



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 01 2011

REPLY TO THE ATTENTION OF:

Nathan Guldán
Environmental Program Director
Forest County Potawatomi Community
P.O. Box 340
Crandon, Wisconsin 54520

Dear Mr. Guldán:

The U. S. Environmental Protection Agency is preparing to publish for notice and comment, a proposed rulemaking that would approve the incorporation of new provisions into Wis. Admin. Code NR § 405 to implement permit requirements for sources with the potential to impact the Forest County Potawatomi Community's (FCP Community) Class I area, into the Wisconsin State Implementation Plan (SIP). EPA values and seeks consideration of tribal views and would like to offer the opportunity for consultation with the Tribe about EPA's proposed approval of these rules. We offer consultation pursuant to EPA Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," and with the *EPA Policy on Consultation and Coordination with Indian Tribes*.

The Wisconsin Department of Natural Resources (WDNR), through an order of the Wisconsin Natural Resources Board, AM-12-10 (enclosed), has promulgated provisions to implement the permitting process for sources with the potential to impact the FCP Community's Class I area. These revisions are incorporated into Wis. Admin. Code NR § 405. By letter of May 12, 2011 (enclosed), WDNR requested that EPA approve the new rules into the Wisconsin SIP. The provisions include the regulation of sources constructing near the newly designated Class I area, procedures that the FCP Community must follow in order to demonstrate that a particular source may have an adverse impact on the Class I area, a process for providing the FCP Community with the opportunity to review Best Available Control Technology (BACT) and Maximum Achievable Control Technology (MACT) for certain sources, and a dispute resolution procedure for BACT and MACT determinations relating to these sources. EPA understands that WDNR and the FCP Community have worked closely in the development of these rules. EPA is now preparing to propose the approval of the revisions to Wis. Admin. Code NR § 405 into Wisconsin's SIP.

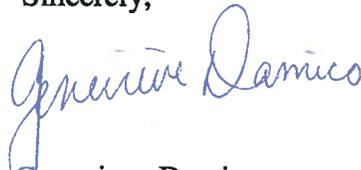
EPA aims to have the proposed rulemaking published for public comment by April 1, 2012. Therefore we would like to offer consultation with the FCP Community at a mutually agreeable date as soon as possible, but no later than February 15, 2012.

Even if the FCP community prefers not to consult, we still will fully brief you and your environmental staff regarding the specifics of the proposed rulemaking we are preparing to propose. Please respond to this consultation notification by January 2, 2011.

Danny Marcus of my staff is the Permit Engineer working on this rule and will serve as the lead EPA technical contact for this consultation and coordination. Danny can be reached at (312) 353-8781 and will be working with Benjamin Giwojna, the Air and Radiation Division's Tribal Program Manager, throughout this effort. If you will not be the main point of contact, please designate a member of your staff as the person with whom we can coordinate on this matter. Please let me know if we should copy any other tribal staff or officials on correspondence regarding this consultation.

We look forward to our discussion and to continuing to work with the FCP Community in protecting air quality.

Sincerely,



Genevieve Damico
Chief
Air Permits Section
Air and Radiation Division

Enclosures

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
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Box 7921
Madison WI 53707-7921

Scott Walker, Governor
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May 12, 2011

Ms. Susan Hedman
USEPA-Region V
77 West Jackson Boulevard
Chicago IL 60604

Subject: Federal Re-designation of Forest County Potawatomi Reservation Community as a non-Federal Class 1 area for Prevention of Significant Deterioration of air quality

Dear Ms. Hedman:

Region V, WDNR, and the Forest County Potawatomi Community (FCPC) have worked together over the last 12 years regarding the re-designation of certain parcels of FCPC land from a Class 2 prevention of significant deterioration (PSD) air quality designation to a non-Federal PSD Class 1 area. This SIP submittal contains a rule which incorporates the federal re-designation of certain parcels of the FCPC Reservation as a non-Federal Class I area for PSD into ch. NR 405, Wis. Adm. Code.

We ask Region V to process this SIP submittal as expeditiously as possible. If you should have any questions regarding this submittal, please call Andrew Stewart of my staff at 608 266-6876 or email him at Andrew.stewart@wisconsin.gov

Sincerely,

John H. Melby, Jr.
Director, Bureau of Air Management

CC: Andrew Stewart – AM/7
Ralph Patterson – AM/7

Attachments:

- SIP Checklist
- SIP Certification Form
- Public Hearing Notice
- Class I Public Hearing notice
- Rule – AM-12-10
- Background Memo
- DNR Green Sheet showing DNR Board's adoption of AM_12_10

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board adopts an order to create NR 400.02 (66m), 405.19 and 406.08(4) relating to permit requirements for Class I areas, and affecting small business.

AM-12-10

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. Statutory authority: ss. 227.11(2)(a) and 285.11(1) and (6) Stats.

3. Explanation of agency authority:

Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(6), Stats., requires the Department to develop a plan for abatement of air pollution in the State. The permitting program, in general, and these regulations specifically, is part of that plan.

These rules are based on federal rules as well as a 1999 Final Agreement reached between the State and the Forest County Potawatomi Community (FCPC).

4. Related statute or rule:

The FCPC Class I area was established as part of a Federal Implementation Plan approved by USEPA in an April 29, 2008 Federal Register Notice.

