

particular paragraphs of section 501(c) or section 501(d). In addition to having the opportunity to inspect material relating to an organization exempt from Federal income tax, a person may request a statement, or the Internal Revenue Service may disclose, in response to or in anticipation of a request, the following information—

(1) The subsection and paragraph of section 501 (or the corresponding provision of any prior revenue law) under which the organization or group has been determined, on the basis of an application open to public inspection, to qualify for exemption from Federal income tax; and

(2) Whether an organization or group is currently recognized as exempt from Federal income tax.

(i) *Publication of non-exempt status.*

(1) For publication of the notice of the revocation of a determination that an organization is described in section 501(c)(3), see section 7428(c).

(2) For publication of a list including any organization the tax exemption of which is revoked for failure to file required returns or notices for three consecutive years, see section 6033(j).

(3) For publication of notice of suspension of tax exemption of terrorist organizations, see section 501(p).

(j) *Withholding of certain information from public inspection.* For rules relating to certain information contained in an application for exemption from Federal income tax and supporting documents that will be withheld from public inspection, see § 301.6104(a)–5(a).

(k) *Procedures for inspection.* For rules relating to procedures for public inspection of applications for exemption from Federal income tax and supporting documents, see § 301.6104(a)–6.

(l) *Effective/applicability date.* The rules of this section apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

**Par. 3.** § 301.6110–1 is amended by:

1. Revising paragraph (a).

2. Adding paragraph (d).

The addition and revision read as follows:

**§ 301.6110–1 Public inspection of written determinations and background file documents.**

(a) *General rule.* Except as provided in § 301.6110–3, relating to deletion of certain information, § 301.6110–5(b), relating to actions to restrain disclosure, paragraph (b)(2) of this section, relating to technical advice memoranda involving civil fraud and criminal investigations, and jeopardy and

termination assessments, and paragraph (b)(3) of this section, relating to general written determinations relating to accounting or funding periods and methods, the text of any written determination (as defined in § 301.6110–2(a)) issued pursuant to a request postmarked or hand delivered after October 31, 1976, shall be open to public inspection in the places provided in paragraph (c)(1) of this section. The text of any written determination issued pursuant to a request postmarked or hand delivered before November 1, 1976, shall be open to public inspection pursuant to section 6110(h) and § 301.6110–6, when funds are appropriated by Congress for such purpose. The procedures and rules set forth in §§ 301.6110–1 through 301.6110–5 and § 301.6110–7 do not apply to written determinations issued pursuant to requests postmarked or hand delivered before November 1, 1976, unless § 301.6110–6 states otherwise. There shall also be open to public inspection in each place of public inspection an index to the written determinations subject to inspection at such place. Each such index shall be arranged by section of the Internal Revenue Code, related statute or tax treaty and by subject matter description within such section in such manner as the Commissioner may from time to time provide. The Commissioner shall not be required to make any written determination or background file document open to public inspection pursuant to section 6110 or refrain from disclosure of any such documents or any information therein, except as provided by section 6110 or with respect to a discovery order made in connection with a judicial proceeding. The provisions of section 6110 shall not apply to material that is open to public inspection under section 6104. See section 6110(l)(1).

\* \* \* \* \*

(d) *Effective/applicability date.* The rules of paragraph (a) of this section apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 49**

[Docket No. EPA–R02–OAR–2004–TR–0001, FRL–8453–9]

**Approval and Promulgation of Saint Regis Mohawk's Tribal Implementation Plan**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of the proposed St. Regis Mohawk Tribe's (SRMT or the Tribe) tribal implementation plan (TIP) to improve air quality within the exterior boundaries of the St. Regis Mohawk Reservation (the Reservation) that are in accordance with federal requirements. EPA previously approved the Tribe for treatment-in-the-same-manner-as-a-state (TAS) under the Clean Air Act (Act) for purposes of administering a TIP on March 5, 2003. The proposed TIP establishes Tribal ambient air quality standards; includes an emissions inventory; provides regulations for permitting, source surveillance, open burning and enforcement; and defines the Tribe's program for review of state permits and regional haze planning. This action will make federally enforceable the approvable portions of the SRMT's proposed TIP.

