



Washington State Attorney General's Office

2024 ENVIRONMENTAL JUSTICE REPORT

Letter from Attorney General Ferguson

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 defined as “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.” Dr. Robert Bullard, known as the father of environmental justice, describes the idea in plain terms: “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.”



Some communities, particularly low-income and Black, Indigenous, and communities of color, have historically borne, and continue to bear, a disproportionate number 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. 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. This report details my office's actions and activities to further environmental justice.

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

Sincerely,

Bob

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The Healthy Environment for All (HEAL) Act

The Legislature passed the Healthy Environment for All (HEAL) Act in 2021.¹ The HEAL Act is Washington’s first state law to define environmental justice (EJ) 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 prioritizes 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 discussion of 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, recognized by Tribal leaders as the first of its kind in the country. 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. A public comment portal was open from September 2023-December 2023 for the public to provide comments on the AGO’s Community Engagement Plan. The AGO received a small number of public comments and feedback on ways to improve the Community Engagement Plan. The AGO’s next step is to incorporate guidance from the Environmental Justice Council, adopted by the Council in August 2023 , and public comments, and to work collaboratively with AGO legal divisions to update the Community Engagement Plan. The AGO will incorporate the Tribal Engagement Guides into the Community Engagement Plan, developed by the HEAL Act Tribal Liaisons Work Group. The AGO will work with our Tribal Liaison to offer consultation to Tribes on the updated draft Community Engagement Plan per the requirements of the HEAL Act. The AGO’s draft Community Engagement Plan can be found at https://www.atg.wa.gov/environmental-justice-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 ANNUALLY - the AGO releases an Environmental Justice Report every year by September 1 on our website detailing our environmental justice and HEAL Act activities. This report is sent to the Environmental Justice Council every year by September 1. Previous Environmental Justice Reports can be found on the AGO's Environmental Justice Initiative page at https://www.atg.wa.gov/environmental-justice-initiative .
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 on our webpage 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. A public comment portal was open from September 2023-December 2023 for the public to provide comments on the AGO's Environmental Justice Implementation Plan. The AGO received a small number of public comments and feedback on ways to improve the Environmental Justice Implementation Plan. The AGO's next steps are to incorporate public comments and work collaboratively with AGO legal divisions to update the Environmental Justice Implementation Plan. The AGO will also work with our Tribal Liaison to offer consultation to Tribes on the updated draft Environmental Justice Implementation Plan per the requirements of the HEAL Act. The AGO's draft Environmental Justice Implementation Plan can be found at https://www.atg.wa.gov/environmental-justice-implementation-plan .
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 expenditures, 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.	ONGOING – the AGO will submit reports to the OFM Dashboard on applicable agency actions.
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 Environmental Justice 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 (EPD). The Environmental Protection Division brings cases on behalf of the people, not state agencies. It pursues both criminal and civil lawsuits enforcing state and federal environmental laws and works closely with communities to pursue cases to end illegal environmental activity by utilizing reporting from community to inform possible investigations and cases. Environmental crimes can be reported online to EPD at <https://fortress.wa.gov/atg/formhandler/ago/EnvironmentalCrimeReportForm.aspx> or by phone at 206-342-6417.

In 2021, the AGO was the first agency to opt-in to the HEAL Act. The AGO Policy Division leads implementation of the HEAL Act, working closely with both civil law enforcement and client-advice legal divisions to integrate the HEAL Act and environmental justice into agency activities. Environmental justice policy staff can be reached via email at environmentaljustice1@atg.wa.gov.

Centering Tribes, Tribal Members, and Indigenous Communities

In 2019, the AGO adopted a Tribal Consent and Consultation Policy, the first of its kind at a Washington state agency. State and national tribal leaders [recognize this policy as “historic” and “groundbreaking”](#). 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 AGO's Tribal Liaison, Asa Washines, works closely across the agency in its 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 regarding Tribal government-to-government engagement and Indigenous community engagement for HEAL Act agencies to implement.

