

RESOLUTION NO. 1410

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE PUGET SOUND CLEAN AIR AGENCY ADOPTING AN INTERIM TRIBAL
CONSULTATION POLICY**

WHEREAS, the Board of Directors of the Puget Sound Clean Air Agency (Board) recognizes there are multiple Tribes within the Puget Sound Clean Air Agency's jurisdiction; and

WHEREAS, the Board understands that there are some decisions made by the Puget Sound Clean Air Agency (Agency) that Tribes may have an interest in and desires Agency staff to communicate with Tribes who are interested in certain decisions made by the Agency at times and in manners consistent with the Agency's obligations under the Washington Clean Air Act, ch. 70.94 (hereafter the "Act") and other applicable authorities; and

WHEREAS, the Act establishes the Agency as a municipal corporation and not a state agency and state consultation requirements applicable to the State of Washington or state agencies do not apply to and have not applied to the Agency as a municipal corporation; and

WHEREAS, as of the adoption of an Interim Policy pursuant to this Resolution, the Agency did not have a tribal consultation policy and there is no provision in the Act requiring such a policy; and

WHEREAS, the Board recognizes that any tribal consultation policy must be consistent with all legal requirements applicable to the Agency; and

WHEREAS, given the size of Agency staff and the volume of decisions made by the Agency the Board recognizes that consultation with a Tribe on every decision may not be feasible; and

WHEREAS, the Board recognizes that while it wishes the Agency to adopt a long-term policy for consultation, such a long-term policy should include conversations with Tribes who may be interested in the creation of a long-term policy and that before a long-term policy is considered and prepared, adoption of an interim policy is in the interest of the Agency; and

WHEREAS, the Board discussed the idea of an interim policy at its October and November 2019 meetings, and has heard and considered written and oral staff reports on this matter, and

WHEREAS, the Board deems it in the interest of the public health, safety, and welfare of the inhabitants of King, Pierce, Snohomish, and Kitsap Counties that the Agency begin implementation of an interim, prospective policy applicable to certain Agency decisions effective January 1, 2020, now, therefore:

[December 1, 2019,] BM

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PUGET
SOUND CLEAN AIR AGENCY:**

Section 1. The Board of Directors hereby approves and adopts Exhibit A to this Resolution: the Puget Sound Clean Air Agency's Interim Tribal Consultation Policy.

Dec. 1, 2019 *BR*

Section 2. Exhibit A is a prospective policy and shall be effective as of January 1, 2020 and shall be in effect until the Board of Directors adopts a long-term Tribal Consultation Policy or takes further action.

Section 3. Agency staff shall provide periodic updates to the Board of Directors regarding Exhibit A.

Section 4. The Board of Directors encourages staff to work with interested Tribes on the preparation of a long-term tribal consultation policy.

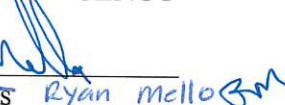
Section 5. Neither this Resolution nor Exhibit A is intended to, does not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person or entity, nor does it limit the lawful regulatory, litigative or administrative prerogatives of the Agency or any governmental entity. Neither this Resolution nor Exhibit A is intended to and does not limit or alter the jurisdiction or authority of the Agency.

PASSED AND APPROVED by the Board of Directors at a regular meeting of the Board this 21st day of November 2019.

PUGET SOUND CLEAN AIR AGENCY

By

 Paul Roberts
Vice-Chair, Board of Directors

 Ryan Mello

Attest:

By 
Craig T. Kenworthy

Executive Director

Approved as to form:

By 
Jennifer Dold
Agency Counsel

PUGET SOUND CLEAN AIR AGENCY INTERIM TRIBAL CONSULTATION POLICY

The Puget Sound Clean Air Agency (hereafter referred to as “the Agency”) has developed the following interim policy for consultation with Indian Tribes located with the Agency’s jurisdiction (King, Kitsap, Pierce, and Snohomish counties). This interim policy, subject to the approval by the Agency’s Board of Directors, would be in effect until further direction and action from the Board.

I. Policy Statement

The Agency’s Interim Policy is to consult on a government-to-government basis with the Indian Tribes when Agency decisions regarding certain Notice of Construction (NOC) air permit applications (defined below in §II(A)) which may directly affect tribal interests.

Consultation is a process of meaningful communication and coordination between the Agency and Tribal officials prior to the Agency taking final action on an application covered by this Interim Policy. 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 the Agency and Tribal governments.

This Policy establishes guidelines and institutional controls for consultation across the Agency 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.

