



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

NOV 26 2008

REPLY TO THE ATTENTION OF:

AR-18J

Laura W. Spurr, Chairperson
Nottawaseppi Huron Band of the Potawatomi
2221 1-1/2 Mile Road
Fulton, Michigan 49052

Dear Chairperson Spurr:

I am writing in response to your October 2, 2008, letter discussing tribal concerns regarding air permitting issues in Michigan and requesting assistance from the U. S. Environmental Protection Agency to facilitate greater Tribal participation in the State's air permitting processes. As I communicated at the September 16, 2008 meeting, EPA recognizes its trust responsibility with Federally recognized Tribes, and remains committed to working with Tribes on a government-to-government basis.

You have requested that EPA respond to several concerns outlined in your letter. First you have asked EPA to provide technical assistance to the Michigan Tribes in connection with the imminent permitting process for the pending new coal-fired power plants in Michigan. In response to the September 16, 2008, consultation with Tribal representatives in Saginaw, Michigan, EPA conducted a training workshop for tribal staff on November 5, 2008, on reviewing coal-fired power plant permits. Nine tribal governments and two inter-tribal organizations were able to participate in the training workshop. The training included a discussion on the Prevention of Significant Deterioration (PSD) major source permitting programs in general, including specifics of the Wolverine Power Supply Cooperative Inc. permit application; one of several coal-fired power plants that have submitted an application for construction in the State of Michigan. Please be aware that the public comment period for the Wolverine Power Supply Cooperative Inc. permit was recently extended to January 6, 2009. I also understand that the State of Michigan plans to hold a public hearing on this permit on January 6, 2009, at 1:00 p.m. in the ConCon Conference Room, Constitution Hall, 525 West Allegan Street, Atrium Level, South Tower, Lansing, Michigan. In addition, at the September 16, 2008, consultation EPA committed to schedule a workshop in 2009 for tribal governments on how to impact Clean Air Act (CAA) permit decisions. We will notify all attendees of the September 16, 2008, consultation when that training has been scheduled.

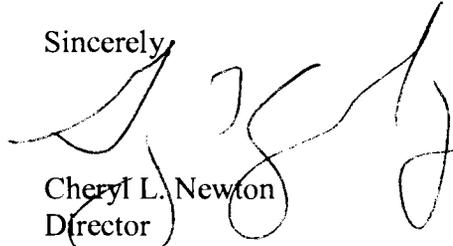
You and your staff may wish to consider modifying your current General Assistance Program (GAP) grant to redirect existing grant funds toward building capacity to establish air program functions, including assistance to review air permits. If you have questions regarding redirecting funds under your current GAP grant, please contact Paulette Foreste of the Indian Environmental Office, at 312-886-0141.

It is encouraging to hear of your interest to meet with officials from the State of Michigan and representatives from power companies with pending permit applications to discuss your concerns regarding risk assessments and the impacts from emissions from these types of sources on traditional lifeways/practices. I have asked Pamela Blakley of my staff to work with her counterpart at the Michigan Department of Environmental Quality (MDEQ) to set up this meeting. Please let me know who should be the tribal contact person to work with them on this effort. Please keep in mind that Federal PSD permitting regulations does not contain a specific requirement to conduct a risk assessment. However, I am aware that MDEQ has a State air toxics program and risk assessment provisions in place that could serve as a vehicle to address your concerns. I believe that a good first step is to have a conference call with the tribes, MDEQ, and EPA staff to discuss risk assessment tools, at the State and Federal level, that may help address your concerns. We would be willing to work with you and MDEQ to set up this call as well.

Finally, you ask that we provide information on how EPA's pending approval of Michigan's State Implementation Plan (SIP) for PSD will impact the appeal procedures for permits issued under the State's approved program. Generally, EPA believes that permits which are made available for public notice and comment after the promulgation of EPA's conditional approval of the Michigan PSD SIP (73 Fed. Reg. 53366 (September 16, 2008)) will be subject to the state appeals process, because the opportunity to appeal will arise after the conditional approval has become effective. However, any appeal or portion of an appeal that raises questions regarding appropriate notice to a Federal Land Manager (FLM) under 40 C.F.R. 51.166(p) (that portion of the Federal PSD program which remains delegated pursuant to EPA's proposed partial disapproval (73 Fed. Reg. 53401 (September 16, 2008))), would be made to the Environmental Appeals Board (EAB). The appeal to the EAB would stay the effective date of the entire permit until such time as the Federal appeals process has been concluded. Appeals of issues other than those covered by 40 C.F.R. 51.166(p) would go through the State's appeal process. Please be aware that on October 8, 2008, MDEQ submitted a corrected rules package to address both the conditional approval issues, as well as the deficiencies noted in EPA's proposed partial disapproval. EPA expects to act on this submittal in the near future. If EPA determines that these rules are consistent with federal requirements, the Agency will approve them into the State's SIP. At that time, EPA's remaining delegation regarding the FLM issue would be withdrawn and all permit appeals would go through the State's appeal process.

If you have any questions, please do not hesitate to contact me, or Pamela Blakley at 312-886-4447.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cheryl L. Newton', written over the printed name.

Cheryl L. Newton
Director
Air and Radiation Division

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