

National Association of Clean Air Agencies

January 19, 2007

U. S. Environmental Protection Agency
EPA West (Air Docket Center)
1200 Pennsylvania Avenue, NW
Mailcode 6102T
Washington, D.C. 20460

Attention Docket ID No. EPA-HQ-OAR-2003-0076

To Whom It May Concern:

The National Association of Clean Air Agencies (NACAA), formerly STAPPA and ALAPCO, is pleased to submit comments on the proposed EPA rules published at 71 Federal Register 48695 (August 21, 2006) titled "Review of New Sources and Modifications in Indian Country." NACAA is the national association of air pollution control agencies in 54 states and territories and over 165 major metropolitan areas throughout the United States.

NACAA commends EPA for addressing air quality in Indian country. Although new source review (NSR) prevention of significant deterioration (PSD) requirements currently apply to new and modifying existing sources on Indian lands, there have been no NSR requirements for minor sources or for major sources in nonattainment areas. The proposed rule will fill a significant gap. Nonetheless, we urge EPA to make revisions in accord with our comments. The rule must provide public health protection for residents of Indian lands that is equal to the protection given to all other Americans. Furthermore, its provisions should establish programs for Indian lands that are consistent with the efforts of states and localities and also level the playing field for industrial sources locating in, and outside, Indian country.

To put the scope of this proposed rule into context, 55.7 million acres of land is held in trust by the United States for American Indians.¹ On this vast acreage, there are 275 Indian land areas administered as Indian reservations, the largest of which is the Navajo reservation of 16 million acres in Arizona, New Mexico, and Utah.² There are 12

¹ Department of the Interior web site, <http://www.doi.gov/bureau-indian-affairs.html>

² <http://nationalatlas.gov/printable/fedlands.html>

Indian reservations that are larger than the state of Rhode Island and nine reservations larger than Delaware. A sizeable majority of NACAA's state and local jurisdictions either contain American Indian reservations or are downwind of emissions from sources on neighboring reservations.

Moreover, approximately 1.4 million American Indians currently live on reservations,³ many in areas that have not attained healthful air standards. For example, 61 tribes live on reservations located in nonattainment areas for the 8-hour ozone national ambient air quality standards.⁴ Seven reservations are located in the San Joaquin Valley Air Quality District, a nonattainment area under the 1-hour ozone standard that is classified "severe."

Given the scope of the land area and the population at risk, it is vitally important that more stringent measures be undertaken than those in the proposed rule. The air knows no boundaries. Only when air pollution is controlled consistently nationwide will all Americans receive equal health protection.

Moreover, we strongly agree with EPA that Indian country should not be viewed by industrial sources as a "pollution haven" from the regulatory requirements of NSR and other requirements (41 *Federal Register* 48704). Facilities that have installed pollution controls (either as a regulatory requirement outside of the reservation or voluntarily on the reservation) and otherwise complied with the regulations of the relevant jurisdiction should not be put at a competitive disadvantage for their efforts. Although the proposal is intended to accomplish this goal, it will not do so unless it is strengthened.

EPA Should Require Attainment Plans for Indian Lands in Nonattainment Areas

Although EPA's proposal addresses new and modifying sources in nonattainment areas, NACAA encourages the agency to go farther and address existing sources on Indian lands. Currently, such sources are unregulated even though they operate within the same air basins as sources subject to all state and federal Clean Air Act requirements. The result is a serious inequity in air pollution regulation and significant potential impact—untouchable by state and local air quality regulators—on the air quality in areas already having degraded air quality.

For instance, on one side of the tribal land boundary line, an existing facility's industrial equipment, such as boilers and internal combustion engines, can emit large quantities of uncontrolled emissions. On the other side of the boundary line, the same type of facility has made significant expenditures to reduce emissions through installation of pollution control equipment. NACAA believes that sources on Indian lands should comply with provisions that are consistent with those of the State Implementation Plans

³"We the People: American Indians and Alaska natives in the United States," report based on 2000 U.S. Census data: <http://www.census.gov/population/www/socdemo/race/censr-28.pdf>. The report states that there are 4.3 million American Indians, 1/3 of whom live on reservations.

⁴ Tribes in 8-Hour Ozone Nonattainment Areas as of April 15, 2004 are listed at <http://www.epa.gov/ozonedesignations/tribaldesig.htm>

(SIPs) in the bordering state or local air agency. The requirements for tribal areas should be embodied in Tribal Implementation Plans (TIPs) that require compliance with the relevant SIPs, including Reasonably Available Control Technology and all other relevant requirements. Because such TIPs could emulate SIPs that have been already been drafted and implemented by the states and localities, it would take relatively little additional effort to arrive at effective tribal rules that would mirror those in the SIPs.

Sources Locating in Indian Country Should Be Subject to Offset Requirements

NACAA supports the proposed rule's requirement to install lowest achievable emission rate (LAER) on new and modifying sources in Indian lands that have not attained the NAAQS. However, the proposal exempts sources from emissions offset requirements, stating, “[t]ribes, with few exceptions, do not have many existing sources within their area of Indian country from which offsets can be obtained.” The Clean Air Act Part D requirements for nonattainment areas allow for no exemptions, casting doubt on the legality of this provision. Apart from the legal argument, it is unfair to sources in other parts of the country that face shortages of offsets to simply exempt tribal areas. Such a proposal again creates an incentive for industrial sources to find Indian country a kind of refuge from regulatory requirements—resulting in a tilted playing field and exacerbating air quality and public health problems on reservations. NACAA urges EPA to require offsets for sources locating in nonattainment areas in Indian lands.

Minor Sources in Indian Lands Should Be Subject to the SIP Rules of the Jurisdiction

NACAA commends EPA for addressing minor sources on reservations, and agrees that permitting these sources, including imposing monitoring and record-keeping requirements, will be beneficial. Nonetheless, we are concerned about the specifics of the proposal relating to control technology. The proposed rule states, “[f]or a new minor source that is subject to this rule...case-by-case control technology review [but no mandated control technology] would be conducted for all emissions units...that emit or have the potential to emit the pollutant for which the source is subject to this rule” (71 *Federal Register* 48704). Although the association agrees fully with the concept of addressing minor NSR, the proposed regulations will do little to address EPA's stated goal of minimizing the basic inequities in air pollution regulation between those operating businesses off and on the tribal lands and in fact will do little to clean the air in Indian country.

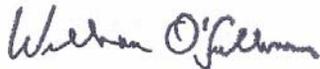
Rather than promulgating a rule that will result in little improvement in air quality, the association encourages tribes to adopt the minor NSR program of the closest neighboring state or local air agency. EPA and the applicable tribes could work together to identify the appropriate minor NSR program for large reservations spanning more than one air agency jurisdiction. In this way, appropriate control technology requirements will be imposed, air quality analysis may be required, and emissions increases will be offset as needed. Of great significance, sources will be treated evenhandedly and consistently

whether they locate in or outside Indian land, and will thus have no incentive to locate in “a pollution haven.”

In sum, the only reasonable method of creating parity between industrial sources in and outside tribal lands is to hold operations on tribal lands to the same standards that apply to operations in neighboring areas. This approach benefits all. Industry is treated evenhandedly, and residents on and around Indian country benefit from the same public health protections as other Americans.

We appreciate the opportunity to provide these comments to you. If you have any questions or desire further information, please do not hesitate to contact one of us or Mary Stewart Douglas of NACAA.

Sincerely,



William O'Sullivan
New Jersey
Co-Chair
NACAA NSR Committee



John Paul
Dayton, OH
Co-Chair
NACAA NSR Committee