



Washington State Attorney General's Office

2023 ENVIRONMENTAL JUSTICE REPORT

Letter from Attorney General Ferguson

August 31, 2023

Dear Washingtonians:

In 2020, I launched the Environmental Justice Initiative at the Attorney General's Office (AGO) to strengthen environmental policies and enforcement with meaningful involvement from the people most affected by environmental issues. Environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies.”¹ As Dr. Robert Bullard, widely viewed as the father of environmental justice, noted: “Environmental justice is nothing more than this whole principle: people have the right to a clean, healthy, sustainable environment without regard to race, color, national origin. It’s just that simple.”² Some communities, particularly low-income and Black, Indigenous, and communities of color, have historically borne, and continue to bear, a disproportionate amount of environmental harms. Environmental harms include lack of access to heating or cooling systems, proximity to high pollution areas, and adverse health impacts, such as increased rates of asthma, cancer, and preterm births, from harmful environmental factors.



In 2021, the Legislature passed the Healthy Environment for All (HEAL) Act, and I committed my office to voluntarily implementing this historic piece of environmental justice legislation. My office remains the only agency to opt-in to implementing the HEAL Act.

The HEAL Act is the result of decades of hard work by community activists, organizers, individuals, and groups, particularly Black, Indigenous, and people of color, across Washington. My office is committed to implementing the provisions of the HEAL Act in a way that is meaningful and impactful for communities who face environmental injustices. This report details my office's actions and activities to implement the HEAL Act and further environmental justice.

I look forward to the continued work to achieve environmental justice for all Washingtonians.

Sincerely,

Bob Ferguson
Washington State Attorney General

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The Healthy Environment for All (HEAL) Act

The Legislature passed the Healthy Environment for All (HEAL) Act, codified at RCW 70A.02, in 2021.³ The HEAL Act is Washington’s first state law to define environmental justice and impose requirements on state agencies to incorporate environmental justice. This law is the result of decades of hard work and activism by community and Black, Indigenous, and people of color (BIPOC) individuals, organizers, and groups across Washington.

The HEAL Act seeks to address the impacts of environmental racism in Washington by reducing environmental and health disparities across the state and prioritizing frontline communities by incorporating environmental justice principles into state agency actions. Seven state agencies are mandated by the HEAL Act to apply specific requirements to agency actions: the departments of Agriculture, Commerce, Ecology, Health, Natural Resources, and Transportation, as well as the Puget Sound Partnership. The HEAL Act invites all other state agencies to opt-in and implement the HEAL Act at any time; the Attorney General’s Office (AGO) is the only opt-in agency to date.

The HEAL Act established the Environmental Justice Council to advise agencies on the integration of environmental justice into agency activities and provide a public forum for environmental justice concerns and priorities. Information on the Environmental Justice Council can be found at <https://waportal.org/partners/environmental-justice-council/home>.

Agencies implementing the HEAL Act are required to develop and adopt a variety of deliverables. The following table shows the current status of HEAL Act deliverables at the AGO.

HEAL Act Deliverables

Statutory Deadline	Deliverable	Description	Current Status
No deadline	Tribal Consultation Framework	Implementing agencies must adopt a tribal consultation process, created in coordination with tribal governments, which includes best practices, protocols for communication and collaboration with federally recognized tribes.	COMPLETED – the AGO adopted the Tribal Consent and Consultation Policy in May 2019. This policy can be found at https://www.atg.wa.gov/tribal-consent-consultation-policy or in Appendix A.
July 1, 2022	Community Engagement Plan	Implementing agencies must create and adopt a Community Engagement Plan that describes methods, practices, and principles for meaningful, direct, and equitable participation and involvement of community when an agency engages in a significant agency action and/or environmental justice work.	DRAFT – the AGO released a draft Community Engagement Plan on July 1, 2022, and will conduct outreach and engagement to receive input and feedback on the central themes, best practices, methods, and principles in the AGO Community Engagement Plan. The AGO will also work with our Tribal Liaison to offer consultation to Tribes per the requirements of the HEAL Act. After feedback, input, and consultation, the AGO will release an updated Community Engagement Plan.

