

Minor New Source Review Air Permitting in Indian Country Tribe, Small Business and Industry Outreach



US Environmental Protection Agency (EPA)

Office of Air Quality Planning and Standards (OAQPS)

October 2024

Agenda

- Clean Air Act (CAA)
- Air Quality Management Process
- Air Quality Management Process Example: NAAQS Designation Process
- Tribal Consultation under the CAA

Clean Air Act

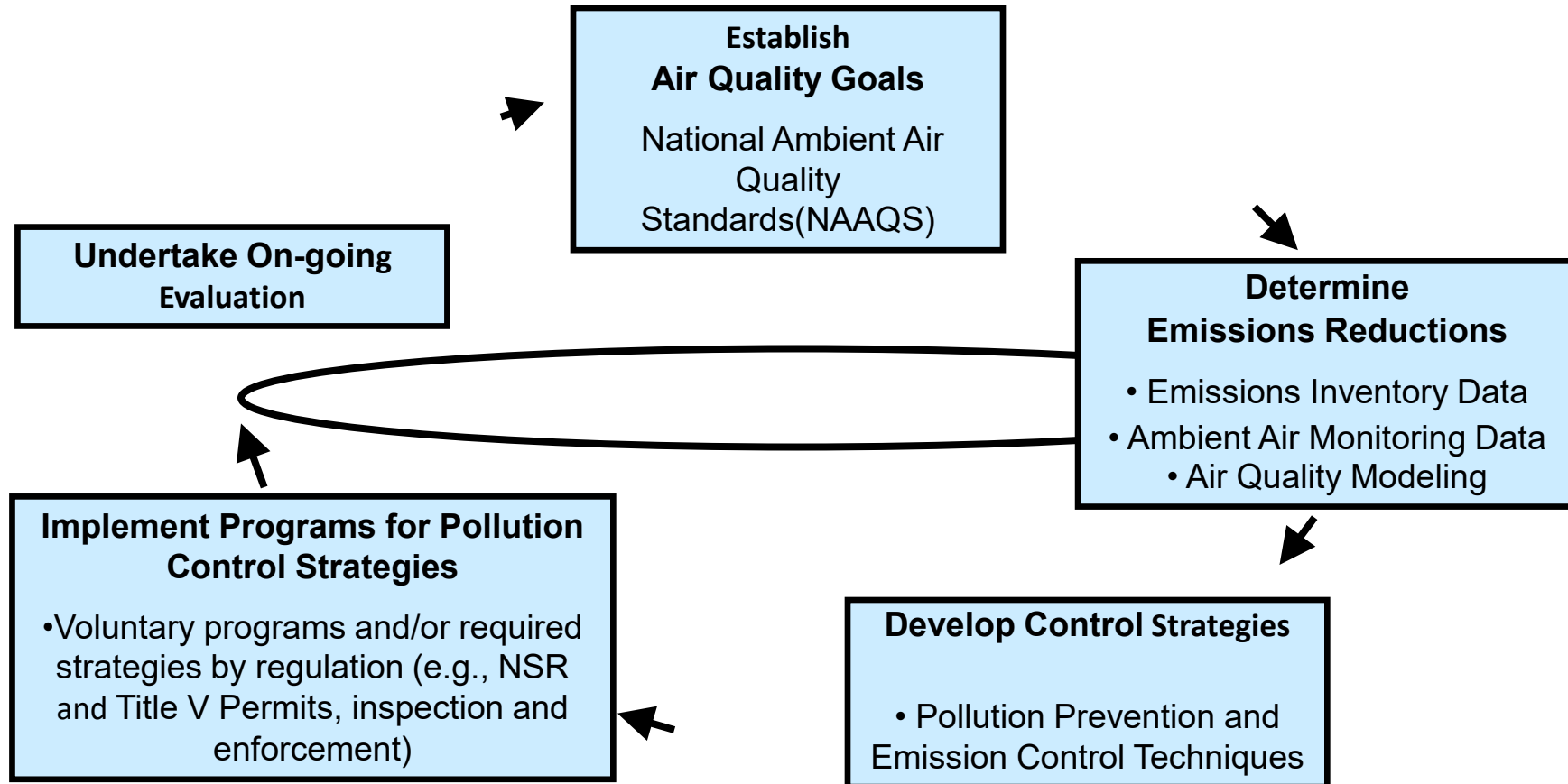
- The Clean Air Act (CAA) is the law that defines EPA's responsibilities for protecting and improving the nation's air quality and the stratospheric ozone layer.
- The 1990 CAA is the latest amendment to this Act.
 - This legislation modified and extended federal legal authority provided by the earlier CAAs of 1963 and 1970.
- The CAA can only be changed by Congress.
- EPA implements the requirements of the CAA through the development of regulations.
- Most current federal regulations for the entire federal government can be found online in the Code of Federal Regulations, <https://www.ecfr.gov/>.
 - 40 CFR Subchapter C – Air Programs
 - 40 CFR Part 49 - Indian Country: Air Quality Planning and Management.



