

---

**U.S. Environmental Protection Agency (EPA)  
Response to Tribal Consultation &  
Coordination Comments  
on  
Plan EJ 2014 Strategy and  
Implementation Plans**

---

**Public Comments Received:  
October 2011**

---

## Plan EJ 2014: EPA's Response to Tribal Consultation and Coordination Comments

Plan EJ 2014 is EPA's roadmap for addressing and integrating environmental justice into the Agency's programs, policies and activities. In order to ensure the Plan is most effective at addressing the environmental and public health concerns of tribes and other indigenous stakeholders, EPA held two tribal consultation and coordination webinars on October 4, 2011, and October 12, 2011. An in-person tribal consultation and coordination meeting was also held in Albuquerque, New Mexico, on October 27, 2011. In addition, an indigenous stakeholder outreach webinar was held on October 13, 2011.

During these sessions an overview of Plan EJ 2014 was presented, and participants had an opportunity to ask questions and give comments. The presentation slides are available at <http://www.epa.gov/compliance/ej/resources/policy/plan-ej-2014/plan-ej-2014-presentation.pdf>. Under the "Comment" column you will find the compilation of specific comments, questions, and recommendations obtained during all the sessions. Under the "Response" column you will find the responses provided by EPA.

Any additional questions or concerns that you may have should be directed to the agency contact as indicated. Environmental Protection Agency: [lee.charles@epa.gov](mailto:lee.charles@epa.gov).

## Plan EJ 2014: EPA’s Response to Tribal Consultation and Coordination Comments

Comments		Responses
1	What do you mean by “permits” [permitting in the context of Plan EJ 2014]?	Some activities require permits at the federal, state, local, or tribal level before they can be carried out. The permitting process often involves some form of public engagement, such as public notices and public hearings.
2	What type of enforcement remedies are you talking about [in Plan EJ 2014]?	EPA, through Plan EJ 2014, seeks appropriate remedies in enforcement actions to benefit overburdened communities and address environmental justice concerns. An important activity of the plan is to increase efforts to address environmental justice concerns through use of injunctive relief, including mitigation, and Supplemental Environmental Projects in civil enforcement actions, as appropriate. Plan EJ 2014 also seeks to increase efforts to benefit affected communities through use of community service and the Crime Victims’ Rights Act in criminal actions. EPA will continue to look for opportunities to work with other federal agencies, state, tribal, and local governments, and the business community to complement and leverage tribal and community benefits resulting from enforcement activities.
3	Can tribes get an electronic copy of the presentation?	Yes. An electronic copy of the presentation slides was sent to webinar participants, and it can be accessed online at <a href="http://www.epa.gov/compliance/ej/resources/policy/plan-ej-2014/plan-ej-2014-presentation.pdf">http://www.epa.gov/compliance/ej/resources/policy/plan-ej-2014/plan-ej-2014-presentation.pdf</a> .
4	Will implementation of Plan EJ 2014 occur all at once or gradually? Is there a timeline?	Each topic area is assigned separate timelines and milestones, so implementation for different focus areas will occur on separate tracks. Timelines for the five cross-agency focus areas and the four tools development areas can be found at <a href="http://www.epa.gov/compliance/ej/plan-ej/">http://www.epa.gov/compliance/ej/plan-ej/</a>
5	Has this effort [Plan EJ 2014] looked at implementation within rural and reservation communities? The focus seems to be on urban populations.	Yes. Plan EJ 2014 is broad-based and encompasses environmental justice issues pertaining to urban, suburban, rural, and reservation communities. For example, the nationally consistent EJ screening tool EPA is developing will provide information about every Census block group in the entire country, including rural and tribal lands. In addition, the Community Cumulative Assessment Tool (CCAT - working title) is being developed so that it could be applied in many community settings, including rural and tribal communities. EPA continues to place a high priority on addressing environmental justice concerns as it develops the specific targeting and case selection strategies for both National Enforcement Initiative cases and the many other enforcement cases. EPA’s Strategic Implementation Teams (SITs) for each National Enforcement Initiative identify opportunities to protect and