Annually, beginning September 1, 2022	Annual Environmental Justice Council Report	Implementing agencies are required to provide an annual update to the Environmental Justice Council by September 1 of each year on the implementation of the HEAL Act.	COMPLETED for 2022 and 2023. The AGO will release an Environmental Justice Report every year by September 1 on our website detailing our environmental justice and HEAL Act activities. This report will also be transmitted to the Environmental Justice Council every year by September 1. The 2022 Environmental Justice Report can be found at https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/2022%20EJ%20Report.pdf
No deadline	Environmental Justice Principles	Implementing agencies are required to incorporate principles of environmental justice into agency activities, and ground HEAL implementation in principles of environmental justice.	COMPLETED – the AGO’s Environmental Justice Principles can be found at https://www.atg.wa.gov/environmental-justice-initiative .
January 1, 2023	Environmental Justice Implementation Plan	Implementing agencies are required to create and adopt an Environmental Justice Implementation Plan. The implementation plan must describe how the agency plans to incorporate principles of environmental justice into agency activities, including goals and actions to implement environmental justice and reduce environmental and health disparities, metrics to track and measure those goals and actions, facilitating equitable participation with community, strategies for compliance with various laws related to environmental justice, and timelines for HEAL Act implementation.	DRAFT – the AGO released its draft Environmental Justice Implementation Plan on August 17, 2023. Per the requirements of the HEAL Act, the AGO will offer consultation to Tribes on the Environmental Justice Implementation Plan. The AGO will also solicit feedback and input from community, and will release an updated plan incorporating feedback.
July 1, 2023	Environmental Justice Assessments on Significant Agency Actions	Implementing agencies are required to create an Environmental Justice Assessment to conduct when engaging in significant agency actions.	DRAFT – AGO EJ Policy staff will coordinate with the AGO Tribal Liaison to offer consultation with Tribes, and engage community to receive input and feedback before finalizing the AGO’s Environmental Justice Assessment template, which will be used to identify potential environmental harms and benefits of proposed significant agency actions, such as agency request legislation for the AGO. Individual Environmental Justice Assessments will be released on the AGO’s website as they are completed.

	Publish Significant Agency Actions on Website & Notify Washington State Register of Significant Agency Actions	Implementing agencies are required to post which of their agency actions fall within the category of “significant agency action” to their website, and notify the Washington State Register of those actions.	COMPLETED – the AGO determined that agency request legislation is the only applicable significant agency action that the agency engages in. More information can be found at https://www.atg.wa.gov/about-heal-act .
	Environmental Justice Principles and Considerations in Financial Actions	Implementing agencies are required to incorporate environmental justice principles into decision processes for budget development, making expenditure, and granting or withholding environmental benefits.	COMPLETED – the AGO determined that the fiscal actions and activities outlined in the HEAL Act are not applicable to the agency due to the nature of the AGO’s work. In an effort to operate within the spirit of the HEAL Act, AGO EJ Policy staff are working with the AGO Financial Services Division to identify opportunities to incorporate environmental justice considerations into AGO budget development, requests, and expenditures.
September 1, 2024	Annual Dashboard Report with Office of Financial Management	Implementing agencies are required to publish a dashboard report, in a uniform format, on the Office of Financial Management’s (OFM) website. The dashboard report must be updated annually and describe the progress of the agency’s implementation of EJ into agency strategic plans, obligations related to budgeting and funding, and EJ assessments.	Not yet started.
July 1, 2025	Define Additional Significant Agency Actions	Implementing agencies have the authority to define additional agency actions as significant agency actions. Agencies shall consider guidance from the EJ Council on what could be a significant agency action, and actions deemed as significant agency actions must be those that “may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened community or a vulnerable population.”	ONGOING – the AGO is evaluating agency actions that may rise to the statutory definition of “additional significant agency actions” under the HEAL Act.

