

The Office of Air Quality Planning and Standards

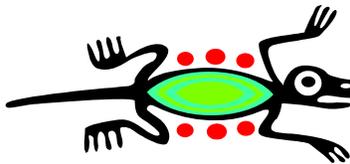
Consulting  
With  
Indian Tribal  
Governments



April 10, 2009

## **Disclaimer**

This document is intended solely for guiding employees of the United States Environmental Protection Agency (EPA) Office of Air Quality Planning and Standards (OAQPS). This guidance is not a regulation and does not create any legal obligations or any right or trust responsibility. This document does not address the requirements of, or procedures called for by, Executive Order (EO) 13175, 65 Fed Reg. 67249 (November 9, 2000). Any EPA approach to implementing EO 13175 will be set forth in a separate document. This document refers to consultation with federally-recognized Indian tribes that OAQPS undertakes generally, as a matter of policy. This document may be updated as appropriate without notice.



## **OAQPS Tribal Program Primary Contact**

The OAQPS primary contact for all issues relating to tribes is the Community and Tribal Programs Group (CTPG) located in the Outreach and Information Division (OID). In addition, there is a cross-divisional OAQPS Tribal team comprised of representatives from the various divisions who can be a resource to you. This document provides OAQPS staff guidance on consulting with federally-recognized tribes; however, it is important that you contact CTPG, or your division tribal representative, early in the process of addressing issues relating to tribes for additional guidance and assistance.

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# Introduction

## **Why develop guidance for OAQPS?**

This guidance describes OAQPS' views regarding tribal consultation and will help assist OAQPS personnel in reviewing EPA actions for effects on tribes and consulting with tribes. Early and meaningful tribal involvement is consistent with the federal trust responsibility to federally-recognized tribes and furthers the Agency's overall goal of protecting human health and the environment.

This document introduces OAQPS staff and managers to the basics of government-to-government consultation with American Indian governments within the context of the work performed in OAQPS. It provides a roadmap for analyzing whether OAQPS actions may impact or affect tribes and if so, how to proceed. For the purpose of this document, the term **“action”** refers to any policy, guidance, or regulation developed by OAQPS. This can include actions such as the area source regulations, National Ambient Air Quality Standards (NAAQS) promulgations, program implementation, and guidance development.

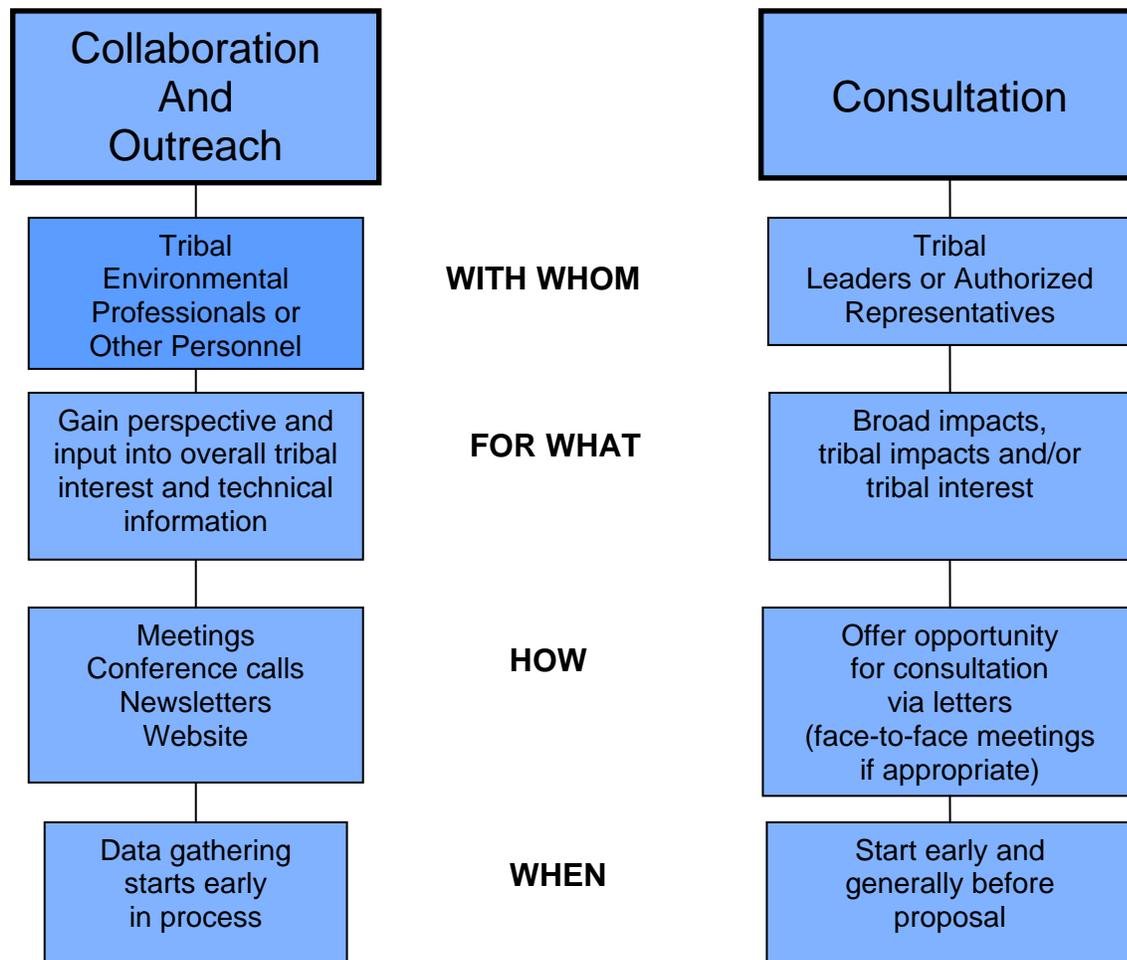
This guidance is divided into three sections – **screening, collaboration and outreach, and consultation**. The first section, **screening**, describes how to identify impacts or effects your action may have on tribes. The second section, **collaboration and outreach**, discusses how to provide information to tribes and, if appropriate, how to get them involved in the action development process. The third section, **consultation**, discusses how to consult effectively with tribes.



