Interim Final
EPA Region 4 Consultation Policy Standard Operating Procedures

Implementing the EPA Policy on Consultation and Coordination with Indian Tribes

Disclaimer

This document identifies internal Agency policies and procedures for EPA Region 4 employees in coordinating Agency activities related to consultation with federally-recognized Indian tribes. This document is not a rule or regulation and it may not apply to a particular situation based upon the circumstances. This document does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. As indicated by the use of non-mandatory language, this Policy does not create any judicially enforceable rights or obligations - substantive or procedural - in any person.

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U.S. Environmental Protection Agency Region 4

Table of Contents

Introduction 1
Background 2
The Regional Consultation Process 2
Regional vs. National Consultation Efforts 2
The Notification Phase 4
Regional Meetings and Outreach vs. Consultation 6
Tribal consultation delegations 6
Declining to Consult or Failing to Respond to Consultation Notifications 6
The Input Phase 7
The Follow-up Phase 7
Concerns Regarding the Region's Decision to Consult and/or Adequacy of Consultation 8
State Roles in Consultation 8
Impact to Cross-Cutting Programs 9
Reporting 10
Projecting Likely Consultations 10
Reporting Completed Consultations 11
Process Feedback and Improvements 11

Appendix A: Likely Regional Consultation Activities

Appendix B: Roles and Responsibilities

Appendix C: Example Consultation Letters

Appendix D: Alternate Consultation Procedures for Tribes

Appendix E: Congressionally-Enacted Reserved Rights by Tribe

Appendix F: Consultation Reporting Resources

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Introduction

The U.S. Environmental Protection Agency's policy is to consult on a government to-government basis with federally-recognized tribal governments when EPA actions and decisions may affect tribal interests. The "EPA Policy on Consultation and Coordination with Indian Tribes," issued May 4, 2011 (2011 Consultation Policy), establishes national guidelines for consultation across the Agency.

EPA Region 4 has developed this Standard Operating Procedure (SOP) to outline regional protocols and implementation procedures for consulting with the federally-recognized tribes in Region 4. Specifically, the goals of this SOP are to: (1) outline Regional program activities for which tribes may be notified of opportunities to consult; (2) outline the consultation process and roles; and (3) establish a Regional reporting process that will ensure accountability and transparency. This SOP applies only to Region 4 consultations, and not to National consultations or consultations with other EPA regional offices.

This SOP is intended to be a living document and is subject to revision as consultation best practices are learned and feedback for improvement is received.[1] Please check http://r4intra.epa.gov/ for updates to this SOP, consultation resources, and representational maps of Indian country areas in Region 4.

A large number of routine administrative and staff level interactions and communications occur between the EPA and tribal government employees of a regular basis. This SOP does not apply to these regular, ongoing interactions. In addition to the biannual "Working Effectively with Tribal Governments" training, Region 4 staff who work with tribes are encouraged to participate in regional training opportunities and to work with their Division Consultation Advisor (DCA) and the Region's Tribal Consultation Advisor (TCA) to ensure that tribal concerns are appropriately considered.

Who is my Division Consultation Advisor?

DCA's for each Division are listed on the R4 Tribal Program intranet, http://r4intra.epa.gov/tribal/index.html

This SOP supplements the 2011 Consultation Policy and three additional overarching documents[2] outlining the EPA's responsibilities with respect to consultation with tribes:

- "EPA Policy for the Administration of Environmental Programs on Indian Reservations" (November 11, 1984) (hereinafter, "1984 Indian Policy");
- Executive Order 13175: "Consultation and Coordination with Indian Tribes" (November 6, 2000) (hereinafter "EO 13175"); and
- "EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights" (February 19, 2016) (hereinafter "Tribal Treaty Rights Guidance").

[1] The Interim Final SOP was completed in 2012 and revised in 2018 to incorporate lessons learned and improved reporting processes.
[2] Documents available at http://r4intra.epa.gov/ or upon request from the TCA or a DCA.

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Background

The EPA's 1984 Indian Policy strengthened the EPA/tribal relationship and introduced consultation, but was predominately focused on recognizing tribal self-government regarding environmental standards and practices. Executive Order 13175 (EO 13175) directed each agency to develop an accountable process to ensure timely and meaningful input by tribal officials in the development of regulatory policies that have tribal implications.

A November 5, 2009 Presidential Memorandum directed federal agencies to develop specific tribal consultation plans and to begin annual reporting of consultation activities to the Office of Management and Budget (OMB). Thereafter, in its 2011 Consultation Policy, the EPA established its national policy of consulting with federally-recognized tribes on a government-to-government basis when EPA actions and decisions may affect tribal interests. This SOP updates existing Region 4 operating principals to focus on tribal consultation and ensures consistency with the 2011 Consultation Policy, as well as with the Tribal Treaty Rights Guidance.

The Regional Consultation Process

The 2011 Consultation Policy defines four phases of the consultation process: Identification; Notification; Input; and Follow-up. It also identifies a list of the EPA activities that may be appropriate for consultation, recommends mechanisms for identifying consultation matters, articulates roles and responsibilities, describes how and when consultation should occur, and defines reporting requirements. This SOP defines each of these elements as they apply to EPA Region 4. To the fullest extent possible, Region 4 plans to rely upon existing Agency practices to implement this SOP.

Regional vs. National Consultation Efforts

The EPA's Headquarters offices also engage in consultation and coordination activities, including those related to national regulation and policy development. The EPA's National program offices will have the lead on tribal consultations regarding National actions, while Region 4 will have the lead on tribal consultations for Regional matters. Region 4 will also strive to ensure that Regional tribes are aware of national consultation efforts, and may coordinate with EPA Headquarters as needed to facilitate communication with Region 4 tribes. Region 4 typically will not conduct consultation on behalf of EPA Headquarters.

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The Identification Phase – *The EPA identifies activities that may be appropriate for consultation*

The EPA's 2011 Consultation Policy identifies a non-exclusive list of activities normally appropriate for consultation where such activities may affect a tribe(s).[3] These activities are:

- Regulations or rules;
- Policies, guidance documents, directives;
- Budget and priority planning development;
- Legislative comments;
- Permits;
- Civil enforcement and compliance monitoring actions;[4]
- Response actions and emergency preparedness;
- State or tribal authorizations or delegations; and
- EPA activities in implementation of U.S. obligations under an international treaty or agreement.

Region 4 has identified additional, specific Regional activities which may also be appropriate for consultation. These are listed by Division in Appendix A. Also listed in the Divisional appendices are those activities typically not appropriate for consultation.

The EPA's consultation process is typically triggered by activities occurring within Indian country (for information purposes, approximate Region 4 tribal boundary maps and/or tribal areas of consultation interest are located on the EPA's intranet site or available upon request from the DCA or TCA). It is important to note, however, that consultation may also be triggered by activities involving areas outside of Indian country. Examples include activities that may affect traditional subsistence hunting, fishing, or gathering locations, cultural resources and/or sacred sites. In addition, permitting and civil enforcement activities occurring outside, but proximate to, Indian country may also implicate tribal interests and should be evaluated for possible consultation.

