

Environmental Protection Agency Plan to Develop a Tribal Consultation and Coordination Policy Implementing Executive Order 13175

Purpose

The United States Environmental Protection Agency (EPA or Agency) was one of the first federal agencies with a formal policy specifying how it would interact with tribal governments and consider tribal interests in carrying out its programs to protect human health and the environment. Signed in 1984, this EPA Policy for the Administration of Environmental Programs on Indian Reservations (1984 Policy) remains the cornerstone for EPA's Indian program.

In an effort to enhance the consultation portions of EPA's 1984 Policy, consistently implement Executive Order 13175 (Executive Order), and comply with President Barack Obama's November 5, 2009 Memorandum on Tribal Consultation (Presidential Memorandum) EPA submits this Plan of Action (the Plan) to the Office of Management and Budget (OMB) and to federally-recognized Tribes. The plan has been developed in consultation with tribes and is a first step towards developing an enhanced Tribal Consultation and Coordination Policy (Policy or Consultation Policy).

Guiding Principles

EPA recognizes that tribal governments are sovereign entities with primary authority and responsibility for each Tribe's own land and membership. Accordingly, EPA works directly with tribal governments as the independent authority for their affairs, and not as political subdivisions of states or other governmental units.

EPA gives special consideration to Tribes' interests in making Agency policies and decisions and ensures the close involvement of tribal governments in making decisions and managing environmental programs affecting Indian country.

EPA considers Tribes' concerns and interests whenever EPA's actions or decisions may affect Indian country or other tribal interests. EPA recognizes the federal government's trust responsibility, which derives from the historical relationship between the federal government and Indian Tribes as expressed in certain treaties and federal Indian law. In keeping with that trust responsibility, the Agency endeavors to consider the interests of Indian Tribes when carrying out its responsibilities that may affect Indian country or other tribal interests.

EPA works cooperatively with other federal agencies on matters that affect Indian country or a Tribe's interests. Where issues involve federal agencies in addition to EPA, EPA carries out its consultation responsibilities jointly with those other agencies, where appropriate.

EPA takes government-to-government consultation with federally-recognized Indian Tribes very seriously. EPA led federal agencies in working directly with tribal governments to cooperatively implement the Nation's environmental programs throughout Indian country. Consultation is an important component of the Tribe-EPA relationship.

EPA views consultation as a process of meaningful communication and coordination at the appropriate time and with tribal officials or their authorized representatives on matters of interest to EPA and a Tribe or Tribes.

EPA interprets the Executive Order's definition of "policies that have tribal implications" broadly, encouraging agencies to take an expansive view. EPA believes that consultation on policies with tribal implications should continue to be integrated into the agency's national and regional operations.

Plan of Action

EPA Designated Official

EPA appoints the Assistant Administrator for the Office of International Affairs, or any successor office, as the Executive Order-designated Agency official with principal responsibility for the Agency's implementation of the Executive Order. These responsibilities include coordination and implementation as directed in the Presidential Memorandum and the Executive Order. The designated Agency official has the responsibility and authority for designating those Agency actions appropriate for consultation, and also for evaluating the adequacy of that consultation once conducted. Designations of actions appropriate for consultation normally would be made through a process that includes tribal participation. This authority ensures that the Agency conducts consultation with Tribes consistently throughout the Agency.

The designated official also ensures that Agency program-office and regional-consultation policies are consistent with the Executive Order and the Agency's future Consultation Policy.

Interpretation of Executive Order 13175

EPA affirms that the language of the Executive Order should be interpreted in a manner to encourage coordination and consultation with Tribes in keeping with the concept of broad consultation contemplated in the Order and the President's Memorandum.

The 1984 Policy provides additional context within the Agency for implementing the Executive Order. EPA's goal is to implement the 1984 Policy and the Executive Order consistently with each other. EPA believes that this will result in broad application of the Executive Order to Agency actions; the planned Consultation Policy is intended to implement such an interpretation.

The ultimate goal of this planned Consultation Policy will be to strengthen the consultation, coordination, and partnership between Tribes and EPA.

Incorporation of Existing Partnership Groups

EPA's existing Tribe-EPA partnership groups are a part of the Agency's close relationship with Tribes. Part of Consultation Policy development is the incorporation of these partnerships into EPA's coordination and consultation efforts. As the Agency builds upon its past partnership successes, EPA plans to continue involvement of these groups as an important part of Consultation Policy development and our future work together.

Consultation Policy Development

1. Review of Tribal Comments

The Agency plans to review all comments provided by Tribes and tribal organizations. EPA has received comments through EPA's Tribal Internet Portal and during EPA and other agency consultation meetings and calls attended by EPA personnel. EPA anticipates additional comment submission and consideration. EPA anticipates that the Plan, the 1984 Policy, the Executive Order, past practice, and these comments will form the basis for the initial development of the Consultation Policy.

2. Consultation During Policy Development

Throughout the Consultation Policy development process, EPA seeks input from Tribes and tribal organizations. Prior to finalization of the Consultation Policy, EPA intends to request, at specified times or on specific issues, additional information from Tribes.

3. Draft Consultation Policy

After consideration of tribal input, EPA intends to prepare the draft Consultation Policy within 270 days after the date of the Presidential Memorandum, and report to OMB on the draft Consultation Policy.

4. Tribal Review

As mentioned, above, EPA is soliciting, and intends to continue to solicit comments from Tribes throughout the Consultation Policy development process. Once the draft Policy is submitted to OMB, EPA will then seek additional tribal review and comment on the draft Policy.

5. Federal Register Publication

The Agency also plans to publish the draft Consultation Policy in the Federal Register, and provide for a 60-day public comment period. In addition, the Agency intends to provide the draft Consultation Policy to all tribal leaders through its normal distribution channels and make the draft Policy available for comment on EPA's Tribal Portal website.

6. Final Publication

Within 90 days of the public comment period's closure, the Agency plans to issue a final Consultation Policy. The final Policy would be published in the Federal Register and posted on EPA's Tribal Portal website.

Updates to this effort may be followed by visiting the Agency's consultation website at <http://www.epa.gov/indian/consultation>.

Any questions about the process should be directed to Jeff Besougloff, Associate Director, American Indian Environmental Office, 1200 Pennsylvania Avenue, MC 4104-M, Washington, DC 20460 or besougloff.jeff@epa.gov.