

TRIBAL NEW SOURCE REVIEW IMPLEMENTATION

Training Webinar

October 05, 2011

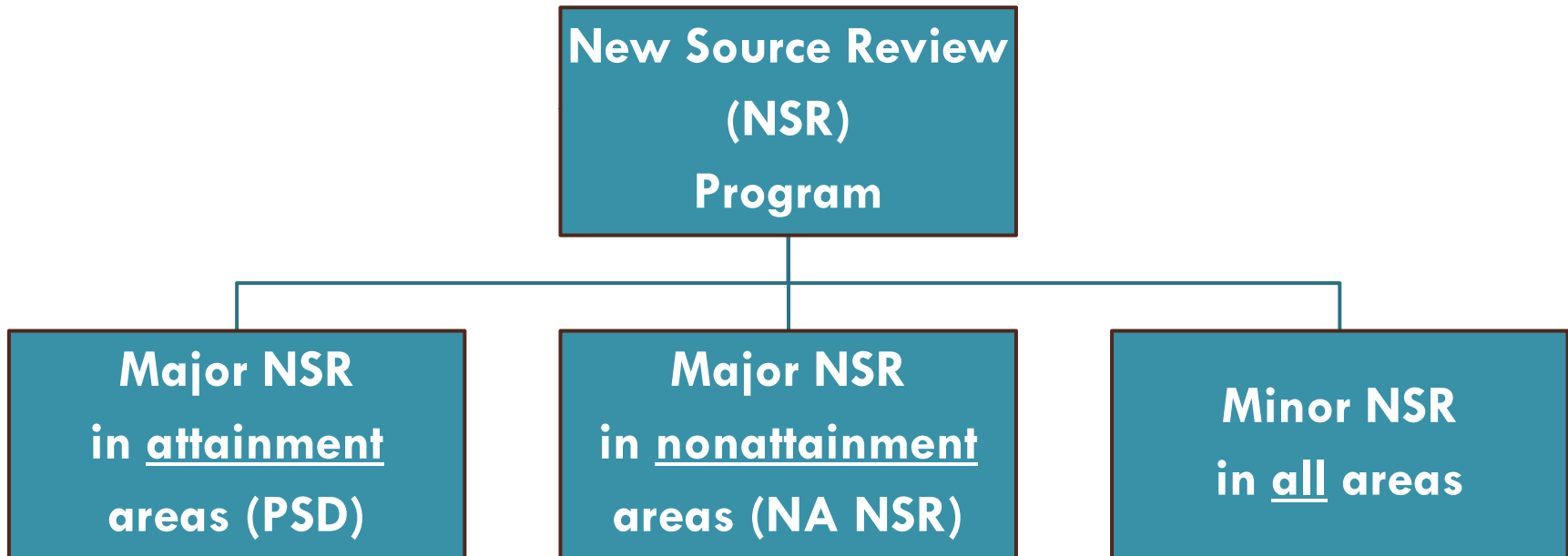
Tribal New Source Review Rule

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- ❑ Proposed in 2002
- ❑ Finalized and signed June 10, 2011
- ❑ Published in Federal Register July 1, 2011
 - Final rule can be found at
<http://www.gpo.gov/fdsys/pkg/FR-2011-07-01/pdf/201-14981.pdf>

Tribal New Source Review Rule

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Tribal NSR Implementation (Overview)

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- ❑ Communication and Training
- ❑ Implementation
 - Permitting process
 - General permits
 - Tribal roles
- ❑ Tribal New Source Review Draft Guidance
 - Understanding the Tribal NSR, implications and resource determinations
 - Decision matrix
 - Resources

Training

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- ❑ Tribal webinars on the NSR rule sections
- ❑ On site training
 - National Tribal Forum, Spokane, WA (June 13, 2011)
 - Pechanga, Temecula, CA (November 1- 4, 2011)
 - Midwest location TBD (winter/early spring 2012)
 - ITEP will begin planning for a technical training in 2012

Guidance Review

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- ❑ 2010 “draft” guidance outline was shared at National Tribal Forum (NTF) to gather input from the tribes
- ❑ Guidance shared with tribal participants on NSR monthly calls for review
- ❑ 2011 “draft” guidance shared and reviewed by tribal participants at NSR training
- ❑ Will review sections of the guidance on NSR calls to finalize document for NSR training

