

Environmental Protection Agency’s Guiding Principles for Consulting with Alaska Native Claims Settlement Act Corporations

These Guiding Principles are designed to clarify how the Environmental Protection Agency (EPA or Agency) engages in consultation and coordination with Alaska Native Claims Settlement Act (ANCSA)¹ corporations.

1. EPA recognizes its obligation under Public Law 108-199, 118 Stat. 452 (2004), as amended by Public Law 108-447, 118 Stat. 3267 (2004), (hereafter referred to as the Appropriations Acts)² to “consult with [ANCSA] corporations on the same basis as Indian tribes under Executive Order 13175.”
2. When EPA consults, it recognizes that its fundamental mission is to protect human health and the environment.
3. EPA recognizes that consultation is a process of providing an opportunity for meaningful communication and coordination between EPA and ANCSA corporation officials prior to EPA taking regulatory actions with implications for ANCSA corporations. Specifically, EPA’s practice is to consult with ANCSA corporations on a regulatory action that has a substantial direct effect on an ANCSA corporation and imposes substantial direct compliance costs. However, this does not include matters that are in litigation or settlement negotiations, including civil and criminal compliance monitoring and enforcement actions or matters for which a court order limits the Agency’s discretion to engage in consultation.
4. EPA’s practice is to consult with ANCSA corporations while recognizing the important distinction that exists when consulting with federally recognized tribes pursuant to the federal trust responsibility. When consulting with ANCSA corporations, EPA will consult with ANCSA corporation official(s) or their representative(s), as determined by the ANCSA corporation.
5. EPA may deem it appropriate to notify ANCSA corporations of an impending Agency action outside the scope of consultation as identified in paragraph 3 above. Additionally, ANCSA corporations are encouraged to affirmatively raise issues with EPA for appropriate coordination, including requesting meetings and additional information about a particular Agency action.
6. When consulting with ANCSA corporations, EPA plans to follow four phases:

Identification: Early in the development process, EPA’s lead Program or Regional office assesses and identifies matters that may be appropriate for consultation under these Guiding Principles for two broad categories of actions:

- a. Regulatory actions following the Action Development Process (ADP) and appearing in the semiannual Regulatory Agenda. Note: The Regulatory Agenda, which lists actions that federal agencies plan to issue, is available at: <https://www.reginfo.gov/public>.

- b. Regulatory actions and decisions that have the potential for substantial direct effects on ANCSA corporations and impose substantial direct compliance costs, but outside the scope of EPA's semiannual regulatory agenda.

In addition, ANCSA corporation officials may request consultation on EPA regulatory actions. EPA's practice is to strive to honor all requests with consideration of the nature of the activity, past consultation efforts, available resources, timing considerations, and all other relevant factors.

For actions identified through the mechanisms noted above, EPA considers the complexity of the activity, its potential for having substantial direct effects and imposing substantial direct compliance costs on ANCSA corporations, and any time and/or resource constraints relevant to the consultation process.

Notification: When notifying ANCSA corporations about consultation opportunities, EPA will strive to notify all ANCSA corporations using the best available contact information provided by the ANCSA Regional Association, Alaska Native Village Corporation Association, and other relevant information resources available to the Agency.

In order to provide ANCSA corporations with the opportunity to provide meaningful input that can be considered by EPA prior to taking action or implementing decisions, EPA strives to notify potentially impacted ANCSA corporations early enough in the process, and with sufficient information, to allow ANCSA corporations to determine whether they want to consult and how to provide meaningful input.

Input: This phase may include a range of interactions including written and oral communications received through phone calls, meetings, mail (both electronic and postal), and other appropriate interactions depending upon the specific circumstances involved. EPA will strive to coordinate with ANCSA corporation officials during this phase to be responsive to their needs for information and to provide opportunities to provide, receive and discuss input. EPA may undertake subsequent rounds of consultation if there are significant changes in the originally proposed activity or as new issues arise. Both EPA and ANCSA corporations are responsible for determining the appropriate individual(s) involved in this phase.

Follow-up: EPA provides feedback to the ANCSA corporations involved in the consultation to explain how their input was considered in the final action. EPA's practice is to provide a formal, written communication from the most senior EPA official to the most senior ANCSA corporation official involved in the consultation.

¹ Alaska Native Claims Settlement Act, Public Law 92-203, 85 Stat. 688 (1971) (codified as amended at 43 U.S.C. §§ 1601-1629h (2018)).

² Consolidated Appropriations Act, 2004, Public Law 108-199, Div. H. § 161, 118 Stat. 3, 452 (2004) as amended by Consolidated Appropriations Act, 2005, Public Law. 108-447, Div. H., Title V. § 518, 118 Stat. 2809, 3267 (2004).

Definitions

For the purposes of these Guiding Principles only, the following terms are used:

ANCSA corporation – Any Alaska Native village corporation, urban corporation, or regional corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act.¹

ANCSA corporation official or designee – An individual designated in writing to represent an ANCSA corporation.

Federally recognized Indian tribes – An American Indian or Alaska Native tribal entity that is listed in the current Department of Interior’s published list of “Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs.” The listed Indian entities are acknowledged to have the immunities and privileges available to federally recognized Indian tribes by virtue of their government-to-government relationship with the federal government as well as the responsibilities, powers, limitations, and obligations of such tribes.

Disclaimer

These guiding principles are intended to provide information to EPA Headquarters and Regional staff on how to implement the Appropriations Acts with respect to ANCSA corporations. In particular, they are intended to improve the internal management of EPA and provide transparency on EPA’s consultation strategy with respect to ANCSA corporations. They are not binding and are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the Agency, its officers or employees, or any other person.

¹ Alaska Native Claims Settlement Act, Public Law 92-203, 85 Stat. 688 (December 18, 1971).