

# NPDES Electronic Reporting Rule: Consultations

## Consultation with Indian Tribes

Subject to [Executive Order 13175](#) (65 FR 67249, November 9, 2000), EPA may not impose requirements not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a Tribal Summary Impact Statement (TSIS).

EPA has concluded that this action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments nor will it preempt tribal law. Although no tribes have yet received approval from EPA to implement an authorized NPDES program, this proposed rule will impose electronic reporting requirements on tribal facilities and on facilities operating on tribal lands.

EPA consulted with tribal representatives in developing this rule via conference calls and webinars with the National Tribal Caucus and National Tribal Water Counsel in November 2010. No concerns were raised during those consultations.

In addition, EPA mailed information to 563 tribes regarding an opportunity to participate in two additional tribal outreach efforts in December 2010. Again, during these conference calls, no concerns were raised by participants during those consultations.

EPA specifically solicits additional comment on this proposed action from tribal officials.

This consultation and coordination process is being conducted in accordance with the [EPA Policy on Consultation and Coordination with Indian Tribes](#).

- [Presentation Materials for Conference Call \(PDF\)](#) (XXX pp, XXXMB) (November 10, 2010)

## Consultation for Unfunded Mandates Reform Act

This proposed rule is not subject to the requirements of Sections 202 or 205 of the [Unfunded Mandates Reform Act](#). This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. In order to determine the burden on states, tribes, and territories, the workgroup conducted an economic analysis of what the cost may be. The analysis examined implementation using various options including the potential burden to state, tribal, and territorial governments. Preliminary indications suggest that the rule would not only cost states, tribes, territories, and local governments well below the threshold of \$100 million, it will actually result in cost savings over time.

This proposed rule is also not subject to the requirements Section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Although this proposed rule will impose electronic reporting requirements on small governments such as municipalities as well as tribes, EPA does not expect these impacts to be substantial or sufficiently unique to meet the UMRA standards. According to EPA's Interim Small Government Agency Plan, actions have a significant impact if the cost is above \$100 million. As stated above, EPA does not expect this proposed rule to exceed that threshold. EPA guidance states that an action could uniquely affect small governments if it disproportionately affects small governments, requires the hiring of experts, requires sophisticated or expensive equipment, or requires offsite training. Preliminary small entity screening analysis for this proposed rule indicates that the cost to any of these entities, and additional requirements, will not exceed 1 percent of total costs. Additionally, although some computer access would be needed to comply with this rule unless a waiver is obtained, this proposed rule will not require purchase of sophisticated or expensive equipment. Furthermore, the proposed rule will not require significant offsite training; training associated with the proposed rule will be offered on-line by EPA rather than offsite.

### **Consultation for Executive Order on Federalism**

Under section 6(b) of [Executive Order 13132](#), EPA may not issue an action that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed action. In addition, under section 6(c) of Executive Order 13132, EPA may not issue an action that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed action.

EPA has concluded that this action may have federalism implications because it will impose electronic reporting requirements on states to provide certain NPDES information to EPA. However, because the largest annual impact on states is \$12.0 million (occurring within the first year after the effective date), this action will not exceed the threshold of \$25 million per year annually, nor will it preempt state law. Thus, the requirements of Sections 6(b) and 6(c) of Executive Order 13132 do not apply to this action.

Consistent with EPA policy, EPA nonetheless consulted with state and local officials and representatives of state and local governments early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. EPA provided significant opportunities for such consultation in public meetings, a series of webinars, a state working group, and in a meeting on September 15, 2010 specifically linked to notifications and consultations required under this Executive Order. This meeting was attended by 11 state and local government officials and organizations. EPA received useful feedback in these meetings, with support for the concept of electronic reporting, comments on the feasibility of various

implementation options, and interest in developing details of how the rule would be implemented.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials. EPA will continue to consult with state and local officials throughout the process of developing the proposed and final action to permit them to have meaningful and timely input into its development. In addition to stakeholder outreach, EPA will contact elected representatives as well as appropriate organizations to ensure compliance with Executive Order 13132.

- [Presentation Materials \(PDF\)](#) (XXX pp, XXXMB) (September 15, 2010)

### **For further information**

For additional information regarding the NPDES Electronic Reporting Rule, please contact [John Dombrowski](#) ([Dombrowski.John@epa.gov](mailto:Dombrowski.John@epa.gov)) or (202) 566-0742.