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March 12, 2021

Dear Honorable Leader:

I am reaching out to you today on behalf of the National Tribal Air Association (NTAA) regarding your Tribe's Treatment in a Manner Similar to a State (TAS) ¹ for administering the Clean Water Act (CWA) Section 303 (c) water quality standards ² (WQS) and/or Section 401 water quality certification programs ³ by meeting the requirements outlined in CWA Section 518 (e) ⁴. We congratulate your Tribe for obtaining such status for your WQS programs and water certification programs. We realize the extenuating and time-consuming process it took to get this vital tool to promote your Tribe's sovereignty.

The NTAA is a member-based organization with 153 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.

The NTAA supports Tribes in protecting public health through the promotion of tribal air quality programs, shaping air quality policy that may impact Tribes, and supports Tribes with TAS under the Clean Air Act (CAA), Section 301(d),⁵ and the Tribal Authority Rule (TAR) ⁶ As with the CWA TAS authorities, Tribes can exercise their sovereignty over air resources on tribal lands to protect public health through air quality management programs under CAA TAS or afford a Tribe with permit review for Title V (large) sources with 50 miles of their Reservation (see below).

Since your Tribe has already met the CWA TAS criteria, the process for obtaining CAA TAS is much simpler. As stated on the Environmental Protection Agency (EPA) website, "A tribe previously determined eligible (or meeting "treatment in the same manner as a state" criteria) under another EPA program will simply have to note such determination has been made in order to demonstrate that

¹ <https://www.epa.gov/tribal/tribes-approved-treatment-state-tas>

² <https://www.law.cornell.edu/uscode/text/33/1313>

³ <https://www.epa.gov/cwa-401/basic-information-cwa-section-401-certification>

⁴ <https://www.law.cornell.edu/cfr/text/40/123.31>

⁵ <https://www.govinfo.gov/content/pkg/USCODE-2013-title42/pdf/USCODE-2013-title42-chap85-subchapIII-sec7601.pdf>

⁶ <https://www.govinfo.gov/content/pkg/FR-1998-02-12/pdf/98-3451.pdf>

it is federally recognized and has an adequate governing body." ⁷ The EPA's decision allows Tribes to pursue CAA TAS designation in a more streamlined manner. As with the CWA TAS, the Tribe will receive several benefits which include the ability to set air quality standards, engage in air emissions permitting, receive notifications with opportunity to comment on other permitting decisions, access to funding, program support, and technical assistance. For example:

Section 105 of the CAA ⁸ allows the Administrator to make grants to air pollution control agencies for activities related to developing and maintaining air pollution programs. The Administrator may not disapprove an application for a continuing grant under Section 105 without prior notice and the opportunity for a public hearing. In the TAR, the EPA specifically waives the maximum Federal share for grants to tribal air programs if approved for TAS for CAA Section 105. A determination of TAS eligibility for Section 105 would permit your Tribe to receive CAA 105 funding for its air quality program with a larger maximum federal share under 40 CFR 35.575(a) ⁹, although the total funding may fluctuate year to year.

Section 126 of the CAA ¹⁰ concerns interstate pollution abatement. Section 126(a) mandates that all State Implementation Plans (SIPs) require each major proposed new (or modified) upwind source to notify states downwind before construction or modification. An eligibility determination would enable your Tribe to be treated as a nearby state for purposes of CAA section 126(a). Section 126(b) allows any state (in this case, the Tribe) or political subdivision to petition the Administrator for a finding that any significant source or group of stationary sources emits or would emit any air pollutant in violation of section 110(a)(2)(D)(ii) ¹¹.

CAA Section 505 (a) ¹² establishes notification procedures for Title V permitting programs. If a Tribe obtains TAS eligibility for Title V permitting, CAA Section 505(a)(2) provides that each permitting authority issuing a permit under the Title V permitting program shall notify all States – including TAS tribes – whose air quality may be affected and contiguous to the State in which the emissions originate or that are within 50 miles of the source. After notification, the affected State must be provided with an opportunity to submit written recommendations concerning the issuance of the permit and its terms and conditions. *An eligibility determination with respect to Section 505(a)(2) would enable your Tribe to be treated as an “affected State” for purposes of this provision.* It would also require the Tribe to notify affected States should it seek and obtain TAS eligibility to assume control of Title V permitting on its reservation.

Given the many benefits and opportunities for your Tribe to protect your tribal air quality, we hope to begin a dialogue with a representative from your Tribe about obtaining TAS authority for potentially implementing an air quality program for your Tribal jurisdiction. To start this dialogue in the next quarter of 2021, NTAA will be hosting an informational webinar for Tribes with water

⁷ <https://www.epa.gov/tribal-air/tribal-authority-rule-tar-under-clean-air-act>

⁸ https://www.epa.gov/sites/production/files/2016-02/documents/caa_tas_document_final_draft.pdf

⁹ <https://www.law.cornell.edu/cfr/text/40/35.575>

¹⁰ https://www.epa.gov/sites/production/files/2016-02/documents/caa_tas_document_final_draft.pdf

¹¹ <https://www.law.cornell.edu/uscode/text/42/7410>

¹² https://www.epa.gov/sites/production/files/2016-02/documents/caa_tas_document_final_draft.pdf



TAS to provide you additional information and answer your questions. We will follow up with you soon to provide the details on how to participate in this informational webinar.

Please ensure to contact NTAA's Project Director, Mr. Andy Bessler either at andy.bessler@nau.edu or via phone at 928-523-0526. The NTAA looks forward to working with you and/or your executive staff to advance air quality in Indian Country.

Sincerely,

A handwritten signature in blue ink that reads 'Carol Kriebs'.

Carol Kriebs
Chairwoman
National Tribal Air Association
Executive Committee

Cc: Tribes Environmental Director
EPA Regional TAC