Implementation at Regional Level

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- ❑ The Tribal NSR Rule will generally be implemented at the regional level through collaboratively developed guidance
- ❑ The Tribal workgroup developed two guidance documents with recommendations for the Regions
 - TIPs for consulting with tribes on permits
 - Recommendations for involving tribal communities on permits

Guidance for Implementation

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- ❑ Purpose of the guidance is to:
 - Provide a clear understanding of the NSR Rule
 - Explore and determine the possibilities that the NSR has for your tribes
 - Provide a decision matrix through which a tribe may determine a direction to take on the rule
 - Provide possible steps to achieve desired outcomes
 - Provide useful examples of products to lessen the administrative and development burden

Tribal NSR Decision Matrix

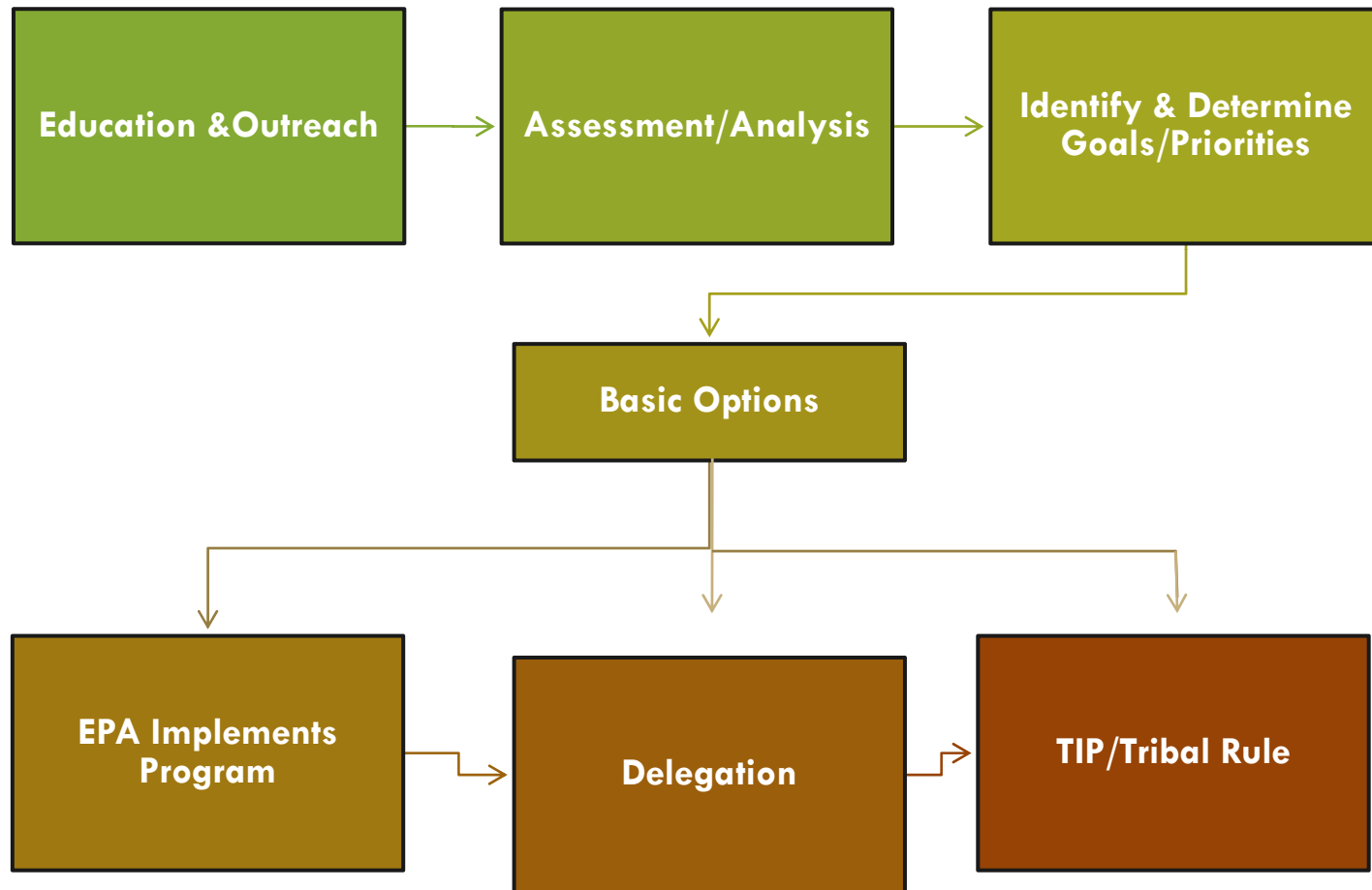
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- ❑ This matrix was developed to prompt and explore options for the tribes considering taking on the Tribal New Source Review Rule (NSR)