<https://www.epa.gov/clean-air-act-overview/evolution-clean-air-act>



Air Quality Management Process under the CAA



CAA Air Quality Management Process (Cont.)

6

1. Establish Air Quality Goals

- Institution establishes goals related to air quality (e.g., acceptable level of a pollutant in the air to protect public health, including vulnerable populations).

2. Determine Emissions Reductions

- Collecting data to determine how much emission reductions are needed to achieve the goals.
- Data from emissions inventories, air monitoring, air quality modeling and other tools.

3. Develop Control Strategies

- Air quality managers consider how pollution prevention and emission control techniques can be applied to achieve the reductions needed to achieve the goals.
- The strategy could be to develop a voluntary program, a regulatory program or a combination of both.

CAA Air Quality Management Process (Cont.)

7

4. Implement Programs for Pollution Control Strategies

- Air quality managers implement voluntary and/or regulatory programs to lower air emissions.
- Voluntary Programs Examples:
 - *Center for Corporate Climate Leadership* – resource center for all companies looking to expand their Greenhouse Gas measurement and management work.
 - *Combined Heat and Power Partnership* – program to reduce the environmental impact of power generation by promoting the use of Combined Heat and Power (CHP).
- Regulatory Programs Examples:
 - *New Source Review (NSR) preconstruction air permitting* – legal documents that facility owners and operators must follow that specify what construction is allowed, air emissions limits that must be met and how the source must be operated to control air pollution.
 - *Title V operating air permits* – legal documents designed to improve compliance by clarifying what facilities must do to control air pollution.

5. Undertake On-going Evaluation

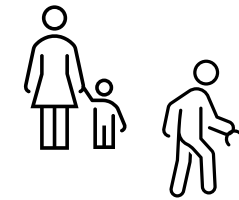
- To know if the air quality goals are being met.
- Begins air quality management cycle again if air quality goals need to be revisited.

Air Quality Management Process Example: The National Ambient Air Quality Standards (NAAQS)

- The EPA established *national airborne concentration values* known as the NAAQS for 6 “criteria pollutant(s):”
 - Ground-level ozone (O₃), Carbon Monoxide (CO), Particulate Matter (PM₁₀ and PM_{2.5}), Sulfur Dioxide (SO₂), Nitrogen Dioxide (NO₂) and Lead (Pb)
- Each NAAQS has a primary and secondary standard:

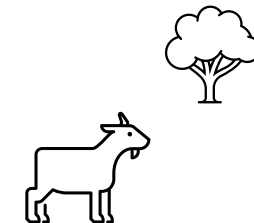
Public Health

“Primary” standards protect public health (including sensitive populations) with an adequate margin of safety



