EPA’s Proposed Tribal Consultation Policy

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Presentation Outline

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- Policy Statement
- Broad, New Standard for Consultation
- New responsibilities within EPA
- How Consultation Works Under Policy
  - What, how & when of consultation
  - Management review and reporting
Background


✦ Two national teleconferences with tribal representatives were held in July.

✦ Comments due by September 16th.

✦ After tribal comments are addressed, the proposed policy will be published in the Federal Register for final public comment.
The Policy in a Nutshell

The proposed policy establishes:

- National guidelines for what, when, and how to consult with tribal governments, and
- Institutional controls within EPA to ensure consistency, transparency, and accountability in the consultation process.
EPA’s policy is to consult on a gov’t-to-gov’t basis with tribal governments when EPA actions and decisions may affect tribal interests.

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.
As a process, consultation includes several methods of interaction that may occur at different levels.
New, Broader Standard

The proposed Policy merges Executive Order 13175’s directive to consult with EPA’s 1984 Indian Policy principle of informing tribes when Agency actions and/or decisions may affect tribal interests.

This is a broader standard than the “substantial direct effects” language in EO 13175.
New Responsibilities Within EPA

- High-level oversight (Designated Consultation Official)
- Annual consultation progress report to OMB
- Consultation planning process – Program Offices & Regions
  - Prepare semi-annual consultation agenda
  - Provide summary information to Designated Consultation Official
- Tribal Consultation Advisor positions
  - Assist in determining when and how to consult
  - Serve as subject matter expert/point-of-contact
How Consultation System Works

✦ Program and regional offices conduct semi-annual reviews to identify matters on which they plan to consult and how they will consult.

✦ Semi-annual plans and summaries of consultation sent to Designated Consultation Official (DCO) through AIEO/ DCO reports to OMB.

✦ Tribal Consultation Advisors assist when needed and coordinate with AIEO to ensure consistency nationally.
What Actions May Require Consultation
(Non-Exclusive List)

- Regulations or rules
- Policies, guidance documents, directives
- Budget and priority planning development
- Legislative comments
- Permits
- Civil Enforcement actions
- Emergency Planning and Response Actions
- State or tribal authorizations or delegations
- Certain activities involving entry into Indian country
- International Treaties and Agreements
How EPA Identifies Matters for Consultation

1. Tribal Government-Requested Consultation

2. Regulatory Steering Committee
   ✤ Oversees action development process – determines whether consultation is appropriate for major rules and actions

3. National Program Offices and Regional Offices
   ✤ Semi-annual consultation plans

4. National Tribal Partnership Groups
   ✤ EPA holds ongoing meetings with national and regional tribal partnership groups who can assist in the identification of matters that may be appropriate for consultation
When Consultation Occurs

- Early enough to allow opportunity to provide meaningful input prior to Agency deciding whether, how, or when to act on a matter under consideration that may affect tribal interests.

- As proposals and options are developed, consultation and coordination must continue to ensure the range of options and decisions are shared and deliberated by all concerned parties, including additions or amendments that occur later in process.
How Consultation Occurs

- No single formula
- The analysis, planning, and implementation of consultation must consider all aspects of action under consideration
- The level of formality, type of meetings, level of interaction, etc. will depend on the action under consideration
- We have discretion to determine the level of EPA official that is appropriate to meet with tribal officials
The Designated Consultation Official will communicate periodically with Assistant Administrators & Regional Administrators to:

- review the consultation system
- consider any matters requiring senior management attention
- make adjustments necessary to improve the Policy or its implementation

EPA will submit annual progress reports on consultation to OMB
EPA’s Tribal Portal

Comments are due by September 16, 2010 and can be submitted through the Tribal Portal:

www.epa.gov/indian
EPA HQ Consultation Contacts

Comments can also be sent to:
David Guest, American Indian Environmental Office
Ph. 202 566-2872/Fax 202-564-0298, guest.david@epa.gov

*************** Other Contacts ***************
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