## Plan EJ 2014: EPA's Response to Tribal Consultation and Coordination Comments

		<p>benefit overburdened communities when selecting and developing specific cases. For example, when selecting facilities for enforcement action, priority may be given to facilities that are affecting or threatening the drinking water supplies of poor rural communities, including those in Indian country. EPA also gives specific consideration and priority to environmental justice concerns and overburdened communities when selecting enforcement actions to address other important compliance problems, regardless of whether they are part of a National Enforcement Initiative. EPA obtains advice and recommendations on each of these areas from the National Environmental Justice Advisory Council, a federal advisory committee to the Agency.</p>
6	<p>Is OAQPS (the Office of Air Quality Protection Standards) involved in this process?</p>	<p>Yes. OAQPS has been involved in several of the task forces and workgroups that are implementing Plan EJ 2014, including work groups that focus on EJ and permits, EJ analysis to support rulemaking, EJ and the action development process, and meaningful involvement for communities with EJ concerns.</p>
7	<p>On the advice and recommendations for Plan EJ 2014 and the Border 2020 program—where is this information going next, and how long does it take to get to Administrator Jackson or to President Obama? In other words, what happens to this tribal input and at what level are these issues being heard at the EPA?</p>	<p>EPA will review the comments received and compile responses. The Agency will incorporate appropriate changes to the Implementation Plans for Plan EJ 2014 when the next updates are conducted, scheduled for late 2012. EPA made a commitment to post an annual report on the progress of Plan EJ 2014 at the end of each fiscal year (September 30, 2012). Administrator Jackson appointed Lisa Garcia as the Senior Advisor on environmental justice (EJ) to make sure there is a high level Agency official focused on EJ that is engaged in EPA decision-making. Ms. Garcia meets with Administrator Jackson regularly to make sure all populations are brought into the conversation. On tribal issues, Ms. Garcia works with Assistant Administrator Michelle DePass, Office of International and Tribal Affairs (OITA). The Agency recently created and charged the NEJAC's Indigenous Peoples Working Group to provide the Agency advice and recommendations on how the EPA can most effectively address the EJ concerns of tribal and indigenous peoples. In addition, EPA created its own work group which is in the process of creating guiding principles/policy on working with tribes and indigenous peoples to address their environmental justice concerns. Border 2020, gives more emphasis to working with colonias and addressing border issues with Mexico, through a separate program managed by EPA's OITA. The program's plan was recently out for public comment. Please see <a href="http://www.epa.gov/border2012/docs/2020/Border2020F">http://www.epa.gov/border2012/docs/2020/Border2020F</a></p>

## Plan EJ 2014: EPA’s Response to Tribal Consultation and Coordination Comments

		<a href="#">actSheetFinal-13oct2011.pdf</a>
8	<p>The Pueblo of Taos was never given a straight answer on how EPA arrived at the \$4,000 penalty on the Town of Taos Water District for polluting our waters. Confidentiality is stressed. The tribe needs to talk with Mr. Almendariz [then-Regional Administrator for EPA Region 6] government to government. Please let him know.</p>	<p>Historically, enforcement/compliance efforts have an element of confidentiality, so many settlements are not public. There is an effort to figure out how EPA can be more transparent where possible. If the penalty has already been assessed, EPA Region 6 can explain how they arrived at the penalty. There are regulations/authorities that speak to the amount of fines that can be enforced or assessed. This goes on throughout the country.</p> <p>On March 16, 2012, EPA Region 6 and the Pueblo of Taos participated in a government-to-government consultation meeting. The meeting agenda included a follow-up discussion on the issues raised at the Plan EJ 2014 tribal consultation.</p>
9	<p>Permittees are not being monitored and that’s our biggest problem. Those people need to be advised to listen to tribal issues, what’s involved with sacred sites and tribal lands. We lost our river—the amount of stuff released into it is unacceptable. EPA needs to be stricter with the permitting process.</p>	<p>Plan EJ 2014 focuses on agency-wide areas critical to advancing environmental justice, including permitting. “Considering Environmental Justice Concerns in EPA’s Permitting Process” is one of the five focus areas of Plan EJ 2014. The goal is to enable indigenous populations and tribes to have full and meaningful access to the permitting process and to develop permits that address environmental justice issues to the greatest extent practicable under existing environmental laws. EPA seeks to strengthen community-based programs to engage overburdened communities and build partnerships that promote healthy, sustainable, and green communities. Specifically, EPA will explore the feasibility of how EPA funding, policies, and programs can inform or help decision makers to maximize benefits and minimize adverse impacts from land use decision-making, planning, siting, and permitting.</p>
10	<p>Environmental justice is overarching and affects minority populations, but we have a special relationship with the Federal government. Tribes should not be placed in the same room with other minority populations.</p>	<p>EPA recognizes that the U.S. government has a unique legal relationship with federally recognized tribes (tribes). This relationship recognizes tribes as sovereign governments and the federal government’s trust responsibility to tribes. The <i>EPA Policy for the Administration of Environmental Programs on Indian Reservations</i>, November 8, 1984, (EPA’s 1984 Indian Policy) sets out a number of principles for how EPA works with tribes as co-regulators and how the Agency gives special consideration to tribes in making policies that may affect their interests. These principles include honoring a direct government-to-government relationship with tribes and consulting with tribal governments before making decisions that may affect them. Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments” was issued</p>