Public Welfare

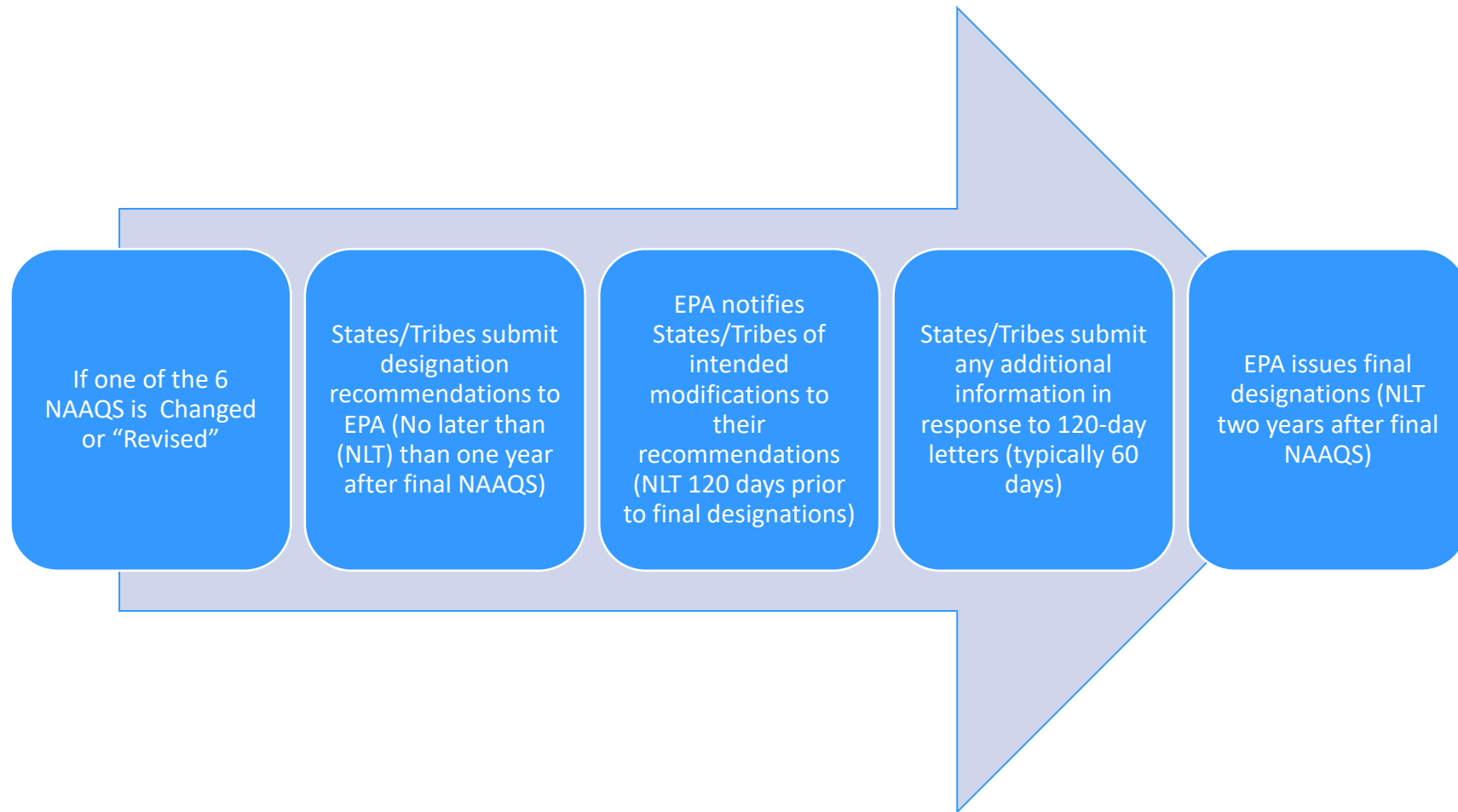
“Secondary” standards protect public welfare and the environment (including visibility and damage to animals, crops and vegetation)



NAAQS Designation Process

- EPA designates every area of the United States as one of the following:
 - **Attainment:** air quality is equal to or better than the level of the NAAQS; these areas must maintain clean air
 - **Unclassifiable:** there are no data on air quality for the area; the area is treated as “attainment”
 - **Nonattainment:** air quality is worse than the level of the NAAQS and must take actions to improve air quality and attain the NAAQS within certain deadlines
 - EPA uses a weight of evidence (W.o.E.) approach to determine boundaries of nonattainment areas.
- EPA has guidance memorandums that provide **NAAQS-specific** designation information on the schedule and process for initial area designations.

NAAQS Designation Process (Continued)

