

EPA Region 9 efforts to improve tribal consultation practices for Clean Air Act Regulatory Actions

Air and Radiation Division

EPA Region 9

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What is Tribal Consultation?

Tribal consultation is a process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes.

Why does the EPA consult with tribes?

Federal Trust Responsibility—a legal responsibility to tribal governments to help them protect tribal health and natural resources.

Tribal Sovereignty—state and local governments have no jurisdiction on tribal reservation land and other areas subject to tribal jurisdiction.

Government to Government Relationship—the relationship between sovereign governments is different than our relationship with states or locals.

Documents Guiding Consultation

Multiple federal and EPA documents detail the rights and policies surrounding tribal consultation.

Key documents include:

- 1) **EO 13175** – Consultation and Coordination with Indian Tribal Governments
- 2) **1984 Indian Policy** – EPA Administer Wheeler reaffirmed the policy during the 2019 NTOC

Additional details at the end of the presentation.

Region 9 Air and Radiation Division working to improve consultation



In the past year, we have been working to improve our tribal consultation practices by engaging tribes in listening sessions.



We held 3 conference call listening sessions in the fall of 2019 and one listening session at the Fall Tribal Conference and RTOC 2019.



At each session we learned ways EPA can improve. We are focusing on what we heard were the main areas of concern.

Key Suggestions from the Listening Sessions



Notifications should be in plain English and indicate how they could impact the tribe.



EPA staff should receive additional training on EPA/tribal roles and interaction.



EPA should provide earlier notice of regulatory actions.



Communicate more with HQ about issues concerning tribes.

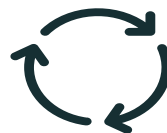


Region 9 should develop best practices to ensure consultation is provided consistently across actions.

Feedback Needed: Sharing Regulatory Agenda at RTOC



Air and Radiation Division takes over a hundred regulatory actions each year – how should we focus sharing our Regulatory Agenda at RTOC?



Some actions are multi-year processes – when appropriate to raise at RTOC?



Types of actions of most interest:

- Planning (changing area designations or classifications)
- Permitting (major/minor New Source Review, title V permits)
- Rules (rules limiting emissions for certain source categories)



Developing best practices to incorporate into our process for regulatory actions.

Expect to share in **September** and seek feedback



Permits office started sharing draft permit information with tribes and permit applicants prior to public comment.



Planning Office has begun offering consultation earlier in our review process for certain actions (for example, changing a nonattainment designation or classification).

Air and Radiation Division Actions to Improve Consultation Practices

Questions and Comments?

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Consultation Documents

Federal:

[1994 Presidential Memorandum.](#)

[1998 Executive Order 13084 on Consultation and Coordination with Indian Tribal Governments.](#)

[2000 Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments.](#)

[2009 Presidential Memorandum on Tribal Consultation.](#)

[2016 MOU Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights.](#)

EPA:

[1984 EPA Indian Policy \(reaffirmed July 2019\).](#)

[1998 Tribal Authority Rule \(outlines how the CAA is implemented in Indian country\).](#)

[2005 EPA Region 9 Approach to Consultation.](#)

[2009 OAQPS Consulting with Indian Tribal Governments guidance.](#)

[2011 EPA Policy on Consultation and Coordination with Indian Tribes.](#)

[2017 OAR Handbook for Interacting with Tribal Governments.](#)