



U.S. Environmental Protection Agency  
Tribal Consultation Implementation  
Frequently Asked Questions



## Introduction

The EPA's Policy on Consultation and Coordination with Indian Tribes (Policy) establishes clear EPA standards for the consultation process, including defining the what, when, and how of consultation; designating specific EPA personnel responsible for serving as consultation points of contact to promote consistency in, and coordination of, the consultation process; and establishing a management oversight and reporting structure that will ensure accountability and transparency. The Policy sets a broad standard for when EPA should consider consulting with federally recognized tribal governments based upon Executive Order 13175 and the principles expressed in the 1984 EPA Policy for the Administration of Environmental Programs on Indian Reservations (1984 Policy).

The Frequently Asked Questions below were developed to assist tribes with their participation in EPA's consultation process. Questions were crafted by an outside contractor working with EPA's National Tribal Caucus, elected tribal leaders, and other tribal environmental staff. Answers were developed by EPA.

**1) What is “tribal consultation”? How does it differ from “seeking public comment” or “conducting public outreach”?**

Under the Policy, consultation is a process of meaningful communication and coordination between EPA and tribal governments prior to EPA taking actions or implementing decisions that may affect tribes. The consultation process includes several methods of interaction that may occur at different levels. The appropriate level of interaction is determined by past and current practices. The consultation process is flexible and tailored to the specific needs of EPA, tribes, and the issues involved. Some consultations may involve multiple communications between EPA and tribes, potentially including workshops, webinars, teleconferences, or face-to-face meetings. Multiple communications may be particularly appropriate for highly technical and complex Agency actions. The Policy recognizes that there is no “one-size-fits-all” approach to consultation.

EPA's tribal consultation differs from the public notice and comment period, and conducting public outreach, by the nature and timing of the interaction. Tribal consultation is between EPA and tribal governments. Tribes can, and do, participate in public comment processes, which are distinct from consultation under the Policy.

**2) How does EPA determine if a matter may affect tribes? How does it decide which tribes to consult?**

The Policy applies to Agency actions or decisions that may affect tribal interests. EPA often makes this determination by evaluating the known effect(s) of an Agency action or decision. In other words, sometimes EPA relies upon its experience partnering with tribes. At other times, EPA makes this determination after interacting with tribal partnership groups (see #3) or after discussions with other tribal officials. Additionally, EPA may conduct a sector analysis (such as electric power, transportation, gas, or agriculture) or issue a proposed action or decision that directly affects tribes. Finally, tribes are often in the best position to determine when an EPA



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action may affect their interests, and EPA encourages tribes to reach out to EPA to initiate consultation.

Generally, tribal consultations are open to all interested tribes. For some matters, a clearly affected group of tribes is identified, and EPA may be particularly interested in consultation with these tribes. However, this is not meant to exclude other interested tribes from the process, should they desire to provide input on the Agency action in question.

EPA strives to list all consultation opportunities on the [Tribal Consultation Opportunities Tracking System \(TCOTS\)](#) webpage where they can be reviewed by all tribes.

### **3) What guides EPA staff in consulting with tribes?**

Under the Policy, 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. EPA's consultation process involves four phases: identification, notification, input, and follow-up. EPA's consultation process may include several methods of interaction that may occur at different levels between EPA officials and tribal government officials. EPA regions and headquarters offices may also have additional methodologies to implement the Policy, including separate tribal consultation procedures. EPA's [Regional or Headquarter Tribal Program Managers](#) information.

### **4) How would a tribe initiate a government-to-government consultation with EPA?**

A tribe (or tribes) can submit a written consultation request to either the Regional Administrator or the Assistant Administrator, depending upon the particular matter. To help ensure that the request for consultation is handled in a timely and appropriate manner, tribes can also contact one of EPA's [Regional or Headquarter Tribal Program Managers](#), who is also the designated EPA Tribal Consultation Advisor for their respective regions and national programs.

### **5) If a government-to-government consultation is requested, does EPA have to hold one?**

EPA attempts to honor the tribal government's request with consideration of the nature of the activity, past consultation efforts, available resources, timing considerations, and all other relevant factors.

### **6) What does EPA do with the information received through consultation, and how does it use the information in decision-making?**

EPA compiles and considers all the tribal input it receives prior to making a final decision on the consultation issue. Then, as part of the Consultation Follow-up phase, EPA provides feedback to tribal commenters on how their input was considered in the final action.