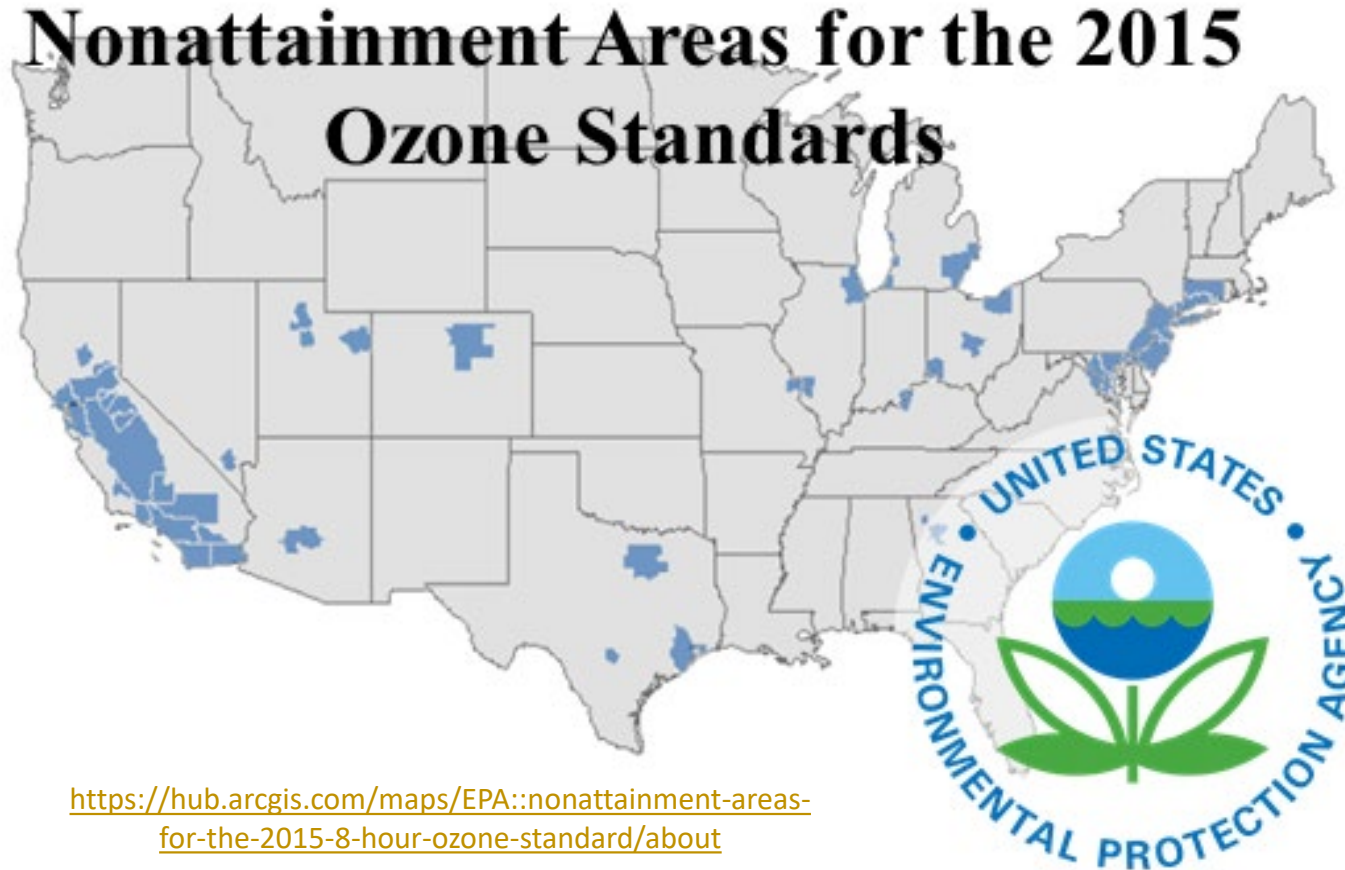


For more information about the NAAQS designation process visit:

<https://www.epa.gov/criteria-air-pollutants/process-determine-whether-areas-meet-naaqs-designations-process>

NAAQS Designation Process: 2015 Ozone

NAAQS Non-Attainment Designation Map

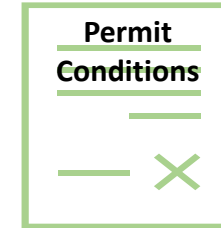


NAAQS Implementation Plans

- The CAA requires states to develop a:
 - General plan to attain and maintain the standards in all areas of the country.
 - Specific plan to attain the standards for each area designated nonattainment.
- These plans are known as “State Implementation Plans (SIPs)” although SIPs do not apply in Indian Country, “Tribal Implementation Plans (TIPs)” apply instead.
 - TIPs can be modular to only address a tribe’s specific air quality problems.
 - In cases where a tribe does not have an approved TIP, EPA determines whether the agency should issue a Federal Implementation Plan (FIP) to protect air quality.
- The plans serve two main purposes:
 1. Demonstrate that the state/tribe has the basic air quality management program components in place to implement a new or revised NAAQS.
 2. Identify the emissions control requirements the state/tribe will rely upon to attain/or maintain the primary and secondary NAAQS.
- SIPs (not TIPs) are due 3 years after setting a new or revised NAAQS.

