



NEW MEXICO ENVIRONMENT DEPARTMENT

Office of the Secretary

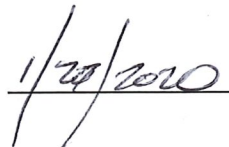
POLICY AND PROCEDURE 07-16

- SUBJECT:** Tribal Consultation and Collaboration
- PURPOSE:** Promote effective communication and collaboration between the New Mexico Environment Department (NMED) and Indian nations, tribes, or pueblos; promote positive government-to-government relations between NMED and Indian nations, tribes, or pueblos; promote cultural competency in providing effective services to American Indians or Alaska Natives; and to notify NMED employees of the provisions of the State-Tribal Collaboration Act and this policy.
- APPLICABILITY:** All NMED employees
- POLICY:** NMED's policy is to work with tribal governments to create a positive government-to-government relationship and to promote effective communication and collaboration.
- REFERENCES:** State-Tribal Collaboration Act, NMSA 1978, § 11-18-1 *et seq.*
- PROCEDURES:**
1. Background
 2. Definitions
 3. Principles
 4. Tribal Liaison
 5. Procedures
 6. Limitations
 7. Approval

APPROVAL:


James C. Kenney
Cabinet Secretary

DATE:


1/20/2010

1. BACKGROUND.

1.1 This Tribal Consultation and Collaboration Policy (“Policy”) continues the Department’s commitment to recognize and respect tribal sovereignty and respect the principles of government-to-government relationships and to promote coordinated collaboration.

1.2 This Policy establishes a framework to jointly address issues of concern and to establish a meaningful consultation process with Indian nations, tribes and pueblos.

1.3 This Policy applies to all federally recognized Indian nations, tribes and pueblos with traditional use or occupancy in New Mexico.

2. DEFINITIONS.

2.1 “American Indian or Alaska Native” means: (1) individuals who are members of any federally recognized Indian tribe, nation, or pueblo; (2) individuals who would meet the definition of “Indian” pursuant to 18 U.S.C. 1153; or (3) individuals who have been deemed eligible for services and programs provided to American Indians and Alaska Natives by the United States Public Health Service, the United States Department of the Interior, Bureau of Indian Affairs, or other federal programs.

2.2 “Collaboration” means a process in which two or more parties work together to achieve a common goal. Collaboration may occur between state and tribal governments and their respective agencies and may involve other Indian organizations if needed. Collaboration may include working with NMED on matters such as workshops and trainings, or sharing information in forums designed to aid communication.

2.3 “Consultation” means the process of government-to-government dialogue between NMED and tribal governments regarding NMED’s programmatic actions or proposed actions that affect or may affect the tribal government’s interest, to resolve concerns.

2.4 “Communication” means verbal or written interactions between governments.

2.5 “Indian nation, tribe, or pueblo” means any federally recognized Indian nation, tribe, or pueblo located wholly or partially in New Mexico.

2.6 “Programmatic action” means any NMED rulemaking, policy, guidance, grant funding changes, or operational activity that may have a direct effect on an Indian nation, tribe, or pueblo including, but not limited to: 1) tribal cultural practices, lands, resources, or access to traditional areas of cultural or religious importance; 2) the ability of an Indian nation, tribe, or pueblo to govern or provide services to its members; and 3) any action that impacts an Indian nation, tribe, or pueblo’s relationship with NMED.

2.7 “Tribal government” means the governing structure of a sovereign, federally recognized tribe, pueblo, band, or nation within the United States.

2.8 “Tribal liaison” means the NMED employee designated by the Secretary to serve as a contact person for matters pertaining to tribal government consultation and communication.

3. PRINCIPLES.

3.1 The state and tribal governments are sovereign governments.

3.2 Tribal governments are unique, and each has its own governmental structure, process, and protocols. To maintain government-to-government relationships, NMED shall work with tribal governments to develop mutually acceptable protocols for consultation and collaboration.

3.3 Some tribal governments claim locations within New Mexico as traditional use or occupancy and therefore hold significant concerns related to the lands and resources under NMED’s jurisdiction even though located out of New Mexico. As resources allow and as practicable, NMED shall endeavor to communicate with those tribal governments with interests in New Mexico.

3.4 NMED shall work in good faith with tribal governments to address and seek to mutually resolve expressed tribal government interests and concerns.

3.5 Meaningful collaboration and consultation require direct two-way communication and effort to respond to requests in a timely manner. Communication, consultation, and collaboration with tribal governments is a fundamental principle of all NMED operations and actions.

4. TRIBAL LIAISON. The NMED tribal liaison shall report directly to the Secretary or designee and assist NMED with:

4.1 ensuring implementation of this policy;

4.2 serving as a contact person who shall maintain ongoing communication between NMED and Indian nations, tribes, or pueblos;

4.3 ensuring that NMED staff take training as specified in NMSA 1978, § 11-18-4(B);

4.4 contacting the tribal environmental directors for all Indian nations, tribes, or pueblos in New Mexico at least annually to ensure reliable and prompt communication;

4.5 contacting tribal historic preservation officers for all federally recognized Indian tribes with traditional use or occupancy in New Mexico, at least annually to ensure timely and effective notifications of consultation;

4.6 providing NMED staff the Indian Affairs Department contacts for the leadership of Indian nations, tribes, and pueblos;

4.7 providing logistical support and meeting facilitation or training to NMED staff and Indian nations, tribes, and pueblos in accordance with a consultation request or other collaborative forum; and

4.8 compiling an annual report meeting the requirements of the State-Tribal Collaboration Act for submission by the Secretary or designee no later than July 31 of every year to the Indian Affairs Department.

