



Minnesota Pollution Control Agency

Office of the Commissioner

MINNESOTA POLLUTION CONTROL AGENCY POLICY ON CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

The Minnesota Pollution Control Agency (MPCA) has developed the following policy for consultation and coordination with each of the eleven (11) Minnesota Indian Tribes regarding environmental regulations, standards and issues as follows:

I. Policy Statement

MPCA's policy is to consult on a government-to-government basis with the eleven (11) Minnesota Indian Tribes when MPCA actions and decisions may directly affect tribal interests. Consultation is a process of meaningful communication and coordination between MPCA and tribal officials prior to MPCA taking actions or implementing decisions that may directly affect Tribes. As a process, consultation includes several methods of interaction that may occur at different levels. The appropriate level of interaction is determined by past and current practices, adjustments made through this Policy and the continuing dialogue between MPCA and tribal governments.

This Policy establishes guidelines and institutional controls for consultation across MPCA and seeks to strike a balance between providing sufficient guidance for purposes of achieving consistency and predictability while allowing for, and encouraging, the tailoring of consultation approaches to reflect the circumstances of each consultation situation and to accommodate the preferences of tribal governments.

The consultations that will result from the implementation of this policy are not intended to preclude or replace the existing, on-going and future meetings, communications and exchanges of information and input that occur between the MPCA staff and Tribes that are expected to continue on a regular basis. The main differences between consultations and more routine communications are that consultations include formal steps to identify the issue, notify parties and develop an administrative record. This stepwise process allows time and opportunity to learn and understand as well as provide input into a decision that has not yet been made.

II. Consultation Process

A. When Consultation Occurs

Consultation should occur early enough to allow Tribes the opportunity to provide meaningful input that can be considered prior to MPCA deciding whether, how, or when to act on the matter under consideration. As proposals and options are developed, consultation and coordination should be continued, to ensure that the overall range of options and decisions is shared and deliberated by all concerned parties, including additions or amendments that occur later in the process.

Consultation may be initiated by MPCA through written notification to all of the eleven (11) Minnesota Tribes or may be requested by any of the Minnesota Tribes through a written request to the MPCA from a Tribal Official. Notifications for consultation should occur between the Designated MPCA Consultation Official and the Tribal Official as identified in section C.

B. How Consultation Occurs

There is no single formula for what constitutes appropriate consultation, and the analysis, planning, and implementation of consultation should consider all aspects of the action under consideration. In the case of state-wide rulemaking, a series of meetings in geographically diverse areas may be appropriate. For more routine operational matters, a less formal process may be sufficient.

The Consultation process consists of four (4) steps: Identification, Notification, Input, and Follow-up.

1. Identification – MPCA, or the Tribe(s) identify activities or issues that may be appropriate for consultation. Identification should include a determination of the complexity, implications and resource constraints of the activity, as well as identification of the potentially affected Tribe(s).
2. Notification – MPCA notifies the Tribes of the intent to hold a consultation. The notification is sent to the Tribal Chairperson and the highest ranking environmental official and should include sufficient information for the Tribes to make informed decisions about participation and how to provide informed input. Notification should occur in such a way to allow for meaningful input by the tribes.
3. Input – Tribes provide input to the MPCA on the consultation matter. This can occur in a number of ways, including meetings, written and oral exchanges of information, phone calls, or other ways depending on the specific circumstances. Subsequent rounds of consultation may need to take place in order to responsive to Tribal needs, to provide sufficient opportunity to provide, receive, and discuss input, and as new issues arise.
4. Follow-up – MPCA will work together with the Tribes to build an administrative record of the consultation. The MPCA will strive to provide a record of consultation meeting topics and the discussion surrounding those topics. This record will be provided to the consulting Tribe(s) for review. The MPCA will include any clarifications or corrections in the final notes for the record. This record will be a written communication from a senior MPCA staff person involved in the consultation to the most senior Tribal Official from each tribe involved in the consultation.

Consultation input and follow-up will be informal, tribal staff to MPCA staff, unless a Tribe(s) or the MPCA believes that consultation regarding a specific topic is not productive. In which case, a Tribal Chair or Designated Consultation Official or the MPCA Commissioner or Designated Consultation Official (defined below) may provide a written request to the MPCA Designated Consultation Official (defined below) or Tribal Chair requesting that formal consultation occur at that higher level for a specific topic.

The consulting Tribe(s) or the MPCA may invite another party to the consultation with the agreement of the consulting parties.

C. Roles and Responsibilities

1. MPCA Designated Consultation Official—The Assistant Commissioner serving as Tribal Liaison as appointed by the MPCA Commissioner or the Commissioner as appropriate. Responsibilities include coordination and implementation of tribal consultation in accordance with this Policy. The Designated Consultation Official has the authority for identifying and defining MPCA actions appropriate for consultation, evaluating the adequacy of that consultation, ensuring that MPCA program and consultation practices are consistent with this Policy, and is responsible for ensuring that a formal record of the consultation is maintained. The Designated Consultation Official will identify the specific MPCA staff who will participate in the consultation.
2. Tribal Official – The Tribal Official is an elected, appointed or Designated Consultation Official. Each Tribe will determine their own roles and responsibilities within the consultation process, as defined by their individual policies and procedures.
3. MPCA staff – Can include staff from all levels of the MPCA below the Commissioner's office including directors, managers, supervisors and technical staff.

By:  David Thornton, Assistant Commissioner, Tribal Liaison, Designated Consultation Official

Dated: *September, 2013*