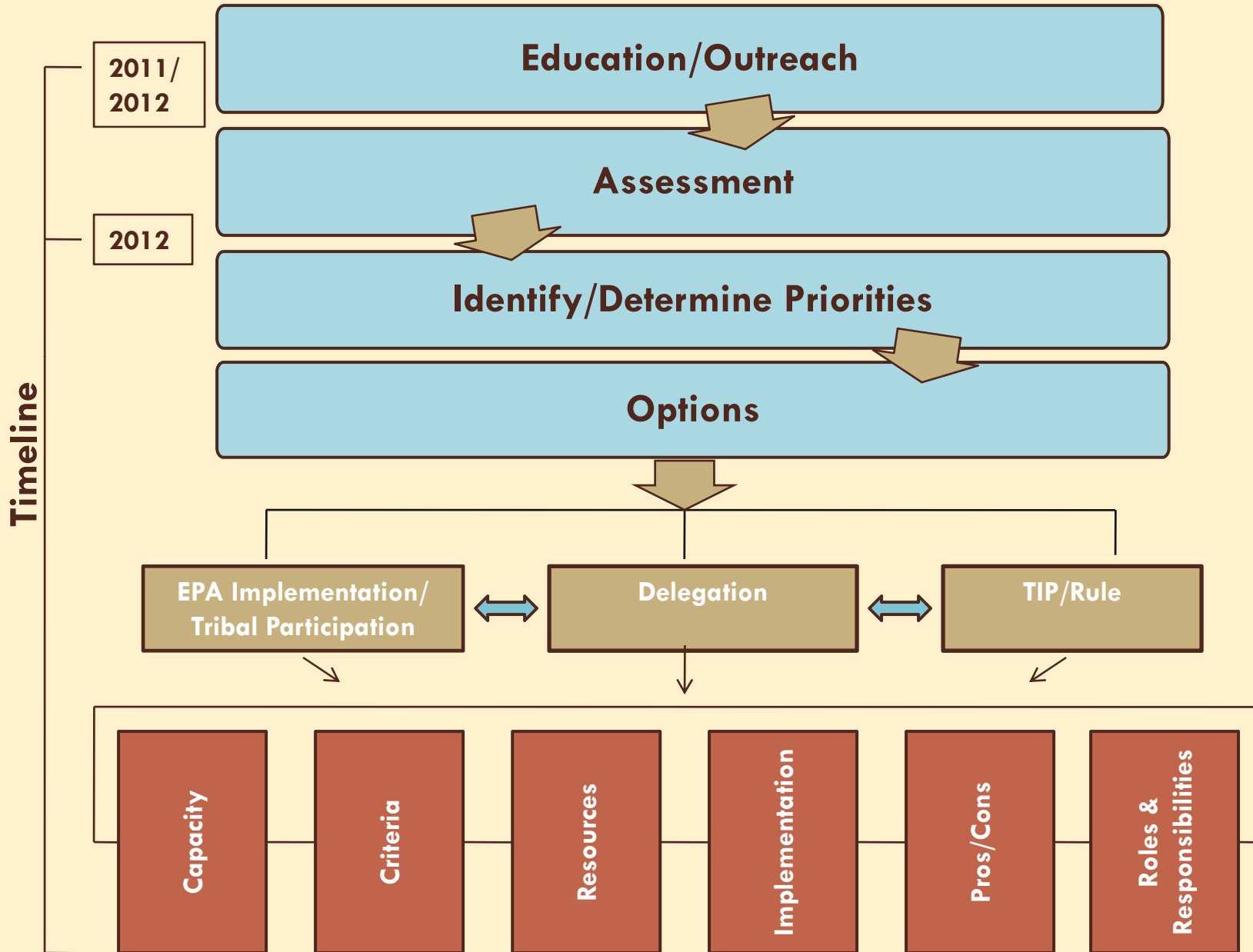
- ❑ The following scenarios are explained in the decision matrix process with the assumption that
 - A tribe may want to start with no, little or limited participation
 - A tribe may want to start small and develop their programs over time, understanding that any combination or mixture of these steps are possible to the tribes

