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July 25th, 2018

Department of Natural Resources & Environmental Control (DNREC)
Division of Air Quality
State Street Commons
100 W. Water Street, Suite 6A
Dover, DE 19904

RE: Request for Consultation and Coordination with Tribes on EPA GHG Emissions Related Rulemaking Activities and State Implementation Plan Development Under Clean Air Act Sec. 111.

Director Ali Mirzakhali, P.E.:

Introduction

The NTAA is a member-based organization with 131 principal member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of Indian Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important that the State of Delaware understands interactions with the organization do not substitute for government-to-government consultation, which can only be achieved through direct communication between the federal government and Indian Tribes.

In October 2017, the Environmental Protection Agency (EPA) filed notice of its proposal to repeal the Clean Power Plan (CPP). In December 2017, the EPA also issued an Advanced Notice of Proposed Rulemaking (ANPR) to "solicit information from the public about a potential future rulemaking to limit greenhouse gas emissions from existing electricity generating units, commonly called power plants." Because the EPA now interprets the Clean Air Act (CAA), Sec. 111(d), to defer to the States to establish appropriate standards of performance for existing sources, we are conducting this outreach to the State of Delaware to indicate our Tribes' interest in working with the State on issues of interest and importance to the Tribes, including the State's view of establishing standards, the establishment of standards, and outreach to the Tribes.

Of specific concern to the NTAA and its member Tribes, the EPA did not include discussion of implications for Indian Country. At least four Electric Generating Units (EGUs) are located on Indian lands, and by some estimates, 50 power plants are located within 20 miles of Indian lands. Unlike the current CPP, which required outreach and consideration of impact on low-income, vulnerable, and indigenous communities, the ANPR does not contemplate any specific outreach or input requirements from these affected Tribal communities. Thus, the NTAA and its member Tribes are especially interested in conducting outreach directly to States.



Indian Tribes and Climate Change Impacts

The NTAA has previously identified the real effects of climate change on Indian Tribes caused by the emission of carbon dioxide (CO₂) and other greenhouse gases (GHGs) into the atmosphere. EGUs are the single largest source of CO₂ pollution in our nation, emitting approximately 2.3 billion tons annually, which comprises 40% of the carbon pollution emitted in the U.S. CO₂ pollution impacts human health and the environment in a number of ways. The impacts vary regionally and seasonally and may include longer, more intense and more frequent heat waves; more intense precipitation events and storm surges; and less precipitation and more prolonged drought. The negative health effects associated with climate change are especially damaging for vulnerable populations including the elderly, young children, and those individuals already in poor health.

Indian Tribes and Alaska Native Villages are not immune from the effects of climate change. Like the rest of the nation, its populations are suffering from the health effects of climate change. Further, Tribes are seeing the effects of climate change through increased storm surges, erosion, and flooding; prolonged droughts never seen in modern times; and increased fires and insect pest outbreaks in their forests. These are just a few snapshots of what is happening on and around the lands of the nation's 573 federally recognized Tribes.

Indian Tribes are also affected much differently than the rest of the nation as their cultures are highly integrated into the ecosystems of North America, and many Tribal economies are heavily dependent on the use of fish, wildlife, and native plants. Even where Tribal economies are integrated into the national economy, Tribal cultural identities continue to be deeply rooted in the natural environment. As climate change disrupts biological communities, the survival of some Tribes as distinct cultures may be at risk. The loss of traditional cultural practices, due to climate-driven die-off or range shift of culturally significant plant and animal species, may prove to be too much for some Tribal cultures to withstand on top of other external pressures that they face.

Climate-driven disruption of biological communities is also having a considerable effect on the treaty rights of Indian Tribes. Many such treaties preserve hunting, fishing, and gathering rights for Tribes on their lands and in the usual and accustomed areas. Some Tribes are finding that the animals and/or plants on which they depend for their cultural practices and identity have either migrated to lands not under their control or have disappeared altogether. How does one begin to value this type of loss for a Tribe? Further, CO₂ emitted today can remain in the atmosphere up to 100 years, meaning that the full impacts of these emissions on Tribes and their cultures may not be seen until many years into the future.

In May 2014, the NTAA released the Status of Tribal Air Report (STAR) that identifies regional impacts from climate change, impacts that the NTAA has highlighted to varying degrees in subsequent STARs issued in 2015, 2016, and 2017. As stated in the STAR: in the northeast, projected increases in heavy precipitation and likely sea level rise may lead to more frequent, damaging floods in this region and coastal erosion. Large portions of the region may become unsuitable for growing some fruit varieties and some crops, such as cranberries, apples, blueberries, grain, and soybeans. Similarly, by the end of the century, only a small portion of the Northeast may be suitable for maple syrup production. In contrast, the region could see a longer growing season for a number of other crops, which would provide potential benefits to society.