Environmental Justice and the HEAL Act at the Attorney General's Office

In April 2020, Attorney General Ferguson launched the AGO's Environmental Justice Initiative, which, notably, elevated the Counsel for Environmental Protection Unit to a permanent legal division at the AGO, renamed the Environmental Protection Division. The Environmental Justice Initiative also included a 2021 symposium on environmental justice, in partnership with Gonzaga University.

In 2021, the AGO was the first agency to opt-in to the HEAL Act. The AGO Policy Unit leads implementation of the HEAL Act, working closely with both affirmative litigation and client-advice legal divisions to integrate the HEAL Act and environmental justice into agency activities.

Environmental Protection Division

The Environmental Protection Division (EPD) is an affirmative litigation division bringing civil and criminal lawsuits to enforce environmental protection laws on behalf of Washingtonians and Washington's environment, natural resources, and human health. Since 2013, environmental crimes prosecutions have resulted in over 50 criminal convictions and almost \$6 million in fines, penalties, and restitution orders, while civil litigation targeting human health and environmental harms has resulted in over \$95 million in recoveries.

Tribal Issues

Tribes and Indigenous people have historically been deeply harmed by environmental injustices, and are essential partners in working toward environmental justice. AGO Tribal Liaison Asa Washines is an integral part of the AGO's environmental justice efforts. Asa serves as co-chair of a work group consisting of Tribal liaisons from agencies implementing the HEAL Act. The work group has developed guidance for Tribal government-to-government engagement and for Tribal community engagement for HEAL Act agencies to follow.

The key priorities for the Tribal government-to-government guide are to reduce exposure to environmental hazards within Tribal lands, ensure Tribal sovereignty and rights in environmental justice, and eliminate environmental and health disparities in disadvantaged, vulnerable, and low-income populations. Engagement with Tribal governments will be guided by 15 principles for each agency to follow. In addition, the Tribal government-to-government engagement guide outlines the process for consultation with Tribes, methods for Tribal government engagement, working with citizens of consulting Tribes, and methods for Tribal citizen engagement.

In 2019, the AGO adopted a [Tribal Consent and Consultation policy](https://www.atg.wa.gov/tribal-consent-consultation-policy), the first of its kind at a Washington state agency. The policy requires the AGO to obtain free, prior and informed consent before initiating programs or projects that directly and tangibly affect Tribes, Tribal rights, Tribal lands, and sacred sites. The AGO must also engage in government-to-government consultation before filing civil litigation against a Tribe or a business owned by a Tribe in an effort to resolve a dispute, to the extent that it does not violate the Rules of Professional Conduct, and requires the AGO to provide notice to Tribes prior to taking actions that may directly affect Tribes or Tribal lands. The AGO's Tribal Consent and Consultation Policy can be found at <https://www.atg.wa.gov/tribal-consent-consultation-policy>.

The key priorities for the Tribal community engagement guide are different from the Tribal government-to-government engagement guide. Many Native American people were forcibly displaced or encouraged to relocate to urban areas through various federal policies that sought to assimilate native people. As a result, cities like Seattle, Tacoma, Aberdeen, and Spokane, among others, have high Tribal populations who are not represented by Tribes that consult with the state of Washington. Many of these people, however, have formed communities and are considered vulnerable populations and overburdened communities under the HEAL Act. One way to engage Tribal communities is to work with and through Tribal organizations created to serve them. Engaging with these Tribal organizations is distinct from consultation with Tribal governments, and can be done concurrently with public engagement.

Community Outreach and Engagement

AGO staff across multiple divisions engage in continuous outreach and engagement with community organizations and individuals across the state on a variety of issues, including environmental justice. The AGO plans to host listening sessions and public comment on environmental justice and HEAL Act deliverables for the remainder of 2023 and into 2024.