Decision Matrix

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TRIBAL NSR DECISION MATRIX



Education & Outreach

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- ❑ Resources will need to be identified to learn more about
 - Final rule's technical information
 - Understand the implementation issues
- ❑ Better understand information to present to
 - Tribal leader
 - Community tribal audience
 - Sources on the reservation (if a tribe chooses to engage)

Assessment

- ❑ Using “assessment” in a general context, a tribe will need basic information in order to determine the extent they want to participate in implementation of the NSR rule
- ❑ Determine what level of assessment is appropriate for your area
 - Example: windshield surveys, emissions inventories
- ❑ Identify what sources are out there so when presenting to your councils, you have the data to support a proposed plan of action
- ❑ Identify plans for future economic development (what potential sources are on the way)

Identify/Determine Priorities

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- ❑ Identification of priorities is important
 - Number of sources on reservation
 - Resources
 - Political direction of the tribe

- ❑ Determine what the tribe is willing to engage in or prepared to do today to implement the Tribal NSR Rule
 - And, to what extent in the future

Basic Option Selection

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- ❑ Develop possible options through meetings within the tribe and with EPA using available information
- ❑ Identify questions to ask the Agency to make more informed decisions or to help your tribal government make a more informed decision

Steps in Process

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- ❑ Moving from lowest involvement or none at all, the following slides will show EPA implementation to a TIP development
- ❑ Keep in mind, a tribe may determine to jump in between steps due to capacity levels and predetermined work as they move towards developing a Tribal NSR rule implementation plan

EPA Implementation

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- ❑ The Tribal New Source Review Rule is a Federal Implementation Plan (FIP)
 - EPA is required to implement the program
 - The tribe is not required to participate

- ❑ A tribe may decide
 - To do nothing
 - Limit participation (i.e., outreach, conference calls)
 - Participate or begin building capacity and work with EPA
 - Review permits
 - Help with outreach to the community

Delegation

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- ❑ Is an established agreement to authorize the administration of one or more federal rules in a FIP with a tribe to assist in whole or partial administration of a specific Tribal NSR rule, with EPA retaining enforcement responsibility

Delegation (cont'd)

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- ❑ Requirements for delegation
 - Must show federal recognition
 - Have governing structure to carry out the duties and powers over the defined area
 - Identification of the boundaries covered by the delegation; provide adequate authority to carry out the aspects of the provisions
 - Demonstrate tribe has or will have technical capacity
 - **TAS is not required to take delegation**
- ❑ Delegation can be requested for the entire FIP or it can be severable
- ❑ Roles and responsibilities: tribes can take on as much or limit the amount of responsibility under delegation
 - A tribe may determine under its own inherent authority to develop tribal rules or codes to implement a program
- ❑ Capacity: tribes can work through delegation with EPA to build upon their capacity through the delegation work

Steps in Requesting Delegation

General Process for Delegation

1. The tribe expresses interest to EPA about receiving delegation for certain provisions of the Tribal NSR rule
2. A tribe staff-to-EPA staff phone call is an appropriate first step
3. The tribe and EPA continue ongoing discussions during the development of the delegation request. EPA will review the draft request as appropriate
4. The tribe formally requests delegation by way of a letter to the EPA Regional Administrator from the Tribal Chairperson that includes all of the information required by the delegation rule
5. EPA formally responds to the tribe and acknowledges receipt of their request for delegation
6. EPA sends a letter to all appropriate governmental entities

Steps in Requesting Delegation (cont'd)

General Process for Delegation

7. EPA can provide the tribe with a draft delegation agreement modeled after existing delegation agreements
8. The tribe and EPA review comments by the tribe on the draft delegation agreement and agree on language for the delegation agreement.
9. The tribe and EPA consult on a government-to-government basis at the tribe's request
10. After the delegation agreement is signed, EPA publishes a notice of the delegation in the Federal Register
11. When the notice of the delegation agreement is to be published in the Federal Register, EPA publishes an announcement of the delegation agreement in local newspapers