PROJECT LEAD
ROLES & RESPONSIBILITIES

As the Project Lead, you should:

- ✓ *In coordination with your DCA, TCA, ORC attorney(s), and/or Division Director, as appropriate, make an initial determination of whether an action or decision is appropriate for consultation;*
- ✓ *Coordinate with the DCA and others throughout the consultation process;*
- ✓ *Provide technical information to the tribe(s) and conduct follow-up call(s) and/or send correspondence; and*
- ✓ *Lead the development of consultation*

[3] See qualifying notes in the May 2011 Consultation Policy.

[4] Primary guidance on civil enforcement matters involving tribes can be found in the "Guidance on the Enforcement Priorities Outlined in the 1984 Indian Policy" and "Questions and Answers on the Tribal Enforcement Process." In addition, judicial and/or administrative case law, EPA compliance monitoring policies, EPA enforcement response policies, and the "Restrictions on Communication with Outside Parties Regarding Enforcement Actions" may also apply to inspections and enforcement activities. ORC should be consulted whenever questions arise about consultation with tribes on such matters.

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The consultation process relies on staff within the Region to identify when their assigned matters may trigger consultation. Projected consultation opportunities are identified and reported semi-annually, at a minimum, but may be identified at any time. Questions regarding whether a matter is appropriate for consultation should be directed to the DCA, who may confer with the TCA, the EPA Tribal Attorney, and/or the Division Director. While the Regional Administrator generally has decision-making authority on all Regional consultation matters, most decisions regarding whether to consult on a Regional action or activity will be made by the relevant Division Director or their designee.[5] The EPA Regional lead for consultation will be the technical project lead with the expertise in the action or activity triggering consultation. He or she will be supported by the DCA, the TCA, and the EPA Tribal Attorney in the Office of Regional Counsel (ORC).

Tribes may also request consultation. Consultation may be requested in writing or verbally to the Project Lead, DCA and/or TCA. The EPA will consider the request in accordance with the Consultation Policy,[6] and if appropriate, consultation will continue with the Notification Phase.

The Notification Phase – *The EPA notifies tribes of a consultation event*

The appropriate point at which to initiate consultation is as early as possible as needed for timely and meaningful input by the tribe(s). Consultations are conducted on a government-to-government basis. Where Region 4 initiates the consultation, letters notifying a tribe of an opportunity to consult will be developed by the program staff lead, with review by the DCA, the appropriate ORC attorney, R4 Tribal Attorney, and the TCA as needed. Notification letters are to be signed by the RA, or the relevant Division Director and must be sent to the tribal leader (Chief/Chairman), unless the tribe has designated a Consultation Agent (CA) to act on his or her behalf.[7] Electronic routing is recommended to expedite the review process.

Letters notifying a tribe of an opportunity to consult should include information to aid tribal officials in making an informed decision about whether to participate in the consultation and sufficient information on how to provide informed input. In general, the letters should contain the following elements:[8]

- A description of the activity with appropriate attachments (maps, technical data, etc.);
- A description of the consultation timeline with a clear beginning (the letter itself), a clear end (this may be described by an event as opposed to a date), and any important steps of consultation as appropriate (*e.g.*, webinar to be held on date specific, conference calls, etc.);
- Questions the EPA would ask when proposing an action that may affect tribal treaty or other reserved rights within a specific geographic area, consistent with the 2016 Tribal Treaty Rights Guidance;[9]

[5] See Appendix B, Roles and Responsibilities.
[6] Consistent with the 2011 Consultation Policy, the final decision on consultation is normally made after examining the complexity of the activity, its implications for Tribes and time and/or resource constraints.
[7] Tribal contact information is available on the Tribal Program intranet, http://r4intra.epa.gov/tribal/index.html
[8] Examples letters are available in Appendix C and on the Tribal Program intranet, http://r4intra.epa.gov/tribal/index.html.
[9] Region 4 recognizes that, although the federally-recognized Tribes in the Region may not have any treaties currently in effect, Tribes may have other sources of reserved rights that carry the force of federal law (e.g., congressionally enacted Indian land claim settlements).

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- The identity of the Region 4 project/consultation lead;
- A request for a response to the consultation notification, and a tribal point of contact or representative with whom the EPA can follow up and who can speak on behalf of the tribe (however, the tribe(s) may also want additional representatives engaged in the consultation opportunity);
- A "please respond by" date, allowing for adequate time for a tribal council meeting or other internal deliberations by the tribe. In most instances, thirty (30) days would be a sufficient response time, however, certain activities may require more or less time depending on the circumstances of the activity at issue. For situations in which the EPA's time to take an action is constrained, it may be appropriate to include a statement notifying the tribe that a failure to respond by the date specified will be interpreted as a decline of the offer to consult;
- Include "cc" to Tribal Environmental Director/Tribal CA; and
- Provide a copy of the final letter to the DCA for tracking and reporting purposes.

Consultation letters should always be mailed directly to the tribal leader and a copy emailed to the Tribal Environmental Director or Tribal CA. In addition to the mailed correspondence, an e-signed copy of the letter is recommended to meet 508 compliant standards for TCOTS reporting.

If previously mutually agreed to by EPA Region 4 and a tribe, alternative consultation procedures may be utilized for certain Regional consultations. Such alternative procedures do not extend to National consultation activities. Currently, alternative procedures are only in-place between the Catawba Indian Nation and APTMD Regulatory Section for a limited scope of activities, as outlined in further detail in Appendix D. The EPA anticipates additional alternate procedures will be added to Appendix D as they are developed and mutually-agreed-upon by EPA Region 4 and the tribes.

Region 4 staff works closely with tribal representatives on all manner of environmental and public health work. Be advised that routine programmatic conversations are not consultation until the consultation process, as described herein, has been formally initiated. Once consultation has been initiated, such conversations may become part of the consultation record where appropriate. Consultation communications may be in the form of emails, conference calls, routine phone calls, and minutes of Regional meetings,[10] to the extent that any such communications took place pursuant to an initiated consultation. Consultation communications should, however, be documented by the Region 4 project lead and included in the consultation summary at the end of the process.

It is important to promote a full and frank exchange of views during government-to-government consultation with tribes. These interactions may include discussions relating to issues of unique sensitivity to tribes such as cultural practices, uses of environmental resources, locations of cultural resources, tribal relationships and jurisdictional issues. EPA staff should consider these potential sensitivities in preparing records memorializing consultations with tribes Staff should also consider and discuss with tribes the fact that memorialization of consultations, including related correspondence,, exchanged between the EPA and tribes ordinarily will generally not be privileged or otherwise protected

[10] See further discussion of Regional meetings below.

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from disclosure under the Freedom of Information Act. For counsel on specific situations, please consult the R4 ORC.