## **What is the difference between tribal collaboration or outreach and consultation?**

It is important to note the difference between **“collaboration and outreach”** and **“consultation.”** Collaboration and outreach are generally conducted with tribal environmental professionals (although other tribal personnel or tribal officials may be involved) in advance of policy, guidance, or rulemaking in which we think tribes will have an interest. The purpose of collaboration and outreach is, among other things, to assist OAQPS in assessing whether a particular action may have effects on tribes, making consultation with elected or duly appointed tribal leaders appropriate. For purposes of this Policy, consultation generally involves meetings or discussions with elected or duly appointed tribal leaders or some other, more formal opportunities for those leaders or their authorized representatives to interact with EPA decision-makers about the action, potential effects on tribes, and options to take such effects into account. While consultation occurs with tribal (elected or duly appointed) leaders or their authorized representatives, EPA routinely conducts a wide variety of interactions with tribes (including with

non-elected leaders, environmental professionals, etc.) in conjunction with the consultation process. Consultation should generally occur as early as possible and before an action is proposed. OAQPS generally sends a letter to tribal leaders with brief information in plain language describing the action and offering the tribal leaders the opportunity for consultation. See Appendix for a sample consultation letter. The OAQPS Community and Tribal Programs Group (CTPG) is your primary contact, along with the OAQPS tribal team member(s) for your division, for helping to decide the most appropriate method for consulting with tribes and obtaining tribal views.



**What is the relationship between this consultation document and Executive Order 13175?**

There is a separate process being undertaken within EPA to develop guidance implementing EO 13175 - "Consultation and Coordination with Indian Tribal Governments". Staff should consult any materials that result from this EPA process or consult with the OAQPS CTPG staff for further guidance. Compliance with EO 13175 may raise different issues than those covered in this document. As a result, if final Agency guidance is released, we intend to consider if this OAQPS guidance document should be revised. EPA's American Indian Environmental Office (AIEO) can provide additional information regarding compliance with EO 13175.

## Background

The interactions between OAQPS and tribal governments are rooted in and guided by three key concepts: tribal sovereignty, the government-to-government relationship, and the federal trust responsibility to federally-recognized tribes.

### **Tribal Sovereignty**

Tribal sovereignty helps us understand *with whom* we are interacting. Indian tribes retain important sovereign powers over their members and their territory. In light of tribal sovereignty and other principles of federal Indian law, states and local governments are generally precluded from exercising jurisdiction in Indian country.<sup>1</sup> This means that as a sovereign government, each tribal government generally sets its own priorities and goals for its membership and territory, including those for environmental protection. Thus, tribal sovereign governments generally have an interest in environmental protection issues, including air quality issues, affecting their members and territory.

### **The Government-to-Government Relationship**

The government-to-government relationship helps us understand *how* we are to interact. The EPA recognizes the government-to-government relationship between the United States and federally-recognized Indian tribes and acknowledges Indian tribes as sovereign governments retaining important inherent powers of self-governance.<sup>2</sup> This relationship provides a framework for interacting with tribes as partners to address issues of mutual concern. EPA has significant experience across the Agency working and consulting with tribes on a government-to-government basis.

### **The Federal Trust Responsibility**

The trust responsibility helps us understand *why* we interact with tribes. The federal government has a trust responsibility to federally-recognized tribes. Like other federal agencies, EPA acts in accordance with that trust responsibility when taking actions that affect tribes.

This responsibility includes consulting with tribes and considering their interests when taking actions that may affect tribes or their resources. In EPA's landmark 1984 Indian Policy, the Agency stated that the keynote of EPA's efforts to protect human health and the environment on Indian reservations "will be to give special consideration to tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands."<sup>3</sup> Similarly, in a 1994

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<sup>1</sup> Indian country is defined at 18 U.S.C. § 1151 as: "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

<sup>2</sup> EPA Policy for the Administration of Environmental Programs on Indian Reservations, November 8, 1984

<sup>3</sup> EPA Policy for the Administration of Environmental Programs on Indian Reservations, November 8, 1984

memorandum, the President directed all federal agencies to assess the impacts of their plans, projects, programs, and activities on tribal trust resources, assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities, and, to the extent practicable and permitted by law, consult with federally-recognized tribal governments before taking actions that affect them.<sup>4</sup>

### **Considerations for EPA Interactions with Tribes**

Each tribe is unique and differs in leadership, governmental and economic infrastructure, and culture. As a result, no single set of protocols will meet the needs of all tribes. Rather, there are general considerations and guidelines to help staff to approach all tribes with appropriate respect and sincerity. It is recommended that all staff take the OAQPS training entitled, “Working Effectively with Tribal Governments” to gain a better understanding of relevant federal law, Indian programs and government, and Indian culture. An online course is available through the EPA American Indian Environmental Office (AIEO) at <http://intranet.epa.gov/oppts/training/tribal/EPA/mainmenu/launchPage.htm>.

Below are key considerations:

- Every tribe is culturally unique. You should respect each tribe’s cultural concerns.
- The perception of encroachment on tribal sovereignty is one of the most significant issues for tribes today. Tribes should, as much as possible, be included early in the policy, guidance, or rule development process to help ensure their input is meaningful.
- Tribes often have two tiers of government, (e.g., legal/political and traditional). The tribal head is not always the decision-maker. You should learn the system of government used by a specific tribe before initiating contact. The OAQPS CTPG and the appropriate Regional Office can assist you with this.
- While environmental issues are a concern of most tribes, many tribes have limited familiarity with environmental issues. They have to focus on many issues such as poverty, unemployment, education, and health issues.
- There may be only one or a few tribal environmental professionals working on all environmental issues for a tribe. Therefore, any apparent lack of interest in a particular matter may, in reality, result from limited time and resources.
- One size does not fit all. Appropriate consultation may be different for each tribe; so it is important that the program lead consider different avenues for reaching out to the tribes.
- Tribes may be skeptical of federal or state governments so they may not be very receptive to you at first. By taking time to inform the tribes appropriately, you will have gone a long way toward building a fruitful, professional relationship. The OAQPS CTPG can help since they have already developed relationships with many tribes.

