

## OVERVIEW

### ***EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights***

#### **Summary**

EPA recognizes the importance of respecting tribal treaty rights and its obligation to do so. The purpose of the new *Guidance for Discussing Tribal Treaty Rights (Guidance)* is to enhance EPA's consultations under the *EPA Policy on Consultation and Coordination with Indian Tribes (EPA Consultation Policy)*. The *Guidance* outlines affirmative steps for EPA tribal consultations in situations where tribal treaty rights or treaty-protected resources may be affected by an EPA action.

#### **Background**

In December 2014, EPA Administrator Gina McCarthy released a Memorandum commemorating the 30th anniversary of EPA's Indian Policy. The Memorandum provided a clear statement on the need to honor and respect tribal treaty rights in EPA's actions. To assist in implementing the Administrator's statement on treaty rights, EPA developed the *Guidance* to be used during tribal consultations under the *EPA Consultation Policy*. The *EPA Consultation Policy* describes how EPA consults on a government-to-government basis with federally recognized tribes when EPA actions may affect tribal interests. Under the *EPA Consultation Policy*, consultation by EPA consists of four phases: Identification, Notification, Input, and Follow-up. After an extensive national tribal consultation effort, the *Guidance* was issued in February 2016.

#### **What does this Guidance do?**

The *Guidance* provides assistance to EPA staff with respect to EPA actions focused on specific geographic areas when tribal treaty rights relating to natural resources may exist in, or treaty-protected resources may rely upon, those areas and EPA's action may affect the tribal treaty rights. In these instances, during consultation with federally recognized tribes under the *EPA Consultation Policy*, EPA will seek to obtain tribal treaty rights information and recommendations in accordance with the *Guidance*. The *Guidance* directs EPA to ask the following questions:

- Do treaties exist within a specific geographic area?
- What treaty rights exist in, or what treaty-protected resources rely upon, the specific geographic area?
- How are treaty rights potentially affected by the proposed action?

EPA will subsequently consider all relevant information obtained to help ensure that EPA's actions do not conflict with treaty rights, and to help ensure that EPA is fully informed when it

seeks to implement its programs to further protect treaty rights and resources when it has discretion to do so.

The *Guidance* does not create any new legal obligations for EPA, expand the authorities granted by EPA's underlying statutes, nor does it alter or diminish any existing EPA treaty responsibilities.

### **Where do I go for more information?**

The EPA Consultation Policy, the Guidance, related documents, and answers to frequently asked questions may be found at <http://www.epa.gov/tribal>.