NAAQS Implementation Plans (Continued)

- Regulatory programs for reducing air emissions that are part of implementation plans include the New Source Review (NSR) preconstruction permitting program.
 - Requires industrial facilities to install modern pollution control equipment when they are built or when making a change that increases emissions significantly to assist in maintaining the NAAQS or bringing nonattainment areas into attainment.
- The rest of these presentations will focus on the NSR preconstruction permitting program requirements, especially the Tribal Minor NSR permitting requirements.
 - Tribal NSR permitting should occur in consultation with tribal officials as briefly described in the next few slides.



Tribal Consultation with Federally Recognized Indian Tribes

15

- It is EPA's policy to consult on a government-to-government basis with federally recognized Tribal governments when EPA actions or decisions may affect Tribes.
- EPA recognizes and works directly with federally recognized Tribes as sovereign entities with primary authority and responsibility for each Tribe's land and membership, and not as political subdivisions of states or other governmental units.
- The federal trust responsibility is a doctrine that defines the United States' unique relationship with Tribes. It allows the federal government to consider Tribal interests and welfare by offering Tribes the opportunity to provide meaningful input on activities and actions that may affect Tribes or their resources.
- The EPA Consultation Policy establishes national guidelines for consultation with federally recognized Tribal governments when EPA actions and decisions may affect Tribal interests - ensures meaningful and timely input by Tribal officials prior to EPA taking actions or implementing decisions that may affect Tribes.

Tribal Consultation with Federally Recognized Indian Tribes – EPA Indian Policy

16

EPA Policy for the Administration of Environmental Programs on Indian Reservations – “EPA Indian Policy”

- EPA became first federal agency to adopt a formal policy specifying how it would interact with Tribal governments and consider Tribal interests in carrying out its programs to protect human health and the environment.
- Key emphasis is to give special consideration to Tribal interests in making agency policy and ensure close involvement of Tribal governments in making decisions and managing environmental programs affecting Indian country.
- The EPA Indian Policy, established in 1984 and reaffirmed in 2019, remains a cornerstone of EPA’s Tribal program.

Tribal Consultation with Federally Recognized Indian Tribes – EO 13175

17

Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments - issued by President Clinton in November 2000

- Establish regular and meaningful consultation and collaboration with Tribal officials in the development of federal policies that have Tribal implications
- Strengthen the United States government-to government relationships with Indian tribes; and
- Reduce the unfunded mandates upon Indian Tribes

Memorandum on Tribal Consultation – signed by President Obama in November 2009 (reaffirmed in 2021)

- Direct all Federal agencies to develop detailed plans to implement EO 13175
- Emphasized commitment to “regular and meaningful” consultation and collaboration with Tribal officials in policy decisions that have tribal implications

Tribal Consultation with Federally Recognized Indian Tribes – EPA's Consultation Policy