It is advisable for Regional staff to courtesy call or contact their tribal counterparts prior to the issuance of a consultation notification letter. Because consultation often occurs early in the process, the notified tribe may not yet be aware of the activity. Such communications can eliminate surprises and facilitate the consultation process.

Regional Meetings and Outreach vs. Consultation

Regional meetings involving multiple tribes and/or outside parties are generally not appropriate for consultation unless consultation has been initiated, and the EPA and the affected tribe(s) identified the Regional meeting as part of the intended consultation plan. If a Regional meeting is part of a consultation opportunity, it is important that the tribes are made aware of that consultation activities will take place during the meeting. Regional meetings present excellent face-to-face opportunities for discussing issues appropriate for consultation in a group situation; however, if consultation has not been initiated and the meeting has not been identified in the consultation plan, discussion of the topic at such a meeting is considered outreach and not consultation. Other tribal meetings, such as trainings and conferences, should also be considered outreach rather than consultation opportunities. Consultation discussions on tribe-specific issues should not occur in group settings unless requested or approved by the consulting tribe(s).

Tribal consultation delegations

To the extent possible, Region 4 will honor tribal preferences regarding consultation communications. Those preferences will be incorporated as Appendix D when available. Tribes may choose to delegate routine EPA consultations to the Environmental Director (as Tribal CA), or a more accessible designee below the tribal leader (*e.g.,* Chief/Chairman) as they deem appropriate. If the tribe has not designated a consultation advisor, all consultation correspondence will be mailed to the tribal leader as described above. If the tribe has designated a consultation advisor, that person should be contacted to determine the appropriate tribal recipient of the consultation invitation. If previously agreed to by the tribe, an email consultation invitation may be appropriate as described in the tribe's alternative consultation procedures but it must still contain the elements described above.

Declining to Consult or Failing to Respond to Consultation Notifications

A tribe's declination of consultation or failure to respond to a notice of an opportunity to consult does not relieve the EPA of its general trust responsibility to consider the interests of the tribe, or mean communication and coordination with the tribe regarding the subject ends. Project leads should continue to keep the tribe informed to the extent of its interest.

If the tribe reconsiders and later requests consultation with Region 4, the request will be reviewed by the Division Director or their designee to determine the extent to which meaningful consultations can be conducted. Region 4 will inform the tribe of its determination. It is Region 4's intent to engage in consultation with tribes if possible, even if they initially decline.

If the EPA's notice of an opportunity to consult included a "please respond by date" and a statement that a failure to respond by such date would be interpreted by the EPA as a decline of the consultation

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request, then the EPA project lead may conclude the consultation if the tribe fails to respond. It is Region 4's general practice to send a brief letter to the tribal leader notifying him or her that the Agency proceeded as though the tribe had declined consultation. Such a letter should summarize the consultation efforts to date and copy the same individuals as copied on the notice.

The Input Phase – *Tribes provide input to the EPA on the consultation matter*

The EPA notes that, consistent with the 2011 Consultation Policy, consultation does not guarantee that Region 4 will make decisions pursuant to the tribes' wishes. Consultation does, however, seek to ensure that tribal interests and concerns are appropriately considered by the Region in the decision-making process. Therefore, the Region 4 project lead provides as much information as possible to the tribe for meaningful consultation. The actual consultations are expected to follow most existing Regional practices currently used for engaging tribes. The EPA program lead coordinates with tribal officials during this phase to be responsive to their needs for information and to provide opportunities for discussion. Phone calls, conference calls, and/or face-to-face meetings can constitute consultation. The Region 4 project lead will document the substance of the consultation including the views and concerns expressed by the tribe(s), the participants in the consultation and the date(s) and time(s) when consultation occurred.

The Region 4 project lead will look to the 2016 Tribal Treaty Rights Guidance and employ three questions regarding tribal treaty rights. The questions are: (1) "do treaties exist within a specific geographic area?;" (2) "what treaty rights exist in, or what treaty-protected resources rely upon, the specific geographic area?;" and (3) "how are treaty rights potentially affected by the proposed action?" Other sources of reserved rights that carry the force of federal law, *e.g.*, congressionally-enacted Indian land claim settlements, should also be considered in consultation. A list of congressionally-enacted settlements for the federally-recognized tribes within Region 4 is included as Appendix E hereto.

As a general matter, the Region intends to conduct tribal consultations prior to any corresponding federal public comment period for the consulted-upon action; however, the Region acknowledges that, in some cases, public comment periods may run concurrent with tribal consultations (*e.g.*, State-lead scenarios, or non-time critical removal situations).

Tribes are encouraged to submit comments in writing at any time during consultation, as well as during any public comment period. Although tribal consultation is distinct from the EPA public participation and community involvement process, Regional staff should alert tribes that it may be advisable for tribes to provide comments during a public comment period even in situations where consultation has occurred as such comment may preserve any administrative appeal rights under the operative statute.

The Follow-up Phase – *The EPA provides feedback to the tribe(s) to explain how its input was considered in the final action/decision*

Consultation is closed when the Agency action or decision is complete. It is Region 4's general practice that, whether or not the tribe(s) submits written comments, input from the tribe(s)should be summarized after the end date or end event proposed in the notice of an opportunity to consult letter. The project lead should share this summary with the tribe(s) prior to the close of consultation to ensure that the

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summary captures their comments. The project lead, in coordination with his or her management, the DCA, ORC (if appropriate), and the Region 4 decision maker, will consider the tribal input prior to final action being taken on the matter. A written response to the comments raised by the tribes will be developed by the program lead, reviewed by the assigned ORC Attorney,[11] and signed by the relevant Division Director or their designee. The written response may include collective Tribal comments when appropriate, and should contain the following points:[12]

- Consultation timeframe;
- History of consultation events;
- Brief summary of consultation comments (or attaching summary already shared with tribe(s) including a discussion of any tribal treaty or otherwise reserved rights;
- A description of how the tribe's input during consultation was considered in the final action;
- Region 4's final decision or intended actions resulting from the consultation effort;
- A clarifying statement that this letter closes out consultation on this matter; and
- Copy all parties from the original notice of an opportunity to consult.

Following the closure of consultation, the Region 4 project lead will write a paragraph summary of the consultation event and submit it to the DCA for reporting in TCOTS. The TCOTS record should be updated and archived within 30 days of the close of consultation.

Concerns Regarding the Region's Decision to Consult and/or Adequacy of Consultation

If tribe(s) disagree with Region 4 regarding the appropriateness of an Agency action for consultation and/or the adequacy of such consultation, tribes may raise a dispute. The parties will first attempt to resolve a dispute matter informally at the staff level. If resolution of the matter is not successful at the staff level, the issue will be presented to immediate supervisors and Division management, who will attempt to resolve the matter. If the dispute is still not resolved, it will be raised to the Regional Administrator for decision. The Regional Administrator will work with the tribe(s) and with the Region 4 program representatives to understand the issues resulting in the dispute. The Regional Administrator will then make a decision and communicate it to all parties, tribal and Region 4. Tribes or the Regional Administrator may also elevate disputes regarding the EPA's definition of actions appropriate for consultation and/or the adequacy of consultation to the Assistant Administrator for the Office of International and Tribal Affairs as the Designated Consultation Official.

