

EXHIBIT K

EPA and Nez Perce Tribe Delegation Agreement (June 2005)

Delegation Agreement

Agreement for Partial Delegation of the Federal Implementation Plan for the Nez Perce Reservation by the United States Environmental Protection Agency, Region 10 to the Nez Perce Tribe

This agreement between the Nez-Perce Tribe (Tribe) and the U.S. Environmental Protection Agency (EPA), Region 10, sets forth the legal and procedural basis for partial delegation of administrative authority for implementation of certain sections of the Federal Implementation Plan (FIP) for the Nez Perce Reservation (40 CFR Part 49 Subpart M, Sections 10401 through 10430), hereafter referred to as the Nez Perce FIP.

I. Purpose

The purpose of this Delegation Agreement is to delegate certain administrative responsibilities and authorities of the Nez Perce FIP to the Nez Perce Tribe. The Nez Perce FIP establishes Federal regulations and requirements applicable to all sources of air pollution located within the federally-recognized exterior boundary of the Nez Perce Reservation of the 1863 Nez Perce Treaty (Reservation). Upon the effective date of this Delegation Agreement, EPA Region 10 delegates to the Nez Perce Tribe authority to administer portions of the Nez Perce FIP on all lands within the Reservation.

II. Legal Authority

- A. The Clean Air Act Amendments of 1990 (CAA, or Act) provide EPA authority to promulgate regulations to protect air quality within Indian country. See Section 301(a) and 301(d)(4) of the Act. EPA Region 10 has promulgated such regulations for the Nez Perce Reservation. See 40 CFR Part 49 Subpart C and 40 CFR Part 49 Subpart M, sections 10401 through 10411.
- B. Pursuant to 40 CFR 49.122, EPA may delegate to an Indian Tribe partial administrative authority. Tribes receiving delegation do not have the authority to further delegate this authority.
- C. 40 CFR Part 49 Subpart M, "Implementation Plans for Tribes - Region X", identifies for each Indian Reservation specific regulations applicable to each Reservation. 40 CFR Part 49 Subpart M, Sections 49.10401 through 49.10430 contain the Nez Perce FIP for the Nez Perce Reservation.
- D. The Nez Perce Tribe has authority to conduct activities in support of this delegation. This Delegation Agreement neither creates nor diminishes any authority otherwise established by tribal or federal law.
- E. EPA retains full authority and responsibility for implementation, administration, and enforcement of any and all components of the Nez Perce FIP.

III. Nez Perce FIP

The following are the federal regulations from 40 CFR 49.123 through 40 CFR 49.138 (Section 49.10410) that apply to all sources of air pollution within the Reservation:

Section 49.123, General Provisions

The General Provisions of the Nez Perce FIP contain definition of terms, requirements for testing, requirements for monitoring, recordkeeping, and reporting, discussion of credible evidence, and provisions incorporated by reference (e.g. ASTM test methods).

Section 49.124, Rule for limiting visible emissions

This section limits visible emissions of air pollutants from certain air pollution sources operating within the Reservation to control emissions of particulate matter to the atmosphere and to indicate whether a source is continuously maintained and properly operated.

Section 49.125, Rule for limiting the emissions of particulate matter

This section limits the amount of particulate matter that may be emitted from certain air pollution sources operating within the Reservation to control ground level concentrations of particulate matter.

Section 49.126, Rule for limiting fugitive particulate matter emissions

This section limits the amount of fugitive particulate matter that may be emitted from certain air pollution sources operating within the Reservation to control ground level concentrations of particulate matter.

Section 49.127, Rule for wood waste burners

This section phases out the operation of wood waste burners (commonly known as wigwam or teepee burners) and, in the interim, limits the visible emissions from woodwaste burners within the Reservation.

Section 49.128, Rule for limiting particulate matter emissions from wood products industry sources

This section limits the amount of particulate matter that may be emitted from certain wood products sources operating within the Reservation to control ground level concentrations of particulate matter.

Section 49.129, Rule for limiting emissions of sulfur dioxides

This section limits the amount of sulfur dioxide that may be emitted from certain air pollution sources operating within the Reservation to control ground level concentrations of sulfur dioxide.

Section 49.130, Rule for limiting sulfur in fuels

This section limits the amount of sulfur contained in fuels that are burned at stationary sources within the Reservation to control emissions of sulfur dioxide to the atmosphere and ground level sulfur dioxide concentrations.

Section 49.131, General rule for open burning

This section limits the types of materials that can be openly burned within the Reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground level concentrations of particulate matter. This rule also provides the authority to issue a burn ban should conditions warrant.