**DATES:** Comments must be received on or before September 13, 2007.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA–R02–OAR–2004–TR–0001, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

- *E-mail:* [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov).

- *Fax:* 212–637–3901.

- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

*Instructions:* Direct your comments to Docket No. EPA–R02–OAR–2004–TR–0001. EPA's policy is that all comments

received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Gavin Lau, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3708 or [Lau.Gavin@epa.gov](mailto:Lau.Gavin@epa.gov).

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#### I. EPA Action Being Proposed Today

EPA is proposing approval of the St. Regis Mohawk Tribe's TIP submission which contains programs to address: Ambient air quality standards for sulfur dioxide (SO<sub>2</sub>), particulate matter (PM), nitrogen dioxide (NO<sub>2</sub>), ozone (O<sub>3</sub>), fluoride, and heavy metals; Emissions Inventory; Permitting; Synthetic Minor Facilities; Source Surveillance; Open Burning; Enforcement; Review of State Permits; and Regional Haze Planning.

#### II. Introduction

The St. Regis Mohawk Tribe (SRMT) is an Indian tribe federally recognized by the U.S. Secretary of the Interior. See 70 FR 71194, 71196 (November 25, 2005). Beginning in 2001, the SRMT, with assistance from EPA, began developing a draft TIP and its various elements with the goal of eventually submitting the TIP to EPA for approval. On December 10, 2001, the SRMT requested that EPA find the Tribe eligible for TAS, pursuant to section 301(d) of the Clean Air Act and Title 40 part 49 of the Code of Federal Regulations (CFR), for the purpose of developing and carrying out a TIP. On March 5, 2003, EPA determined that the Tribe is eligible for TAS for that purpose. Having found that the SRMT is eligible for TAS, EPA is now proposing approval of the Tribe's TIP. The Tribe did not apply for TAS eligibility for the area known as the Hogsburg Triangle, and EPA made no determination with respect to that area. Therefore, the proposed TIP would not apply to the Hogsburg Triangle. The St. Regis Mohawk Tribe Tribal Implementation Plan, revision 003, was formally submitted to EPA on February 26, 2004.

The SRMT's TIP has been developed to protect the Reservation populace from air pollution by controlling or abating existing and new sources. The TIP includes ambient air quality standards for SO<sub>2</sub>, PM, NO<sub>2</sub>, O<sub>3</sub>, fluoride, and heavy metals. Other programs in the TIP include emissions inventory, permitting, synthetic minor facilities, source surveillance, open burning, enforcement, review of state permits, and regional haze planning.

#### III. Background

##### A. What is the Clean Air Act and its Relationship to Indian tribes?

The Clean Air Act (Act) was originally passed in 1970 and has been the subject of substantial amendments, most recently in 1990. Among other things, the Act: Requires the EPA to establish National Ambient Air Quality Standards (NAAQS) for certain pollutants; requires the EPA to develop programs to address specific air quality problems; establishes the EPA's enforcement authority; and provides for air quality research. As part of the 1990 amendments, Congress added section 301(d) to the Act authorizing EPA to treat eligible Indian tribes in the same manner as states and directing EPA to promulgate regulations specifying those provisions of the Act for which TAS is appropriate. In February of 1998, EPA implemented this requirement by promulgating the Tribal Authority Rule (TAR) (63 FR 7254 (February 12, 1998), codified at 40 CFR part 49). EPA included relevant provisions relating to implementation plans among the provisions for which TAS is appropriate (exceptions are identified in 40 CFR 49.4).

Under the provisions of the Act and EPA's regulations, Indian tribes must demonstrate that they meet the eligibility criteria in section 301(d) of the Act and the TAR in order to be treated in the same manner as a state. The eligibility criteria are: (1) The Indian tribe is federally-recognized; (2) the Indian tribe has a governing body carrying out substantial governmental duties and powers; (3) the functions the Indian tribe is applying to carry out pertain to the management and protection of air resources within the exterior boundaries of the reservation (or other areas within the Indian tribe's jurisdiction); and, (4) the Indian tribe is reasonably expected to be capable of performing the functions the Indian tribe is applying to carry out in a manner consistent with the terms and purposes of the Act and all applicable regulations.