Environmental Justice Principles

The AGO developed a set of environmental justice principles to provide a foundation of shared beliefs and values about environmental justice to inform the development and execution of the HEAL Act's deliverables and environmental justice work. The principles are based on the 17 Principles of Environmental Justice⁴ developed by the delegates to the First National People of Color Environmental Leadership Summit in 1991, the 2020 Washington State Environmental Justice Task Force Report,⁵ and the HEAL Act. The work of the Environmental Justice Council will also guide the evolution of these principles. The principles are as follows:

1. Environmental Justice uses an intersectional lens to address disproportionate environmental and health impacts by prioritizing highly impacted populations, equitably distributing resources and benefits, and eliminating harm.
2. Environmental Justice requires focusing on racial equity and recognition of the ways in which systemic racism leads to disproportionate environmental impacts and health disparities in Black communities, Indigenous communities, communities of color (BIPOC communities), and low-income communities, and demands deliberate anti-racist action.
3. Environmental Justice necessitates meaningful engagement with impacted communities about the development, implementation, and enforcement of laws, rules, and policies that impact the environment and health of Washingtonians, and requires ongoing transparent and accessible communication throughout, without compromising the integrity of the AGO's legal work.
4. Environmental Justice demands recognition that self-determination is a core principle to tribal sovereignty and the AGO Tribal Consent and Consultation Policy is integral in decision making that affects tribes, tribal lands, and tribal rights.

Actions to Further Environmental Justice and the HEAL Act

2022

Oct.

Crown Resources Violated the Clean Water Act

The AGO filed a lawsuit against Crown Resources and its parent company, Kinross Gold, in May 2020 for violating its water quality permit and water containment requirements during the operation of Buckhorn Mountain gold mine in Okanogan County, WA. Attorney General Ferguson announced on October 20th that Judge Mary K. Dimke issued an order of partial liability against Crown Resources.⁶ The order found that Crown Resources committed over 3,000 violations of the Clean Water Act while operating the Buckhorn Mountain gold mine, resulting in contamination of groundwater and nearby streams. Penalties for these violations will be determined at a later date.

Letter of Support for Chemical Accident Safety Rule

On October 31, Attorney General Ferguson joined 19 state attorneys general in a multi-state comment letter of support to the Environmental Protection Agency (EPA) for a proposed rule to restore a number of chemical safety protections that were rolled back under the Trump administration.⁷ The letter commended the EPA's restoration of safeguards for communities repealed in 2019, and also urged the EPA to further strengthen the proposed rule to prevent and mitigate chemical accidents. The letter discussed the environmental justice issues that the proposed rule would address, highlighting the fact that chemical accidents occur at a disproportionate rate in historically marginalized communities because facilities containing chemical hazards are disproportionately located within marginalized communities. The letter also expressed the need for the EPA to advance environmental justice in their rulemaking by making chemical hazard information available in multiple languages.

2023

April

Extreme Heat Utilities Shutoff Moratorium Signed into Law

Attorney General Ferguson partnered with Rep. Sharlett Mena (29th District) to prevent public utilities from shutting off power and water in instances of extreme heat. House Bill 1329, agency request legislation from the AGO, was passed by the Washington State Legislature and signed into law by Governor Jay Inslee during the 2023 legislative session. Sen. Joe Nguyen (34th District) sponsored the Senate companion bill. HB 1329 prevents utility operators from shutting off Washingtonians' electricity or water when the National Weather Service issues a heat-related warning or alert, and allows Washingtonians to request reconnection of utilities for those days that a heat-related warning or alert is issued. The bill also requires utility operators to report, on an annual basis, the number of disconnections that occur for each day that there is a heat-related warning or alert. In recent years, Washington has experienced record-breaking heat waves, including the 2021 heat wave that claimed 157 lives.⁸ HB 1329 protects access to things like electric fans, air conditioning, working refrigerators and freezers, and running water, which can mitigate heat-related illnesses, dangers, and fatalities.⁹