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<sup>4</sup> Memorandum: Government-to-Government Relations with Native American Tribal Governments, April 29, 1994 (59 Fed. Reg. 22951)

## Section I – Screening

The **screening phase** is designed to help assess whether your action may have any impacts or effects on tribes. This section defines what “impacts or effects on tribes” are; provides questions to help you assess if there are potential impacts or effects; and then, if appropriate, recommends how to proceed into the “collaboration and outreach” and “formal consultation” phases.

### **What does “impacts or effects on tribes” really mean?**

Such effects may include ecological, cultural, human health, economic, or social impacts. This includes any actions that may have an impact on tribal natural resources and trust lands; an impact on treaty rights applicable to lands outside reservation boundaries; or an impact on the authority or resources of tribal governments.

### **How do I assess whether there are impacts or effects on tribes?**

To help assess whether there are impacts or effects on tribes there are a few questions you, the policy, guidance or rule writer, should answer. To assist you, these questions can be answered on an **Impacts or Effects on Tribes Form**. If you can answer **YES** to any of the following questions, then your action likely has potential impacts or effects on tribes and more analysis should be done to consider appropriate means to involve tribes in the process. In addition, if there are potential effects or impacts on tribes a **Tribal Consultation Plan** should be developed. The OAQPS CTPG or your division tribal team representative can assist you with this form. *(See example Impacts or Effects on Tribes Form and Tribal Consultation Plan in Appendix.)*

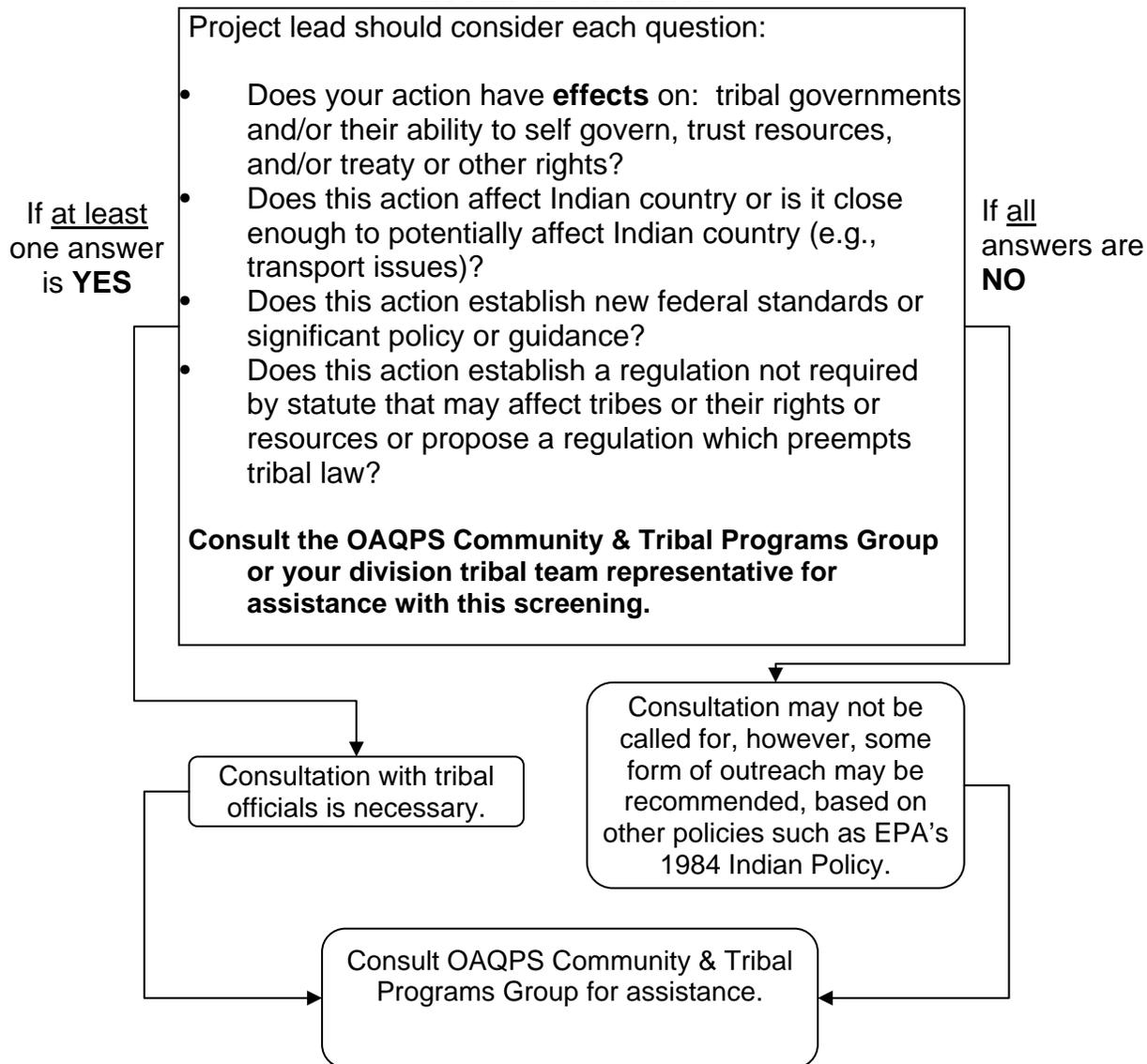
The **Impacts or Effects on Tribes Form** includes these questions:

- Are there effects on:
  - tribal governments, communities, cultures and/or their ability to self-govern
  - trust resources
  - treaty or other tribal rights
- Does this action affect Indian country or is it close enough to potentially affect Indian country (e.g., transport issues)?
- Does this action establish new federal standards or significant policy or guidance?
- Does this action establish a regulation not required by statute that may affect tribes or their rights or resources or propose a regulation which pre-empts tribal law?

If you cannot clearly answer **NO** to all of the questions listed above, then you should begin thinking about how to proceed with tribal outreach. You should contact the OAQPS CTPG, or your OAQPS division tribal team representative. Together, you will assess whether there are potential impacts or effects on tribes and if so, how to effectively collaborate and consult with affected tribes. There also may be situations when a tribe requests an opportunity to consult even if there are no clear impacts or effects on tribes. In this case, you should have discussions with the tribe regarding the action. The OAQPS CTPG can provide supplemental information to assist you with the specific steps of the process and to initiate appropriate tribal contact.