##### 1. What is an implementation plan?

An implementation plan is a set of programs and regulations developed by the appropriate regulatory agency in order to assure healthy air quality through the attainment and maintenance of the NAAQS. These plans can be developed by states, eligible Indian tribes, or the EPA, depending on the entity with jurisdiction and EPA approval in a particular area. For states, such plans, once approved by EPA, are referred to as State Implementation Plans or SIPs.

Similarly, for eligible Indian tribes these plans, once approved, are called Tribal Implementation Plans or TIPs.

Occasionally, EPA will develop an implementation plan for a specific area or source. This is referred to as a Federal Implementation Plan or a FIP. Once final approval is published in the **Federal Register**, the provisions of an implementation plan become federally enforceable. An applicable implementation plan may be comprised of both TIPs and FIPs and/or SIPs and FIPs.

The contents of a typical implementation plan may fall into three categories: (1) Agency-adopted control measures, which consist of rules, regulations or source-specific requirements (e.g., orders, consent decrees or permits); (2) agency-submitted "non-regulatory" components (e.g., attainment plans, rate of progress plans, emission inventories, transportation control measures, statutes demonstrating legal authority, monitoring programs); and (3) additional requirements promulgated by the EPA (in the absence of a commensurate agency provision) to satisfy a mandatory Clean Air Act section 110 or part D requirement. The implementation plan is a living document which can be revised by the state or eligible Indian tribe as necessary to address air pollution problems. Accordingly, the EPA from time to time must take action on implementation plan revisions which may contain new and/or revised regulations that will become part of the implementation plan.

Upon submittal to EPA, the Agency reviews implementation plans for conformance with federal policies and regulations. If the implementation plan conforms, the State's or eligible Indian tribe's regulations become federally enforceable upon EPA approval. The codification is usually accomplished by first announcing the EPA's findings in the **Federal Register** through a Proposed Rulemaking, with an appropriate public comment period. After evaluating comments received on the proposal, a Final Rulemaking Action will be published by EPA, which will incorporate the implementation plan, if approved, into the CFR.

## 2. How do Tribal Implementation Plans compare to State Implementation Plans?

The Act requires each state to develop, adopt, and submit an implementation plan for EPA approval into the SIP. Several sections of Title I of the Act provide structured schedules and mandatory requirements for SIP preparation and contents. These are

further developed in 40 CFR part 51. The SIP program reflects each state's particular needs and air quality issues. At a minimum, SIPs must meet minimum federal standards. If a state fails to submit an approvable SIP within the schedules provided in the Act, sanctions can be imposed on the state, and if the state still does not submit an approvable implementation plan, the EPA is required to develop and enforce a FIP to implement the applicable Act requirements for that state.

Sections 110 and 301(d) of the Act and EPA's implementing regulation at 40 CFR part 49 provide for tribal implementation of various Act programs including TIPs. Eligible Indian tribes can choose to implement certain Act programs by developing and adopting a TIP and submitting the TIP to EPA for approval. TIPs: (1) Are optional; (2) may be modular; (3) have flexible submission schedules; and (4) allow for joint tribal and EPA management as appropriate.

- **Optional**—The Act requires each state to develop, adopt and submit a proposed SIP for EPA approval. Unlike states, Indian tribes are not required to adopt an implementation plan. In the TAR, the EPA recognized that not all Indian tribes will have the need or the desire for an air pollution control program, and EPA specifically determined that it was not appropriate to treat tribes in the same manner as states for purposes of plan submittal and implementation deadlines. See 40 CFR 49.4.

- **Modular**—The TAR offers eligible Indian tribes the flexibility to include in a TIP only those implementation plan elements that address their specific air quality needs and that they have the capacity to manage. Under this modular approach, the TIP elements the eligible Indian tribe adopts must be "reasonably severable" from the package of elements that can be included in a whole TIP. "Reasonably severable" means that the parts or elements selected for the TIP are not necessarily connected or interdependent to parts that are not included in the TIP, and are consistent with applicable Act and regulatory requirements. TIPs are fundamentally different than SIPs because while the Act requires States to prepare an implementation plan that meets all of the requirements of section 110 of the Act, an Indian tribe may adopt TIP provisions that address only some elements of section 110.

