



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

VIA EMAIL TRANSMISSION [OIRA\_Submission@omb.eop.gov]

Office of  
International and  
Tribal Affairs

August 2, 2011

Cass R. Sunstein  
Office of Information & Regulatory Affairs  
Office of Management and Budget  
Washington, DC

Dear Administrator Sunstein,

As U.S. EPA's Designated Consultation Official, I am pleased to transmit this letter as our progress report per President Obama's November 5, 2009 memorandum on tribal consultation, and to transmit for your information the *EPA Policy on Consultation and Coordination with Indian Tribes*. This report describes EPA's progress to-date, anticipated next steps, and other activities related to EPA's Plan of Action on tribal consultation, submitted to the Office of Management and Budget on February 3, 2010.

**Progress To-Date**

**Finalization of EPA's Tribal Consultation Policy** - The primary action specified in EPA's Plan of Action was the development of a tribal consultation policy. The *EPA Policy on Consultation and Coordination with Indian Tribes* ("Policy") was finalized on May 4, 2011 after extensive consultation and coordination with tribes and a public comment period. The Policy is designed to fulfill the Agency's obligation to consult with tribes in accordance with Executive Order 13175, but importantly establishes a broader standard regarding the type of Agency actions and activities that may warrant consultation. This broader standard is drawn from EPA's 1984 Indian Policy, which states that "tribal concerns and interests are considered whenever EPA's actions and/or decisions may affect" tribes. The Policy also establishes new roles and responsibilities for managers and staff across EPA and new management practices designed to ensure consistency, transparency, and accountability in how the Agency meets its commitment to consultation with Indian tribes. These practices include a semi-annual planning process where all EPA program and regional offices review planned activities to determine whether consultation may be appropriate. Once these determinations have been made, the activities planned for consultation will be listed on our Indian Tribal Portal, [www.epa.gov/tribal](http://www.epa.gov/tribal).

**Noteworthy Consultations** – Over the past year EPA has conducted consultations with tribal governments on a number of activities. These include:

- National Water Program Climate Change Strategy, Office of Water;

- Tribal New Source Review Rule, Office of Air and Radiation;
- National Tribal Operations Committee (NTOC) Revitalization Plan, Office of International and Tribal Affairs;
- Clarifying Tribal Participation in the Toxics Release Inventory Program, Office of Environmental Information;
- Action to Resolve Violations at Bureau of Indian Education (BIE) Schools and Bureau of Indian Affairs Public Water Systems Serving BIE Schools, Office of Enforcement and Compliance Assurance;
- Restricted Use Pesticides Applicator Certification Plan, Office of Chemical Safety and Pollution Prevention;
- Proposed Water Port Construction Project in New Bedford, MA, EPA Region 1;
- Great Lakes Initiatives, EPA Regions 2 and 5;
- Best Available Retrofit Technology Determination for San Juan Generating Station, EPA Region 6; and
- South Dakota's Proposed PSD Permit Extension for Hyperion Energy Center, EPA Regions 7 and 8 and the Office of Air and Radiation.

**Related Implementation Steps** – EPA has established a national workgroup to develop implementation tools and guidelines for the Policy. These include a consultation tracking database and a model notification letter. EPA regularly updates tribes on progress regarding implementation of the Policy in a variety of ways, including discussions with the NTOC and Regional Tribal Operations Committees, information sharing with media-specific tribal partnership groups, and postings on EPA's tribal consultation webpage at [www.epa.gov/tribal/consultation](http://www.epa.gov/tribal/consultation). Several EPA program and regional offices already have detailed consultation procedures in place that represent best practices worked out by mutual agreement with tribes over multiple consultations. Moreover, EPA has established the new position of Tribal Consultation Advisor in each office across the Agency to help ensure the Agency consults with tribal governments when appropriate and does so in an appropriate manner. Finally, pursuant to EPA's FY2011 – 2015 Strategic Plan, all Agency employees will be required to take the *Working Effectively with Tribal Governments* training course.

#### **Anticipated Next Steps**

EPA will continue to solicit feedback from tribes on the effectiveness of our consultation process, both directly from tribes during actual consultations and through our tribal partnership groups. We look forward to further discussions with you as we implement EPA's Policy. Should you have any questions or comments, please contact JoAnn Chase, Director, EPA American Indian Environmental Office, on [chase.joann@epa.gov](mailto:chase.joann@epa.gov) or 202-564-0878.

Sincerely,



Michelle DePass  
Assistant Administrator

Attachment