In addition to environmental justice and HEAL Act work, over the last year Asa has worked closely with Deputy Attorney General Kristen Mitchell to develop baseline guidance for state agencies negotiating sovereign immunity waivers in contracts with Tribes. One of the functions of the AGO is to advise state agencies, boards, and commissions on legal matters, which can include contracts with other entities. Asa and Kristen addressed the lack of uniform advice regarding negotiating sovereign immunity waivers in contracts with Tribes and worked with a team of attorneys in the AGO to develop uniform guidance and advice on alternatives to the waivers, such as insurance requirements or arbitration provisions. The team also developed guidance around cultural competency when negotiating contracts with Tribes. The guidance is now part of the AGO's contracts desk book, which is a resource for attorneys and state agency contract specialists. The AGO develops and presents internal trainings with agencies that regularly enter into contracts with Tribes around this issue.

In addition to the Tribal Liaison and their work on environmental justice and HEAL Act implementation, the AGO Policy Division has a Tribal Policy team, which includes staff working on the Missing and Murdered Indigenous Women and People (MMIWP) Task Force, the Emmett Till Historic Indigenous Cold Cases project, and the Indian Boarding Schools Truth & Reconciliation Tribal Advisory Committee (TAC). The AGO Policy Division worked closely with AGO Human Resources to develop new hiring policies for recruitment to the Tribal Policy team. The new hiring policies allow all Tribal members in the Policy Division, for any policy project, to stay on their reservation and report to the closest AGO satellite office as their workstation, instead of being required to report to either the Seattle or Olympia office as their official workstation. This has allowed for more robust recruitment of Tribal members to the Tribal Policy team, who work directly with Tribes across the state for the MMIWP Task Force and the TAC. This hiring policy is a step toward reducing barriers to direct participation in state government through employment.

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.

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.

Environmental Justice Implementation Plan

On August 17, 2023, the AGO released a draft Environmental Justice Implementation Plan. The AGO solicited public input and feedback on the Environmental Justice Implementation Plan from September 2023 to December 2023. The AGO received a small number of comments detailing ways to improve the plan and suggestions for additional goals, actions, and metrics. AGO Environmental Justice staff are incorporating public comments and are collaborating with legal divisions to update and improve the Plan. The AGO will review the Department of Justice's [Comprehensive Environmental Justice Enforcement Strategy](#) and [Comprehensive Environmental Justice Enforcement Strategy Annual Report](#) for additional insight into how environmental justice can be integrated into legal work.

Actions to Further Environmental Justice and the HEAL Act

2023

Sept.

Letter to EPA to Finalize Draft Supplement and Revision to Toxic Substances Control Act

On September 8, 2023, Attorney General Ferguson joined nine state attorneys general in a multi-state comment letter urging the Environmental Protection Agency (EPA) to finalize a draft supplement and draft revision to the Toxic Substances Control Act (TSCA) for the chemical 1,4-dioxane.² The letter urged the EPA to finalize the supplement and revision to the TSCA regarding the analysis and regulation of 1,4-dioxane due to the danger it poses to the public when it enters surface water, groundwater, air, and land. The letter also expressed the need for additional rulemaking to address all risks presented by the presence of 1,4-dioxane, which includes liver and kidney toxicity, adverse effects to nose membranes affecting sense of smell, and cancer.

Oct.

CLE Lite: Community Lawyering

On October 17, 2023, the AGO hosted an internal CLE on community lawyering. CLE stands for “continuing legal education” and refers to the ongoing training and education that lawyers are required to do during their career to stay relevant in the practice of law. The CLE featured guest speakers Danielle Alvarado, Executive Director at Fair Work Center, and Jeremiah Miller, Legal Director at Fair Work Center. Danielle and Jeremiah covered what community lawyering is, how Fair Work Center, an organization dedicated to improving working conditions and fighting for economic and racial justice, uses community lawyering in their day-to-day operations, and how community lawyering can be integrated into the work of a government attorney. Over 50 AGO employees attended the CLE.

Dec.

Letter in Support of EPA’s Proposed Rule Regarding Trichloroethylene

On December 15, 2023, Attorney General Ferguson joined 13 state attorneys general in a multi-state comment letter supporting the EPA’s proposed rule to the TSCA to ban the manufacture, use, and disposal of Trichloroethylene.³ The chemical is harmful to the environment and poses an unreasonable risk to human health. The EPA conducted an analysis of the environmental justice impacts of the chemical, finding facilities that use the chemical in areas where Toxic Release Inventory facilities are clustered. These facilities are, in turn, located close to towns with large BIPOC and low-income populations. The estimated publication for the final rule is sometime in 2024.

2024

Mar.