- **Have Flexible Submission Schedules**—Neither the Act nor the TAR requires Indian tribes to develop TIPs. Therefore, unlike states, Indian tribes are not required to meet the implementation plan submission

deadlines or attainment dates specified in the Act. Indian tribes can establish their own schedules and priorities for developing TIP elements (e.g., regulations to limit emissions of a specific air pollutant) and submitting them to the EPA. Indian tribes will not face sanctions for failing to submit or for submitting incomplete or deficient implementation plans. See 40 CFR 49.4.

- **Allow for Joint Tribal and EPA Management**—Consistent with the Act and the TAR, eligible Indian tribes can revise a TIP to include appropriate new programs or return programs to EPA for Federal implementation as necessary or appropriate based on changes in tribal need or capacity. The EPA may regulate emission sources that the Indian tribe chooses not to include in a TIP if it is necessary or appropriate to adequately protect air quality. This type of joint management is expected to result in a program fully protective of tribal air resources.

## IV. Tribal Implementation Plan Requirements

*What is required for the approval of a Tribal Implementation Plan?*

For a tribe to receive EPA approval of a TIP, the tribe must, among other things:

- Obtain a determination from EPA that the tribe is eligible for TAS for purposes of the TIP;
- Submit to EPA a TIP that satisfies requirements of the Act and relevant regulations that apply to the plan elements and functions the tribe seeks to carry out.

To be found eligible for TAS for the purpose of carrying out an implementation plan under the Act, the tribe must meet the requirements of section 301(d) of the Act and 40 CFR 49.6:

- The Indian tribe must be federally recognized;
- The Indian tribe must have a governing body carrying out substantial governmental duties and powers over a defined area;
- The functions to be exercised by the tribe must pertain to the management and protection of air resources within the exterior boundaries of the tribe's reservation or other areas within the tribe's jurisdiction;
- The Indian tribe must be 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 Act and all applicable regulations.

The following technical elements may be included in a TIP:

- A list of regulated pollutants affected by the plan;
- Locations of affected sources and the air quality designation (*i.e.*, attainment, unclassifiable, nonattainment) of the source location;
- Projected estimates of changes in current actual emissions from affected sources;
- Modeling information (*i.e.*, input and output data, justification of models used, data and assumptions used);
- Documentation that the plan contains emission limitations, work practice standards, and recordkeeping/reporting requirements;
- Regulations.

The TAR allows tribes to develop, adopt, and submit an implementation plan for approval as a TIP in a modular fashion, so it may not be necessary to meet all of the requirements identified above.

The EPA has the authority, under the Act, to enforce the regulations in an approved TIP. The EPA will work cooperatively with the Indian tribe in exercising its enforcement authority. The EPA recognizes that, in certain circumstances, eligible Indian tribes have limited criminal enforcement authority. The TAR specifically provides that such limitations on an Indian tribe's criminal enforcement authority do not prevent a TIP from being approved. Where implementation of the TIP requires criminal enforcement authority, and to the extent a tribe is precluded from asserting such authority, the federal government will exercise primary criminal enforcement responsibility. A memorandum of agreement between an Indian tribe and the EPA is an appropriate way to address circumstances in which the tribe is incapable of exercising applicable enforcement requirements as described in 40 CFR 49.7(a)(6) and 40 CFR 49.8. The memorandum of agreement shall include a process by which the tribe will provide potential investigative leads to EPA and/or other appropriate federal agencies in an appropriate and timely manner.

#### V. St. Regis Mohawk Tribe's TIP Submittal

##### A. What did EPA determine in finding the St. Regis Mohawk Tribe Eligible for TAS?

On December 10, 2001, SRMT requested an EPA determination under the provisions of 40 CFR 49.7 that the Tribe is eligible for TAS for the purpose of developing a TIP for air quality. On March 5, 2003, EPA determined that the Tribe meets the eligibility requirements of section 301(d) of the Act and 40 CFR

49.6 for the purposes of developing and carrying out an implementation plan under the Act. As noted above, the Tribe did not request an eligibility determination for the area known as the Hogansburg Triangle, and EPA made no determination with respect to that area. This proposed TIP approval pertains only to lands within the exterior boundaries of the St. Regis Mohawk Reservation covered by the March 3, 2003 determination and thus does not apply to the Hogansburg Triangle.