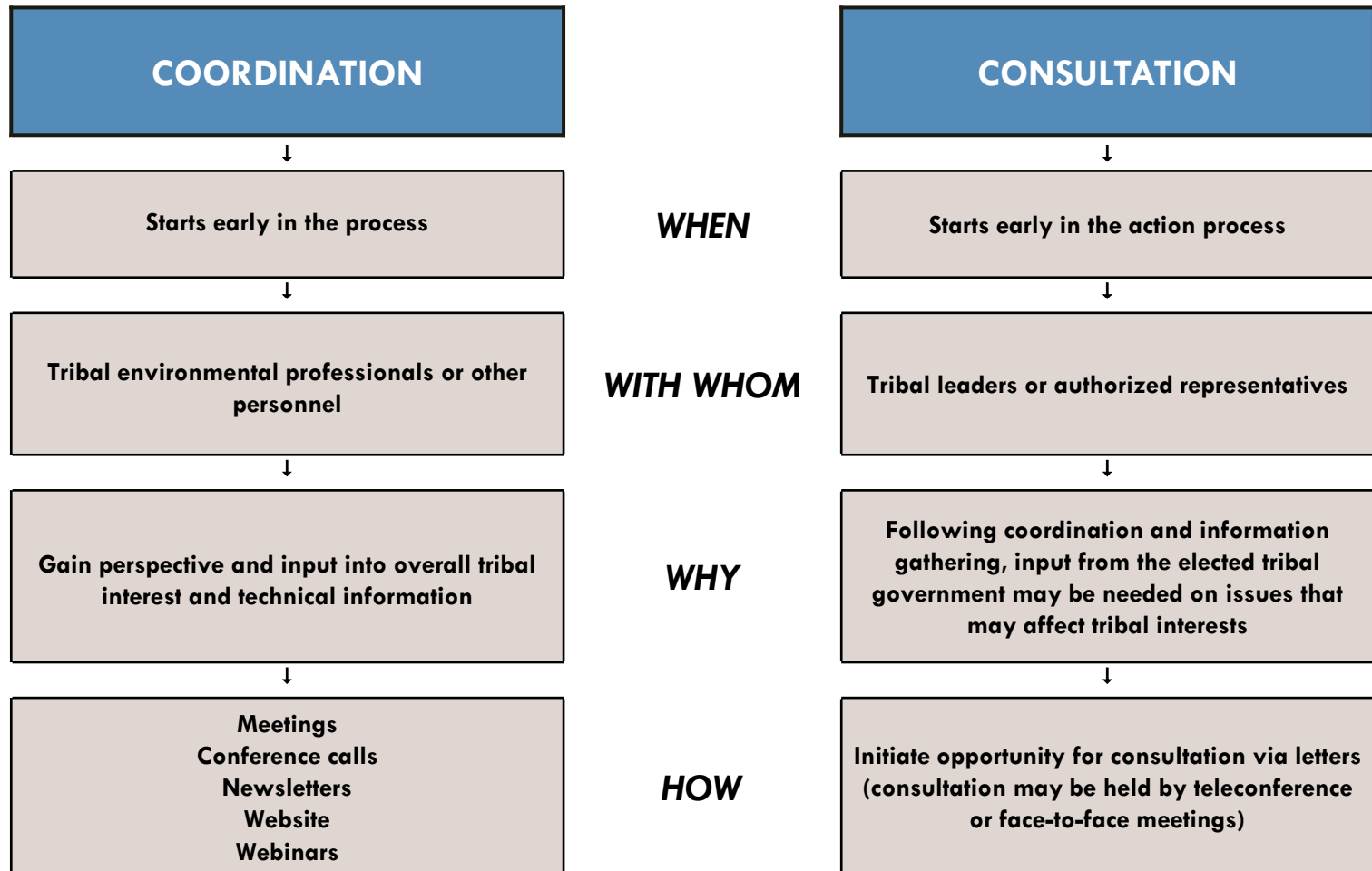
18

EPA Policy on Consultation with Indian Tribes

- Establishes national guidelines for consultation across the agency
- Implements the principles of the EPA Indian Policy and the EO 13175
- Strengthens government-to-government relationships between EPA and Tribal governments
- Originally established in 2011, revised in 2023, incorporates standards outlined in the 2022 Presidential [Memorandum on Uniform Standards for Tribal Consultation](#) and input received from Tribal governments.
- Policy applies when administering EPA statutes and regulations that may affect Tribal interests
- Outlines a process to ensure meaningful and timely input by Tribal officials prior to EPA taking actions or implementing decisions that may affect Tribes

Tribal Consultation with Federally Recognized Indian Tribes - Coordination versus Consultation

19



Tribal NSR Permitting Consultation

20

- It is the responsibility of the permit applicant to submit its permit application to the appropriate permit reviewing authority, either [EPA](#) or a Tribe.
 - EPA has delegated portions of the NSR permitting program to: St. Regis Mohawk Tribe (NY), Mohegan Tribe of Indians (CT), Mashantucket Pequot Indian Tribe (CT), Southern Ute Indian Tribe (CO), and Gila River Indian Community (AZ).
- EPA coordinates or consults with federally-recognized Tribes on any air permits for new facilities and non-administrative revisions to permits for existing facilities.
 - Consultation is offered through letters for federally recognized Tribes within 50 miles from the new facility and follows the [2023 Consultation Policy](#).
- EPA also consults with Tribes on any permit actions that may have an effect on historic properties using a similar process that involves the state and/or Tribal Historic Preservation Officer.

Additional Resources and Links

- EPA Indian Policy November 1984 - [EPA Policy for the Administration of Environmental Programs on Indian Reservations](#)
- Executive Order 13175, November 6, 2000 - [Consultation and Coordination with Indian Tribal Governments](#)
- EPA Consultation Policy, December 7, 2023 - [EPA Policy on Consultation with Indian Tribes](#)
- OAR Tribal Air Website <https://www.epa.gov/tribal-air>
- EPA Tribal Consultation Opportunities Tracking System (TCOTS) <https://tcots.epa.gov>