



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

OFFICE OF THE
REGIONAL ADMINISTRATOR

OCT 16 2008

Mr. Robert H. Smith
Tribal Chairman
Pala Band of Mission Indians
12196 Pala Mission Road
Pala, CA 92059

Dear Chairman Smith:

It gives me great pleasure to formally announce that the Pala Band of Mission Indians has met the eligibility requirements of the Clean Air Act ("CAA") Tribal Authority Rule ("TAR") and has been approved to be treated as an "affected State" under the notification provisions of the Title V operating permit program.

I would like to commend the Tribe's effort in working collaboratively with EPA to produce the application which resulted in final approval. We look forward to continuing our work together to protect and enhance the Pala Band's air resources. We also would like to publicly acknowledge and celebrate this accomplishment at an upcoming EPA Region 9 Tribal Operations Committee meeting, and we will be in touch with your staff to coordinate this.

If you have any questions, please do not hesitate to give me a call, or have your staff contact Sara Bartholomew of the Air Division at (415) 947-4100.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne Nastri".

Wayne Nastri
Regional Administrator

cc: Lenore Volturmo, EPA Director, Pala Band
Robert Kard, APCO, San Diego APCD



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ELIGIBILITY DETERMINATION FOR THE PALA BAND OF MISSION INDIANS TO BE
TREATED AS AN "AFFECTED STATE"
UNDER THE NOTIFICATION PROVISIONS OF TITLE V OF THE CLEAN AIR ACT

The Office of Regional Counsel ("ORC") and the Air Division have reviewed the Pala Band of Mission Indians' ("Tribe") request for a determination that the Tribe is eligible to be treated as an "affected State" under the notification provisions under Section 505(a)(2) of the Clean Air Act ("CAA"), and they have recommended a finding of eligibility. Based on this review and recommendation, I have determined that the Pala Band of Mission Indians has met the requirements of 40 C.F.R. § 49.6 for the purpose of being treated as an "affected State" under the notification provisions of the CAA Title V operating permit program.

Eligibility Requirements

The substantive requirements for this eligibility determination are identified in the Tribal Authority Rule (TAR) at 40 C.F.R. § 49.6¹, and the application requirements are outlined at 40 C.F.R. § 49.7. The TAR provides that, where tribes have previously received authorization for a CAA program or for any other EPA-administered program, their applications need only identify the prior authorization and provide required information which had not been submitted with the prior application (40 C.F.R. § 49.7(a)(8)). The substantive requirements identified in the TAR are as follows:

a) The applicant is an Indian tribe recognized by the Secretary of the Interior;

The Tribe demonstrated that it fulfilled this requirement by referencing the list of "Indian Entities Recognized and Eligible to Receive Services from the United States and the Bureau of

¹ The Tribal Authority Rule establishes the implementing regulations for the Clean Air Act provisions that apply to Tribes, including CAA § 301(d)(1)(A), 42 U.S.C. § 7601(d)(2), which provides that the Administrator "is authorized to treat Indian tribes as States under this chapter. . . [,]" and CAA § 302(r), 42 U.S.C. § 7602(r), which defines "Indian tribe" as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

Indian Affairs” published by the Department of the Interior on December 29, 1988 (53 Fed. Reg. 52830). A more recent list was published by the Department of the Interior on March 13, 2000 in the Federal Register (65 Fed. Reg. 13298-01, p 71196). Both these lists include the Pala Band of Luiseno Mission Indians.

b) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

The Tribe has demonstrated that it fulfilled this requirement by referencing the powers in its 1997 Constitution. Through its Constitution and as a sovereign government, the Pala Band’s General Council is empowered to pass all tribal laws and regulations necessary to protect the health, safety, and welfare of the Band. This empowerment to regulate tribal resources stems from the Band’s inherent governmental authority and various Acts of Congress. The Tribe also met this requirement through its Application for Eligibility for Approval for a Grant Under Section 106 of the Clean Water Act, approved by EPA on June 25, 1997. EPA’s review of that application showed that the required information was submitted.

c) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe’s jurisdiction; and

The Tribe is seeking to be treated as an “affected State” under the Title V operating permit program in order to receive notice and opportunity to comment when neighboring States issue CAA Title V permits to facilities with air emissions having the potential to impact the Reservation. The functions to be exercised pertain to the management and protection of air resources within the exterior boundaries of the Reservation (including four parcels of trust land outside the exterior reservation boundaries), and specifically to the Tribe’s application to receive “affected State” status for the notification provisions of the Title V operating permit program under Section 505(a)(2) of the CAA. The specific functions described under this application for eligibility determination are not regulatory in nature.

