UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

OCT 2 5 2010

Dear Tribal Leader:

The purpose of this letter is to provide you with information about the U.S. Environmental Protection Agency's (EPA) development of standards under the Clean Air Act for air emissions of hazardous air pollutants from coal- and oil-fired electric utility steam generating units and to invite you to consult should you believe that your Tribe could be affected by these standards.

On March 29, 2005 (70 FR 15994), EPA published a final rule (Section 112(n) Revision Rule) that removed coal- and oil-fired electric utility steam generating units from the list of sources for which regulation under Clean Air Act section 112 was required. At the same time, EPA published a separate related rule requiring reductions in emissions of mercury from electric utility steam generating units (Clean Air Mercury Rule, May 18, 2005, Federal Register Volume 70, page 28606). The Section 112(n) Revision Rule was voided on February 8, 2008, by the U.S. Court of Appeals for the District of Columbia Circuit. As a result of that court action, the Clean Air Mercury Rule was also voided and coal- and oil-fired electric utility steam generating units remain on the list of sources that must be regulated under Clean Air Act section 112.

Today's letter notifies you that EPA will develop standards under Clean Air Act section 112(d) that will reduce hazardous air pollutant emissions from electric utility generating units. EPA is under court order to sign a proposed rule containing those standards by March 16, 2011.

The "electric utility steam generating unit" source category includes those units that combust coal or oil for the purpose of generating electricity for sale and distribution through the national electric grid to the public. The source category includes investor-owned units as well as units owned by the federal government, municipalities, and cooperatives, among others. Clean Air Act section 112(a)(8) defines an "electric utility steam generating unit" as:

> "any fossil fuel-fired combustion unit of more than 25 megawatts electric (MWe) that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MWe output to any utility power distribution system for sale is also considered an electric utility steam generating unit."

The national standards EPA will develop will apply to any existing, new, or reconstructed electric utility generating unit. Coal- and oil-fired generating units have the potential to emit a number of hazardous air pollutants. While all hazardous air pollutants are pollutants of interest to EPA, those of particular concern are hazardous air pollutant metals, including mercury, lead, antimony, arsenic, beryllium, cadmium, chromium, cobalt, manganese, nickel, and selenium, and the hazardous air pollutants hydrogen fluoride, hydrogen chloride, and dioxins/furans.

Because the standards will apply to all electric utility generating units located within Indian country, the Agency believes it is important to offer consultation with federally-recognized tribes. EPA expects the proposed rule to *improve* environmental protection within Indian country and nationwide. However, to ensure that your lands and interests are protected, we are prepared to consult with you or your designee should you desire. If you would like to initiate government-to-government consultation with EPA, please contact Laura McKelvey at (919) 541-5497 or James White at (919) 541-0842. Due to the court-imposed deadline, however, we kindly request that you notify EPA of your request for consultation by November 5, 2010.

We request your input to assure that we develop the best rule possible. We endeavor to conduct our efforts with sensitivity to the needs and culture of your tribe and with attention to the potential impact of our actions. We look forward to receiving your input.

Sincerely,

P. Tsirigotis

Peter Tsirigotis
Director
Sector Policies and Programs Division

cc: Tribal Environmental Staff