Section 49.132, Rule for open burning permits

This section establishes a permit program for open burning within the Reservation to control particulate matter and other noxious fumes to the atmosphere and ground level

concentrations of particulate matter.

Section 49.133, Rule for agricultural burning permits

This section establishes a permitting program for agricultural burning within the Reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground level concentrations of particulate matter.

Section 49.134, Rule for forestry and silvicultural burning permits

This section establishes a permit program for forestry and silvicultural burning within the Reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground level concentrations of particulate matter.

Section 49.135, Rule for emissions detrimental to public health or welfare

This section is intended to prevent the emissions of air pollutants from any air pollution source operating within the Reservation from being detrimental to public health or welfare.

Section 49.137, Rule for air pollution episodes

This section establishes procedures for addressing the excessive build-up within the Reservation of certain air pollutants during periods of stagnant air. This rule is intended to prevent the occurrence of an air pollution emergency within the Reservation due to the effects of air pollution on human health.

Section 49.138, Rule for the registration of air pollution sources and the reporting of emissions

This section requires certain air pollution sources operating within the Reservation to register with EPA and submit annual emissions reports. Registration allows EPA to develop and maintain a current and accurate record of air pollution sources and their emissions within the Reservation.

Section 49.139, Rule for non-Title V operating permits.

This section establishes a permit program to provide for the establishment of Federally-enforceable requirements for air pollution sources within the Reservation.

IV. Delegated Provisions of the Nez Perce FIP

Partial authority to administer the Nez Perce FIP may be delegated to the Nez Perce Tribe for all sources of air pollution located within the Reservation, that are subject to the Nez Perce FIP, (40 CFR 49.122). This section of the delegation agreement identifies those provisions where the Nez Perce Tribe will assist EPA with implementing delegated provisions. In addition, this delegation agreement identifies program elements that require coordination and communication between EPA and the Nez Perce Tribe.

A. Section 49.124 Rule for limiting visible emissions

The Nez Perce Tribe is delegated authority to administer the general rule for open burning, including the authority to determine whether a source has demonstrated that the presence of uncombined water, such as steam, is the only reason for the failure of an air pollution source to meet 20% opacity. See 40 CFR 49.124(d)(2). This determination should be made by an individual certified to make opacity determinations (certified smoke reader).

B. Section 49.131 General rule for open burning

The Nez Perce Tribe is delegated authority to administer the general rule for open burning, including the authority to declare a burn ban under 40 CFR 49.131(d)(2), which provides for issuing a burn ban when conditions warrant, such as when air quality levels have exceeded or are expected to exceed 75% of any National Ambient Air Quality Standard for particulate matter and these levels are projected to continue, or recur, over at least the next 24 hours.

The Nez Perce Tribe is delegated authority to coordinate burn bans, to the extent practicable, with surrounding jurisdictions.

The Nez Perce Tribe is delegated authority to permit, except during a burn ban under paragraphs (d)(2) or (d)(3) of Section 49.131, open outdoor fires used by qualified personnel to train fire fighters. See 40 CFR 49.131(c)(4).

The Nez Perce Tribe is delegated authority to permit, except during a burn ban under paragraphs (d)(2) or (d)(3) of Section 49.131, one outdoor fire each year to dispose of fireworks and associated packaging materials. See 40 CFR 49.131(c)(5).

C. Section 49.132 Rule for general open burning permits

The Nez Perce Tribe is delegated the authority to administer the rule for general open burning permits. This authority includes the responsibility to receive applications for an open burn permit for each proposed open burn pursuant to 40 CFR 49.132(e)(1).

The Nez Perce Tribe is delegated authority to issue a burn permit and include any conditions the Tribe determines necessary to ensure compliance with Section 49.131, General rule for open burning, to protect public health and welfare. See 40 CFR 49.132(e)(2) and 40 CFR 49.132(e)(3).

The Nez Perce Tribe is delegated authority to coordinate issuance of open burning permits, to the extent practicable, with surrounding jurisdictions. See 40 CFR 49.132(e)(4).

D. Section 49.133 Rule for agricultural burning permits

The Nez Perce Tribe is delegated the authority to administer the rule for agricultural burning permits. This authority includes the responsibility to receive applications for an agricultural burn permit for each proposed burn pursuant to 40 CFR 49.133(d)(1).

The Nez Perce Tribe is delegated authority to approve the agricultural burn permit, include any conditions the tribe determines necessary to protect public health and welfare and authorize burning on the day burning is to be conducted, if the proposed burn is consistent with this Section 49.133, and Section 49.131, General rule for open burning, taking into consideration relevant factors set forth in 40 CFR 49.133(d)(2).