The Tribe has provided maps and legal descriptions of the Pala Reservation and four parcels of tribal trust land, which the Tribe identifies as areas within the Tribe’s jurisdiction. While the map provided by the Tribe also show some fee lands outside the boundaries of the Reservation that are owned by the Pala Tribe, the Tribe has indicated that those lands should not be included in the application and that the legal description is the most accurate description of the Reservation. Therefore, ORC has reviewed the Tribe’s jurisdiction only with respect to the lands within the exterior boundaries of the Reservation and the four parcels of tribal trust land located outside the formal Reservation. The Office of Regional Counsel has reviewed the Tribe’s application and found that the Pala Band of Mission Indians has met this requirement for these areas.

d) the Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator’s judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable

regulations.

The Air Division reviewed the Tribe's capability to administer its "affected State" responsibilities under Title V of the CAA. The Air Division concludes that the Tribe has the capability to carry out these functions.

In sum, the Office of Regional Counsel and the Air Division find that the Tribe has met all of the requirements of CAA §§ 301(d)(2) and 302(r), and 40 C.F.R. § 49.6, for the purpose of being treated as an "affected State" under the notification provisions of the Title V operating permit program.

Notification of "Appropriate Governmental Entities"

40 C.F.R. § 49.9(b) provides that the Regional Administrator shall notify appropriate governmental entities upon receipt of a Tribe's initial, complete application for an eligibility determination under the CAA. Notification was first provided on February 22nd, 2008 to the Governor of the State of California, the United States Forest Service, the San Diego County Air Pollution Control District, the Pechanga Band of Luiseno Mission Indians, the La Jolla Band of Luiseno Mission Indians, the Pauma Band of Luiseno Mission Indians, the Rincon Band of Luiseno Mission Indians, and the San Pasqual Band of Digueno Mission Indians.

The Office of the Governor of the State of California requested a more detailed map and boundary description from the Tribe. This was provided and sent with a second notification to the same governmental entities on July 11, 2008, providing an additional 30 days for comment.

Consistent with EPA policy, public notice was provided in the form of an advertisement in the **San Diego North County Times**. Four comment letters were received on the Tribe's application. EPA's response to these comments are summarized in Attachment A.

Determination

Based on the information provided to me by the Air Division and the Office of Regional Counsel, I have determined that the Pala Band of Mission Indians has met the requirements of CAA §§ 301(d)(2) and 302(r) and 40 C.F.R. § 49.6 for purposes of receiving "affected State" status under the notification provisions of the Title V operating permit program.

Date: 10/16/08


Wayne Nasti, Regional Administrator

Attachment A
Response to comments on Pala Band CAA TAS application

The Pala Band of Mission Indians originally submitted an application seeking Eligibility for “Treatment in the Same Manner as a State” and Designation of “Affected State” under Title V of the Clean Air Act (“CAA”) on March 22, 2007.

40 C.F.R. § 49.9(b) provides that the Regional Administrator shall notify appropriate governmental entities upon receipt of a Tribe’s initial, complete application for an eligibility determination under the CAA. Notification was first provided on February 22nd, 2008 to the Governor of the State of California, the United States Forest Service, the San Diego County Air Pollution Control District, the Pechanga Band of Luiseno Mission Indians, the La Jolla Band of Luiseno Mission Indians, the Pauma Band of Luiseno Mission Indians, the Rincon Band of Luiseno Mission Indians, and the San Pasqual Band of Digueno Mission Indians.

The Office of the Governor of the State of California requested a more detailed map and boundary description from the Tribe. This was provided and sent with a second notification to the same governmental entities on July 11, 2008.

The Tribal Authority Rule (TAR) at §49.9(1)(c) outlines the relevant scope for comments on the Environmental Protection Agency (EPA)’s review of tribal Clean Air Act applications:

The governmental entities shall have 30 days to provide written comments to EPA’s Regional Administration regarding any dispute concerning the boundary of the reservation.

The Tribal Authority Rule (TAR) at §49.9(1)(d) also provides that:

In all cases, comments must be timely, limited to the scope of the tribe’s jurisdictional authority, and clearly explain the substance, bases, and extent of any objections.