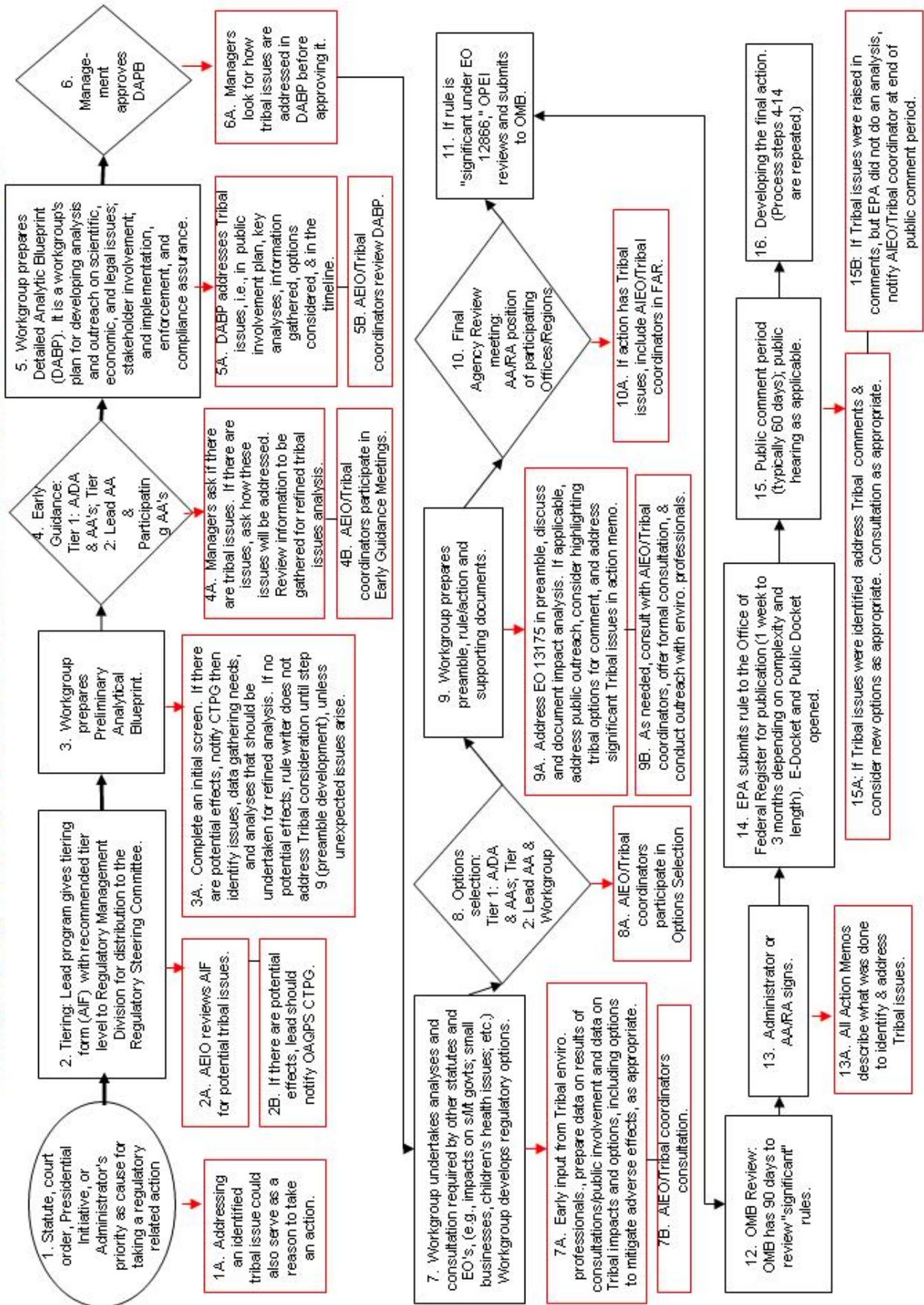
The following flow chart can be used to further assist you in determining if there are impacts or effects on tribes:

## Incorporating Tribal Considerations into OAQPS Actions



The chart on the next page is for those actions which have been designated as either Tier 1 or Tier 2 rules under the Agency's Action Development Process (ADP). There is a greater possibility that rules designated as Tier 1 or Tier 2 may have tribal impacts or effects. The chart depicts the Agency's official action development process; however, we have added boxes, designated in **red**, to show when tribal considerations should be incorporated into the Agency's official process for OAQPS rules. This is not intended to amend or alter the Agency's official ADP. Rather, the additional information is designed to provide separate guidance for OAQPS staff to assist in the consideration of effects on, and outreach to, tribes in the context of relevant OAQPS actions.

# Incorporating Tribal Considerations into Tier 1 and 2 Actions under the ADP



## Section II – Collaboration and Outreach

### **Collaboration and Outreach**

If an OAQPS policy, guidance, or rulemaking action may affect tribes or if tribes are interested in learning more, collaboration and outreach are important next steps. Collaboration and outreach provide an opportunity for EPA to interact with tribal environmental professionals (TEP) and tribal personnel on the potential impacts or effects. This is an opportunity for EPA to talk with the TEPs to assist EPA in its assessment of whether to call for government-to-government consultation. When an action is targeted directly toward tribes, has impacts or effects on tribes or Indian country communities, or has broad tribal interest, OAQPS staff should consult with the tribes. Outreach activities can be tailored to the specific needs of your action, ranging from notification to the tribes via a listserv to establishing a formal work group. The OAQPS CTPG can help you design the appropriate scope of interaction.

### **General Recommendations**

- Identify Issues, Interests, and Impacts
  - What are the issues?
  - What are the critical time lines and events?
  - Who is involved?
  - Who has an interest?
  - Who is potentially impacted?
- Involve Tribes Early in the Process
  - The earlier the better.
  - Carefully set up work groups<sup>5</sup> to ensure needed expertise.
  - Outreach schedules should reflect critical and appropriate points for interaction.
  - Allow for a full range of opinions and interactions.
- Plan Strategies and Mechanisms
  - Consider strategies about appropriate audience, method of communication, and content.
- Involve EPA Regional Offices
  - Regional tribal and program offices should be actively involved in identifying and working with tribal officials and personnel from their Regions. One way to raise issues quickly is to work with the sub-lead Region for tribal air issues and schedule time on one of the monthly Tribal Air Coordinator (TAC) calls.