Electron Hydro to Pay Largest Financial Penalty for Environmental Crimes in State History

The AGO filed criminal charges against Electron Hydro, LLC and its Chief Operating Officer Thom Fischer in January 2022 for polluting the Puyallup River during construction of the Electron Dam in Pierce County, WA. Attorney General Ferguson announced on May 8th that Electron Hydro and Thom Fischer will plead guilty and pay a total of \$1 million in fines and restitution for its violations.¹⁰ The AGO consulted with the Puyallup Tribe regarding restitution prior to the court hearing, and the penalties are believed to be the largest for an environmental crime in Washington state law history. Of the \$1 million, the Puyallup Tribal Fisheries will receive \$745,000 to help restore the Puyallup River, which was polluted by toxic debris from artificial turf and crumb rubber placed on the riverbed and covered by a plastic liner by workers during construction on the Electron Dam. The river was diverted over the plastic liner, which ripped and released the turf and rubber into the river.

Letter of Support Urging Federal Action to Address Health and Safety Risks of Gas Stoves

On May 8, Attorney General Ferguson joined a multistate comment letter of support for the Consumer Product Safety Commission's (CPSC) initiative to collect information on the health hazards associated with gas stove emissions.¹¹ The States recommended that the CPSC develop uniform performance and ventilation standards that will reduce the emissions of harmful pollutants from gas stoves that degrade indoor air quality in U.S. households. Gas stove emissions often have a disproportionate effect on sensitive groups, especially children, who are susceptible to developing asthma at an early age. Also, Black and Latino households are more likely to face harmful cumulative health effects from the combined exposures to both indoor and outdoor air pollutants based on where they reside. Additionally, the multistate letter urged the CPSC to increase consumer awareness of the harms posed by gas stoves through more informative warning labels and public education.

Letter of Opposition to Pesticide Worker Protection Rule Rollbacks

On May 12, Attorney General Ferguson joined five state attorneys general in a multi-state comment letter of opposition to the Environmental Protection Agency (EPA) for a proposed rule for pesticide worker protection to rollback several provisions of the 2015 Worker Protection Standard.¹² The letter urged the EPA to retain several provisions of the 2015 Worker Protection Standard that protect workers from adverse effects from exposure to pesticides, including vulnerable groups, such as minority or low-income populations, child farmworkers, and farmworker families. The letter also highlighted that the new rule would fail to comply with Executive Order 12898, which directs federal agencies to address environmental justice in minority and low-income populations.

Lawsuit Against Manufacturers of "Forever Chemicals"

PFAS, which stands for per- and polyfluoroalkyl substances, are chemicals used to create water-resistant substances, such as chemical foams used in firefighting and emergency responses, particularly around airports and military bases. PFAS are commonly called "forever chemicals" because they do not break down in the environment or in the human body. These chemicals cause harmful human health effects such as reproductive and hormonal effects, developmental effects or delays in children, increased risk of cancers, reduced ability of the body's immune system to fight infections, and increased cholesterol levels.¹³ Attorney General Ferguson filed an environmental lawsuit on May 31st against 20 manufacturers of PFAS, asserting violations of a number of state laws, including public nuisance laws, the Products Liability Act, and the Consumer Protection Act. In Washington, PFAS have been found in the groundwater, surface water, sediments, wastewater treatment plant sewage, soil, fish tissue, and osprey eggs. Nearly 200 water sources have tested positive for PFAS, with impacted areas including Moses Lake, Issaquah, Fairchild Air Force Base, Joint Base Lewis-McChord, Naval Base Kitsap Bangor, Naval Air Station Whidbey Island and the Yakima Training Center. The lawsuit asserts that manufacturers, including 3M, DuPont, and 18 others, knew of the dangers of PFAS, but intentionally kept that knowledge hidden from the government and the public. The lawsuit asks the court to order the companies to pay the costs associated with cleaning up PFAS contamination.¹⁴

