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	Tribal Consultation and Collaboration	Policy No. 0101.2022 Effective: 05/01/2022

This Substantive Policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

1.0 Purpose

Pursuant to A.R.S. § 41-1001(22), "substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. The clarification provided in this substantive policy statement has been determined by ADEQ to meet applicable state and federal law and, therefore, ADEQ provides this substantive policy to assist persons in interpreting rules pertinent to ADEQ. Notwithstanding this substantive policy statement, ADEQ may consider alternative approaches to comply with applicable law.

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. The Arizona Department of Environmental Quality ("ADEQ") is charged with preserving, protecting and enhancing the environment and the public health of the citizens/residents of the State of Arizona. ADEQ operates in accordance with its authority and limitations under Title 49 with a critical mission to Protect and Enhance Public Health and the Environment. The Bureau of Indian Affairs at the U.S. Department of Interior recognizes 22 Tribal governments located within the State of Arizona that have jurisdiction over approximately 28% of the land base in the State of Arizona. ADEQ is committed to developing cooperative relationships and mutual trust and understanding with Tribes.

2.0 **Definitions**

Tribal Land – For the purposes of this policy, ADEQ will use the federal government’s definition of Indian Country, which is: “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” 18 U.S.C.A. § 1151.

Tribes or Tribal Governments – For the purposes of this policy, Tribes or Tribal governments refers to the 22 federally recognized Native Nations, Tribal Governments, and Tribal Communities located within the boundaries of the State of Arizona. Refer to Appendix A for the list of federally recognized Tribes located in the State of Arizona.

3.0 **Policy Statement**

ADEQ will work with Tribes to improve State-Tribal interactions, enhance communications and resolve problems as they arise. ADEQ will maintain a Tribal Liaison to serve as the main point of contact for initiating communication, providing training opportunities, and coordinating with each Tribe to establish preferred methods of communication and identify the appropriate Tribal contacts. When possible, meetings will be held within Tribal communities.

ADEQ supports the strengthening of Tribal capacity for environmental management, regulation, and compliance assistance. ADEQ’s support will not be used as the basis for assertion of State authority within Indian Country. In turn, ADEQ recognizes the value of Tribal traditional knowledge.

3.1 **Recognition and Respect of Sovereignty and Jurisdiction:** ADEQ recognizes the sovereignty of Tribal governments and their jurisdiction over Indian Country. ADEQ will not assert authority over Indian Country.

ADEQ will not conduct any activities within Indian Country or attempt to represent the interests of Arizona Tribes without first receiving a written invitation from the appropriate Tribal official.

3.2 **Federal Government:** ADEQ recognizes that the federal government has the primary responsibility for assisting Tribes to regulate and manage the environment within Indian Country. Without Tribal consent, ADEQ will not solicit and assert no claim to U.S. Environmental Protection Agency (“EPA”) resources that would otherwise be provided directly to Tribes.

When ADEQ becomes aware of EPA funds that may be available for Tribes, ADEQ will notify the Tribes and offer to work cooperatively so that the Tribes may gain access to the funds.

- 3.3 **Capacity Development:** ADEQ will assist Tribes in developing environmental programs by providing technical assistance, sharing data, participating in joint Tribal-State projects, and cooperatively resolving environmental issues to the extent resources allow. ADEQ staff will relay Tribal issues, including requests from Tribes for technical assistance, to the appropriate division director(s) and Tribal Liaison as quickly as possible.

ADEQ supports the strengthening of Tribal capacity for environmental management, regulation, and compliance assistance. Upon request of a Tribe, ADEQ will open its training programs to Tribes when appropriate and as resources allow.

- 3.4 **Consultation:** Consultation is a formal, unique, and enhanced form of government-to-government communication to enable meaningful and timely discussion with Tribal Governments and which emphasizes trust and respect and does not involve matters or issues in litigation.

ADEQ will work in good faith with each Tribe to ensure Consultation is a shared responsibility that allows the parties to exchange, in an open and free manner, timely and accurate information and opinions for the purpose of mutual understanding. ADEQ is committed to collaborating with each Tribe to develop a consultation procedure that will meet its unique needs (to be contained in Appendix B). If ADEQ has not received specific consultation procedures from a Tribe, it will follow the procedures in the Consultation Toolkit maintained by the Arizona State Historic Preservation Office. At a minimum, ADEQ will consult Tribes during the development of:

- Regulations, policies, programs;
- New air quality permits/registrations and permit revisions with significant emission increases (as defined in state law) that are within a defined distance of Tribal boundaries (100 kilometers for New Source Review projects, 50 kilometers for other permits and 25 kilometers for registrations);
- Water quality individual Arizona Pollutant Discharge Elimination System permits, individual Aquifer Protection permits, individual reclaimed water permits, and reissuance and amended permits, and;
- Coal Combustion Residuals (CCR) and Hazardous Waste TSD permitting
- Matters that will, or are reasonably believed to, have the potential to affect federally recognized Tribes.