Tribal Implementation Plan/Tribal Rule

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- ❑ A tribe can choose to develop a TIP to assume primacy for ensuring that the NAAQS are met within its jurisdiction
- ❑ Developing a TIP gives the tribe the option of implementing and enforcing its own program
- ❑ Once a TIP is approved by EPA, the provisions of the implementation plan become federally enforceable in addition to being enforceable by the tribe
- ❑ TAS is required for a TIP

Tribal Implementation Plan (TIP)

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- ❑ As part of the decision process a tribe may determine to develop/implement a TIP
- ❑ A tribe may request ALL or some elements of the Tribal NSR rule to develop a TIP
- ❑ A TIP may include selected elements of a complete NAAQS implementation plan, provided those elements are reasonably severable from the other CAA elements not included in the TIP
 - Potential elements of a TIP are
 - Maintenance strategies
 - Attainment strategies
 - Source preconstruction permits (NSR)
 - Regional haze plans

TIP Requirements

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❑ Request for determination of eligibility

- The TAR requires EPA to determine that a tribe is eligible to implement CAA programs (TAS) before approval
 - Tribe must demonstrate federal recognition
 - Have a governing body carrying out substantial government duties and powers
 - Provide evidence that tribe will perform functions pertaining to management and protection of air resources within the exterior boundaries of its reservation or other areas with the tribe's jurisdiction
 - Demonstrate the tribe's capability to administer effectively the program for which it is seeking approval

TIP Requirements (cont'd)

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□ Administrative elements

- A letter of submission from the tribal leader requesting EPA approval of the TIP elements
- Documentation that the tribe has: 1) adopted the plan into law; 2) the tribe has sufficient authority in tribal law to adopt and enforce a TIP; 3) the adoption date; and 4) the effective date of the plan
- Evidence that the tribal environmental agency has sufficient personnel and resources to develop, implement and enforce the proposed TIP elements
- Evidence that the public was notified in accordance to EPA requirements; certification that public hearings were held; a compilation of public comments and the tribe's response
 - The public needs at least 30 days to review the TIP and submit comments to the tribe
 - Public hearings should be advertised at least 30 days in advance (preferably 60 days)
- Technical information used to prepare the TIP

TIP Requirements (cont'd)

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❑ **Demonstration of enforcement authority**

- An enforcement program should include
 - Resolutions and laws passed by the tribal government to establish authority to do inspections and enforce laws
 - Requirements for emission sources to monitor their emissions and periodically report emissions data and other information needed to determine compliance to the tribe
 - Procedures for inspecting sources to verify that emission limits are met, issuing notice of violations, and assessing fines
- Limitations on a tribe's criminal enforcement authority will not prevent TIP approval
 - Generally covered by an MOU between the tribe and EPA

Treatment as a State (TAS)

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- ❑ Tribes need TAS to implement Tribal NSR via a TIP and may get TAS for delegation
- ❑ Can obtain TAS for Tribal NSR or with other elements of the CAA
- ❑ Requirements for TAS

TAS Timeline

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- EPA's process for reviewing a federally-recognized tribe's eligibility application for TAS in order to administer a regulatory program under the Clean Air Act (CAA) consists of four steps. They are

Step 1: The tribe submits an application

- Pre-application discussions and technical assistance (between Tribe and EPA)
- EPA review of pre-application materials (if requested)
- Tribe submits application to EPA
- EPA notifies the tribe of receipt of the application, and, as needed, requests additional information from the tribe, within 30 days of receipt of the application
- Tribe submits additional information (if applicable)

Step 2: EPA review

- EPA reviews application and determines if the application is complete
- EPA notifies all appropriate governmental entities of the application and how it identifies the reservation's boundaries, and of any assertions regarding tribal authority over non-reservation areas, within 30 days of receipt of initial, complete application
- EPA notifies the tribe, in writing, that the application is complete no later than when EPA provides the notification in step 1

TAS Timeline (cont'd)