Letter of Support for Stronger Coal Power Plant Emission Standards

On June 23, Attorney General Ferguson joined 15 state attorneys general in a multi-state comment letter of support to the Environmental Protection Agency (EPA) for a proposed rule to strengthen standards for mercury and other hazardous air pollutants from coal-fired power plants.¹⁵ The letter commended the EPA's proposal, highlighting the commitment to environmental justice and addressing environmental justice concerns in communities and populations who have been historically marginalized and overburdened, such as those who live near coal power plants.

2023 HEAL Act Deliverables

On July 1, the AGO posted updates pertaining to a number of HEAL Act deliverables, including identifying significant agency actions, integrating environmental justice principles into budget, funding, and expenditure decisions, and completing environmental justice assessments on significant agency actions. These statements are available on the AGO HEAL Act webpage,¹⁶ and are summarized as follows:

- **Significant agency actions:** the AGO identified agency request legislation as the only significant agency action specifically listed in the HEAL Act applicable to agency actions and operations.
- **Fiscal activities:** the AGO determined that the obligations related to budget, funding, and expenditure decisions in the HEAL Act do not apply to the types of fiscal activities that the AGO engages in. The AGO will work to identify opportunities to incorporate environmental justice principles and considerations into the agency's fiscal activities.
- **Environmental Justice Assessments:** per the request of Tribes, the AGO will engage in Tribal consultation before finalizing the agency's Environmental Justice Assessment. The AGO will also engage with community to solicit feedback and suggestions to the Environmental Justice Assessment. The Environmental Justice Assessments will be done on agency request legislation, and filed with the Office of Financial Management.

Appendix A: Tribal Consent and Consultation Policy

CENTENNIAL ACCORD PLAN

Washington State Office of the Attorney General

I. The Role of the Attorney General in State Government

The Attorney General for the state of Washington is an independent constitutional officer and the legal adviser to state agencies, officers and officials. Among the duties assigned to the Attorney General by law is the duty to “represent the state and all officials, departments, boards, commissions and agencies of the state . . . in all legal or quasi legal matters . . . and advise all officials, departments, boards, commissions, or agencies of the state in all matters involving legal or quasi legal questions . . .” RCW 43.10.040. With few exceptions, the Attorney General is the exclusive source of legal counsel and representation for state officers and agencies.

Because of its role in state government and its comprehensive legal duties and responsibilities, the Attorney General’s Office (AGO) is involved in a wide array of issues which potentially impact state agencies and tribal governments in their relations with one another. Because of this unique role, the AGO may be in a position to assist with communications and the facilitation of solutions that employ the diverse expertise and resources of multiple agencies and officials.

II. Overview of the Centennial Accord Plan

This plan covers AGO commitments and the process for consent, consultation and notice. Section IV describes the specific situations where the AGO will request consent from Tribes. Consent in this plan entails receipt of free, prior and informed consent prior to taking the actions specified in this plan that directly and tangibly affect Tribes, rights or tribal lands. Section V and VI describe the consultation between the AGO and Tribes. Consultation is a process where the AGO will share information regarding AGO actions with affected Tribes to ensure a complete understanding of the action and to identify and address tribal concerns. Specifically, Section V describes consultation prior to the AGO initiating litigation and Section VI states that Tribes may request consultation with the AGO. Section VII describes situations where the AGO will provide notice of AGO actions to Tribes.

In this plan, “Tribe” refers to the federally recognized American Indian Tribes in Washington State or the governing body of that Tribe. “Tribal land” includes “Indian Country” as defined in federal law as well as trust lands and lands which have been identified by a Tribe to the AGO as containing cultural, historic or archaeological resources.