II. Consultation Process

A. When Consultation Occurs

This consultation process begins with written notification from the Agency to Indian Tribes located with the Agency’s jurisdiction of the receipt of a Notice of Construction application that meets one of the following criteria:

1. Establishes a new air operating permit source or modifies an existing source to the extent the proposed project would lead to air operating permit applicability, as defined in Agency Regulation I, Section 7.01;
2. Establishes a new registered source that would be subject to the emission reporting thresholds identified in Agency Regulation I, Section 5.03(a)(3);

3. Modifies an existing emission reporting source subject to Regulation I, Section 5.03(a)(3) to increase the production capacity of that source;
4. Establishes a new registered source that meets any of the following equipment or activity descriptions:
 - Asphalt batch plants
 - Commercial composting with materials from offsite
 - Concrete batch plants
 - Iron or steel foundries
 - Rendering plants
 - Sewage treatment plants with odor control equipment
 - Shipyards
 - Steel mills; or
5. Modifies an existing source that meets the description in Criteria 4 above to increase the production capacity of that source or replaces the primary production equipment for that described operation.

The Agency will notify each Indian Tribe located within the Agency's jurisdiction of the proposal, as described below. If the Agency receives an NOC application that does not meet the criteria identified above, but may represent similar types and quantities of emissions, the Agency has the discretion to provide additional consultation opportunities to the Tribes in its jurisdiction.

B. How Consultation Occurs

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

1. **Identification** – The Agency will review each NOC application during the initial completeness review to identify whether it meets, or may meet, one of the criteria identified above. If it meets (or may meet) that criteria, the application will be deemed subject to the notification under this policy and communication will be initiated for the consultation opportunity.
2. **Notification** – The Agency notifies the Tribes of the intent to hold a consultation. The notification is sent to the Tribal Chairperson and the highest ranking environmental official (if that person has been identified) and should include: sufficient information for the Tribes to make informed decisions about participation; the date(s) by which the Agency is asking a Tribe to respond to a notification; and how to provide input to the Agency. Notification should occur in such a way to allow for meaningful input by the tribes.
3. **Input** – Tribes provide input to the Agency on the consultation matter. This can occur in a number of ways, including, but not limited to, meetings, written and oral exchanges of information, phone calls, or other ways depending on the specific circumstances and the methods that most readily support the

consultation communication. Subsequent rounds of consultation may need to take place in order to be responsive to Tribal needs, to provide sufficient opportunity to provide, receive, and discuss input, and as new issues arise.

4. **Follow-Up** – The Agency will work together with the consulting Tribes to create an administrative record of the consultation. The Agency 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 Agency will include any clarifications or corrections received from the Tribe in the final notes for the record. The final record will be completed by a written communication from an Agency manager involved in the consultation to the most senior Tribal Official from each Tribe involved in the consultation explaining how any Tribal input was or will be considered in the Agency’s decision.

5. **Additional Provisions**

- a) If a Tribe does not respond by the date provided in the notification described in § II(B)(2) above, the Agency will reach out to the Tribe, usually through a follow-up e-mail, letter or phone call to the tribal contacts. If there is still no response from a Tribe to the follow-up contact, this should be documented in the Agency’s file and would conclude the Agency’s efforts to initiate consultation for an application.
- b) Consultation communications typically will be informal (meaning between Tribal staff and Agency staff) unless a Tribe or the Agency believes that consultation regarding a specific topic is not productive. In this occurs, either a Tribal Chair (or their Designated Consultation Official) or the Agency Executive Director (or Director of Compliance) may provide a written request to the other party to the consultation that formal consultation occur at that higher level for a specific topic.
- c) A consulting Tribe(s) or the Agency may invite another party to the consultation with the agreement of the consulting parties.

III. **Limitations**

This Interim Policy is not intended to, and does not, limit or alter any jurisdiction or authority of the Agency or of any Tribe in the Agency’s jurisdiction.

This Interim Policy is not intended to, and does not create, any right to administrative or judicial review, or any other right or benefit or responsibility, substantive or procedural, enforceable against the Agency, or its Board of Directors or Advisory Council, or its employees. Nothing in this Interim Policy prohibits or limits the Agency from asserting

any rights or pursuing any administrative or judicial action under state or federal law to effectuate the interests of the Agency.

IV. Effective Date

This Interim Policy applies prospectively to NOC applications (to which this Interim Policy applies as identified above in §II A)) received by the Agency (including filing fee paid by an applicant) after ~~January 1, 2020~~. *December 1, 2019.*