The TAS determination fully addressed the four criteria of 49 CFR 49.6. In summary: (1) The Indian tribe must be federally recognized: The U.S. Secretary of the Interior has recognized SRMT. See 70 FR 71194, 71196 (November 25, 2005);

(2) The Indian tribe must have a governing body carrying out substantial governmental duties and powers over a defined area: The SRMT governing body is embodied in its Tribal Council. The Tribal government enacts laws and legislation within the jurisdiction of the SRMT Reservation. The Tribal government administers health, education, environmental, and welfare programs. EPA determined that the Tribe has a governing body carrying out substantial duties and powers under the provisions of 40 CFR 49.6 and made a similar determination in a previous TAS eligibility determination for the purposes of section 105 and section 505(a)(2) of the Act;

(3) The functions to be exercised by the tribe must pertain to the management and protection of air resources within the exterior boundaries of the tribe's reservation or other areas within the tribe's jurisdiction: The SRMT applied for TAS, and EPA found the Tribe eligible, for lands within the exterior boundaries of the St. Regis Mohawk Reservation, excluding the area known as the Hogansburg Triangle. New York State was given the opportunity to review the TAS application and to provide any comments on the Reservation boundaries, pursuant to 40 CFR 49.7. The Reservation is located in the northern portion of New York adjacent to the St. Lawrence River. The specific Reservation boundaries, and the exclusion of the Hogansburg Triangle area, were described in the Tribe's December 10, 2001 application and referenced in EPA's TAS eligibility determination; and,

(4) The Indian tribe must be 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 Act and all applicable regulations: SRMT's

TAS application contains substantial information regarding the Tribe's capability to carry out the functions in the proposed TIP. As discussed fully in the TAS decision, EPA considered this information in determining that the Tribe meets this requirement for TAS eligibility. In particular, SRMT's Air Quality Program has staff with degrees ranging from an Associates Science to a Masters Degree. They have received extensive training including but not limited to training in TIP development and permit issuance. The staff has also demonstrated considerable capabilities in the programmatic, administrative, and legal spheres since 1990. The TIP will be implemented by Air Quality Program staff, Conservation Officers, Environmental Lawyers, and an on-site legal advisor, with technical support through EPA Region 2 and EPA's Tribal Air Monitoring center in Las Vegas. All SRMT agencies, including but not limited to the Tribal Police Force, will assist in compliance activities and (as appropriate) the enforcement of the TIP in accordance with applicable law.

Based on information submitted by the Tribe, summarized above, other relevant information, and our knowledge of the Tribe's programs, EPA determined that the SRMT met all requirements for TAS eligibility. The determination and cover letter were sent to the Tribal Council with a courtesy copy to New York State.

In addition to the approval for TAS for the purpose of developing a TIP for air quality, the Tribe was deemed eligible for the purpose of establishing a minor source permitting program in a separate determination on March 25, 2001.

##### B. What authority does the St. Regis Mohawk Tribe Environment Division have?

The SRMT Tribal Council gave the SRMT Environment Division Clean Air Quality Program authority to administer Clean Air Act programs on behalf of the Tribe in a Tribal Council Resolution (TCR 99-43) dated December 3, 1999. This Resolution authorizes the Air Quality Program to submit applications for Federal assistance and to administer Clean Air Act programs, as allowed under the Act and EPA's regulations.

##### C. What role does EPA have in criminal enforcement?

Consistent with 49 CFR 49.7(a)(6) and 49 CFR 49.8, on November 20, 2003, the SRMT entered into a Memorandum of Agreement (MOA) with the EPA Region 2 and EPA's Criminal Investigations Division concerning criminal enforcement of air pollution rules and

regulations. Under the terms of this agreement, the SRMT and its agencies would refer to the appropriate EPA or U.S. Department of Justice Office alleged criminal violations of the Act where the alleged violator is a non-Indian as well as all alleged criminal activity where the potential fine is greater than \$5,000 or the penalty would require imprisonment for more than one year in accordance with 25 U.S.C. 1302. Criminal enforcement issues relating to implementation of the TIP outside of this agreement may be pursued, as appropriate, by SRMT's Environmental Conservation Officers and Tribal Officers.