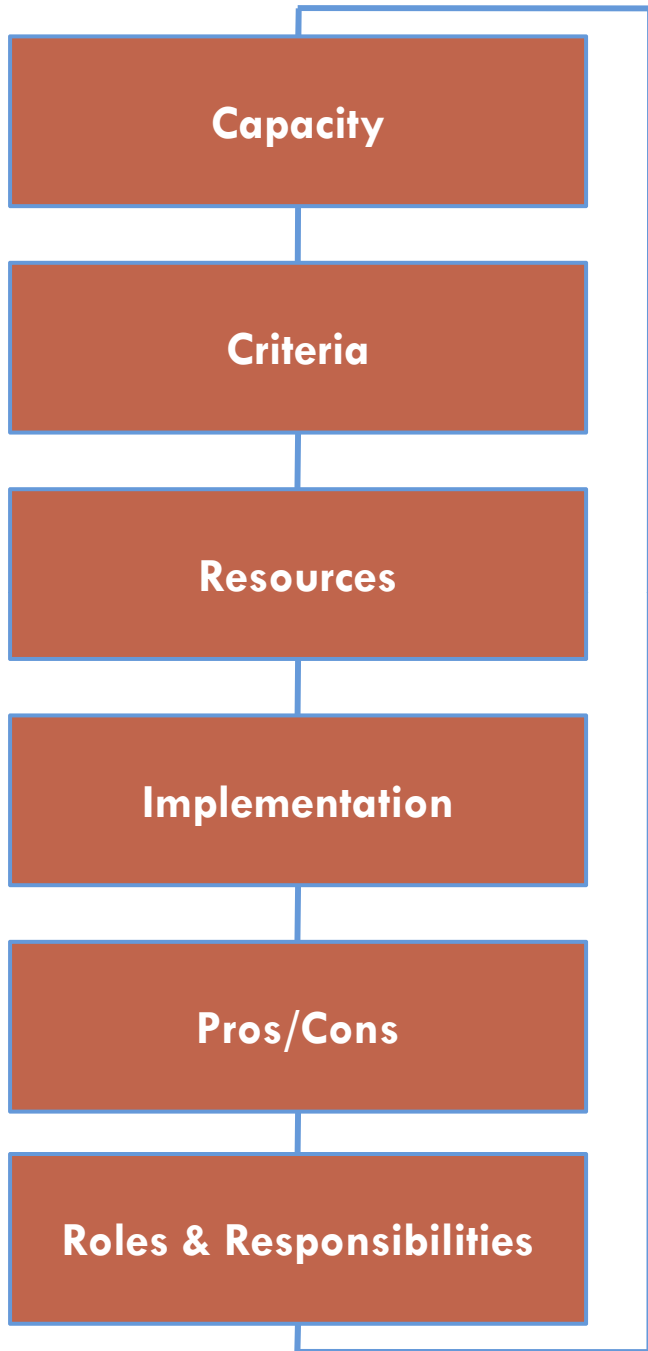
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Step 3: Comment period (if needed)

- Appropriate governmental entities and the public have the opportunity to comment regarding the reservation's boundaries or tribal authority over non-reservation areas; comments are generally due within 30 days
- EPA provides the comments to the tribe within 30 days of the close of the comment period
- The tribe reviews the comments and may respond
- Where there is a dispute concerning tribal authority that EPA cannot promptly resolve, it may approve the portion of an application addressing undisputed areas. *See* 40 CFR 49.9(e)

Step 4: Final TAS Eligibility decision

- EPA prepares decision document and response to comments
- EPA regional official signs decision document
- EPA notifies tribe of decision within 30 days of signature



Decision Matrix (Basic Options)

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Areas/Questions to consider when taking initial action or moving between these basic options in the decision matrix

Example Questions

- What type of capacity is necessary take on delegation
- What are the criteria for delegation
- What resources are needed
- How to implement a delegated program
- What are the pros/cons to the tribe
- What are the specific roles and responsibilities of the tribe and/or EPA in a delegated program

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Permit Application Deadline

New Major/Synthetic Minor Permits

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- ❑ Two forms need to be completed to obtain a synthetic minor permit
 - Application for New Construction
 - Application for Synthetic Minor Limit
- ❑ Both forms are to be submitted to the reviewing authority
- ❑ Reviewing authority will make determination
- ❑ The forms are available at <http://www.epa.gov/air/tribal/tribalnsr.html>
 - Both forms are interim and will be revised soon

