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**MEETING MINUTES
National Tribal Air Association / U.S. Environmental Protection Agency
Tribal Air Policy (TAP) Workgroup
July 6, 2006**

INTRODUCTION

The TAP Workgroup (Workgroup) held a conference call on July 6, 2006 from 2:00 to 3:30 p.m. EST. EPA provided updates on Agency activities, including an overview of Executive Order 13175, Consultation with Tribes; an overview of the draft guidance on the regional haze SIP/TIP process, and an update on outreach plans for the Tribal NSR Rule.

ATTENDEES

Annabelle Allison	EPA/OAQPS
Jose Aguto	EPA/AIEO
Christella Armijo	Salt River Pima-Maricopa Indian Community
Barbara Bauer	E.H. Pechan & Assoc., Inc (contractor to EPA)
Lisa Brenneman	Eastern Shawnee Tribe of Oklahoma
Ken Cronin	National Tribal Environmental Council
Tamera Dawes	Inter-Tribal Council of Arizona
Bob Gruenig	National Tribal Environmental Council
Kathy Kaufman	EPA/OAQPS
Sam Kitto	Santee Sioux Nation
Andy Knott	Grand Traverse Band of Ottawa and Chippewa Indians
Tami LaPlante	EPA/OAQPS
Charlie Lippert	Mille Lacs Band of Ojibwe
Wendy Namisnik	EPA/OAQPS

DISCUSSION

Updates

Jose Aguto – EPA Draft Guidance for Implementing EO 13175 “Consultation and Coordination with Indian Tribal Governments.”

Please see the accompanying file (EO Presentation for Tribal Air Call (3).doc) that contains detailed information from Jose’s presentation to the Workgroup.

Jose provided an overview of draft guidance for implementing Executive Order 13175, Consultation with Tribes, which is currently open for public comment until July 18, 2006

(although EPA expects to extend the public comment period 30-60 days). Jose explained that an Executive Order (EO) is an order from the President to the Federal Agencies. An EO is a statement of policy and is not legally binding. EPA was charged with structuring this draft implementation guidance similar to the state consultation guidance.

Ken asked who has principal responsibility for EO 13175. Jose replied that ultimate responsibility for compliance with the EO rests with the Director of AIEO, Carol Jorgensen. However, regarding its implementation, Jose explained that EPA accesses all Agency expertise.

Ken asked if each individual preparing an EPA rulemaking or policy would make the determination whether or not the rule has Tribal implications (TI), and if each individual would develop a separate consultation plan. Jose responded that this is the case, depending on the rule and agency action.

Ken pointed out that despite having major impact on Tribes (threat to Tribal air programs and health), EPA determined that there was no TI, and therefore did not consult with Tribes on the PM2.5 NAAQS rule. Jose agreed, and added that one of the dynamics within the Agency is who has ultimate say regarding whether an action has TI. AIEO can make suggestions, but the rulemaking office makes the final determination. Jose stated that EPA is hoping to prepare guidance for the rulemaking offices on how to analyze TI (early in the rulemaking process). Annabelle added that OAQPS is developing a formal process for rule writers related to the analysis of TI.

Ken doubts that any Federal agency has enough information about Tribes to make the TI determination. Only the Tribes themselves can tell EPA if they will be affected by a rule. Ken asked why EPA is not using the successful minor NSR rule process as a Tribal consultation model. In the minor NSR rule process, Tribes determined if and how consultation would take place. Annabelle agreed that this was a successful process.

The Workgroup discussed the level of complication and amount of information that Tribes must consider – at any given time there can be 80-100 different EPA rules that may apply to Tribes. Annabelle stated that EPA is trying to perform in-house analyses to determine affect on individual Tribes and sources to identify and focus on those Tribes that may be most impacted by a particular rule. EPA will seek input from the Tribes on how these in-house analyses could work. Jose added that EPA is developing a template for EPA rule writers about how to engage in Tribal consultation. This guidance template will include how to develop plain-language one-pagers, setting up conference calls, working with the Regional Indian Coordinator, etc. Once this guidance is finalized, it will become part of the formal training that is required for rule writers.

Kathy Kaufman – Overview of a guidance document being developed by EPA for the Regional Haze SIP/TIP process

Please see the accompanying file (RP guidance—consultation process – with wkgrp comments – memo form 06-30-06.doc) that contains detailed information from Kathy’s presentation to the Workgroup.

Kathy provided a brief overview of the guidance. EPA will accept comments on the guidance through August 7, 2006.

Kathy explained that under the Regional Haze rule, five Regional Planning Organizations (RPOs) were developed, which include Tribal participants. States and RPOs are currently involved in developing the SIPs, with Tribal input through the RPO process. For every Federal Class I area, states are required to develop a SIP that address visibility and regulates the sources affecting visibility. Tribes may elect to develop TIPs, which would also address these issues. Currently no Tribes are developing TIPs, but Tribes are subject to the same deadline as the states. Regional Haze implementation plans are due December 2007.

EPA issued draft guidance in November on how to do reasonable progress determinations for Federal Class I area visibility impairment. The guidance specifically addresses what sources contribute to visibility impairment and how to regulate those sources. The guidance did not address consultation; however, some states and RPOs asked for additional guidance on Tribal consultation in the development of Regional Haze SIPs. As a result, EPA Regions and OAQPS developed a memo and accompanying two-page description of the Regional Haze Tribal consultation process. This consultation guidance stresses the importance of Tribal consultation at every point in the process.

Ken asked why Tribes were not involved in the development of the memo early on. Kathy replied that the guidance is specifically aimed at those who are writing implementation plans and EPA did not know which, or if any, Tribes were planning to develop TIPs.

Ken pointed out that in the Regional Haze rule (under Long-Term Strategies) Tribes are to be treated in the same manner as states and there should be consultation. It doesn’t say there must be a SIP or TIP for the consultation to occur. Kathy agreed that the Regional Haze rule does require Tribal consultation. However, the rule doesn’t provide all the details of how the consultation should occur. EPA created the RPOs, which include Tribes; the RPOs are now undertaking all of the consultation work.

Ken expressed concern that the memo was not sent directly to the RPO directors and that different versions of the document were being circulated. Kathy said that OAQPS sent the memo to the Regional offices and asked them to share it with the RPOs; the RPOs were then to share the memo with the Tribes.

Sam expressed concern about states that will not work with Tribes in SIP development. He heard a State say that it will not consult with tribes because the state has no jurisdiction within Tribal boundaries. Kathy said if the Tribe is part of the RPO process, consultation will occur within the RPO. Ken believes that most RPOs will not undertake this process, although the WRAP is trying to get to this point. Kathy asked the Tribes to provide this type of comment on the guidance document.

Workgroup members asked how Tribes with no or new Tribal air programs and Tribes with and without TAS will be addressed in the guidance. They suggest that the guidance include consultation with all Tribes. Kathy asked the Tribes to send this specific comment to kaufman.kathy@epa.gov.

Wendy Namasnik – Tribal NSR Rule Outreach Plans

Wendy provided an update on the OAQPS Tribal NSR rule's outreach plan. She explained that EPA will soon publish two new NSR rules. Some of the outreach plans are:

- Webex “train the trainer” session with EPA Regional offices.
- Conference calls with Tribal, state, and local groups.
- Posting informational PowerPoint presentations on NTEC, ITEP, and NTAA web sites.
- Public hearing

Wendy can be reached at 919-541-0371 or email at namasnik.wendy@epa.gov.

ACTION ITEMS

- Workgroup members should send comment to EPA on the rules and guidance discussed during the conference call