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<sup>5</sup> Meetings with outside organizations may be subject to the Federal Advisory Committee Act (FACA). Consult your Office of General attorney to determine whether FACA applies to your meeting.

## **Steps for Effective Collaboration and Outreach**

1. Identify which tribes may be affected.
  - a. Initiate discussions with OAQPS CTPG, division tribal team representative, and appropriate EPA Regional Office Tribal Air Coordinators.
  - b. Identify type of tribal government and appropriate tribal contacts.
  - c. Identify special tribal considerations and protocols (e.g., subsistence seasons) for those tribes.
  
2. Write a fact sheet in plain English.
  - a. Describe the action being considered (i.e., policy, guidance, rulemaking).
  - b. Describe how the action may impact or affect tribal governments.
  - c. Include information on how to contact you and receive additional information.
  
3. Notify tribal environmental professionals.
  - a. Work with the OAQPS CTPG and the EPA Regional Office where the tribe is located to develop an outreach/communication strategy.
  - b. Notify all affected tribal governments at an early stage by disseminating early information to tribal officials on action development. In addition to sending out the fact sheet described above, you can also send out a listserv or Tribal Air Website message with EPA contact's address, participate in National Tribal Air Association (NTAA) monthly calls, work with National Tribal Environmental Council (NTEC) and EPA Regional tribal contacts, and send information to Regional Tribal Operations Committee (RTOC) contacts.
  
4. Consultation with tribal leaders where appropriate.
  - a. If consultation is called for, please proceed to Section III of this document, Consultation, for more information on how to proceed. If not, continue coordination through updates and consideration of input from TEPs and other tribal personnel at an appropriate degree of specificity.

## **Section III - Consultation**

### **Formal (or Full) Consultation**

Consultation is built upon the exchange of ideas, not simply providing information, and is generally not a one-time event, but an ongoing process. Consultation is called for, among other potential actions, any policy, guidance, or rule that is 1) targeted directly toward tribes; 2) has impacts or effects on tribes or Indian country communities; or 3) has broad tribal interest. Examples include the Tribal Authority Rule, New Source Review Rule for Indian Country, Mercury Maximum Achievable Control Technology Standards for Utilities, Landfill Maximum Achievable Control Technology Standards, Tribal Implementation Plan Guideline, and Rules for Implementing New National Ambient Air Quality Standards. While EPA Headquarters (i.e., OAQPS) consults on its actions, staff should work closely with the EPA Regional Offices. Formal consultations, including any letters sent to tribes, are initiated by the OAQPS Division Director level or higher.

Earlier it was stated that OAQPS staff should contact TEPs to assist in assessing whether consultation is called for in advance of any action for which we think tribes will have an interest. If after doing that, we find that a few TEPs are interested or concerned about an action and OAQPS believes that tribes would be affected, OAQPS would generally send a letter to tribal leaders of those potentially affected tribes, providing an overview of the action and offering an opportunity for consultation. This action should be taken prior to proposing the rule. Early communication is important. The goal is to have a dialogue between informed tribal leaders, or their authorized representatives, and federal officials to help OAQPS appropriately consider tribal views in developing and finalizing the federal action.

### **Recommendations for Developing Tribal Consultation Plans**

The outreach/community strategy completed in Section II as part of the collaboration and outreach process, can now be used to develop a tribal consultation plan. This plan serves as the road map for the formal consultation process. Below are issues to consider when developing your plan. AIEO is the principal point of contact for coordinating the interaction of tribes and other EPA offices and officials; however, your first point of contact is the OAQPS CTPG and your division tribal representative.

#### **Issues to Consider**

- The Inter-governmental Stakeholders
  - Who are the interested principal tribal government stakeholders likely to be affected by this action?
  - Are there tribal elected officials who have expressed interest in the action under development?
  - Which, if any, tribal environmental or technical agencies will administer the action?
  - What other tribal governmental entities will have to take action (e.g., pass legislation, raise funds, be subject to requirements)?
  - Are there any other tribal government agencies (e.g., economic development, transportation, agriculture) likely to be affected or have an interest?
- Governmental Impacts
  - What is known about costs and other implications of the action?
  - Will the action impact different tribal entities to different degrees or in different ways?
- Unique Impacts
  - Will the action have disproportionate impacts on any tribes in a particular region of the country?
  - Will the action affect tribes in urban, rural, or other areas differently?
  - How will outreach and consultation efforts be targeted and tailored in light of these unique or disproportionate impacts?
  - Will tribes be affected or be presented with unique compliance issues?
  - What steps will be taken to notify tribes of the planned action and to secure their participation?

- Major Issues/Areas of Concern
  - What information will tribal government officials need to help them understand the potential implications of the proposed action and why they should (or may) be interested?
  - What issues are likely to be major concerns to the different tribal government officials?
  - What steps should be taken to identify additional issues?
- Tribal Participants
  - Are tribal organizations such as NCAI, NTAA, NTEC, ITCA, ITCG (see appendix for acronyms), and other consortia involved?
  - What EPA organizations provide/offer tribal perspectives?
  - How can EPA solicit tribal government views?
  - How can other individual tribal officials interested in the rule be identified?
  - How can EPA regional offices assist in securing their participation?
- Outreach/Collaboration Activities
  - What outreach and collaboration efforts have already been undertaken?
  - Are there tribes potentially interested that have not yet been informed about the proposed action?
  - What is the plan for disseminating information about the action?
  - What kinds of information materials are needed?
  - How can tribal government officials be involved in resolving issues and areas of concern?
  - How and when are tribal officials informed about the results of cost and other impact analyses?
- Expertise Needed
  - What kinds of expertise from tribal officials would be especially helpful in designing this action? Examples include:
    - Experts in particular technologies, industries, or scientific disciplines;
    - Economists, lawyers, or policy analysts specializing in particular areas; and
    - Managers with expertise administering comparable programs at another level of government.
- Schedule/Resources
  - What is the schedule for key outreach and consultation activities?
  - What resources – staff, extramural funds, or other resources – may be needed to carry out the consultation plan?
  - What assistance is needed from other EPA offices (e.g., Regions, Office of General Counsel, Office of Policy, Economics, and Innovation, or the American Indian Environmental Office)?