State Roles in Consultation

EPA consultations are about EPA decisions and actions that may affect tribal interests. Regional Project leads should not share tribal concerns raised during consultation with the affected state(s). This has the potential to undermine the government-to-government relationship between the EPA and a tribe. Consultation may also have the potential to enhance state/tribal relations. Project leads should work

[11] If an ORC attorney is assigned to the matter, then that attorney should review the response to comments. If no attorney has been assigned, then the ORC Tribal Attorney will review the response to comments.
[12] Example summary and follow-up letter available in Appendix C and at http://r4intra.epa.gov/ or available upon request for the DCA or TCA.

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with the tribe(s) to determine the appropriate extent, if any, to engage the state. This tribal coordination should occur prior to the EPA involving any state in tribal consultation activities.

Many environmental programs are delegated to the states. As such, certain state actions or decisions may affect tribal interests even though such state programs are not implemented within Indian country. As a general matter, Region 4 will, to the extent practicable, encourage states to consult with tribes on state actions that may affect tribal interests. Region 4 will coordinate and facilitate such discussions when possible. Region 4 encourages tribes to contact the DCA when such facilitation is desired.

The EPA's Role with Other Federal Agency Programs

There may be times when Region 4 coordinates with other federal agencies on environmental programs (*e.g.*, Environmental Impact Statement reviews). If the EPA is the lead agency, the EPA will initiate consultation consistent with its policies. If another agency is the lead, the EPA will recommend and facilitate tribal consultation where practicable, but it remains the responsibility of the lead federal agency to initiate consultation pursuant to its internal practices.

R4 may assist with consultations led by national EPA programs. For example, R4 supported the Office of Water's consultation efforts during the promulgation of the Florida Numeric Nutrient Criteria Rule. The Office of Water was responsible for the majority of the technical aspects of the consultation. R4 took the lead in communication and coordination given our existing relationships with the impacted Tribes.

Record Retention

Tribal consultation records will be kept in the project files by the program staff in accordance with any underlying statutory or regulatory requirement, including, but not limited to, the Federal Records Act, the Freedom of Information Act, and EPA's record retention policies.

Impact to Cross-Cutting Programs

Some federal statutes and regulations contain specific requirements to consult with tribal governments. Where possible, Region 4 will seek to use these SOP when undertaking consultation activities pursuant to such federal statute or regulations.

Examples where federal actions might include separate requirements for tribal consultation include:

- The American Antiquities Act of 1906;
- The Historic Sites, Buildings Objects and Antiquities Act of 1935;
- The National Historic Preservation Act of 1966; and
- The Native American Graves Protection and Repatriation Act of 1990.

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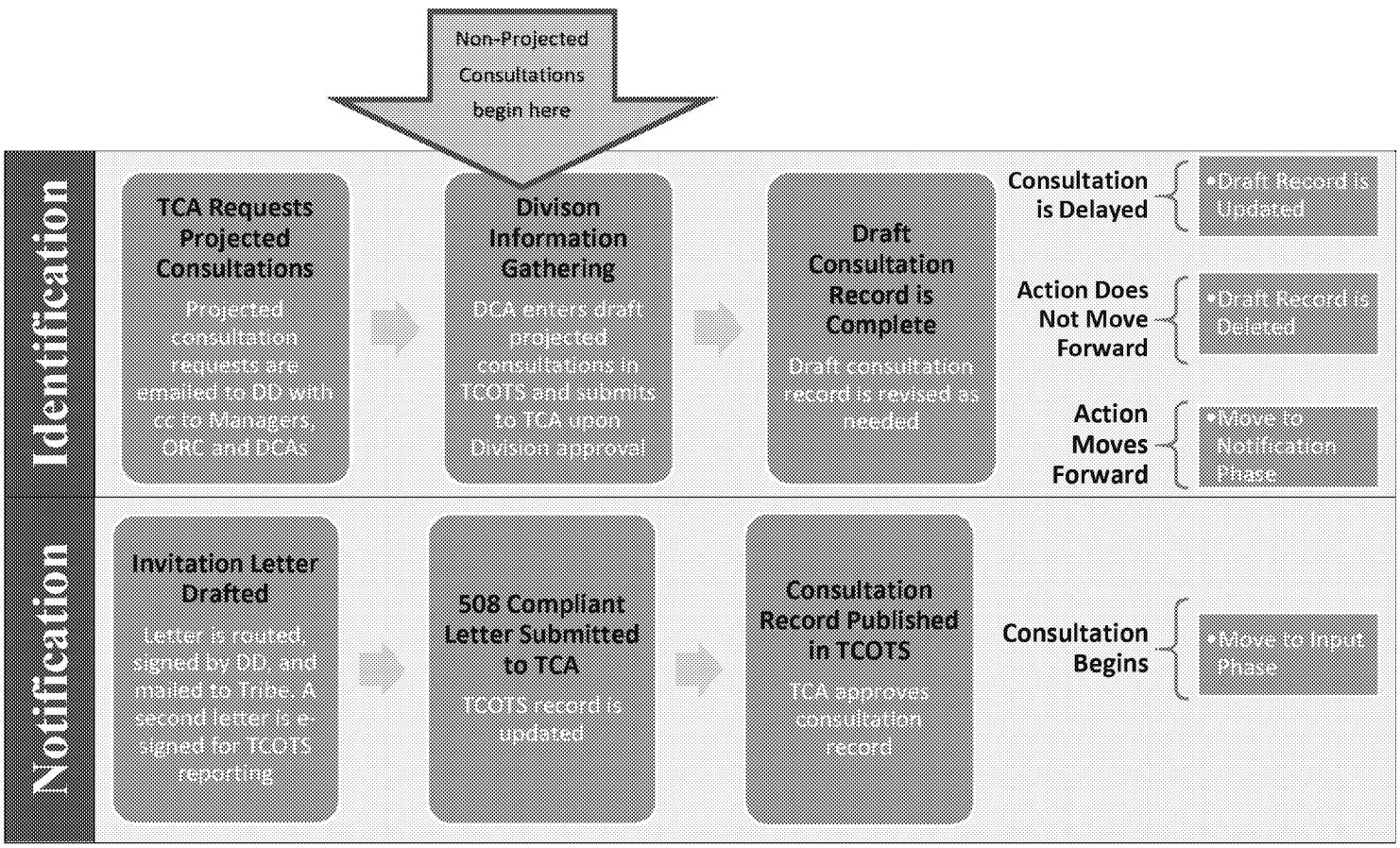
Reporting

Projecting Likely Consultations

EPA's American Indian Environmental Office (AIEO) manages the Tribal Consultation Opportunity Tracking System (TCOTS) database. Twice a year, on April 1 and October 1, AIEO will establish a list of prospective consultation opportunities that have been identified for the next six months.