5. Plain language analysis: This rule is being proposed to amend portions of Department rules to incorporate the federal re-designation of certain parcels of the Forest County Potawatomi Community Reservation as a non-Federal Class I area for the prevention of significant deterioration (PSD) of air quality, and to include portions of a 1999 Final Agreement reached between the State and the Forest County Potawatomi Community concerning the Class I area.

A Class I area is defined in ch. NR 405, Wis. Adm. Code. In general, the PSD program is designed to preserve air quality in Class I areas such as national parks and other areas meeting National Ambient Air Quality Standards. Class I areas are subject to lower allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide.

6. Summary of, and comparison with, existing or proposed federal regulation: In an April 29, 2008, Federal Register Notice, the United State Environmental Protection Agency (USEPA) established the FCPC Class I area. The Department and the FCPC have agreed to provisions impacting the FCPC Class I area that USEPA stated, in the April 29, 2008, notice, need to be promulgated as part of the State's Implementation Plan for controlling air pollution in order to be effective for federal purposes.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota): There are no non-federal Class I areas or non-federal Class I rules in any of these states.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen: The proposed rule is based on the federal re-designation of the FCPC Reservation lands to non-federal Class I, and the Final Agreement.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report: An analysis of the effect of the proposed rules on small business was not performed since the proposed rule only impacts major sources of air pollution in the State and conforms to federal requirements. Major sources of air pollution are not typically small businesses.

10. Effect on small business: These rules should not have a significant economic impact on small business because major air pollution sources do not generally meet the definition of a small business.

11. Agency contact person: Steven Dunn, P.O. Box 7921, Madison, WI 53707, Telephone number: (608) 267-0566; e-mail address: Steven.Dunn@wisconsin.gov

SECTION 1. NR 400.02 (66m) is created to read:

NR 400.02 (66m) "Forest County Potawatomi Community Class I area" or "FCPC Class I area" means those land parcels of the Forest County Potawatomi Reservation that are designated as a non-federal Class I area by EPA under 40 CFR. 52.2581. The FCPC Class I area has a geographic center, as determined by the department, at latitude 45.49978°N, longitude 88.64377°W.

SECTION 2. NR 405.19 is created to read:

NR 405.19 Forest County Potawatomi Class I area. (1) For any new major source or major modification of an existing source, the Forest County Potawatomi Community shall have the opportunity to present to the department, within no more than 75 days of receipt of a complete permit application by the department, a demonstration that the emissions from the proposed new major source or major modification would have an adverse impact on the established air quality related values of the FCPC Class I area.

(2) New major sources or major modifications of existing sources wholly or partially locating or located within a radius of 22.25 miles from the geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m), are subject to an increment analysis and limited to the maximum allowable increase levels of a Class I area.

(3) New major sources or major modifications of existing sources locating or located

wholly outside the area defined in sub. (2) are subject to an increment analysis and maximum allowable increase levels of a Class II area.

Note: The relationship between the State of Wisconsin and the Forest County Potawatomi Community with regard to the FCPC Class I area is established in a 1999 Class I Final Agreement. The geographic center of the FCPC Class I area was determined by finding the center of a rectangle placed around the outer most portions of the Class I area. The 22.25-mile radius was determined by adding 10 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area. A map developed by the Department and the Forest County Potawatomi Community shows the approximate 22.25-mile radius for the FCPC Class I area. The Final Agreement, map, and information on established air quality related values for the Class I area are available from the Department upon request, or may be found on the Department's web site.

SECTION 3. NR 406.08 (4) is created to read:

NR 406.08 (4) (a) The Forest County Potawatomi Community shall have the opportunity to review best available control technology (BACT) or maximum achievable control technology (MACT) determinations made by the department for any new or modified source that is either of the following:

1. Wholly or partially locating or located within a radius of 22.25 miles from the geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m).
2. Wholly or partially locating or located within 62 miles of the FCPC Class I area, and has a modeled impact exceeding 1 microgram per cubic meter averaged over any 24-hour period for mercury or for any regulated pollutant that has an ambient air quality standard in s. NR 404.04.

(b) Disagreements between the department and the Forest County Potawatomi Community regarding BACT or MACT determinations are subject to dispute resolution but the department shall act on a permit application according to time period requirements under ss.

285.61 and 285.62, Stats.

Note: The geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m), was determined by finding the center of a rectangle placed around the outer most portions of the Class I area. The 22.25-mile radius was determined by adding 10 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area.

The Department has determined that any source wholly located outside of a circle with a radius of 74.25 miles from the geographic center of the FCPC Class I area is not within 62 miles of the FCPC Class I area. The 74.25-mile radius was determined by adding 62 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area. It is the Department's intent that this circle be used as a screening tool for determining applicability of this subsection, and evidence that a source is wholly outside of this circle will be accepted as proof that the source is not within 62 miles of the FCPC Class I area.

The relationship between the State of Wisconsin and the Forest County Potawatomi Community with regard to the FCPC Class I area is established in a 1999 Class I Final Agreement. Dispute resolution follows a process agreed to by the Department and the Forest County Potawatomi Community pursuant to the Final Agreement.

The Final Agreement and maps showing the approximate 22.25-mile and 74.25-mile radii are available from the Department upon request, or may be found on the Department's web site.

SECTION 4. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

