

Exhibit C

Examples of Region 9 Consultation Approaches

Changes to the attainment status of an airshed under the Clean Air Act

When Region 9's Air Division takes an action that potentially affects tribal governments (for example, changing the attainment status of an airshed), the initiating office typically:

1. works with Air Division's Grants and Program Integration Office to create a strategy for consultation;
2. identifies which tribes are affected by the action, and assesses the extent and number of tribes affected;
3. contacts potentially-affected tribes by letter, informing them of the action, and asking if and how they would like to be consulted;
4. includes consultation language in notices that appear in the Federal Register and other locations;
5. engages in follow-up meetings, phone calls, and correspondence, as appropriate;
6. communicates with affected tribes prior to making a final decision.

Developing the Safe Drinking Water Act Tribal Set-Aside Guidance

1. In anticipation of developing a new program guidance, Region 9 approached the RTOC to provide information on this new program and to get preliminary input from tribal representatives on the content of the guidance.
2. A cover letter signed by a senior management official and a copy of the draft guidance was sent to all Tribal Chairpersons, Tribal Environmental Directors, and other appropriate tribal representatives involved in the operation of Public Water Systems serving tribes.
3. EPA gave presentations on the draft guidance and solicited comments at the RTOC and at the EPA Annual Tribal Environmental Conference. EPA Safe Drinking Water Project Officers discussed the document with tribal representatives when they visited Region 9 tribes.
4. After receiving and incorporating tribal comments as appropriate, EPA sent out the solicitation letter signed by a senior management official with the final guidance to all Tribal Chairpersons, Tribal Environmental Directors, and other appropriate tribal representatives involved in the operation of Public Water Systems serving tribes.

Superfund site listing, remedy selection, and community involvement

1. When working on a Superfund Site that involves a tribe, R9's Superfund Office of Community Involvement works closely with the tribal government and its delegated representatives. The National Contingency Plan imposes community relations requirements on all EPA remedial activities. Community Involvement Plans that include tribal communities are developed in consultation with those tribes so that the end product accurately and adequately reflects tribal information and concerns.
2. When EPA Region 9 is considering listing a site of tribal concern on the National Priorities List (NPL), the Regional Administrator sends a letter to the affected tribe's chairperson requesting the tribe's position on listing. The Superfund Division Director will meet with tribal officials if requested to discuss the tribe's concerns about the site, as well as the pros and cons of NPL listing. The Superfund Division Director will elevate unresolved disputes between a state and tribe over NPL listing to EPA's Office of Solid Waste and Emergency Response (OSWER) for resolution. NPL listing decisions are made by the Assistant Administrator of OSWER.
3. Region 9 encourages tribal involvement throughout site investigation and cleanup at NPL sites that potentially affect tribes. Subject to funding availability, EPA provides Support Agency cooperative agreement funding to the affected tribe during the site investigation phase ("remedial investigation/feasibility study" or RI/FS). The purpose of Support Agency funding is to assist with tribal participation in various RI/FS activities. On a few selected NPL-caliber sites where Region 9 has a technical support role, EPA provides similar financial assistance during the RI/FS.
4. At key milestones, EPA solicits comments from the tribe on draft documents such as the RI Report, Alternatives Analysis, and Risk Assessment. Before Region 9 selects a cleanup remedy for an NPL site, the Superfund Division will prepare a proposed cleanup plan, convene a public meeting to discuss the proposed cleanup remedy, and provide a formal comment period for all affected parties.
5. Under the National Contingency Plan, neither states nor tribes have a right of concurrence on EPA's selection of a Record of Decision for remedy selection.