## Plan EJ 2014: EPA’s Response to Tribal Consultation and Coordination Comments

		<p>to provide federal agencies specific guidelines on consultation with tribal governments for certain actions. One of the goals of the EPA Policy on Consultation and Coordination with Indian Tribes is to fully implement Executive Order 13175 and certain aspects of EPA’s 1984 Indian Policy. Thus, EPA does not work with tribes as just another population, but recognizes the unique political status of tribes as sovereigns and works with tribes on a government-to-government basis. Section 6-606, of Executive Order 12898, Federal Actions for Addressing Environmental Justice in Minority Populations and Low-Income Populations, notes that each federal agency responsibility set forth under the order shall apply equally to Native American programs. For this reason, EPA works with tribes, as it deems appropriate, to address their environmental justice concerns.</p>
11	<p>Environmental justice is about helping disproportionately impacted communities, but the administrative burdens of these grants stand as significant barriers. Tribes are overburdened with bureaucratic requirements, which are repetitive and redundant. They prevent tribes from fulfilling objectives and having successful programs. Tribes hope this can be looked at in the Draft Implementation Plans.</p>	<p>EPA often hears that the grant process is burdensome for small tribes and community groups. This topic is being discussed at an interagency level. EPA is currently looking at tribal and community grants to identify opportunities for improving the processes for grants management for tribes and communities.</p>
12	<p>EPA strategic plans put an undue burden on tribes. As tribes develop their proposals and grants they must tell EPA how the projects fit under EPA’s priorities. However, tribes have their own plans, and they need to develop projects that fit under <i>their</i> priorities first.</p>	<p>Plan EJ 2014 does not envision a one-size-fits-all approach to addressing environmental concerns across the country. EPA is aware that tribes set environmental and human health priorities and develop plans to address each priority. EPA works with tribes to align the Agency’s plans and priorities, to the extent possible, with tribal plans and priorities. In addition, EPA has a range of financing and technical assistance vehicles in place that each tribe can use to meet both their priorities and EPA’s priorities. For example, EPA’s Indian General Assistant Program provides funds to tribes and tribal consortia for planning, developing, and establishing environmental protection programs in Indian country, as well as for developing and implementing solid and hazardous waste programs on tribal lands. EPA is currently consulting with tribes on a “Guidebook for Building Tribal Environmental Capacity” (GAP Guidebook) that will provide a framework for supporting tribal capacity. In addition, the GAP Guidebook will facilitate EPA’s ability to ensure that the Agency’s and tribe’s priorities are addressed by requiring specific,</p>