### **7) How are comments considered? Does EPA notify commenters on the effects and status of their comments?**



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EPA values tribal input, and the Policy seeks to ensure that tribal input is duly considered by the Agency in its decision-making processes. The Follow-up phase described in the Policy is an important part of demonstrating that EPA values tribal input by informing tribes about how their input was considered. EPA's feedback is formal, written communication from the most-senior EPA official involved to the most-senior tribal official involved in the consultation, or may be in a response to comment document that is sent to all commenters and/ or posted on an EPA web site.

**8) How are oral comments from national consultations handled?**

EPA considers all tribal input; however, on some consultation calls, it may be difficult to track verbal comments accurately. In such cases, EPA includes verbal comments in the response-to-comments document (see #7) or, in some instances, the organization hosting the national call will develop a question-and-answer document and post it on their web site.

**9) How can tribes become involved before a proposed rule is drafted?**

EPA has an ongoing relationship with a number of tribal partnership groups that were established to interact with EPA and ensure that the tribal voice is heard by EPA. EPA does not consider interaction with these groups to be consultation as defined under the Policy, but instead views this engagement as an important opportunity to interact with tribal leaders and tribal technical professionals regarding possible consultations on activities such as rule development and guidances that EPA may be considering. This initial engagement often leads to consultation under the Policy. Several of these tribal partnership groups are the [National Tribal Water Council](#), the [National Tribal Air Association](#), [Tribal Waste and Response Assistance Program](#), and the [National Tribal Toxics Council](#).

**10) Is there a time limit from the start of consultation to when a rule is finalized?**

There are no set time limits for rule-making consultations; however, other processes may affect the time limits for tribal consultation, such as schedules for finalization and public comment deadlines. All of these processes depend on the specific rule. EPA's goal is to ensure early involvement by tribes so they have the opportunity to provide meaningful input prior to EPA taking actions or implementing decisions that may affect tribes.

**11) Can a tribe request government-to-government consultation on a proposed rule-making after the formal public comment period closes?**

Yes. Tribes can request consultation with EPA at any time; however, EPA attempts to set consultation periods so that tribes can have the earliest opportunity to provide meaningful input.

**12) How does EPA consult with tribes that do not have a land base?**

EPA consults with tribes that do not have a land base in the same manner as with other tribes. Under the Policy, consultation is appropriate when an Agency action or decision may affect tribal interests. This includes tribes with and without land bases.



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**13) What does EPA do when there is a consultation on an issue that affects multiple tribes, and the tribes do not agree?**

The Policy provides that all tribal input be considered. At times, consensus is not reached between EPA and tribes, or among tribes in the positions expressed to EPA. EPA considers all views during consultation and in its decision-making process.

**14) Is there training or assistance for tribes to articulate comprehensive, meaningful responses to EPA consultations? What training does EPA offer tribes in learning about EPA's Consultation Policy implementation processes?**

Yes. EPA's Tribal Consultation Advisors (see #4) serve as a point of contact for EPA staff, tribal governments and others interested in EPA's consultation process. EPA has no formal training modules, but training can be provided through the Tribal Consultation Advisors with support from the American Indian Environmental Office.

**15) How does EPA determine if a consultation will be a teleconference or a face-to-face meeting?**

The Policy is intentionally designed to accommodate a diverse range of tribal consultation needs and preferences. The specific form of any given consultation is influenced by a variety of factors including, but not limited to, the issues being considered, number of tribes potentially affected, time and resource limitations of the EPA and involved tribes, and other pertinent factors. While EPA appreciates the benefits of face-to-face consultations, EPA is not able to have such consultations in all instances.

**16) How does EPA determine the schedule and amount of advance notice given to tribes when consultation is desired?**

EPA strives to provide advance notice prior to initiation of a consultation opportunity. As soon as the appropriate information is available within EPA, direct mailings to tribal leaders, email alerts to tribal environmental directors and other interested groups are sent, and a TCOTS posting is made. There are some instances, such as Congressional legislative comments, where EPA's ability to provide advance notice may not always be possible. Internally, EPA works to develop schedules and projections of future consultation opportunities to be able to announce the opportunity as early as possible.

**17) How does EPA take into account the preservation of treaty rights and the utilization of traditional ecological knowledge?**

EPA considers all comments received on the proposed EPA action or decision regarding treaty rights or traditional ecological knowledge.

**18) Does EPA consult with affected communities before initiating consultation?**

No, EPA does not consult with affected communities, only with federally recognized tribes' elected, appointed or designated officials or employees. EPA does provide affected communities, which may be a state, the public or tribal communities, with an opportunity to



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participate in public outreach activities and the public notice-and-comment process. Tribal communities may also request assistance on issues of concern under EPA's "[Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples](#)."