The Nez Perce Tribe is delegated authority to coordinate the issuance of agricultural burn permits, to the extent practicable, with surrounding jurisdictions. See 40 CFR 49.133(d)(3).

E. Section 49.134 Rule for forestry and silviculture burning permits

The Nez Perce Tribe is delegated authority to administer the rule for forest and silviculture burning permits. This authority includes the responsibility to receive applications for a forestry or silvicultural burn permit for each proposed burn pursuant to 40 CFR 49.134(d)(1).

The Nez Perce Tribe is delegated authority to approve the forestry or silvicultural burn permit, include any conditions the tribe determines necessary to protect public health and authorize burning on the day burning is to be conducted if the proposed burn is consistent with this Section 49.134, and Section 49.131, the General rule for open burning, taking into consideration relevant factors as set forth in 40 CFR 49.134(d)(2).

The Nez Perce Tribe is delegated authority to coordinate the issuance of silvicultural burn permits, to the extent practicable, with surrounding jurisdictions. See 40 CFR 49.134(d)(3).

F. Section 49.137 Rule for air pollution episodes

The Nez Perce Tribe is delegated authority to administer the rule for air pollution episodes including the authority to issue an air stagnation advisory or declare an air pollution alert, air pollution warning, or air pollution emergency pursuant to Section 49.137, Rule for air pollution episodes.

The Nez Perce Tribe is delegated authority to coordinate, to the extent practicable, the issuance of an air stagnation advisory or declare an air pollution alert, air pollution warning, or air pollution emergency with surrounding jurisdictions.

V. Complaint Response

A. The Nez Perce Tribe is delegated authority to initially respond to air quality complaints on the Reservation. This initial response will generally include a site visit to the source, request for additional information, and compliance assistance to the source owner. Information gathered during a site visit response will be transmitted to EPA in writing. EPA will staff the FARR HOTLINE (located in EPA's Seattle office) to log complaints and immediately report complaints on the Reservation to the Nez Perce Tribe, Air Quality Office.

B. EPA, in consultation with the Nez Perce Tribe, will decide whether additional response is warranted and the extent of that response. Complaints that result in a violation of the Nez Perce FIP, and that warrant an enforcement response, will be addressed by EPA in accordance with established federal policies and procedures, following consultation with the Tribe.

C. The Nez Perce Tribe will maintain a log containing details on each complaint they receive related to the Nez Perce FIP. The Nez Perce Tribe will submit a summary of complaints and responses to EPA on a quarterly basis for entry into EPA's data management system(s).

VI. Inspections & Investigations

A. The Nez Perce Tribe may assist EPA in compliance monitoring activities by investigating complaints and conducting compliance inspections. For example, the Tribe may conduct compliance inspections of Title V sources, registered sources, general open, agricultural, and forest open burning sources. These activities may include an inspection or investigation of open burning activities regulated under the General rule for open burning, 40 CFR 49.131. These

activities may also include determining source opacity levels or other fact finding with respect to applicable Nez Perce FIP requirements for which the Tribe's staff have established capability.

B. EPA will issue Inspector Credentials to qualified employees of the Nez Perce Tribe once EPA requirements have been met. EPA Inspector Credentials enhance the ability of inspectors to gain access to source facilities and source operating information by identifying the Tribal staff person as an authorized representative of EPA. The requirements for obtaining and tracking EPA inspector credentials are described in the "Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA", September 30, 2004. The conditions and limitations set forth in this Guidance will be incorporated into a separate written Authorization Agreement between the Nez Perce Tribe and EPA.

C. EPA will provide the necessary training as resources allow, or information on where to obtain training for Tribal inspectors to qualify for EPA-authorized inspector credentials, including EPA's basic inspector training, health and safety training, air program specific training, and training on the terms/conditions in the Authorization Agreement that impact the inspector.

D. The Nez Perce Tribe may also assign staff who are authorized representatives of EPA or the Tribe to conduct inspections and investigations to evaluate compliance with the Nez Perce FIP.

VII. Enforcement

A. Enforcement of the Nez Perce FIP will remain the sole responsibility of EPA Region 10.

B. EPA, to the extent practicable, will consult with the Nez Perce Tribe prior to initiating any enforcement action for sources located within the Reservation.

C. EPA Region 10 will follow all established Federal policies and procedures, including policies and procedures issued by the Office of Enforcement and Compliance Assurance (OECA) and EPA Region 10, in the pursuit of enforcement remedies for violations of the Nez Perce FIP.

D. EPA will, on a quarterly basis, provide the Nez Perce Tribe a report on the status of all air enforcement actions for sources located within the Reservation.