## Plan EJ 2014: EPA’s Response to Tribal Consultation and Coordination Comments

		<p>negotiated environmental plans that link funding to activities and to short- and long-term goal measurements. EPA also has a range of funds available to help indigenous communities improve their understanding of environmental and human health issues and develop local solutions that minimize people’s exposure to harmful conditions. EPA’s criminal enforcement program – the Office of Criminal Enforcement, Forensics, and Training - is collaborating with the Department of Justice in developing, through its National Indian Country Training Initiative, a training program on enforcement of wildlife and environmental laws in Indian country. The goal of the training is to help build tribal capacity to assume additional responsibility for the enforcement of environmental and wildlife laws in Indian country and promote federal tribal partnerships in this area. It is anticipated that this training will occur in the first half of calendar year 2012. EPA is currently reviewing some of its grants processes in order to be able to reach more communities through its grants process. For example, EPA is emphasizing and promoting community-based participatory research approaches as a way to design research so that it meets the needs of communities. Plan EJ 2014 priorities are being incorporated into the EPA Strategic Plan, which pertain to the work EPA is authorized to perform and support through federal environmental law.</p>
13	<p>On incorporating EJ into rulemaking, there is a guidance for EPA rulemaking with tribes—the Tribal Consultation Policy. When plans are being developed tribes need to be incorporated at the outset of the process. Offices dealing with tribes needs to be reminded of this.</p>	<p>In November of 2009, President Obama reaffirmed Executive Order 13175. This presidential directive charges all federal agencies to engage in consultation and collaboration with Indian governments, strengthen the government-to-government relationship, and reduce the imposition of unfunded mandates upon tribes. This directive requires that agencies have “an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” Agencies must also certify consultation when their proposed regulations or legislation have tribal implications. The EPA has developed internal procedures and controls to institutionalize these requirements. Every office and region has a Tribal Consultation Advisor and EPA has mandated that all of its employees take training on working effectively with tribal governments.</p>
14	<p>On advancing EJ through compliance and enforcement: EPA fails to adequately act or assist tribes in addressing the issues. OECA’s strategy is looking at tribal water</p>	<p>EPA’s strategic plan includes an element specifically designed to increase the percent of the tribal population served by community drinking water systems that meet all applicable health-based drinking water standards. This</p>

## Plan EJ 2014: EPA’s Response to Tribal Consultation and Coordination Comments

	<p>systems and moving into enforcement without addressing compliance assistance that tribes are looking for. These are some of the oldest, poorest maintained things and there is no money.</p>	<p>strategic plan element is tied to a national enforcement goal to ensure clean drinking water for all communities, including those in Indian country. To attain this strategic plan element and national enforcement goal, EPA provides funds to build and fix drinking water systems, provides compliance and technical assistance to ensure proper maintenance and operation of those systems, and, when appropriate, takes enforcement to protect the health of tribal and non-tribal consumers of drinking water systems. Particularly important is EPA’s Drinking Water Act Tribal Set-Aside Program (DWTSA). The DWTSA program provides funding to construct or improve tribal drinking water systems. EPA works with tribes and other federal agencies, including the Indian Health Service, to ensure that drinking water projects addressing the greatest health risks are ranked highest for DWTSA funding. In addition, EPA’s Public Water System Supervision Tribal Support Grants are used to fund tribes that want to assume responsibility for developing and carrying out the federal drinking water program in Indian country. EPA continually engages tribes and tribal organizations on funding decisions and on compliance assistance and enforcement activities. These dialogues enable EPA and tribes to take appropriate action to protect the health of tribal and non-tribal members.</p>
<p>15</p>	<p>EJ is a way for EPA to be able to provide low-income, minority, and tribal communities with equal footing to industry and states. Also, tribes can apply for Treatment-As-State. However, the fiduciary trust responsibility is still there. Tribes need to be elevated above states.</p>	<p>As the Agency considers environmental justice issues it recognizes the unique legal relationship that the US government has with federally recognized tribes. Plan EJ 2014 is a roadmap that will help EPA integrate environmental justice into the Agency’s programs, policies, and activities. EPA is using this roadmap as it works with tribes who are interested in obtaining the ability to implement and maintain federal environmental programs (i.e., “treatment in a similar manner as a state” or “TAS”). If and when a tribe implements and maintains a federal program, the tribe is held to the same standard as EPA. At the same time that EPA is working with tribes to build their capacity to implement federal programs, the Agency is using Plan EJ 2014 to guide our direct implementation activities in Indian country where tribes have not obtained, or are unable to obtain, TAS. This means that EPA is working to fully protect the health in communities overburdened by pollution, to empower communities to take action to improve their health and environment, and to establish partnerships with tribal and indigenous organizations to achieve healthy and sustainable communities.</p>