In Region 4, prospective consultation opportunities will be identified at the Divisional level. DCAs will be responsible for submitting a list of identified prospective consultation opportunities for his or her Division to TCOTS no later than March 15 and September 15 of each year.[13] The DCA should coordinate with staff and include management in identification of potential consultation opportunities to the extent preferred by the relevant Division Director. Following the TCA's review of the Division submittals, the Region will share the draft list of prospective consultation opportunities with the tribes. Tribes will then have the opportunity to identify consultations they wish to withhold from publication in the TCOTS database. Table 1 summarizes TCOTS reporting requirements throughout the consultation process.



[13]See Appendix F for TCOTS database instructions and other resources

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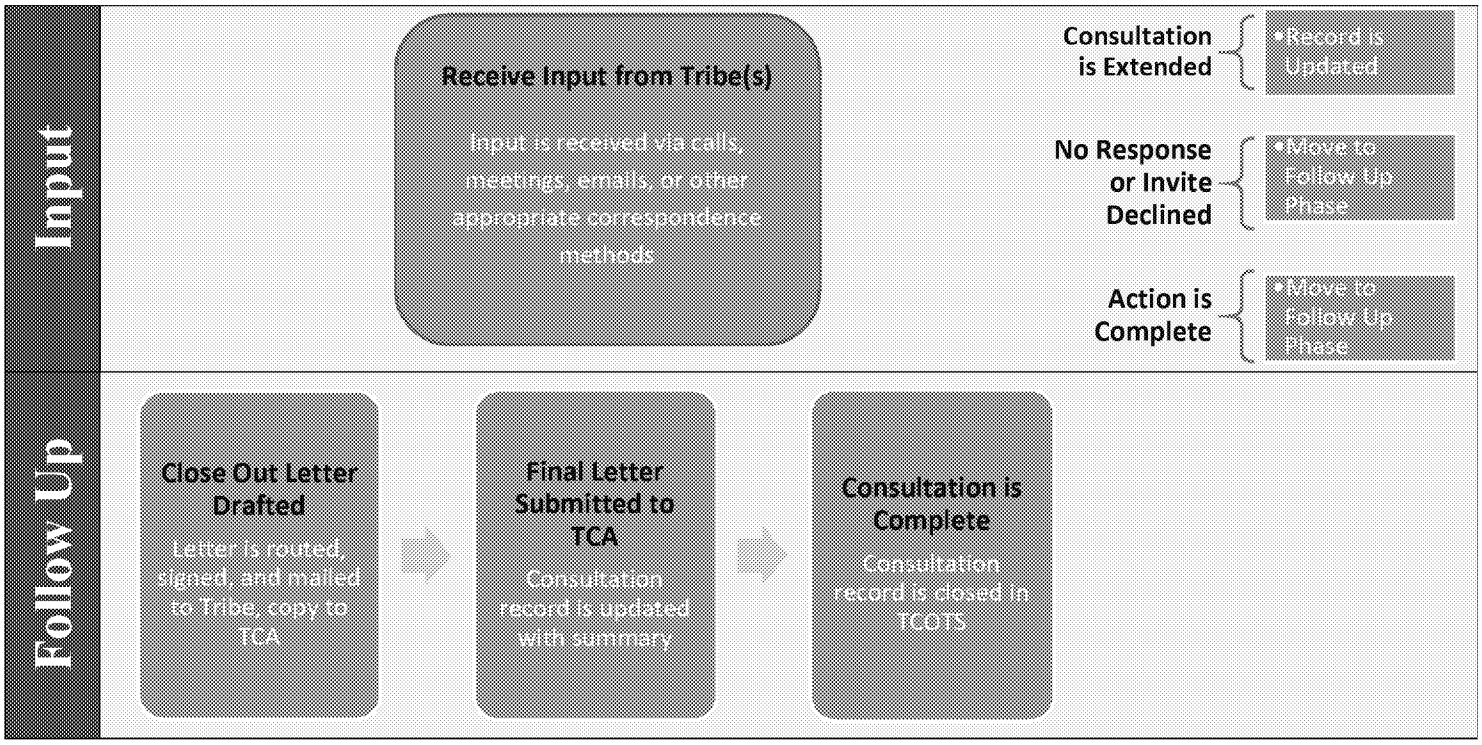

Table 1: TCOTS Reporting Process Overview

Region 4 also recognizes that not all activities appropriate for consultation will or can be identified by these reporting dates. When EPA staff recognizes consultation-appropriate activity, or a tribe requests consultation on an otherwise unreported matter, the DCA and Division management should be notified promptly and the consultation opportunity should be entered into TCOTS.

Reporting Completed Consultations

The TCOTS database will serve as the basis for reporting completed consultations and outcomes annually to OMB in June of each year.

Process Feedback and Improvements

Region 4 views this SOP as a living document and expects that procedures and practices may be identified in the future that would improve the Region's consultation efforts. As such, the Region intends that this SOP will be periodically evaluated by Region 4 and the tribes during future Regional Tribal Operations Committee meetings. Should the EPA and the tribes determine that revisions to this policy are necessary and appropriate, the EPA will work in coordination with the tribes to make any such changes to this SOP.

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Appendix A
Likely Regional Consultation Activities

The general types of activities for which consultation may be appropriate are noted in the text of the SOP and are described again below. This attachment supplements the nationally provided general list by adding likely Region-specific circumstances for which consultation may also be appropriate. Many, but not all, activities listed here result from undelegated program elements, or from other Regional activities. Also provided is a list of circumstances for which consultation generally may not be appropriate. These lists are provided by way of example only and consistent with the 2011 Consultation Policy.

Circumstances for which consultation is generally appropriate across all programs (as specifically included in the 2011 Consultation Policy):

- Policies, guidance documents, directives;
- Budget and priority planning development;
- Legislative comments;
- Permits;
- Civil enforcement and compliance monitoring actions;[14]
- Response actions and emergency preparedness;
- State or Tribal authorizations or delegations; and
- EPA activities in implementation of U.S. obligations under an international treaty or agreement.

Division Specific Matters for which Consultation may be Appropriate:

Air Division:

- NAAQS Designations; and
- Program delegation for the Lead-based Paint Program in South Carolina and Florida.

RCRD Division:

- PCB commercial storage and disposal approvals;
- PCB cleanups under §761.61(a) and (c);
- HSWA permits issued by the EPA within the State of Mississippi; and
- RCRA 3008(h) orders.

[14] The May 2011 Consultation Policy states in a footnote that "Primary guidance on civil enforcement matters involving tribes can be found in 'Guidance on the Enforcement Priorities Outlined in the 1984 Indian Policy,' and 'Questions and Answers on the Tribal Enforcement Process.'" EPA consultation on these matters must also be undertaken consistent with the EPA's "Restrictions on Communicating with Outside Parties Regarding Enforcement Actions" (Mar. 8, 2006).