5. PROCEDURES FOR CONSULTATION AND COLLABORATION.

5.1 *Consultation* consists of Identification, Notification, Engagement and Follow-up Communication and may be requested by tribal officials (governor, president or chairperson) or NMED’s secretary or designee. NMED shall initiate or respond considering the timelines of an agency action, available resources, past consultation efforts and all other relevant information.

5.1.1 *Identification:* NMED shall consult with tribal governments upon written request for consultation by one or more tribal governments to NMED or by written invitation for consultation by NMED to one or more tribal governments. Either NMED or tribal government officials shall identify programmatic actions as early as possible to give enough time for meaningful consultation. Each time a programmatic action requires compliance with this policy, employees shall notify the tribal liaison and the Office of the Secretary.

5.1.2 *Notification Initiating Consultation:* Written notification of consultation or invitation to consult shall be transmitted by US Mail or electronic mail and shall:

5.1.2.1 be timely;

5.1.2.2 identify the proposed programmatic action to be consulted upon and provide relevant information regarding the action;

5.1.2.3 identify the representatives authorized to consult on behalf of NMED and request names for authorized representatives from the tribal government; and

5.1.2.4 identify the preferred methods of communication.

5.1.3 *Engagement:* Tribal governments shall have the opportunity to provide information and be included in and make recommendations on the proposed programmatic actions to NMED officials responsible for the final action.

5.1.3.1 *Final Decision Making:* The NMED tribal liaison and the consulting tribal government or governments shall develop a timeframe for consultation between NMED and tribal governments on NMED’s proposed programmatic

actions to include a date by which NMED plans to make a final decision as to how to proceed with the proposed action.

5.1.3.2 Representation at Consultation: Government-to-government consultation shall be between tribal and NMED government officials; face-to-face meetings are preferred for consultation. While NMED employees are encouraged to maintain regular communication and cooperation with tribal governments, official consultation occurs through the Office of the Secretary.

5.1.3.3 Location: Consultation meetings may be held wherever practical, including tribal government locations.

5.1.3.4 Scope: NMED shall maintain compliance with all applicable state and federal laws.

5.1.3.5 Confidentiality: Successful consultation is dependent upon NMED protecting confidential information provided by tribal governments to the extent allowed by applicable federal and state laws, including the New Mexico Public Records Act, and the Inspection of Public Records Act. NMED will protect and exhibit a high degree of respect and sensitivity regarding the confidential information provided by tribal governments and will ensure confidentiality whenever possible.

5.1.4 Follow-up Communication: NMED shall inform tribal governments of final agency actions that were subject to consultation.

5.2 Collaborations such as workshops and trainings or forums designed to aid communication in preparation for rulemakings or legislative actions may be requested by tribal officials (governor, president or chairperson), tribal organizations or coalitions (All Pueblo Council of Governors or Eight Northern Indian Pueblo Council) or NMED’s Secretary, Tribal Liaison, or NMED staff. NMED shall initiate or respond, and work to convene or create a space to foster collaborative communications.

6. LIMITATIONS.

6.1 This policy creates no benefit, substantive or procedural right, or entitlement, enforceable by law, for any tribal government or tribal official, and state government or state official.

6.2 This policy shall not diminish any administrative or legal remedy otherwise available by law to NMED or a tribal government.

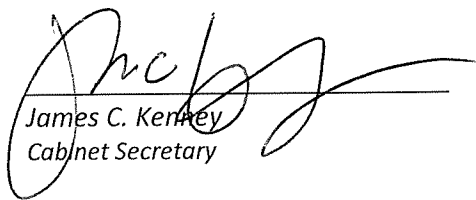
6.3 This policy shall not be construed to waive the sovereign immunity of the State of New Mexico or a tribal government, or to create a right of action by or against the State of New Mexico or tribal government or its officials for failure to comply with this policy.

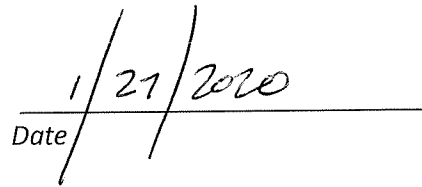
6.4 This policy does not prevent NMED and any tribal government from entering into Memoranda of Understanding, Intergovernmental Agreements, Joint Powers Agreements, or established administrative procedures and practices mandated by federal, state, or tribal laws or rules or regulations.

6.5 NMED retains the final decision-making authority with respect to actions undertaken by NMED. [NMSA 1978, §11-18-5]

7. APPROVAL.

Approved by:


James C. Kenney
Cabinet Secretary


Date