## Plan EJ 2014: EPA's Response to Tribal Consultation and Coordination Comments

16	<p>Hundreds of tribes have to compete for the same funding, but they all have the same needs. For example, states have a revolving loan fund for Section 106 funding, but tribes have to compete with each other for the 106 funding. EJ should look at how EPA can achieve equal dissemination of resources so tribes can all develop these resources.</p>	<p>EPA's funding for tribes has been on a steady increase over the past several years. It is EPA's intention to continue to support the development of tribal environmental programs to the extent possible. Each EPA media office awards grants based on the amount of funding available from Congress along with requirements dictated by their respective statute. As the Agency develops its General Assistance Program (GAP) Guidebook, opportunities for supporting the tribes with the greatest needs are being considered. EPA's American Indian Environmental Office and Office of Environmental Justice are working together to identify how to best work with tribes to address their environmental justice concerns.</p>
17	<p>On permitting: When there is a wastewater treatment plant that discharges directly into tribal waters, when does the trust responsibility kick in? Before the permit is issued or during the expansion plans? Tribes are treated like a citizen and we can only comment like a public citizen, but monies have gone out already. The permitting process needs to allow earlier engagement and meaningful involvement with tribes.</p>	<p>The EJ in Permitting work group is looking at ways to give guidance on consultation and improve collaboration, including understanding the needs of new facilities before the permit is requested or issued and before the expansion occurs. The Agency wants to bring in the voice of the impacted community, and tribes, before the application phase.</p>
18	<p>Permit and compliance is done on a top-down model. When it comes to the regions, it might be different from one wing of the EPA building to the other. I understand confidentiality (ex. on how penalties are derived) on the administrative level, but that's not the government-to-government level. Contamination on our land—tribes should know how the decision was arrived at.</p>	<p>EPA works diligently to communicate with affected tribes, communities, and the public about civil enforcement actions that may affect them. EPA recognizes that tribes and communities have a legitimate need to be informed of and to understand the federal government's civil enforcement activities to protect their environment, and to have their voices heard in the determination of appropriate resolutions for civil violations of federal environmental laws that affect them. As EPA implements Plan EJ 2014, the Agency commits to tribal consultation and outreach to communities and to provide more information about environmental problems caused by failure to comply with federal environmental laws, our efforts to address those problems, and available civil judicial and administrative solutions to those problems that can address the tribes' and communities' concerns and needs. At the same time, it is important for tribes and communities to understand the legitimate and essential need to protect the confidentiality of enforcement activity when a case is under development and in settlement negotiations. This is essential to assure that effective enforcement, and its ultimate benefits for tribes and communities, will not be undermined and</p>

## Plan EJ 2014: EPA's Response to Tribal Consultation and Coordination Comments

		adversely affected by premature disclosure of confidential enforcement information. While this consideration will necessarily limit the amount and kind of information that EPA is able to share with a tribe or community at various stages of enforcement activity, the Agency is committed to sharing as much information as possible to enable tribes and communities to be informed and have their voices heard in the determination of appropriate resolutions for civil violations of federal environmental laws that affect them.
19	On communication of permits: For example, when a permit goes through a state agency for state lands and the State Game and Fish Department investigated, none of this information went back through the tribe. State-tribal relations, EPA-state relations, and EPA-tribal relations have cracks. From an EJ perspective tribes are vulnerable.	EPA appreciates this comment. EPA's Policy on Consultation and Coordination with Indian Tribes ( <a href="http://www.epa.gov/tp/consultation/consult-policy.htm">http://www.epa.gov/tp/consultation/consult-policy.htm</a> ) establishes clear standards for when and how EPA should consult with tribal governments, such as when EPA issues a permit that will affect tribes. The NEJAC/Indigenous People Work Group has been tasked with providing advice and recommendations on addressing tribal and indigenous EJ issues. The EPA Tribal and Indigenous Peoples Environmental Justice Workgroup is developing guiding principles on addressing tribal and indigenous EJ issues.
20	On enforcement: If EPA doesn't have someone in New Mexico to enforce, they're going to rely on the state of New Mexico, who has little or less interest in investigating tribal issues. When the state is involved, communication breaks down. Tribes don't know what's going on between the state and EPA. Tribes don't have the resources to do a full-blown investigation ourselves. The processes in place do not work. There's a trust responsibility, but EPA is programmatically delegating stuff to the states. Tribes need to fill the voids (inspectors, monitoring situations, building capacity), but it all comes back to communication. Consultation needs to happen early, not after contamination.	EPA's commitment to expand the conversation on environmentalism includes efforts to further engage all interested and affected parties to better ensure open dialogue among the parties. The desire is to encourage communication early and as often as practicable. EPA directly implements federal programs in Indian country unless and until a tribe seeks and obtains program approval. Thus, in the absence of an approved tribal program, EPA conducts inspections and pursues enforcement of federal environmental laws in Indian country. With rare exceptions, EPA neither approves nor relies on states, such as New Mexico, to enforce federal programs in Indian country. As indicated in the prior comment, when EPA is inspecting or enforcing in Indian country, EPA engages in appropriate consultation with tribal governments to protect the confidentiality of enforcement activity when a case is under development and in settlement negotiations.
21	EPA's Tribal Consultation Policy says that tribes have asked to be consulted upon every action that EPA takes, but that only addresses over-arching national issues. However, the issues we care about are generally on the regional level, not national, and we would like to be	Pursuant to the EPA Policy on Consultation and Coordination with Indian Tribes (Consultation Policy, May 4, 2010), the Agency "consult[s] on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests. Consultation is a process of meaningful communication and coordination between EPA and tribal