## **Steps to Effective Consultation**

1. Develop a Tribal Consultation Plan which serves as the road map for consulting with the tribes.
  - a. Using the outreach/collaboration strategy developed in Section II, a consultation plan can now be developed for the consultation phase.
  - b. Develop and send out consultation letters to leaders of affected tribes providing them an opportunity to consult (*see appendix for example consultation letter*).
2. Continue discussions with OAQPS CTPG, OAQPS tribal division representative, and EPA Regional Office Tribal Air Coordinators.
3. Communicate with Tribes.
  - a. Consult with tribes early in the process of developing the action(s).
    - i. In some cases, you may be working with only one or two tribes, and you should be able to communicate and consult with them directly. In other cases, where the action is less developed or there is greater tribal interest, you may need to communicate with a much larger group. In addition to one-on-one meetings, reaching a larger tribal audience can be accomplished through national meetings and with the assistance of the National Congress of American Indians and the National Tribal Operations Committee.
  - b. Consider any responses received from the consultation letters sent out to the tribal letters.
  - c. Explain to tribes how you intend to respond to the concerns they raised in the consultation process and when you plan to get back to them.
4. Make available to the Office of Management and Budget (OMB), as appropriate, information submitted by tribes.
  - a. As you move closer to finalizing your action, make available information submitted by the tribes through the consultation and, as appropriate, information submitted by TEPs or other tribal personnel through the outreach and collaboration process to OMB.
  - b. Once you have determined the status of your action under Executive Order 13175, you need to refer to **Preamble Templates for Executive Order 13175: Consultation and Coordination with Indian Tribal Governments** at <http://intranet.epa.gov/adplibrary/adp-templates/index.htm> to determine the appropriate template to use in your action.
  - c. If there are potential impacts (*refer to page 8*), contact the EPA American Indian Environmental Office (AIEO), in the final stage of the action.
    - i. A Tribal Impact Summary Statement may have to be developed and in return, a certification letter from the Director of AIEO, may have to be submitted with the final action.

5. Document the Consultation.
  - a. If consultation was conducted, briefly discuss in the relevant section of your rule preamble or document background/summary: the consultation process, the tribal concerns, and how you addressed these concerns or why you did not.
  - b. Ensure that all information is submitted to the docket for proper recordkeeping.



# Appendix

## KEY TERMS & CONCEPTS

### **Authorized Inter-Tribal Organization**

An “authorized inter-tribal organization” is an organization that has been officially designated by the elected or duly-appointed leader of a federally recognized tribal government to represent that tribe on a particular issue.

### **Consultation**

Consultation generally consists of meaningful and timely communication between EPA officials and elected or duly appointed tribal government officials or their authorized representatives in developing Agency actions that affect tribes. Consultation means open sharing of information, the full expression of tribal and EPA views, a commitment to consider tribal interests in decision-making, and respect for tribal self-government and sovereignty. Consultation is different from input and interaction or collaboration and outreach: consultation is government-to-government, whereas input and interaction or collaboration and outreach can be with communities, environmental staff, and others.

### **Consultation versus Community Involvement**

It is important to distinguish between government-to-government consultation and community involvement activities. Community involvement typically involves members of the tribal community directly and is normally separate from consultation or discussions with the tribal government. Consultation occurs in addition to the public participation process.

### **Federal Indian Law**

“Federal Indian Law” refers to the body of law that defines the unique relationship between the United States and the Indian tribes, including federally-recognized Alaska Native entities. Federal Indian Law addresses, among other things, tribal sovereignty, tribal treaty rights, and jurisdiction in Indian country.

### **Federal Indian Trust Responsibility**

The federal government has a “trust responsibility” to federally recognized Indian tribes that arises from treaties, statutes, executive orders, and the historical relations between the United States and Indian tribes. Like other federal agencies, EPA acts in accordance with the trust responsibility – which generally includes consulting with and considering the interests of tribes – when taking actions that may affect tribes or their resources.

### **Government-to-Government Relationship**

The relationship between federally-recognized Indian tribal governments and the federal government is a unique one. Indian tribes possess an inherent sovereignty over their members and territories. Because each Indian tribe is a sovereign government, EPA officials (and those from other federal agencies) interact with tribal officials as representatives of their government. EPA consults – on a government-to-government basis – with federally-recognized tribes.

### **Indian country**

This term is defined by federal statute at 18 U.S.C. § 1151 to include all land within federal Indian reservations, dependent Indian communities, and certain lands or allotments owned by Indians. Indian country includes lands held in trust by the United States for the benefit of an Indian tribe that have not

been formally designated as reservations. Tribal land issues can be quite complicated; therefore, you should talk to EPA Regional Indian Program representatives, Regional Counsel, or the Office of General Counsel for more in-depth information.

### **Indian Tribe**

A federally recognized “Indian tribe” is an entity that appears on the list of federally recognized tribes published by the U.S. Bureau of Indian Affairs (BIA) of the U.S. Department of the Interior (DOI). It is generally a community of Indians who are ethnologically similar, but who as a community also exist in a legal-political sense.

Indian tribal governments generally determine who is a member of an Indian tribe by ensuring that they meet specific tribal membership criteria. Each tribe has its own laws and methods of determining membership, but typically it is based on ancestry.

### **Multiple Tribes**

More than one tribe could have interest in the same area. In this type of situation, EPA should offer to consult with all affected tribes. In some cases, tribes may form a group to speak with one unified voice. If this does not happen, EPA should continue to consult with all affected tribes.

### **Native Americans (also referred to as Indian, American Indian, and Alaska Native)**

The terms “Native American,” “American Indian,” “Indian” and “Alaska Native” can be used in a very broad sense to describe members of ethnically distinct groups of United States citizens who are indigenous to North America. All of these terms are generally accepted, but it is preferable to use individual tribal affiliation whenever possible.