III. Contact Within the Attorney General’s Office

- Asa Washines
 - Tribal Liaison
 - 1125 Washington Street SE
 - P.O. Box 40100
 - Olympia, WA 98504-0100
 - Phone: (360) 878-0664
 - Email: Asa.Washines@atg.wa.gov

IV. Consent from Tribes on Certain AGO Actions

The AGO will receive free, prior and informed consent prior to taking certain actions specified in this section that directly and tangibly affect Tribes, rights or tribal lands.

A. Actions Subject to Consent

1) Unless prior consent is received, the AGO will not initiate an AGO program or project that directly affects a Tribe that the AGO undertakes under the independent authority of the Attorney General. Consent will not be requested related to AGO investigations, litigation, employment and other internal business decisions, or in circumstances where a failure to act may subject the AGO to sanction from a court.

2) AGO actions on behalf of any other entity in the AGO's role as legal counsel to state officials, agencies, departments, boards and commissions are not subject to consent. Consent also will not, and cannot, be requested on statutory duties and functions of the AGO, including but not limited to issuing legal opinions and formulating ballot titles for state initiatives or referendum measures.

3) Consent will not be requested on broad issues that impact many or all Washington Tribes, because a requirement for "consensus" from all affected Tribal governments would be both impractical and inconsistent with the independent sovereignty of each Tribe.

4) Actions specifically covered in the consultation and notice requirements of this plan are not subject to consent. The requirements for notice and consultation are covered in Sections V, VI and VII of this plan. However, the AGO may choose to request consent for programs and projects outside the scope of this section.

B. Request for Consent

1) The AGO will request consent by sending notification to the chair of the Tribe's governing body or to any person identified by the Tribes to receive the request. The AGO will send a copy of the request to each member of the Tribe's governing body.

2) The request will provide clear information about the AGO program or project and describe its potential impact to the Tribe.

3) Tribes may identify persons to receive the request by sending the name, address and contact information to an AGO Tribal Liaison.

C. Consent

1) Consent is a written resolution from the governing body of the affected Tribe.

2) If a Tribe does not respond within the timeframe designated in the request then the AGO will interpret that as a grant of consent.

3) If a Tribe responds to a request for consent by objecting to the project or program, the AGO may request consultation with the Tribe to see if issues raised by the Tribe can be addressed.

V. Consultation with Tribes Prior to Litigation Initiated by the AGO

The goal of consultation is to further the government-to-government relationship between Tribes and the State, and ensure the mutual respect for the rights, interests and obligations of each sovereign. A further goal of consultation is to share information regarding AGO actions to ensure a complete understanding of the action and to identify and address tribal concerns. Consultation is independent of and in addition to any other public participation process required by law.

A. Litigation Consultation

1) To the extent consistent with the Rules of Professional Conduct, and with the goal to avoid litigation whenever possible, the AGO will consult with a Tribe prior to filing civil litigation against a Tribe or a business owned by a Tribe. The AGO may request consultation on other issues to further the goals of this plan.

B. Consultation Request

1) The AGO will request consultation by sending notification to the chair of the Tribe's governing body or to any person identified by the Tribe to receive notice. The AGO will send a copy of the notice to each member of the Tribe's governing body. Tribes may identify persons to receive notice by sending contact information to an AGO Tribal Liaison.

2) The notice will provide clear information about the dispute or issue.

3) The notice will provide a time of no less than thirty days for the Tribe to respond to the AGO accepting the invitation to consult or declining consultation. Thirty days will run from the date of actual receipt or five days after date of mailing for notices sent by first class mail. The notice will clearly state the timeframe for response and how to respond.

4) If a statute of limitations, court rule, or other factor requires the AGO to provide less than 30 days notice, the AGO will clearly identify the deadline in the notice and make every reasonable effort to consult within the time available.

5) If the Tribe does not respond within thirty days of receipt of the notice, or the amount of time provided under (4), the AGO may conclude that the Tribe has declined consultation on the project.