Senate Bill 5884: Environmental Crimes Restitution

The AGO supported [SB 5884](#), sponsored by Sen. Yasmin Trudeau (27th District), during the 2024 Legislative Session. The bill clarifies the authority of courts to order restitution for harm to natural resources and the environment following a criminal conviction for water pollution, air pollution, or hazardous waste management. Environmental Protection Division Chief Bill Sherman testified in support of the bill at policy committee hearings, and Governor Inslee signed the bill into law on March 28, 2024.

Mar.

Letter to Snohomish County Regarding Everett Aggregate Yard

On March 18, 2024, the AGO's Environmental Protection Division provided a comment letter to the Snohomish County Planning and Development Services Department regarding the operations of the Mountain Loop Mine Everett Aggregate Yard in Mukilteo, owned and operated by OMA Construction.⁴ The gravel yard is located in unincorporated Snohomish County, near Paine Field Airport and adjacent to two elementary schools: Fairmount Elementary and Pathfinder Kindergarten Center. The populations of the two schools are primarily students of color and from lower-income households. Residents of the area surrounding the gravel yard complained to Snohomish County about unpermitted work at the site violating county code, and teachers at the two elementary schools reported that both teachers and students had experienced more bloody noses, headaches, and coughing, as well as negative effects on students' learning environments. The letter from the AGO detailed existing environmental and health burdens in the area surrounding the gravel yard, air quality emissions, noise violations, and storm water impacts, and requested that Snohomish County gather more information under permitting application processes to adequately assess the impacts of the gravel yard's operations and projects. The gravel yard was listed for sale in late May 2024.⁵

Lawsuit to End Unlawful Practices by Underground Storage Tank Servicing Companies

On March 22, 2024, the AGO's Wing Luke Civil Rights Division filed a lawsuit against Northwest Environmental Solutions, Inc., Core Environmental Group, LLC, and their owner, Kevin Wilkerson, for violations of the Consumer Protection Act. These companies, and Mr. Wilkerson, purport to offer services for underground storage tanks (USTs), the majority of which are located at independently owned and operated gas stations in Washington State. UST owners and operators are required to comply with regulations enforced by the Washington State Department of Ecology (Ecology) to ensure that the USTs remain safe and do not cause environmental harm from contamination caused by leaks. To comply with these regulations, gas station owners are required to hire a certified service provider to service and maintain their tanks regularly. The lawsuit alleges that the companies and Mr. Wilkerson engaged in unfair and deceptive practices, including accepting payment for UST services that were never completed; performing low-quality services that could expose customers to liability for environmental damages; misrepresenting that they were certified to perform certain UST services; misrepresenting to customers that their UST systems required expensive repairs, causing customers to purchase and install expensive equipment or make repairs to their UST systems that were unnecessary; and failure to communicate with customers regarding documentation due to Ecology or status updates on ongoing projects. The lawsuit seeks injunctive relief to stop the unlawful practices, restitution for customers, and statutory penalties.

Apr.

Gonzaga EJ Symposium

On April 12, 2024, the AGO co-sponsored and participated in Expo '74: 50 Years of Environmental Justice in the Inland Northwest. The event, co-sponsored by the Gonzaga Institute for Climate, Water, and the Environment, Gonzaga Law School's Center for Law, Ethics, and Commerce, and the United States Attorney's Office for the Eastern District of Washington, was a one-day conference focusing on environmental justice work in Spokane, WA since Expo '74, the first environment-themed world fair.



Symposium topics included efforts to clean up the Spokane River, enforcement of environmental and civil rights laws, and the future of environmental justice in the Spokane area. Two AGO division chiefs participated on the enforcement panel: Colleen Melody, Chief of the Wing Luke Civil Rights Division, and Bill Sherman, Chief of the Environmental Protection Division. The event's keynote speaker was Cliff Villa, Deputy Assistant Administrator at the U.S. Environmental Protection Agency, who discussed the history of environmental justice in the legal field. More information, including a recording of the event, can be found at <https://www.gonzaga.edu/climate-institute/events/expo-74-50-years-of-environmental-justice>.