### **Native Hawaiians**

“Native Hawaiians” can be described as Native American because they are indigenous to their areas and they are not descendents of European colonizers. The Native Hawaiian community generally has a different relationship with the U.S. Government. You should consult your tribal legal and policy experts for more information where issues regarding Native Hawaiians may be raised.

### **Reservations**

“Indian reservations” are a subset of Indian country (see 18 U.S.C. § 1151). Reservations may have been set aside from the public domain by an act of Congress, executive order, or treaty. The exterior boundaries of reservations may include lands not owned by the tribe, including, but not limited to, allotments and nonmember-owned fee lands.

### **Sovereignty**

“Sovereignty” is the authority that a government draws upon to govern. In the United States, tribes retain important aspects of sovereignty and authority over their members and territory.

### **Treaties**

Through treaties, Indian nations ceded certain lands and rights to the United States and reserved certain lands (“reservations”) and rights for themselves. In many treaties, tribal governments reserved hunting, fishing, and gathering rights in territories beyond the land that they reserved for occupation.

### **Tribal Air Coordinators (TAC)**

Each Regional Office has a tribal air coordinator that participates in monthly conference calls organized by the sub-lead EPA Region for Tribal Air Issues. These regional contacts (see Contacts List in appendix) are familiar with tribal issues specific to the tribes in their region and can serve as a good resource in early planning efforts and follow-up consultation.

### **Tribal Area**

“Tribal area” is a generic term adapted from concepts used by the U.S. Census Bureau to discuss where Native Americans live. It includes American Indian reservations, Alaska Native Villages, and other special types of areas that represent ongoing centers of tribal culture.

### **Tribal Authority Rule**

The “Tribal Authority Rule” refers to the EPA regulation that implements the provisions of the Clean Air Act that authorize eligible tribes to implement tribal air quality programs under the Clean Air Act in a manner similar to states. The final Tribal Authority Rule was published at 63 Fed. Reg. 7254 (February 12, 1998).

### **Tribal Consultation**

See definition of “Consultation.”

### **Tribal Environmental Professional (TEP)**

“Tribal Environmental Professionals” are employed by the tribal government to work on environmental issues. They cannot make decisions on behalf of the tribal governments but they are knowledgeable of the day-to-day environmental concerns of the tribes and should be consulted with on a regular basis.

### **Tribal Governments**

Most tribes have their own governments, which are generally formed to suit the particular tribe’s practical, cultural, political, or religious needs. Many tribal government structures combine traditional features with Western forms. More traditional tribal governments may select political officials by consensus with decisions based on family, clan, or religious law; while other tribal governments may use a more democratic process to elect officials.

### **Tribal Officials**

“Tribal officials” for the purpose of this policy **means an elected or duly appointed official of Indian tribal governments or their authorized representatives or authorized inter-tribal organizations.** EPA generally recognizes an inter-tribal organization to be authorized to represent a tribal government after receiving confirmation from an elected or duly-appointed tribal leader that the inter-tribal organization is authorized to consult with EPA on the tribe’s behalf. Such confirmation should be provided in writing.

### **Trust Responsibility**

See Federal Trust Responsibility.



## **RELEVANT TRIBAL AND EPA ORGANIZATIONS** *(referenced in this document)*

### **AIEO – The American Indian Environmental Office**

AIEO is part of the U.S. EPA. The AIEO, working with its regional components, coordinates the Agency-wide effort to strengthen public health and environmental protection in Indian country. AIEO oversees development and implementation of the Agency's Indian policy.

### **ITCA – Inter-Tribal Council of Arizona**

ITCA provides a united effort to promote Indian self-reliance through public policy development.

### **ITEC - Inter-Tribal Environmental Council of Oklahoma**

The ITEC was formed in 1992 by the signing of a Memorandum of Understanding between 20 Oklahoma tribes and EPA Region 6. Since that time other tribes have joined and the current membership is 31.

### **NCAI – National Congress of American Indians**

NCAI is a representative national Indian organization, serving more than three quarters of the American Indian and Alaska Native population.

### **NTAA – National Tribal Air Association**

NTAA's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of American Indian Tribes, Alaska Natives and Native Hawaiians.

### **NTEC – National Tribal Environmental Council**

NTEC was formed in 1992 and is a membership organization dedicated to working with and assisting tribes in the protection and preservation of the reservation environment. NTEC is open to membership to federally-recognized Indian tribes and currently has 182 member tribes.

### **NTOC – National Tribal Operations Committee**

The NTOC was formed in February 1994 in order to improve communication and build stronger partnerships between the tribes and EPA. NTOC comprises 19 tribal leaders or their environmental program managers (the National Tribal Caucus) and EPA's Senior Leadership Team, including the Administrator, the Deputy Administrator, and the Assistant and Regional Administrators.

### **RTOC – Regional Tribal Operations Committee**

Federally-recognized tribes reside in nine of the Agency's 10 regions (Region 3 is the exception). Each of these nine regions has appointed a Regional Indian Coordinator, and some of the regions have established an Indian program office. Some regions have a formal Regional Tribal Operations Committee comprised of tribes residing within that region.

### **TAMS - Tribal Air Monitoring Support Center**

The TAMS Center is a partnership between OAR offices, OAQPS, and ORIA with support from NAU's **Institute for Tribal Environmental Professionals (ITEP)**. The mission of the TAMS Center is to develop the tribal capacity to assess, understand, and prevent environmental impacts that adversely affect health, culture, and natural resources.

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**SAMPLE**

**OAQPS IMPACTS OR EFFECTS ON TRIBES FORM**  
**(to be used for OAQPS actions – regulation, policy, or guidance)**

Name of Action: \_\_\_\_\_

Project Lead Name & Number: \_\_\_\_\_

Division & Group: \_\_\_\_\_

Action Stage (e.g., data gathering, pre-proposal, proposal, final, other) \_\_\_\_\_

Estimated date of next major action (e.g., proposal or final) \_\_\_\_\_

To determine if there are any potential **impacts or effects on tribes**, please address the following questions: (If the answer is **YES and more space is needed** please explain on an attached sheet.)