*D. When did SRMT adopt the Tribal Implementation Plan under Tribal Law?*

The SRMT developed and proposed rules comprising the proposed TIP to its Tribal community in 2002. A public notice announcing availability of the proposed TIP and inviting public comments was published in the local newspaper (Watertown Daily Times on June 29, 2002). In addition, the SRMT has posted the proposed TIP on the Tribe's Web site and for public review at the Tribal environmental health center. The comments received from the public review on the proposed TIP were minor. Based on the comments received, revisions were made to the proposed TIP. The St. Regis Tribal Council

adopted the rules comprising the proposed TIP on October 3, 2002 (TCR 2002-183) as part of Tribal Law, and it became effective under Tribal Law 30 days thereafter. In order to satisfy the public hearing requirements of 40 CFR 51.102, the Tribe offered the opportunity for a public hearing upon request. The notice of opportunity was published on April 5, 2007 in the Indian Times and the proposed TIP was made available at the SRMT Environmental Division and on their Web site. The notice indicated that a public hearing would be held on May 16, 2007, upon request. EPA and New York State Department of Environmental Conservation (NYSDEC) were notified of the opportunity for a public hearing by the Tribe on April 11, 2007. SRMT provided EPA a package, dated May 16, 2007, which included copies of the public notice of the availability of the proposed TIP for comment, e-mails reserving and confirming a location for the public hearing, and a letter notifying NYSDEC of the opportunity for a public hearing. No requests for a public hearing were made nor were any comments received. All comments and responses made concerning the proposed TIP during the comment periods are on file with the SRMT Environmental Division (ED) and EPA. EPA found that the Tribe satisfied public hearing requirements.

*E. What is included in the SRMT TIP submittal?*

The SRMT TIP submittal includes ambient air quality standards for sulfur dioxide, particulate matter, nitrogen dioxide, ozone, fluoride, and heavy metals, and provisions for emissions inventory, permitting for major sources and for synthetic minor facilities, source surveillance, open burning, enforcement, review of state permits, and regional haze planning.

1. Ambient Air Quality Standards

EPA has established primary and secondary National Ambient Air Quality Standards (NAAQS) for six common air pollutants: CO, lead, NO<sub>2</sub>, ozone, particulate matter, and SO<sub>2</sub>. Most pollutants regulated by the NAAQS have two limits. The "primary" standard is designed to protect the public—including children, people with asthma, and the elderly—from health risks. The "secondary" standard is to prevent unacceptable effects on the public welfare, e.g., damage to crops and vegetation, buildings and property, and ecosystems.

SRMT established ambient threshold standards and measuring methods in section 9 of the proposed TIP for the following air pollutants:

Pollutant	Threshold	Measuring method
SO <sub>2</sub> primary standard	Annual 0.030 ppm 24-hr 0.14 ppm.	40 CFR part 50 App A or 40 CFR part 53.
SO <sub>2</sub> secondary standard	3-hr 0.5 ppm	40 CFR part 50 App A or 40 CFR part 53.
PM <sub>10</sub> primary and secondary standard	Annual 50 µg/m <sup>3</sup> 24 hr 150 µg/m <sup>3</sup> .	40 CFR part 50 App J or 40 CFR part 53.
PM <sub>2.5</sub> primary and secondary standard	Annual mean 15.0 µg/m <sup>3</sup> 24 hr 65 µg/m <sup>3</sup> .	40 CFR part 50 App L.
NO <sub>2</sub> primary and secondary standard	Annual mean 0.053 ppm	40 CFR part 50 App F or 40 CFR part 53.
O <sub>3</sub> 1 hr primary and secondary standard	0.12 ppm	40 CFR part 50 App D or 40 CFR part 53.
O <sub>3</sub> 8 hr primary and secondary standard	0.08 ppm annual 4th highest daily maximum ..	40 CFR part 50 App D or 40 CFR part 53.
Fluoride forage standard	Growing season—10 ppm 60 day—15 ppm. 30 day—20 ppm.	None.
Fluoride ambient standard	12 hr—1.13 ppb 24 hr—0.88 ppb. 1 wk—0.50 ppb. 1 mo—0.25 ppb.	Methods set by SRMT Environment Division.
Heavy Metals standard		40 CFR part 50 App B.
Beryllium	4.2×10 <sup>-4</sup> µg/m <sup>3</sup> .	
Cadmium	2.4×10 <sup>-2</sup> µg/m <sup>3</sup> .	
Chromium	1.2 µg/m <sup>3</sup> .	
Lead	7.5×10 <sup>-1</sup> µg/m <sup>3</sup> .	
Nickel	4.0×10 <sup>-3</sup> µg/m <sup>3</sup> .	
Zinc	50.0 µg/m <sup>3</sup> .	