June

Lower Yakima Valley Outreach Tour

On June 3-4, 2024, staff from the AGO's Wing Luke Civil Rights Division, Environmental Protection Division, and Policy Division participated in an outreach tour in Sunnyside, WA. AGO staff participated in an evening community forum at the Sunnyside Community Center, giving a presentation about the AGO and what the Civil Rights and Environmental Protection divisions do. Staff then had the opportunity to hear concerns from residents, including water quality and air pollution issues. AGO staff also participated in a smaller-scaled community roundtable, hearing directly from community members about the environmental justice issues the Lower Yakima Valley faces. The AGO partnered with ELLA ([Empowering Latina Leadership & Action](#)) on this outreach tour. ELLA is a Chicana/Latina-led social justice organization focusing on advocacy, leadership development, and civic engagement to bring change and improvement to the residents of the Lower Yakima Valley.



Aug.

Food Desert in Birchwood, Bellingham

On June 25, 2024, Attorney General Ferguson announced that, as a result of his investigation, Albertsons lifted its illegal land use restrictions that created a food desert in the Birchwood neighborhood of Bellingham.⁶ Birchwood is a largely low-income neighborhood, and when Albertsons sold its Birchwood store in 2018, the grocer included a restriction limiting the amount of food that could be sold in the old store as part of the sale terms. This prevented a new grocery store from opening in the neighborhood; and created a food desert in Birchwood. A food desert is defined in federal law as “an area in the United States with limited access to affordable and nutritious food, particularly such an area comprised of predominantly lower-income neighborhoods and communities.”⁷ As a result of Attorney General Ferguson’s investigation, Albertsons has relinquished its land use restrictions on their properties, allowing for another grocery store to open in the future.

Resolution Agreement with Greenbrier International for Toxins in Products

On August 1, 2024, Attorney General Ferguson announced a legally binding resolution with Greenbrier International, doing business as Dollar Tree, requiring more thorough testing of children’s products.⁸ An investigation by the AGO’s Environmental Protection Division found that school supplies sold at Dollar Tree contained illegal and dangerous levels of lead and cadmium, both toxic heavy metals. Dollar stores such as Dollar Tree are more likely to be in low-income and BIPOC communities, making low-income and people of color more likely to be harmed by their products when they contain toxins. The resolution requires Greenbrier to ensure that the laboratories it uses outside of the U.S. follow testing methods for lead and cadmium that are audited and verified through an independent expert. Greenbrier is also required to pay the AGO \$190,000, which will be used for enforcement of the Consumer Protection Act and environmental protection efforts. Dollar Tree cooperated with the AGO’s investigation of its products and removed contaminated products from its stores.

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
 - o Tribal Liaison
 - o 1125 Washington Street SE
 - o P.O. Box 40100
 - o Olympia, WA 98504-0100
 - o Phone: (360) 878-0664
 - o 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 (2022).
- 2 New York State Office of the Attorney General et al., Multistate Comments on TSCA Supplemental Risk Evaluation and Risk Determination for 1,4-Dioxane (September 8, 2023), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2022-0905-0054>.
- 3 Attorneys General of New York et al., State Comment Letter on Proposed Rule for Trichloroethylene (TCE) Regulation Under the Toxic Substances Control Act (TSCA) (December 15, 2023), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2020-0642-0311>.
- 4 Daniel Beekman, *WA's AG, Health Officials Raise Questions About Gravel Yard by School*, THE SEATTLE TIMES (March 26, 2024), <https://www.seattletimes.com/seattle-news/was-ag-health-officials-raise-questions-about-gravel-yard-by-school/>.
- 5 Daniel Beekman, *Gravel Yard by Snohomish County Elementary School Now Up for Sale*, THE SEATTLE TIMES (June 7, 2024), <https://www.seattletimes.com/seattle-news/politics/gravel-yard-by-snohomish-county-elementary-school-now-up-for-sale/>.
- 6 *AG Ferguson: Albertsons Lifts Illegal Restrictions That Created Food Desert in Bellingham Neighborhood*, WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL (June 25, 2024), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-albertsons-lifts-illegal-restrictions-created-food-desert-bellingham>.
- 7 H.R.2419 - 110th Congress (2007-2008): Food, Conservation, and Energy Act of 2008, H.R.2419, 110th Cong. (2008), <https://www.congress.gov/bill/110th-congress/house-bill/2419/text>.
- 8 *Dollar Tree to Reform Children's Products Testing Nationwide, Pay Nearly \$200k, After AG Ferguson Investigation Reveals Toxic Products*, WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL (August 1, 2024), <https://www.atg.wa.gov/news/news-releases/dollar-tree-reform-children-s-products-testing-nationwide-pay-nearly-200k-after>.