- Number and location of sources \_\_\_\_\_
- Pollutants addressed \_\_\_\_\_
- Are there effects on:
  - tribal governments, communities, cultures and/or their ability to self-govern \_\_\_\_\_
  - trust resources \_\_\_\_\_
  - treaty or other tribal rights \_\_\_\_\_
- Does this action affect Indian country or is it close enough to potentially affect Indian country (e.g., transport issues)? \_\_\_\_\_
- Does this action establish new federal standards or significant policy or guidance?  
\_\_\_\_\_
- Does this action establish a regulation not required by statute that may affect tribes or their rights or resources or propose a regulation which pre-empts tribal law?  
\_\_\_\_\_

*Refer to the OAQPS Consulting with Indian Tribal Governments Guidance for more information.*  
**Please submit completed form to your division tribal team representative or  
OAQPS Outreach and Information Division, Community and Tribal Programs Group  
(MD-C-304-03).**

## EXAMPLE TRIBAL OUTREACH/COLLABORATION STRATEGY

- 1) Early in Action Development Process
  - a. Contact sub-lead EPA Region and give brief overview of action on monthly TAC call
  - b. Meet with Tribal Environmental Professionals (TEP) on monthly NTAA calls, RTOC and NTEC meetings or other tribal forum to present key concepts of the action and get input on tribal impacts,
    - i. Work with OAQPS/CTPG to identify appropriate forum
    - ii. OAQPS/CTPG can help you communicate with the tribes and EPA Regional tribal contacts as well as develop communication materials that are tribal friendly
- 2) Prior to Proposal of Action
  - a. Meet with tribal personnel to present the key concepts in the proposal. (Note: Generally this is done with TEP staff, but if there are relevant tribal impacts or interest, a formal opportunity for consultation with elected tribal officials or their authorized representatives should take place.)
    - i. If consultation is called for, send letters to tribal leaders and key consortia to provide an opportunity for consultation
      1. Consultation letters should come from the division director or a higher level
      2. Copy TEP so they are aware of the letter
    - ii. Respond to tribal leaders as appropriate (Note: they may defer to coordination with TEP.) If they request conference calls or face-to-face meetings, we should work with the tribe to set those up as appropriate.
      1. Note: the Regional Office can help with face-to-face meetings
      2. If all agree, consultation may take place at a joint meeting which includes Regional TOC.
- 3) After Proposal of Action
  - a. Outreach to explain the content of the proposal and encourage input from the tribes should be ongoing in the TAC calls, NTAA and NTEC calls, RTOC meetings and other forums. Additional consultation with tribal leaders or their authorized representatives should be conducted as appropriate.
  - b. Mechanisms for highlighting the proposal:
    - i. Tribal Air Newsletter
    - ii. Tribal Air Website at <http://www.epa.gov/air/tribal/>
    - iii. Tribal List serve
- 4) After Final Action
  - a. Outreach to explain the content of the final rule
  - b. Mechanisms for highlighting the final decision and identifying next steps:
    - i. Tribal Air Newsletter
    - ii. Tribal Air Website at <http://www.epa.gov/air/tribal/>
    - iii. Tribal List serve

## SAMPLE CONSULTATION LETTER<sup>6</sup>

May 5, 2008

«FIRST» «LAST»  
«TITLE»  
«TRIBE\_NAME»  
«ADDRESS»  
«CITY», «FULL\_STATE» «ZIP»

«GreetingLine»:

On May 1, 2008, the U.S. Environmental Protection Agency proposed to strengthen the national ambient air quality standards (NAAQS) for lead. The purpose of this letter is to invite you to consult on this proposal.

The proposed rule will establish new uniform national standards for lead in ambient air to protect public health. EPA proposes to revise the level of the primary (health-based) standard to within the range of 0.10 to 0.30 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), and to revise the secondary (welfare-based) standard to be identical in all respects to the primary standard. The proposed standards will significantly strengthen the standards of  $1.5 \mu\text{g}/\text{m}^3$  set in 1978.

In addition to proposing to change the level of the standard, EPA is also proposing to improve the monitoring network and outlining an approach and timeline for implementing the revisions to the lead standards. The proposed rule and accompanying materials, including maps relating to current air quality and emissions of lead from stationary sources in the U.S., are available on EPA's website at <http://www.epa.gov/air/lead>.

Though lead emissions have declined significantly in the U.S. following the permanent phase-out of leaded gasoline, there are still a variety of lead sources in the U.S. and even small amounts of lead in the air may pose a public health risk. Lead in the air can be inhaled or, after it settles out of the air, can be ingested. It causes a variety of effects at low levels of exposure including effects on the blood, central nervous system, cardiovascular system, kidneys, and immune system. Children are particularly sensitive to the effects of lead. Exposures to low levels of lead early in life are associated with effects on IQ, learning, memory, and behavior.

EPA does not believe the proposed rule will have adverse implications for Tribes because it increases the level of environmental protection nationwide. However, to ensure that your lands and interests are protected, we open the door to consultation and welcome any additional information about the standards or potential impacts you would like to share.

EPA will accept comment for 60 days after the proposed rule is published in the Federal Register. EPA will also hold public hearings on June 12, 2008, in Baltimore, Maryland, and St.

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<sup>6</sup> While this sample was sent after proposal of the rule (which is a time when continuing tribal consultation may be appropriate), tribal consultation should ideally begin earlier in the process and prior to proposal.

Louis, Missouri. We will be available to discuss the proposed revisions in other settings as well, such as during the next National Tribal Air Association/EPA joint conference call on air quality, at the 2008 National Tribal Forum on Air Quality in June, and with Regional Tribal Operations Committees. If you prefer to initiate a formal consultation with EPA on this rule, please contact **Laura McKelvey** at **(919) 541-5497** or **Deirdre Murphy** at **(919) 541-0729**.

We want your input to assure that we develop the best rules possible. We endeavor to conduct our efforts with sensitivity to the needs and culture of Tribes and with attention to the impact of our actions on Tribal sovereignty. We look forward to receiving your input.

Sincerely,

Lydia N. Wegman  
Director  
Health and Environmental Impacts Division  
Office of Air Quality Planning and Standards

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