## Plan EJ 2014: EPA’s Response to Tribal Consultation and Coordination Comments

	<p>consulted on those. Example: GAP Online.</p>	<p>officials prior to EPA taking actions or implementing decisions that may affect tribes.” The Consultation Policy establishes national guidelines for consultation across EPA. EPA program and regional offices have the primary responsibility for consulting with tribes on activities for which they have the lead. Thus EPA regions consult with tribes on individual or region-specific activities as they arise.</p>
<p>22</p>	<p>EPA needs to take into consideration the cultural value of a stream (or any other body of water). More severe punishments are warranted for polluting culturally significant streams. Given that there’s a drought on top of the cultural significance of streams here, each drop of water is so important. What’s the feasibility of developing something like “the waters of tribe X?” Since tribes are sovereign, if tribes decide to declare something as an important water body, will the federal government adapt/respect it?</p>	<p>EPA is working to clarify the scope of waters protected by the Clean Water Act after recent U.S. Supreme court decisions. We understand that many culturally significant waters do not flow all the time and, as a result, are working within the confines of the Act and court decisions to develop a policy that protects all tributaries, including intermittent and ephemeral waters. An important Clean Water Act provision that helps to protect culturally significant waters on Tribal lands is Section 401 water quality certification. Under Section 401, all federal permits or licenses on waters of the US need certification that they would be consistent with CWA provisions and state/tribal law. Tribes with treatment in a similar manner as a state (TAS) status can condition their 401 certification (e.g., Section 401 of the CWA, regarding applicants for a federal license or permit which may result in any discharge into a navigable water) and the resulting permit or license so that culturally important waters are protected. Alternatively, tribes with TAS may deny certification, which prohibits the issuance of the federal permit or license. Where tribes do not have TAS status, EPA Regional offices certify on the Tribe’s behalf. The Office of Water has provided training to tribes on developing tribal Water Quality Standards, and the use of Section 401, as part of Tribal Water Quality Standards Academies.</p>
<p>23</p>	<p>On state versus tribal: I know EPA cannot deal with this, but states forget that crossing into borders means it’s not state land or property but tribal land. When industries pollute, they’re dumping into international waters.</p>	<p>Under Section 402 of the Clean Water Act, which governs the National Pollutant Discharge Elimination system (NPDES), any industry with a point source discharge of pollutants into waters of the United States must obtain a NPDES permit from EPA or an authorized state, territory or tribe. If EPA has found a tribe eligible for federal treatment in a similar manner as a state status and approved a tribe’s Water Quality Standards (WQS), then the Tribal WQS would be applied in the NPDES permit at the state/tribal boundary, if the discharge is upstream of Indian country. See 40 CFR 122.4(d) and 122.44(d). If the location of the discharge is in Indian country, EPA or the tribe would be the permitting authority.</p>