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Superfund Division:

- Site/facility listing;
- Assessments & Decision Documents (see multi-year project consultations note below); and
- Emergency and Removal Actions.

Water Protection Division:

- Water Quality Standards Revisions (state-wide);
- Site-Specific Water Quality Criteria;
- 303(d) impaired waters list;
- Total Maximum Daily Loads (TMDLs);
- Establishment of Regulatory Roles for a Public Drinking Water System (where multiple jurisdictions control drinking water supply, the EPA must mediate selection of the appropriate oversight organization);
- Approval of Class 6 Underground Injection Control (UIC) Permits (*e.g.*, fracking permits); and
- Clean Water Act § 402 Permits issued by Region 4.

Office of Regional Counsel:

ORC should be consulted whenever questions arise about the application of federal Indian law, jurisdictional issues, or EPA policies pertaining to Indian country.

In addition, as previously discussed, civil compliance monitoring and enforcement actions are generally appropriate for consultation, to the extent practicable and as permitted by law and EPA policy. However, there may also be additional, relevant documents and sources of law governing such actions, including judicial and/or administrative case law, EPA compliance monitoring policies, EPA enforcement response policies, and the "Restrictions on Communication with Outside Parties Regarding Enforcement Actions." ORC should be consulted whenever questions arise about consultation with tribes on such matters.

Multi-year project consultation considerations:

Multi-year projects, such as Superfund or RCRA Corrective Action assessment and cleanup, could necessitate several consultation periods throughout the project. In these circumstances, the EPA makes decisions throughout the process. Consultation should be initiated at the earliest possible point, including site identification, and continue through cleanup. A consultation plan should be developed in which critical points in the process are identified for specific tribal input to that phase of the project. OLEM and AIEO are currently exploring how these extended consultation scenarios can be meaningfully operated and tracked. Check with the DCA for updated recommendations for developing such consultation plans.

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Activities for Which EPA Consultation Generally Is Not Appropriate:

- When the EPA is engaged in a multi-agency project for which it is not the lead agency.
    - EPA Staff, however, are encouraged to raise consultation needs to the lead agency.
- For internal EPA operations, such as activities and decisions relating to staffing, personnel, and human capital management; oversight of contractor performance under Agency-issued contracts; administration of EPA's working capital funds; and EPA funding allocation decisions.
- When the EPA lacks discretion (*e.g.*, Congressionally mandated actions, schedules or other requirements; EPA response to court orders; any activities subject to confidentiality protections).
- When actions or decisions are completed for state program reviews.
    - The process for state program reviews varies across the Region, and it may involve reviewing site/facility specific information such as individual facility permits. To the extent that specific information evaluated during a state program review pertains to a site or facility that may affect tribal interests (*e.g.*, due to its location near to Indian country), the EPA will generally not consult on such reviews. The EPA's objective during state reviews is to evaluate the state's overall program and not to review individual outcomes under the state program. However, if the EPA should identify an actionable deficiency with a specific site or facility permit, for example, and the EPA intends to take action to address that concern, the Agency would consult on the revised decision or action consistent with its consultation obligations. As a general matter, the Region will encourage states to consult with tribes on state actions that may affect tribal interests.
- The EPA response to tribally-requested input or reviews
    - In certain circumstances where the tribe has requested EPA review or input, such circumstances may not warrant consultation depending on the nature of the requested action or decision. Program staff should work with their DCA before such decisions or action is made to determine whether consultation is needed.

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Appendix B
Roles and Responsibilities

Designated Consultation Official

The Assistant Administrator for the Office of International and Tribal Affairs, as the Designated Consultation Official, has the authority for: (1) defining EPA actions appropriate for consultation, (2) evaluating the adequacy of that consultation, and (3) ensuring that EPA program and regional office consultation practices are consistent with this Policy.

Regional Administrator (RA)

The RA oversees the consultation process in the region, including appointment of a Tribal Consultation Advisor, analysis for potential consultation and the consultation process, and submission of semi-annual consultation projections.

Division Director (DD)

The DD is responsible for overseeing the implementation of the May 2011 Consultation Policy and this SOP in their relevant divisions. DDs are the primary decision-maker on consultation decisions within their Division and are the primary signatories on all formal correspondence with tribal leaders. DDs are also responsible for concurring on their Divisions' TCOTS submissions.

Tribal Consultation Advisor (TCA)

The Tribal Relations Coordinator in the Office of the Regional Administrator is the appointed Tribal Consultation Advisor for Region 4. The TCA is responsible for meeting all AIEO reporting obligations for consultations conducted by the Region and ensures the accuracy of reporting to OMB. The TCA coordinates consultation activities with the DCAs, reviews and approves TCOTS entries, and advises when necessary. The TCA monitors the effectiveness of the Region's consultation procedures, makes recommendations for improvements, and elevates consultation matters to the RA as needed. The TCA is available to assist the DCAs and the Project Lead in all aspects of consultation.

Division Consultation Advisor (DCA)/Alternate

A DCA is appointed by each Division Director. The DCA will serve as the first point of contact for Project Leads throughout the Division in answering questions and advising about consultation practices and requirements. The DCA will ensure that the Division staff and management maintain a level of awareness regarding consultation obligations and will assist in identifying consultation opportunities. The DCA will assist the Division Director in developing the semi-annual list of consultation opportunities (March 15 and September 15), enters TCOTS records, and ensures that project leads prepare a short summary of consultation outcomes following the conclusion of each consultation.

ED_005978_00037288-00017 FL CWA 404 Assumption FOIA_Interim Release 15

Project Lead

The Project Lead is the staff-level technical lead assigned to a particular matter. This individual also serves as the Tribal consultation lead. Specifically, he or she is responsible for:

- Conferring with the DCA to make an initial determination whether a Tribe(s) interest may be affected by an EPA action or decision;
- Notifying the DCA when a Region 4 action/decision is likely to trigger consultation, or when the Tribe requests a consultation;
- Coordinating with management, the DCA, TCA, and the ORC and/or Tribal attorney as needed throughout the consultation process;
- Providing the technical information needed by the tribe for informed consultation. Conducts follow-up call(s) and/or sends letters or emails to the tribal environmental staff to ensure that appropriate levels of tribal program management are aware of the consultation efforts underway.
- Leading the development of any necessary documentations, including: (1) the letter initiating consultation, (2) a summation of all tribal input, (3) assuring tribal review of the summary of tribal input, (4) developing the consultation conclusion letter to the tribe, and (5) documenting close out of consultation by writing a short summary of the consultation effort for inclusion in the TCOTS tracking system.

Office of Regional Counsel (ORC) Tribal and Staff Attorneys

The ORC Tribal Attorney should be consulted whenever questions arise about the application of federal Indian law, jurisdictional issues, or EPA policies pertaining to federally-recognized tribes and Indian country. The ORC Tribal Attorney will advise on questions about whether an EPA Region 4 action or decision is appropriate for consultation, and the effect of other generally-applicable EPA policies and guidance on such consultations.