ADEQ will maintain and manage the following to ensure efficient Tribal engagement with each Tribe:

- Updated contact information and communication preferences;

- Geographic areas of importance or particular agency actions of interest; and
- ADEQ standard work to ensure policies and procedures are maintained.

3.5 **Communication:** ADEQ is committed to engaging with each Tribe through other means of communication, such as collaboration, cooperation, and coordination, e.g., grant opportunities and information sharing not related to Section 3.4 of this policy. However, ADEQ recognizes that these forms of communication do not take the place of formal consultation.

3.6 **Cultural Sensitivity:** To effectively work in cross-cultural communication environments, ADEQ will participate in professional development and the Governor's Office presentation regarding Introduction on Tribal Relations for building knowledge awareness, and will expand personal knowledge on norms and values in cross-cultural situations. ADEQ has learned by experience that relationship building is enhanced when the time and effort is made to learn about the traditions and histories of each tribal nation. ADEQ will also establish procedures to ensure that staff are provided with other support necessary to work within tribal communities.

4.0 **Authority**

A.R.S. § 41-2051, Governor's office on Tribal relations; director; responsibilities of state agencies; report

A.R.S. Title 49, The Environment

5.0 **Audience**

ADEQ Employees

Tribes in Arizona

6.0 **Policy Steward**

ADEQ Tribal Liaison

7.0 **Communication & Training**

This substantive policy will be noticed in accordance with A.R.S. § 41-1091. ADEQ will make this policy available on its external website. The Tribal Liaison will coordinate with Division Directors to designate staff who should be trained on this policy. The Tribal Liaison will ensure that those staff are trained on the policy.

8.0 **Annual Policy Review**

On or before October 1 of each year, the Tribal Liaison will review this substantive policy and submit a progress report in accordance with A.R.S. § 41-2051(C)(5).

9.0 Additional Documents

Each Tribal Nation is encouraged to provide any input or documentation that will help in the development of cooperative relationships and mutual trust and understanding.

10.0 Approved by:

Title	Name	Signature	Date
ADEQ Director	Misael Cabrera		Jun 22, 2022
Affected Executive Leadership Team Members	Daniel Czecholinski		Apr 25, 2022
	Trevor Baggioire		Apr 28, 2022
	Laura Malone		Apr 29, 2022
	Amanda Stone		May 3, 2022
Administrative Counsel, as to form	Edwin Slade	 Edwin Slade (Jun 22, 2022 10:51 PDT)	Jun 22, 2022
Tribal Liaison	Len Drago		May 3, 2022

11.0 Historical Note

Date	Number, Name, and Issue Date of Previous Version	Replaces Listed Sections/Entire Document
April 22, 1994	0003.000 ADEQ TRIBAL GOVERNMENT POLICY	Original Policy approved by Management Team
May 9, 1997	0003.001	Amended
April 28, 2003	0003.001 ADEQ Tribal Government Policy	Amended to state ADEQ will not impose State environmental fees or taxes on non-Tribal activities within Indian Country reservation boundaries; response to objections to Hazardous Waste Management Fees assessed within Indian Country
December 8, 2021	0103.2017 ADEQ Tribal Government Policy	Updated the ADEQ Tribal Government Policy (0103.2017). for ELT review and approval
January 1, 2022	Tribal Consultation and Collaboration 0100.2022	Updated policy to contain a section on Consultation and other communication protocol
April 1, 2022	Tribal Consultation and Collaboration 0101.2022	Reissued policy with a list of permit types to be communicated to Tribes

Appendix A

Federally Recognized Tribes located within Arizona
1. Ak-Chin Indian Community
2. Cocopah Indian Tribe
3. Colorado River Indian Tribes
4. Fort McDowell Yavapai Nation
5. Fort Mojave Indian Tribe
6. Quechan Tribe
7. Gila River Indian Community
8. Havasupai Tribe
9. Hopi Tribe
10. Hualapai Tribe
11. Kaibab Band of Paiute Indians
12. Navajo Nation
13. Pascua Yaqui Tribe
14. Salt River Pima-Maricopa Indian Community
15. San Carlos Apache Tribe
16. San Juan Southern Paiute Tribe
17. Tohono O'odham Nation
18. Tonto Apache Tribe
19. White Mountain Apache Tribe
20. Yavapai-Apache Nation
21. Yavapai-Prescott Indian Tribe
22. Pueblo of Zuni

**Appendix B
Tribal Consultation Preferences
(Understood During Consultation)**

Federally Recognized Tribes located within Arizona
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21. Yavapai-Prescott Indian Tribe
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