The Act requires the NAAQS to be met everywhere. Accordingly, the SRMT standards and measuring methods for SO<sub>2</sub>, PM, NO<sub>2</sub>, and O<sub>3</sub>, which are the same as the EPA standards, are approvable for

incorporation into the TIP. The EPA is proposing to approve the SRMT air quality standards and measurement methods included in the proposed TIP for these pollutants. The standards for fluoride, beryllium, cadmium,

chromium, nickel and zinc in the SRMT's proposed TIP are unique. These pollutants are listed in the Act as hazardous air pollutants. While EPA has standards regulating the emissions of these pollutants from stationary sources,

the Agency has not established ambient standards for hazardous air pollutants. Consequently, EPA is not proposing to incorporate the fluoride and heavy metal standards into the federally approved TIP. EPA is also not proposing to approve the SRMT standard for lead, as the standard in the proposed SRMT TIP are not equivalent to EPA's ambient air quality standard. EPA is proposing to approve into the proposed TIP the other ambient air quality standards and test methods. Measurements for approvable standards will be made in accordance with the techniques listed in 40 CFR part 50, appendix A, D, F, J, L, or by equivalent methods designated in accordance with 40 CFR part 53.

## 2. Emissions Inventory

An emissions inventory is a quantitative list of the amounts and types of pollutants that are entering the air from each source in a given area. The inventory may be comprehensive, looking at all pollutants, or focused on only selected pollutants of concern. The fundamental elements in an emissions inventory are the characteristics and locations of the air emissions sources, as well as the amounts and types of pollutants emitted. Periodic inventories are used to track changes in emissions over time, estimate the effectiveness of emission reduction strategies, and track the progress of air quality.

The SRMT has chosen periodic emission inventories as its approach to listing the pollutants emitted by sources. An initial emissions inventory titled Emission Inventory Report was submitted to EPA on December 30, 1999 utilizing a baseline year of 1995 and including sources within the St. Regis Mohawk Reservation's exterior boundaries. The boundaries for the emissions inventory did not include the area known as the Hogsburg Triangle. There is currently no timetable for updating the emissions inventory. The EPA finds that the method used by SRMT to produce the emissions inventory is acceptable and is proposing to approve the emissions inventory. The SRMT emissions inventory and the Tribe's process are based on guidance established in EPA's Procedures for Emission Inventory Preparation Volumes I-V, U.S. EPA Air Pollution-42 (AP-42), Emissions Inventory Improvement Program Volumes I-VII, and MOBILE 5/6.

## 3. Permits

Owners and/or operators of existing or proposed sources of air contaminants within the exterior boundaries of SRMT are required to submit applications and obtain permits from the SRMT Air

Quality Program for the operation of such sources. However, owners and/or operators of major stationary sources subject to 40 CFR part 71 and located within the area covered by this proposed TIP must continue to obtain a title V permit from the EPA, in accordance with part 71.

Permitting procedures for minor sources are specified in sections 11 and 12 of the SRMT proposed TIP. Applications for construction and operating permits for minor sources must be obtained from the SRMT ED. The SRMT Air Quality Program will make a determination of facility status within 60 days of receipt of a complete application. A 30-day period for public comment and EPA review will be provided prior to final action by SRMT. The Air Quality Program will publish a notice of complete applications. Minor sources are required to seek renewal of the SRMT permit every 5 years from the date of original issuance. Owners or operators of affected facilities must submit their applications for renewal no later than 180 days before the date of expiration.