If a matter has an ORC staff attorney assigned to it, then the ORC Staff Attorney should be consulted on all non-Indian-law aspects of the matter (*i.e.*, media/environmental subject matter questions), and should also be included in any Indian law discussions of the matter with the ORC Tribal Attorney.

Concurrence by the ORC Tribal Attorney and ORC Staff Attorney (if applicable) is necessary for all notices of opportunities to consult, as well as all letters to a tribe pertaining to consultation, including written responses to comments communicated during consultation. An ORC assignee should attend consultation discussions if an attorney for the tribal government is expected to participate.

The ORC Tribal Attorney is responsible for reviewing the semi-annual list of consultation opportunity projections prepared by the DCAs.

Consultation Advisor for the Tribe (CA)

Tribal leaders may designate a CA to act on their behalf. CA designations will be recognized by Region 4 only to the extent they include a defined set of circumstances/actions for which the CA authorized to consult with Region 4 on behalf of the tribe. If a CA is designated, the CA will be the first point of

ED_005978_00037288-00018 FL CWA 404 Assumption FOIA_Interim Release 15

contact for Region 4 Program Leads on matters for which CA consultation is appropriate. For all other matters, consultation communications will be directed to tribal leaders.

The CA will decide if the consultation effort should be referred to the tribal leadership level or stay with the tribal staff level. It is expected that each tribe will decide how Regional consultation should be conducted for that tribe. Those preferences will become an attachment to this Regional SOP.

The CA will determine who among the tribal staff and organizations needs to be part of the identified consultation effort and will share that with the Region 4 Project Lead. Tribes may designate different CAs for different areas of expertise.

ED_005978_00037288-00019 FL CWA 404 Assumption FOIA_Interim Release 15

Appendix C
Example Consultation Letters

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Appendix D
Alternate Consultation Procedures from Tribes

Catawba Indian Nation and APTMD Regulatory Development Section

Introduction

The EPA Region 4 Consultation SOP provides for the development of Alternative Consultation Procedures (ACP) when mutually agreed to by the EPA Region 4 and a tribe. Accordingly, the Catawba Indian Nation (CIN) and the EPA Region 4 Air, Pesticides and Toxics Management Division's Regulatory Development Section (RDS) have developed the following alternative process for consultation on Clean Air Act State Implementation Plan (SIP) actions that may affect CIN interests. This ACP applies only between the RDS office at the EPA Region 4 and the CIN, and is incorporated into the Region 4 Consultation SOP in Appendix E effective March 11, 2013.

EPA Region 4 is committed to timely, meaningful consultation with the CINCIN on actions and decisions that may impact the CIN. The CIN currently has a unique regulatory relationship with South Carolina, and as a result, many state environmental actions, such as state implementation plan (SIP) revisions, are applicable to the CIN's reservations and have the potential to impact the CIN. As such, these SIP actions may be appropriate for consultation. Due to the significant number of South Carolina SIP activities that may be appropriate for consultation, both RDS and the CIN recognize the benefit of a mutually agreed upon ACP to provide an efficient mechanism to identify SIP related activities in South Carolina for which consultation is appropriate.

Alternative Consultation Process

RDS and the CIN have agreed to monthly teleconferences (as needed) held on a reoccurring date and time. This call will project rulemaking activities anticipated to occur in the upcoming month and beyond. Approximately one week prior to the call, RDS will share the South Carolina "SIP tracking log" with the CIN so that the Tribe may identify specific areas of interest. If the Tribe's interest is significant, the Region will initiate the consultation process, beginning at the Input phase. For matters identified during the monthly call that the Tribe does not wish to consult on, the EPA will treat such matters as having been declined for consultation.

Notwithstanding this approach, the Tribe retains the ability to request consultation on any RDS matter. The EPA Region 4 will continue to handle such requests consistent with processes described in the EPA Policy on Consultation and Coordination with Indian Tribes and the EPA Region 4 Consultation SOP.

In addition, RDS will continue to follow the consultation process defined in the Region 4 Consultation SOP (Identification, Notification, Input, and Follow-up) for major actions and decisions.

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Reporting

RDS will document summaries of monthly calls and resulting action items and will share with the CIN for concurrence. If initiated, consultation will be recorded in the EPA Tribal Consultation Opportunity Tracking System as outlined in the EPA Region 4 Consultation SOP.

Contacts:

Darin Steen, Environmental Services Director
Catawba Indian Nation
darin.steen@catawbaindian.net
803-366-4792

Lynorae Benjamin, Chief
Regulatory Development Section
Benjamin.lynorae@epa.gov
404-562-9040

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Appendix E
Congressionally-Enacted Reserved Rights by Tribe

Catawba Indian Nation

Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, 25 U.S.C. § 941 et seq.

Incorporating Agreement in Principle Between Catawba Indian Nation and the State of South Carolina, reprinted in S. Rpt. 103-124 (Aug. 5, 1993), beginning on p. 51 of Part 1 and continuing to Part 2.

Eastern Band of Cherokee Indians

None identified at this time

Miccosukee Tribe of Indians of Florida

Florida Indian (Miccosukee) Land Claims Settlement Act of 1982, 25 U.S.C. § 1741

Incorporating a Lease Agreement between the Tribe and the State of Florida, explained in Miccosukee Tribe of Indians of Fla. v. United States, 716 F.3d 535, 548-49, n.36 (11th Cir. 2013)

Big Cypress National Preserve and Addition Lands, 16 U.S.C. § 698j

Everglades National Park, 16 U.S.C. § 410

Miccosukee Reserved Area Act, Pub. L. 105-313 (Oct. 30, 1998)

Mississippi Band of Choctaw Indians

None identified at this time

Poarch Creek Band of Indians

None identified at this time

Seminole Tribe of Florida

Seminole Indian Land Claims Settlement Act of 1987, 25 U.S.C. § 1772

Incorporating:

Settlement Agreement between the Seminole Tribe of Florida, the State of Florida, and the South Florida Water Management District; and

ED_005978_00037288-00023 FL CWA 404 Assumption FOIA_Interim Release 15

Water Rights Compact Among the Seminole Tribe of Florida, the State of Florida, and the South Florida Water Management District

Big Cypress National Preserve and Addition Lands, 16 U.S.C. § 698j

Everglades National Park, 16 U.S.C. § 410

ED_005978_00037288-00024 FL CWA 404 Assumption FOIA_Interim Release 15

Appendix F
Consultation Reporting Resources

Template email for requesting projected consultations:

Hello - Twice a year, on April 1 and October 1, AIEO establishes a list of prospective consultations that have been identified for the next six months. The information is published in the Tribal Consultation Opportunity Tracking System (TCOTS) for tribal access, and is compiled and reported annually to OMB. I am asking the Sections and Programs to submit a list of prospective consultations to me no later than XXX. I will then compile all responses into TCOTS, request upper management concurrence, and submit to Region's Tribal Consultation Advisor for approval and publication by the October 1 deadline.

