



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

FEB 28 2011

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Summary of Outreach and Consultation with Tribal Governments

FROM: Laura McKelvey, Group Leader
Community & Tribal Programs Group
Outreach & Information Division

TO: National Emission Standards for Hazardous Air Pollutants (NESHAP) for
Coal- and Oil-Fired Electric Utility Steam Generating Units (EGUs)
Docket # EPA-HQ-OAR-2009-0234

1.0 INTRODUCTION

Subject to Executive Order (E.O.) 13175 (65 FR 67249, November 9, 2000), Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute; unless, the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement. E.O. 13175 requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

The EPA has concluded that this action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. This proposed rule would impose requirements on owners and operators of EGUs. EPA is aware of three coal-fired EGUs located in Indian country. EPA is not aware of any EGUs owned or operated by tribal entities.

2.0 OUTREACH AND CONSULTATION

The EPA offered consultation with tribal officials early in the process of developing this proposed regulation to permit them to have meaningful and timely input into its development. Consultation letters were sent to 584 tribal leaders. The letters provided information regarding

EPA's development of NESHAP for EGUs and also offered consultation. Three consultation meetings were requested and held:

- December 7, 2010, with the Upper Sioux Community of Minnesota;
- December 13, 2010, with Moapa Band of Paiutes, Forest County Potawatomi, Standing Rock Sioux Tribal Council, Fond du Lac Band of Chippewa; and
- January 5, 2011, with the Forest County Potawatomi and a representative from the National Tribal Air Association.

In these meetings, EPA presented the authority under the CAA, used to develop these rules, and an overview of the industry and the industrial processes that have the potential for regulation. Tribes expressed concerns about the impact of the utilities on the reservations. Their particular concerns were on potential mercury deposition and the impact on the water resources of the tribe, with specific worries about the impact on subsistence lifestyles for fishing communities, the cultural impact of impaired water quality for ceremonial purposes, and the economic impact on tourism. In light of these concerns, the tribes expressed interest in an expedited implementation of the rule. They also expressed concerns about how the Agency would consider variability in setting the standards and use tribal specific fish consumption data from the tribes in our assessments. The tribes were not supportive of using work practice standards as part of the rule and asked the Agency to consider going beyond the floor to offer more protection for the tribal communities. A more specific list of comments can be found in the Docket.

In addition to these consultations, EPA also conducted outreach on this rule through presentations at the National Tribal Forum in Milwaukee, Wisconsin, and on National Tribal Air Association calls. EPA specifically requested tribal data that could support the appropriate and necessary analysis and the regulatory impacts analysis for this rule. We will also hold additional meetings with tribal environmental staff to inform them of the content of this proposal as well as provide additional consultation with tribal elected officials where it is appropriate.

Attached are materials provided by the Forest County Potawatomi Community (FCPW) that support their comments.

Attachments:

1. FCPC Follow-up Materials to Utilities MACT Consultation with EPA
2. FCPC Comments on EPA's CAMR Rulemaking
3. Watras Study – Devils Lake – Mercury Final Report – June 06