## Plan EJ 2014: EPA's Response to Tribal Consultation and Coordination Comments

24	<p>On Plan EJ 2014's Site Tools Development: It would be helpful to include impacts on resources due to natural disasters, climate change (Gulf Coast, hurricanes, fires). EPA will not be able to provide answers or solutions, but these factors are important to consider.</p>	<p>EPA understands the necessity of looking at impacts of natural disasters on environmental management and protection resources. Recently, EPA commented on a National Environmental Policy Act (NEPA) review to make sure agencies consult with tribes on emergency response. EPA is actively involved in the federal Interagency Climate Change Adaptation Task Force, co-chaired by the White House Council on Environmental Quality (CEQ), with representatives from more than 20 Federal agencies. In addition, EPA is developing its own Climate Change Adaptation Plan (Plan), and initiated consultation and coordination with federally- recognized tribes on the development of the Agency's Plan. This Plan is designed to guide the Agency's efforts to integrate climate change adaptation planning into its programs, policies, rules, and operations to ensure they are effective as climate changes. These efforts will extend to environmental protection programs mandated under federal statutes implemented by tribes and states that have obtained EPA approval or authorization.</p>
25	<p>Sister agencies should be here as part of the consultation (Department of the Interior, Water Resources and Management).</p>	<p>EPA frequently engages the Bureau of Indian Affairs, the Indian Health Service, the National Indian Gaming Commission, the Department of Justice, and other federal agencies on issues that potentially impact Indian country. EPA does acknowledge, however, that consultation on interagency actions may not have been well-coordinated in the past. EPA continues to search for opportunities to improve interaction with other federal agencies on tribal issues. As other federal agencies also develop formal procedures to consult per President Obama's Memorandum and Executive Order 13175, the opportunities to better coordinate should increase.</p>
26	<p>Comment to other tribes: If your land is in trust, it is in title or ownership to the tribe—not the state or federal government. In issues of effluent down a stream—our tribe has sued the city of Grants. There are processes in place to initiate some of these actions. You can enter into a Memorandum of Agreement with state departments and utilize those resources.</p>	<p>EPA has no response or comment.</p>
27	<p>Comment to other tribes: On permitting, there is a process. Most tribes here have their own WQS, so whatever is ratified by the Tribal Council stands. Develop your</p>	<p>EPA agrees with this comment. EPA's Policy on Consultation and Coordination with Indian Tribes (<a href="http://www.epa.gov/tp/consultation/consult-policy.htm">http://www.epa.gov/tp/consultation/consult-policy.htm</a>) establishes clear standards for consulting with tribal</p>

## Plan EJ 2014: EPA’s Response to Tribal Consultation and Coordination Comments

	own environmental capacity. The regulatory provision does provide assistance for better implementation or processes, initiating the government-to-government relationship. It’s important to go through that process.	governments when actions, such as permits, may affect tribal interests.
28	Communication starts at tribal leadership. In turn tribes work through departments to communicate those efforts. Continue to maintain that dialogue across the board. There should be a standard uniform protocol for consultation. One agency’s protocol should not be different from another.	EPA’s Policy on Tribal Consultation and Coordination with Indian Tribes establishes a framework to consult on a government-to-government basis with federally recognized tribal governments when “EPA actions and decisions may affect tribal interests.” Consultation is a process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes. The Consultation Policy establishes national guidelines for consultation across EPA. EPA program and regional offices have the primary responsibility for consulting with tribes. The Consultation Policy seeks to strike a balance between providing sufficient guidance for purposes of achieving consistency and predictability and allowing for, and encouraging, the tailoring of consultation approaches to reflect the circumstances of each consultation situation. Each executive department of the federal government has been directed to develop a detailed plan of action to implement Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments.” When EPA issues involve other federal agencies, EPA carries out its consultation responsibilities jointly with those other agencies, where appropriate.
29	Are there Native Americans or tribal members/leadership on the work groups/committees that are establishing the various strategies? Please include a program person from Pueblo country. Your programs and policies are affecting litigation on water, etc. Make sure you consider these issues.	Each federal agency is developing environmental justice strategies. Plan EJ 2014 is EPA’s strategy. Drafts of EPA’s strategy were informed by tribal input. Recently the EPA has formed two work groups to look at how EPA can work with tribes and indigenous populations when issues of environmental justice arise. The Tribal/Indigenous Peoples Work Group is an internal work group consisting of EPA staff who will draft guiding principles/policy on protocols for how the Agency can respond to these issues. The work group is consulting with tribes and communicating with other stakeholders to obtain their input. The Indigenous Peoples Work Group is a work group under the National Environmental Justice Advisory Council (NEJAC) that will advise the NEJAC on recommendations to the EPA on these issues.
30	This is consultation on issues that might	The U.S. government has a unique legal relationship with