Per the Interim Final EPA Region 4 Consultation Policy Standard Operating Procedures, action and decisions for which consultation is generally appropriate for consultation across all programs include:

- Policies, guidance documents, directives;
- Budget and priority planning development;
- Legislative comments;
- Permits;
- Civil enforcement and compliance monitoring actions (Note: These actions are neither reported in TCOTS nor are part of this request for information on prospective consultations);
- Response actions and emergency preparedness;
- State or tribal authorizations or delegations; and
- EPA activities in implementation of U.S. obligations under an international treaty or agreement.

In the past, APTMD has reported prospective consultations related to: GHG PSD permits, state annual monitoring implementation plans, NAAQS designations, among other actions/decisions.

The information I would need from APTMD programs with prospective consultation that may be impact our Regional tribes:

· Topic of the consultation
· Status: TCA, Draft, Approved
· Program Contact
· Scope: Regional, National
· Activity
· Methodology: Teleconference, Letter, Other (please specify)
· Approximate Start and End dates
· Number of Tribes to be engaged

If your Section or Program has consulted any of the Region 4 tribes in the last 6-12 months, please also send me an update on the status of the consultation and a copy of the notice of the opportunity to consult and/or close-out letter.

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If you have any questions regarding this request please contact the Division Consultation Advisor, Jane Doe (2-XXXX).

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How to Make Simple MS Word Documents 508 Compliant

What Is 508 and Why Should I Care?

- In 1998 the US Congress amended the Rehabilitation Act to require Federal agencies to make their electronic and information technology [web pages and documents posted both internet and intranet] accessible to people with disabilities. **Section 508** was enacted to eliminate barriers in information technology.
- This legislation addresses the special needs of Americans with disabilities (particularly aural or visual) who must have access to electronic documents when dealing with the government.

  Read more: EPA Guidance
  http://yosemite.epa.gov/OEI/webguide.nsf/content/pdf_metadata

- Basic required fields: Title, Description (aka subject), Publisher (author), and keywords

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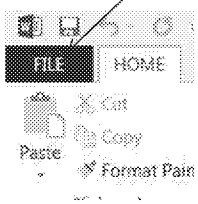
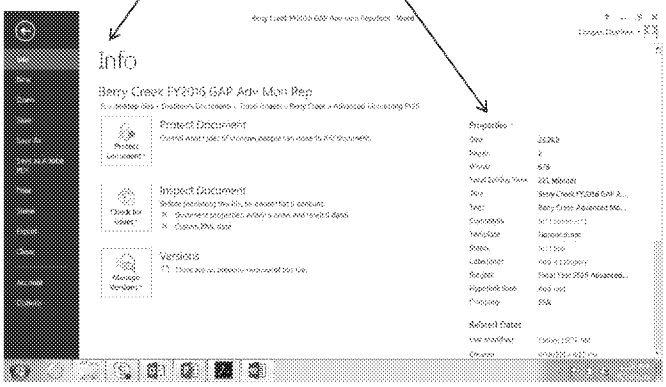
Step 1: Opening a Document Word File to Add Properties

1. Open the target document

2. Click on the Microsoft Word File Button

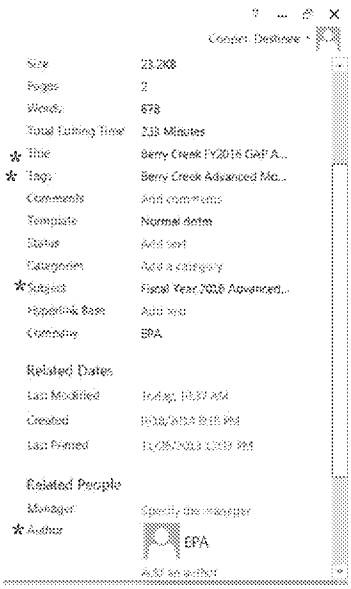
3. Under **Info**, look at **Properties** on the left of the screen





Step 2- Document Information Panel

A. Enter text in required Fields (*) for 508 compliancy. Click inside the box to entry desired text. *TIP- Mouse over the field to get description of required text. The author is never a person but the office.*



FYI (B.) -- To close this box- click on the **(back arrow)** at far left end of the panel

C. Example of completed document properties information panel for 508c

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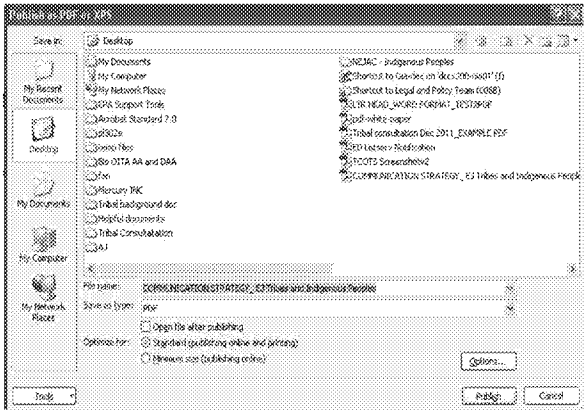
Step 3: Save as a PDF Document

1. Click on the Microsoft Office File Button. Click **Save As Adobe PDF**

2. Select **PDF** as Save as type. Click **Save**.



HOW TO ADDRESS SIGNED WORD DOCUMENTS

- Current EPA Web Council policy recommends not posting signed documents.
- Using /s/ on the original Word document indicates a signed copy is on file, and
- Convert document to PDF directly from Word using the instructions to follow
- If you needed to have signed document posted you will need to have Abode Pro 10 software **OR** have your IT/web staff person add the document properties to make it 508 compliant

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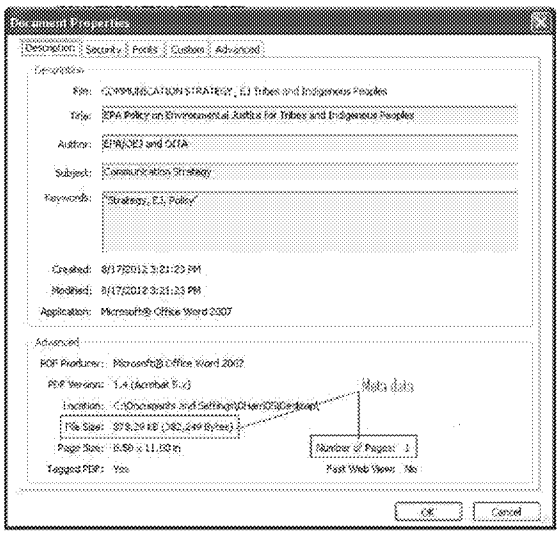
Checking Final Document

1. Retrieve (open) pdf document
2. On keyboard press the Ctrl key and the letter D



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