Permit Application Timeline	Modifications to Existing* Sources		Existing Sources		New Sources			
	Major Modification of Existing Major Source	Minor Modification of Existing Major Source	Existing True Minor Source	Existing Synthetic Minor Source	New Major Source in area of attainment	New Major Source in Area of Nonattainment	New True Minor Source	New Synthetic Minor Source
Applicable Permit Program	PSD or Nonattainment NSR	Minor NSR	Minor NSR	Minor NSR	PSD	Nonattainment NSR	Minor NSR	Minor NSR
After Effective Date of Rule (August 30, 2011)	Apply for permit before construction of modification	Apply for permit before construction of modification		Source may need to apply for permit depending on how existing synthetic minor status was obtained**	Apply for permit before construction	Apply for permit before construction		Apply for permit before construction
18 Months after Effective Date (March 1, 2013)			Register source within first 18 months after effective date or 90 days after source begins operation					
36 Months after Effective Date (Sept. 2, 2014)			No permit needed unless modification is proposed				Obtain a permit within 36 months after effective date or 6 months after general permit is published in the Federal Register	

Permit Issuance Timeline

NOTE: GP=General Permits

Permit Issuance Timeline	Modifications to Existing* Sources		Existing Sources		New Sources			
	Major Modification of Existing Major Source	Minor Modification of Existing Major Source	Existing True Minor Source	Existing Synthetic Minor Source	New Major Source in area of attainment	New Major Source in Area of Nonattainment	New True Minor Source	New Synthetic Minor Source
Applicable Permit Program	PSD	Minor NSR	Minor NSR	Minor NSR	PSD	Nonattainment NSR	Minor NSR	Minor NSR
90 Days After Reviewing Authority Receives Application		GP will be granted or denied within 90 days after reviewing authority receives application					GP will be granted or denied within 90 days after reviewing authority receives application	GP will be granted or denied within 90 days after reviewing authority receives application
135 Days After Application Deemed Complete	A Site-Specific permit will be granted or denied no later than 135 days after application is deemed complete							
1 Year After Application Deemed Complete		A Site-Specific Permit will be granted or denied no later than 1 year after application has been deemed complete		Synthetic Minor permit will be granted or denied no later than 1 year after the date the application is deemed complete				Synthetic Minor permit will be granted or denied no later than 1 year after the date the application is deemed complete
Permit Decision Appeals	Permit decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit decision has been issued	Permit decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit decision has been issued	Permit decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit decision has been issued	Permit decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit decision has been issued	Permit decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit decision has been issued	Permit decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit decision has been issued	Permit decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit decision has been issued	Permit decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit decision has been issued
Permits Effective	Permits generally are effective 30 days after notice of issuance unless otherwise noted.							

General Permits (Current)

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- ❑ Source Categories (in process)
 - Auto body shops
 - Gasoline dispensing facilities (a.k.a. gas stations)
 - Hot mix asphalt
 - Petroleum based dry cleaners
 - Rock crushing facilities

- ❑ In the proposal, we will take comment on whether these source categories should be covered by Permit by Rule (PBR) or by General Permits (GP)
 - Signature timeframe: December, 2011 (proposal)

General Permits (Future)

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□ Additional source categories that will be proposed in the near future

■ Oil & Natural Gas (only)

- Dehydration systems
- Hydrocarbon storage tanks (oil/condensate/produced water)
- Hydrocarbon loading facilities
- Pneumatic pumps, pneumatic controllers, blow down vents
- Fugitive emissions (multiple source categories of VOC, dust, etc.)
- Separators/heaters-treaters
- Enclosed combustors
- Flares

■ General Combustion

- Industrial boilers
- Heating units
- Biomass boilers

■ Solvents

- Surface coating operations
- Degreasers
- Solvent cleaners
- Spark ignition engines
- Sand and gravel production
- Stone quarrying and processing
- Concrete batch plant
- Saw mills
- Landfills
- Printing operations