## Plan EJ 2014: EPA's Response to Tribal Consultation and Coordination Comments

<p>affect Indian country. But everything EPA does affects Indian country because this whole country was taken from Indians.</p>	<p>federally recognized tribes (tribes). This relationship recognizes tribes as sovereign governments and recognizes the federal government's trust responsibility to tribes. The <i>EPA Policy for the Administration of Environmental Programs on Indian Reservations</i>, November 8, 1984, (EPA's 1984 Indian Policy) sets out a number of principles for how EPA works with tribes as co-regulators and how the Agency gives special consideration to tribes in making policies that may affect their interests. These principles include honoring a direct government-to-government relationship with tribes and consulting with tribal governments before making decisions that may affect them. Executive Order (EO) 13175, "Consultation and Coordination with Indian Tribal Governments," was issued to provide federal agencies specific guidelines on consultation with tribal governments for certain actions. One of the goals of the "EPA Policy on Consultation and Coordination with Indian Tribes" is to fully implement the EO and certain aspects of EPA's 1984 Indian Policy.</p>
---	--

## Plan EJ 2014: EPA’s Response to Tribal Consultation and Coordination Comments

31	<p>Remember that there is a difference between consulting with a tribal government and speaking with a tribal representative. You have two separate issues.</p>	<p>EPA considers work it does with tribal governments as a separate programmatic effort from environmental justice. EPA’s American Indian Environmental Office in the Office of International and Tribal Affairs has the mission to lead EPA efforts to protect human health and the environment of federally recognized tribes by supporting the implementation of federal environmental laws consistent with the federal trust responsibility. EPA’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. EPA is structurally organized so that work focusing on tribal communities, rather than tribal governments, is lead by EPA’s Office of Environmental Justice. Executive Order 12898 directs each Federal Agency to making achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations, including tribal populations.</p> <p>The Tribal and Indigenous Peoples Environmental Justice Work Group is an internal Agency group created to address the unique challenges of implementing the Agency’s EJ priorities in Indian country as directed under EO 12898.</p>
32	<p>Tribes are caught in the middle between trust responsibility and environmental justice. Tribes are burdened with keeping track of everything going on at EPA. I’d like to thank tribal leadership for not holding us accountable for implementing the [consultation] processes that should be happening at the government-to-government level. I feel like I’m letting tribal leadership down when that doesn’t happen.</p>	<p>We recognize the additional work placed on tribes as an outcome of all federal agencies complying with Executive Order 13175. To assist tribes, EPA has established a Tribal Consultation Opportunity Tracking System that allows tribes and other interested parties to view all its ongoing or planned consultation activities via the internet and to access all consultation-related materials in one centralized location. Other agencies are considering developing similar systems. In addition, over time EPA’s regional offices have developed a relationship with the tribes in their regions and work with them to identify what issues are most important for consultation.</p>

## Plan EJ 2014: EPA's Response to Tribal Consultation and Coordination Comments

33	<p>Comment to tribes: When President Clinton wrote the executive orders, there's one called 12866, Regulatory Planning and Review. Identify barriers, do an assessment. Include them in your strategic plan. It works as a valuable tool that people don't know about.</p>	<p>Information on Executive Order (EO) 12866 is available on EPA's website at <a href="http://www.epa.gov/lawsregs/laws/eo12866.html">http://www.epa.gov/lawsregs/laws/eo12866.html</a>. Section 1 of the EO makes reference to the relationship between federal agencies and tribes when developing regulatory actions, and a list of such actions currently under review by the Office of Management and Budget is available at <a href="http://www.reginfo.gov/public/do/eoPackageMain">http://www.reginfo.gov/public/do/eoPackageMain</a>. Executive Order 12866 also established planning mechanisms for the Unified Regulatory Agenda and the Regulatory Plan. The most current versions of those documents are available at <a href="http://www.reginfo.gov/public/do/eAgendaMain">http://www.reginfo.gov/public/do/eAgendaMain</a> or at <a href="http://www.epa.gov/lawsregs/regulations/regagenda.html">http://www.epa.gov/lawsregs/regulations/regagenda.html</a>.</p>
----	--	---