The urgency and need to address climate change and its impacts to Indian Tribes, and the nation as a whole, increases with each ton of CO₂ emitted into the atmosphere. Our nation and other parts of the international community were hit hard this year with multiple hurricanes and wildfires, all of which were intensified due to the changes in our climate system from an increase in the percentage of atmospheric carbon, methane, nitrous oxide, and other GHGs. These natural disasters cost our country billions of dollars, as well as the loss of lives and livelihoods.

The CPP, the first and only federal rule to place limits on carbon pollution emitted from existing power plants in the U.S., will help to reduce such atmospheric emissions and the natural disasters whose causes are partially rooted in these emissions.

EPA conducted a significant degree of analysis in support of the GHG emissions reductions under the CPP. EPA calculated that these expected GHG emissions reductions would prevent up to 90,000 childhood asthma attacks, 300,000 missed work and school days, 1,700 hospital admissions, 1,700 heart attacks, and 3,600 premature deaths annually by 2030.¹ Further, the expected value of the public health and climate benefits generated by the CPP, which could help spark economic growth for the nation's economy, would evaporate. These benefits are worth an estimated \$34 billion to \$54 billion compared to \$8.4 billion in costs. The CPP also incentivized major investments in energy efficiency and renewable energy, such as solar and wind power, investments a number of Indian Tribes have made. NTAA and its member Tribes have a vested interest in seeing these tremendous health benefits, economic benefits and clean energy investments from reducing GHG emissions.

Tribal Consultation

While the Tribes in the State of Delaware have a unique government-to-government relationship with the federal government, the Tribes also have a government-to-government relationship with the State. Consultation is a core element of this government-to-government relationship.

Native American Tribal communities possess unique vulnerabilities to climate change, particularly those impacted by degradation of natural and cultural resources within established reservation boundaries and threats to traditional subsistence lifestyles. Tribal communities whose health, economic well-being, and cultural traditions that depend upon the natural environment will likely be affected by the degradation of ecosystem goods and services associated with climate change.

For this reason, combined with EPA's call for cooperative federalism with state and Tribal governments to address environmental problems collectively, the NTAA and its member Tribes encourage the State to establish consultation policies and procedures as the State reviews, evaluates, and comments on future EPA rulemaking related to GHG emissions regulations. Furthermore, the NTAA and its member Tribes also encourage the State to use these consultation policies to conduct outreach to the Tribes as it develops its State Implementation Plan under any future EPA rule related to GHG emissions regulations.

The result of meaningful government-to-government consultation should be that substantive Tribal input has been considered and incorporated into any State policy and actions having Tribal implications. To be meaningful, consultation by the State with the Tribes should:

¹ <https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-clean-power-plan-numbers.html>



1. Provide clear guidance on how the relevant state agency intends to assure that government-to-government consultation with Tribes will result in meaningful dialogue rather than simply pro forma consultation.
2. Assign to the State action a Tribal liaison who has worked extensively with Tribes on similar issues.
3. Send a letter to Tribal chairpersons with copies provided to appropriate Tribal staff (e.g., Tribal administrator, Tribal historic preservation officer, environmental and/or natural resources manager) that asks Tribes how they would like to be consulted regarding the State action, and a request for the names and addresses of other persons who should be notified or consulted.
4. Provide assurances to Tribes that the most senior-level State agency official will be engaged in government-to-government consultation regarding the State action since Tribes will likely be represented by its highest-level officials such as Tribal chairpersons and/or council members.
5. Provide assurances to Tribes that communications and documents shared as part of government-to-government consultation shall remain confidential unless the parties involved agree to share any such communications or documents with outside parties.
6. Provide sufficient time or maximum administrative discretion to Tribes to review and provide comments regarding the state action.

Lastly, in addition to group outreach sessions, the State agency should engage in government-to-government consultation with individual Indian Tribes. Government-to-government consultation with individual Tribes is necessary and meaningful for a number of reasons. First, it provides for more candid conversations between the individual Tribe and the State agency than what would occur otherwise during a group meeting. Second, each Tribe's circumstances are unique and must be treated as such by the State agency. A group meeting of Tribes would only give short shrift to these circumstances. Third, most cultural resources information should be protected from public release. Discussion of such information by an individual Tribe as part of a group meeting of Tribes risks its release to the general public and potentially endangers Tribal cultural sites and practices. Finally, the subject matter may be so unique that government-to-government consultation between individual Tribes and the State agency provides the best opportunity for a resolution to the situation versus a group meeting of Tribes where any number of Tribal issues could be brought up with only a limited period of time to discuss them.

Conclusion

In summary, the NTAA and its member Tribes strongly encourage the State of Delaware to engage the Tribes on its efforts related to GHG emission reductions and regulations, including the State's potential comments to EPA rulemaking and development of the State's standards and implementation plan. If you have any questions or require clarification from NTAA, please NTAA's Project Director Andy Bessler at 928-523-0526 or andy.bessler@nau.edu.



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Thank you for your time and prompt consideration of this request.

Sincerely,



Wilfred J. Nabahe
Executive Committee Chairman
National Tribal Air Association