C. Consultation Process

1) Where a Tribe accepts the invitation to consult, the AGO will contact the Tribe to establish a mutually agreed timeline for completion of consultation. The AGO will communicate any time constraints on the process.

2) The AGO and the Tribe will identify to each other a point of contact and persons who will participate in the consultation. The AGO and Tribe's point of contact will schedule any necessary meetings. Whenever feasible, the Attorney General or Chief Deputy will personally participate in the consultation.

3) The AGO will work in good faith during the consultation process to identify and address the Tribe's concerns.

4) The Tribe may choose how to provide feedback and identify concerns including whether in writing, verbally during a meeting or in other form.

5) The AGO will provide a response to the Tribe detailing how the AGO will respond to the Tribe's feedback and concerns.

VI. Consultation with the AGO at the Request of Tribes

The AGO is always open to consultation at the request of Tribes on any issue or topic contemplated by the Centennial Accord. The AGO is also amenable to assisting Tribes in resolving disputes with state agencies or officials or with the AGO itself. The nature and extent of the consultation or dispute resolution process may vary depending on the role the AGO occupies in relation to the issue or topic. Tribes may request consultation with the AGO or AGO participation or assistance with dispute resolution by contacting the Attorney General or an AGO Tribal Liaison.

VII. Notice to Tribes of Other AGO Actions

The AGO will provide notice to Tribes prior to:

- Proposing legislation that may directly affect Tribes, rights or tribal lands;
- Filing an amicus brief that may directly affect Tribes, rights or tribal lands.

The AGO will provide notice to Tribes after:

- Filing a ballot title for a state initiative or referendum measure with the Office of Secretary of State on an initiative or referendum measure that directly affects Tribes, rights or tribal lands.

A. Notice to Tribes

1) The AGO will send notice to the chair of the Tribe's governing body or to any person identified by the Tribes to receive notice. The AGO will send a copy of the notice to each member of the Tribe's governing body. Tribes may identify persons to receive notice by sending the name, address and contact information to an AGO Tribal Liaison.

2) The notice will provide clear information about the action, the timelines associated with the action and will provide information for the Tribe to contact the AGO for additional information.

DATED this 10th **day of May, 2019.**

Endnotes

- 1 WASH. REV. CODE § 70A.02.010(8) (2022).
- 2 Jamil Smith, *The Father of Environmental Justice, On Whether We're All Doomed*, Vox (December 10, 2021), <https://www.vox.com/2021/12/10/22826247/robert-bullard-environmental-justice-vox-conversations-interview>.
- 3 WASH. REV. CODE § 70A.02 (2022).
- 4 *Principles of Environmental Justice*, EJNET.ORG (October 24-27, 1991), <https://www.ejnet.org/ej/principles.html>.
- 5 Environmental Justice Task Force, *Recommendations for Prioritizing EJ in Washington State Government*, GOVERNOR'S INTERAGENCY COUNCIL ON HEALTH DISPARITIES (October 31, 2020), https://healthequity.wa.gov/sites/default/files/2022-01/EJTF%20Report_FINAL%281%29.pdf.
- 6 *Court Rules Gold Mining Company Violated the Law More than 3,000 Times in Okanogan County*, WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL (October 20, 2022), <https://www.atg.wa.gov/news/news-releases/court-rules-gold-mining-company-violated-law-more-3000-times-okanogan-county>.
- 7 New York State Office of the Attorney General et al., Rulemaking Comment Letter on EPA's Proposed Rule: Safer Communities by Chemical Action Prevention (October 31, 2022), <https://www.regulations.gov/comment/EPA-HQ-OLEM-2022-0174-0444>.
- 8 *Heat Wave 2021*, WASHINGTON STATE DEPARTMENT OF HEALTH (last visited August 10, 2023), <https://doh.wa.gov/emergencies/be-prepared-be-safe/severe-weather-and-natural-disasters/hot-weather-safety/heat-wave-2021>.
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