



EPA Consultation with Tribes Pat Childers OAR overview

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Principles of EPA Consultation

- Consult on a “Government-to-government basis”
- “When EPA actions and decisions may affect tribal interests”
- A process of “meaningful communication... prior to EPA taking actions or implementing decisions”



Policies and Principles that Inform EPA Consultation and Coordination with Tribes

- Broad:
 - Federal Trust Responsibility
- Specific
 - *EPA Policy for the Administration of Environmental Programs on Indian Reservations (1984 Indian Policy)* (November 1984)
 - Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 2000)
 - *Memorandum on Tribal Consultation* (November 2009)
 - *EPA Policy on Consultation and Coordination with Indian Tribes (EPA Consultation Policy)* (May 2011)
 - *EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights* (February 2016)
 - *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* (January 2021)



Federal Trust Responsibility

- Arises from treaties, statutes, executive orders, historical relations between federal government and tribes
- Relates to the moral and legal duties underlying the relationship between the federal government and tribes
- Informs how EPA uses its discretion



Specifics Informing EPA Consultation and Coordination

- 1984 Indian Policy, Principle #5 – “The Agency, in keeping with the federal trust responsibility, will assure that tribal concerns and interests are considered whenever EPA’s actions and/or decisions may affect reservation environments.”
- Executive Order 13175 affirmed the unique legal relationship that the United States has with tribal governments and, among other things, required agencies to consult with tribes early in the process of developing **regulations** that have tribal implications and that preempt tribal law.



Specifics Informing EPA Consultation and Coordination, cont'

- The 2009 Executive Memo called on each federal department / agency to create a detailed plan on how to meaningfully engage with tribal governments, established reporting requirements
- EPA's 2011 Consultation Policy is the Agency's plan on consultation, establishes a national process for consultation. It defines four phases of consultation:
 - Identification
 - Notification
 - Input
 - Follow-up



OAR Handbook for Interacting with Tribes

Updated December 2017

- This handbook is intended as guidance for employees of the United States Environmental Protection Agency (EPA), Office of Air and Radiation (OAR).
- This handbook refers to coordination and consultation activities with federally recognized Indian tribes, which OAR undertakes generally, as a matter of policy.
- https://www.epa.gov/sites/default/files/2018-01/documents/oar_handbook_updated_1.24.18_.pdf



Specifics Informing EPA Consultation and Coordination, cont'

- The January 26, 2021 Executive Memo reaffirms the importance of consultation and encourages all agencies to review their consultation policies and practices
 - EPA submitted a detailed Plan to OMB on April 23 on how it will meaningfully consult with tribes during this Administration
 - Workgroup of Tribal Consultation Advisors (TCAs) to review input received throughout 2021



Feedback from Tribes on EPA Consultation (March 2021)

- EPA does not provide adequate time for consultation
- Consultation feels like a 'check the box' exercise for EPA, or equivalent to a public comment period
- Decisionmakers often do not participate in consultations
- Tribal input is often not reflected in a final action
- Appearance that EPA's decision has already been made by the time consultation occurs
- Insufficient follow-up from EPA offices on how tribal input was considered