tribal membership." We ask that the EPA develop formal strategies for ensuring that this goal comes into fruition. Without the proper stratagems in place, it will be difficult if not impossible to obtain representative Tribal participation. In addition, the EPA has not outlined how it intends to facilitate correspondence with Tribes via their one Tribal co-chair. There are 567 federally-recognized Tribes in the contiguous United States and Alaska. How does the EPA intend to select the Tribal co-chair and ensure that they have the skillset and credentials to coordinate the various needs, concerns, crises and comments of individual Tribal governments? We applaud the EPA on desiring Tribal inclusivity; however, we assert that this objective will only be marginally achieved if the EPA does not develop comprehensive protocols for engaging stakeholders in Indian Country.

We are grateful and applaud the EPA's recognition that Tribal membership in the Leadership Council should not be limited to elected officers but may also include employees designated by their Tribal governments. Tribal leaders are responsible for knowledge of and attention to all aspects of their government and do not always have the time or capacity to devote to E-Enterprise.

Tribal leaders rely on the input and advice of their employees and technical advisors. It is imperative Tribal delegates have the ability to delegate their employees to serve on the Council where their skillset can be utilized to the fullest extent. We appreciate that the EPA recognizes this.

Finally, it is important to assert that Tribal representation on the leadership council does not supplant formal consultation requirements set forth by Executive Order 13175, nor does it supersede EPA's own Tribal consultation protocols, as outlined in the EPA Policy on Consultation and Coordination with Indian Tribes. Moreover, Tribal inclusion on the Council is solely for the assurance of Tribal representation on E-Enterprise objectives and procedures—not representation overall.

II. Technical Assistance Concerns

Given the unique and substantial problems surrounding Indian Country's access to various technologies, infrastructures and programmatic developments, concerted efforts must be made to strengthen Indian Country's capacity to participate in, and benefit from, any new advancements. In reference to the information technologies entailing E-Enterprise, Tribes will need comprehensive technical assistance around operational, structural and managing requirements to achieve optimal implementation. In the draft charter, the EPA mentioned that States will be awarded grants to "*...offset the costs of change to enable complimentary development efforts and to encourage innovation*"; however, Tribes were not explicitly mentioned as also being recipients of such grants. Given the woefully underfunded status of Indian Country, the EPA must take active measures to promote Tribal preparedness around these technologies, and guarantee that they too are included in any 'readiness' grants.

The EPA has announced that stakeholders will "*...implement new monitoring technologies and tools to deliver new kinds of environmental data to the public.*" Given the severe and all-encompassing concerns surrounding capacity and funding, we encourage the EPA to develop plans to facilitate this far-reaching goal for their constituents in Indian Country. In addition, special attention needs to be paid to current monitoring, reporting and crisis intervention protocols already enacted by Tribal governments, so as to not impugn the sovereignty status of Tribes. We hope that these concerns will be conveyed, analyzed and adapted into the E-Enterprise framework and all future initiatives.

III. Future Concerns

As mentioned, there exists a litany of environmental crises in Indian Country that require swift and extensive intervention, the EPA has not outlined how E-Enterprise will address these issues. Although not all of these concerns are exclusive to Indian Country, it would behoove the EPA to exercise extra caution and attention to how these problems are *disproportionately* affecting Indian Country. Moreover, by increasing and improving monitoring, the assumed goal is to be able to

intercede more quickly and systematically. However, the EPA has not set forth provisions within E-Enterprise to streamline interventions as they are required.

Therefore, we ask that the EPA pay special consideration to how deficiencies in environmental monitoring, reporting, and crisis interventions in Indian Country necessitate a predetermined and collaborative agenda, and encourage EPA to take systematic and careful measures to mitigate risk and standardize solutions.

We appreciate the EPA for their continued efforts to engage Tribes and improve the livelihood of Indian Country. Additionally, we encourage the EPA to maintain and build on their relationship with key Tribal stakeholders, and continue striving for better health outcomes. Thank you again for this opportunity to comment. Please contact Devin Delrow, NIHB Federal Relations Director at ddelrow@nihb.org if you have any questions on the concerns raised above.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lester Secatero', with a long horizontal flourish extending to the right.

Lester Secatero
Chairman, National Indian Health Board