EPA notes that comments outside the scope of the Tribe’s jurisdictional authority are not considered in the TAS eligibility process.

Comment letter from the Pechanga Band - dated March 26, 2008

1. Comment: The Pechanga Band does not understand the scope of the request, and would like an explanation of whether the Pala Band has requested EPA approval of both an eligibility determination and a Clean Air Act program.

EPA Response: The Pala Band application is only seeking approval for Treatment as State for Title V notification under the Clean Air Act, not for any regulatory Clean Air Act program. The Tribe’s letter states that “This letter is in support of the Band’s application seeking eligibility for

'Treatment in the Same Manner as a State (TAS) and designation as 'affected State' under the Title V of the Clean Air Act.'" The Clean Air Act states that "The permitting authority shall notify all States whose air quality may be affected and that are contiguous to the State in which the emission originates, or that are within 50 miles of the source."

2. Comment: The Pechanga Band commented that incomplete documentation attached was attached to the notification, and the notification was missing pages of the Pala Band's constitution.

EPA Response: The missing pages were inadvertently left out of the copy. The missing pages were identified, and provided to the commenter. The commenter did not identify any specific dispute with respect to the boundary of the Reservation or the Pala Band's jurisdictional authority.

3. Comment: The Pechanga Band states that the Pala Band must submit documents showing that it has a fully effective program that meets all statutory and regulatory requirements associated with that program.

EPA Response: This comment is noted, but it is outside the scope of this determination. As stated in the TAR, §49.9(1)(c), "The governmental entities shall have 30 days to provide written comments to EPA's Regional Administration regarding any dispute concerning the boundary of the reservation." Pursuant to §49.9(1)(c) and (d), EPA only considers comments limited to the scope of the Tribe's jurisdictional assertion. EPA also notes that designation as an "affected State" is not a regulatory program.

4. Comment: The commenter wants to know if the Pala Band is asserting jurisdiction over any off-Reservation areas.

EPA Response: The Pala Band has included in its application all lands within the Reservation's exterior boundary, and four tribal trust land parcels, which are considered part of the Pala Reservation. A map provided by the Pala Tribe also shows fee lands located outside the Pala Reservation that are owned by the Pala Tribe, but these lands are not included in the legal description and are not part of this determination.

5. Comment: The commenter is concerned that "the Pala Band, by obtaining Pechanga's permit applications, will obtain trade secrets and other confidential information about the Pechanga Band's business plan. The Pechanga Band is also apprehensive the Pala Band would use approval of its TAS application to obtain information on and recommend denial of the Pechanga Band's CAA permit applications or seek to impose unnecessarily stringent requirements."

EPA Response: This comment is noted, but it is outside the scope of this determination.

Comment letter from the Pechanga Band – dated August 5, 2008

Comment: The Pechanga band provided a second comment letter, in response to the second comment period. In it, the earlier comments were reiterated, and the following comment added:

The Pechanga Band questions whether EPA can reward the Pala Band with a federal delegation of "affected State" status when the Pala Band has neither applied for nor obtained a Title V permit for its existing resort and casino and subsequent expansions.

EPA response: Comment noted, but outside the scope of this determination.

Comment letter from the Pauma Band - August 15, 2008

Comment: The Pauma Band is concerned that since their tribe is contiguous to the Pala Band, this determination might grant the Pala Band jurisdictional authority over sources that are located on the Pauma Reservation. The Pauma Band wants to be assured that any jurisdictional assertion by the Pala Band does not implicate the Pauma Band's territorial and regulatory jurisdiction over its own reservation.

EPA response: The Pala Band's application is for Designation of "affected State" under Title V of the Clean Air Act. This designation allows the Tribe to receive additional notice of CAA permits. The Tribe has not applied for a regulatory program under the CAA at this time, and so EPA is not analyzing the Tribe's regulatory authority over any air sources.

Comment letter from the Office of California Governor Arnold Schwarzenegger - August 12, 2008

Comment: The commenter states that "To the extent the application only includes lands within the exterior boundaries of the Tribe's formal reservation, established by Executive Orders and pursuant to Acts of Congress, and the lands taken into trust for the Tribe after establishment of the formal reservation, the State would have no comment on the application."

EPA response: In this application for Treatment as Affected State for Title V Notification, the Pala Band considers all lands within the reservation exterior boundary and four tribal trust land parcels to be part of the reservation. EPA is not making a determination with respect to any fee lands outside the exterior boundary.