VIII. Data and Reporting Requirements

A. Data and information obtained by the Nez Perce Tribe relating to implementation of delegated portions of the Nez Perce FIP shall be reported to EPA in summary format, on a quarterly basis.

B. EPA shall furnish the Tribe requested information in its files related to implementation of the Nez Perce FIP.

C. Data and information may be withheld, should either EPA or the Nez Perce Tribe have a valid reason.

D. Employees of the Tribe should not accept any information submitted to the Tribe under a claim as confidential business information. The Tribe will instruct the person making the claim to submit the protected information directly to EPA. Information without a claim of confidential business information may be made available to the public without further notice.

IX. Funding

A. EPA expects to provide funds to the Nez Perce Tribe to carry out the Tribe's responsibilities delegated under this agreement, as resources allow. This funding will be provided through a Direct Implementation Tribal Cooperative Agreement (DITCA) grant or other appropriate funding mechanism.

B. The Nez Perce Tribe may promulgate tribal regulations authorizing the collection of fees to offset the cost their administration. These fees are for the sole purpose of program income to the Nez Perce Air program.

X. Additional Provisions

A. The Nez Perce Tribe has, or will have, the technical capability and adequate resources to carry out responsibilities delegated through this agreement. As requested by the Nez Perce Tribe, EPA will strive to provide technical assistance and resources to meet needs identified by the Nez Perce Tribe or EPA. See VIII. Funding above.

B. The Nez Perce Tribe will provide a process to resolve issues arising between a regulated entity and the Tribe from the Tribe's decisions or actions relating to their delegated authority under this agreement, before raising the issue to EPA.

C. EPA Region 10 and the Nez Perce Tribe will maintain open communication. Should an issue arise between EPA and the Tribe, best efforts should be made for resolution at the staff level. If staff are unable to resolve the issue, staff will present the issue in writing to progressively higher levels of management until consensus is reached. If consensus cannot be reached, EPA retains final implementation and enforcement authority for the Nez Perce FIP.

D. The Nez Perce Tribe will follow all EPA-issued policies, guidance and determinations involving implementation of the Nez Perce FIP and this Agreement. EPA will provide the Nez Perce Tribe with copies of these policies, guidance, and determinations. Where no current EPA

policy or guidance clearly covers a specific situation, the Nez Perce Tribe and EPA Region 10 shall consult with each other.

XI. Agreement Evaluation, Modification, or Termination

A. EPA and the Nez Perce Tribe will engage in an annual evaluation of this delegation agreement. This evaluation may include among other things, identification of level of effort, description of program activities, costs, evaluation of citizens complaints, and identification of areas for improvement.

B. This Agreement may be modified to account for any changes to the Nez Perce FIP promulgated after May 1, 2005. Implementation of new or revised requirements after May 1, 2005, will remain the sole responsibility of EPA until this Agreement is modified.

C. Pursuant to 40 CFR Part 49.122(c)(2), this Delegation Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Nez Perce Tribe. Any substantive modifications or amendments to this agreement will be subject to the procedures described in 40 CFR Part 49 Section 49.122(d)(2), including public notice.

D. The Nez Perce Tribe may, at any time, submit to the Regional Administrator a written request for modification or amendment of this delegation agreement.

E. The Nez Perce Tribe may, at any time, terminate this Agreement by providing one hundred twenty (120) days written notice to the Regional Administrator.

XII. Appendix

"Federal Air Rules for Reservations, Implementation Framework"

XIII. Signatures

EPA and the Nez Perce Tribe recognize that each reserve all rights, powers, and remedies now or hereafter existing in law or in equity, by statute, treaty or otherwise. Nothing in this Agreement is, or shall be construed, to be a waiver of the sovereignty of the Nez Perce Tribe or the United States. By entering into this agreement, EPA and the Nez Perce Tribe reserve, and do not waive, any jurisdictional claims relating to proper application of the CAA or any other matter. This delegation agreement is intended solely for the purpose of facilitating intergovernmental cooperation, and creates no rights in third parties or the right to judicial review.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year below.


THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



Ron Kreizenbeck, Acting Regional Administrator
U.S. EPA Region 10

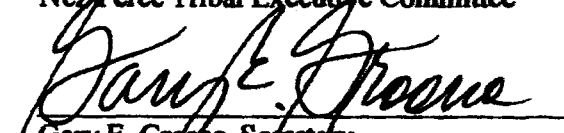
Date: 6/27/05

NEZ PERCE TRIBE



Rebecca A. Miles, Chairman
Nez Perce Tribal Executive Committee

Date: 5-31-05



Gary E. Greene, Secretary
Nez Perce Tribal Executive Committee

Date: 5/31/05