Contacts

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Appendix

Communication Action Items	Date
♦ Email update to the tribes informing them that the NSR rule left OMB	1/18/2011
♦ NSR workgroup calls with tribes placed on hold, pending further notice on rule status	2/28/2011
♦ Rule officially signed	6/10/2011
♦ Official press release distributed by EPA Office of Public Affairs to general public at 12:00 pm	6/13/2011
♦ Rule announcement posted at: http://epa.gov/nsr/actions.html#jun11	6/13/2011
♦ Letter sent to tribes from the Director, OAQPS, announcing the finalization of the CAA rule titled, "Review of New Sources and Modifications in Indian Country." Fact sheet and Regional Contact sheet were included in this mailing	6/13/2011
♦ Rule announcement at National Tribal Forum (NTF) during NSR Training in Spokane, Washington	6/13/2011
♦ Email notification of rule announcement sent to Tribal Air Directors, Natural Resource Managers and appropriate Environmental Staff	6/14/2011
♦ Rule announcement posted at: http://www.epa.gov/air/tribal/announce.html	6/14/2011
♦ Final NSR rule published in Federal Register	7/01/2011
♦ Letters sent offering consultation on NSR rule Implementation	7/29/2011
♦ Training/informational webinars scheduled: <ul style="list-style-type: none"> ▪ NSR Rule (PSD & NA NSR) – Regions (technical staff) ▪ NSR Rule (PSD & NA NSR) – Tribes ▪ Minor NSR Program – Tribes ▪ NSR Rule Implementation – Tribes ▪ NSR Rule Implementation – Regions (tribal air coordinators) ▪ NSR Rule Implementation – Industry/States ▪ NSR Rule "Train the Trainers" – Regions (Video Conference) 	7/14/2011 7/20/2011 7/25/2011 10/05/2011 TBS TBS TBS
♦ Monthly NSR call with Tribes (3 rd Wednesday of each month)	Ongoing
♦ Onsite training (3 days) <ul style="list-style-type: none"> ▪ Pechanga, Temecula, CA ▪ Midwest or Research Triangle Park, NC 	11/2011 (TBD)

Tips on Working with Tribes

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- ❑ Familiarize yourself with the community, history, groups, and issues
- ❑ Research how the community public receives information and learn which sources they trust
- ❑ Work with the tribal environmental professional, **this is key since the Tribal Governments want you to work with them in contacting their communities**
- ❑ Work with other EPA staff or other Agencies that have built credibility, build off of their experience
- ❑ Identify any community-based organizations
- ❑ Consider working with a neutral party, often times it will be via the tribal contact

Tips on Working with Tribes (cont'd)

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- ❑ Respect local work or traditional/cultural schedules for public outreach and communications
- ❑ Develop project specific mailing and contact lists using all appropriate methods
- ❑ Outreach methods should be tailored for each community and can include (electronic mail, printed flyers, mailings, meetings, door-to-door contact, radio, tribal newspapers, common regional mainstream papers)
- ❑ Make sure all communications are in plain language and includes appropriate contact information
- ❑ Notices should be visible in local tribal offices, social, faith-based and civic organizations, malls, banks, grocery stores, libraries, schools and senior centers
- ❑ Where appropriate you may need to have information translated into native languages

Tips on Consultation Outline

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- ❑ Timely communication is highly emphasized by tribal environmental professionals who work with their respective EPA contacts
- ❑ To assist with the communication process, most tribal environmental professionals prefer to be copied on any correspondence going to their tribal leader
- ❑ Consultation generally consists of meaningful and timely communication between EPA officials and tribal government officials in developing Agency actions that affect tribes
- ❑ Consultation vs. Participation/Collaboration: it is important to distinguish between government-to-government consultation and participation/collaboration of tribal environmental professionals
- ❑ Federal Indian Trust Responsibility: government-to-government consultation recognizes and ensures the federal government's trust responsibility to protect tribal sovereignty

Consultation Tips (cont'd)

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- ❑ Tribal governments do not have the same organizational structure as a state, local agencies, or even other tribes
- ❑ Be aware of your perceptions and be open-minded
- ❑ Tribe-specific and site-specific factors
- ❑ Privileged or confidential cultural information
- ❑ Don't assume you know what the tribe may want to review, provide all information to the tribe and let them tell you what's important
- ❑ If the Region is developing a permit plan and communication strategy, the outreach and consultation process should be built in