The issuance of construction permits follows the procedures listed in 40 CFR 51.160-51.163. Construction permits require that proposed facilities or activities do not lead to any subsequent exceedence of SRMT ambient air quality standards or NAAQS. Air quality modeling, in accordance with 40 CFR part 51, appendix W, is required for facilities or activities that will emit more than 20 tons per year (tpy) of PM<sub>10</sub>, or 40 tpy of SO<sub>2</sub>, NO<sub>x</sub>, or O<sub>3</sub>. Permits will be issued if the SRMT Air Quality Program determines that Reasonably Available Control Technology will be applied and the applicant has adequately demonstrated that reasonable further progress toward the attainment of air quality standards is not impaired. The Air Quality Program may modify the production/process rate, hours of operation, or other permit conditions in order to create enforceable permit conditions. Violations of permit conditions will lead to enforcement penalties that include permit revocation. EPA is proposing to approve the conditions and procedures the SRMT has established for its minor source permitting program.

Section 13 of the proposed TIP provides for permits to synthetic minor sources. Owners or operators of stationary sources that would otherwise be major sources but whose permits limit operation or emissions with pollution control devices to less than major source thresholds may request and accept Tribally- and Federally-enforceable emission limits sufficient to

allow the source to be considered "synthetic minor sources." A synthetic minor source is not subject to the Clean Air Act Title V—Federal Operating Permit Program, unless it is subject to that rule for any reason other than being a major source. EPA is proposing approval of the SRMT's synthetic minor source permit program.

## 4. Source Surveillance

Section 14 of the SRMT TIP addresses source surveillance. Source surveillance includes: (1) Emission reports and recordkeeping; (2) testing; (3) enforcement, inspection and complaints; (4) continuous emissions monitoring; and (5) quality assurance/quality control plans. In summary, the proposed TIP requires the following:

Emission reports and recordkeeping—Emission reports are to include facility, emission point, and process level information. These reports should be submitted on March 1 each year based on one of the following methods: Stack samples or other emission measurements; material balance using knowledge of the process; AP-42 emission factors; or best engineering judgment (including manufacturer's guarantees). All required records must be maintained on-site for a period of five years, and the owners or operators must make them available to representatives of the SRMT Air Quality Program upon request.

Testing—For the purpose of ascertaining compliance or non-compliance with any air pollution control plan, rule or regulation, the Air Quality Program requires the source owner or operator to report results of testing within 30 days of testing. A source owner or operator shall notify the Air Quality Program in writing, not less than 30 days prior to the test, of the time and date of the test. The notification should include procedures for stack test sampling and analytical procedures. Acceptable methods of testing are in 40 CFR part 60, appendix A and 40 CFR part 61, appendix B. For the purpose of ascertaining compliance or non-compliance with any air pollution control regulation, the Air Quality Program may conduct separate or additional emission tests on behalf of the SRMT. A source owner or operator shall provide sampling ports, scaffolding and other pertinent equipment required for emission testing.

Enforcement—Enforcement of these rules and regulations is performed by St. Regis Mohawk Conservation Officers, with EPA exercising certain primary criminal enforcement authorities as described in the November 20, 2003 Memorandum of Agreement between

the Tribe and EPA. The Conservation Officers are also responsible for inspecting facilities based on any complaints received. Findings shall be recorded and a copy given to both the facility and the Air Quality Program. The Air Quality Program representative is responsible for annual facility inspections and any unannounced audits. As noted earlier, the TIP provisions approved by EPA are also federally enforceable, and therefore EPA may also exercise its civil enforcement authorities, as appropriate, and in consultation with the SRMT.

Continuous emissions monitoring requirements are provided in Section 14.3 of the proposed TIP. The owners and operators of any source conducting source surveillance shall be required to install and operate Continuous Emission Monitors on each affected unit at the source, and to assure the quality of data for sulfur dioxide, nitrogen oxides, opacity and volumetric flow at each such unit. All units over 25 megawatts and new units under 25 megawatts that use fuel with a sulfur content greater than 0.05 percent by weight are required to measure and report emissions. New units under 25 megawatts using clean fuels are required to certify their eligibility for an exemption every five years.

Quality assurance/quality control—The owner or operator must develop and implement a written quality assurance/quality control plan for each system. The quality control plan must include complete, step-by-step procedures and operations for calibration checks and adjustments, preventive maintenance, audits, and record keeping and reporting. The quality assurance plan must include procedures for conducting periodic performance tests.

EPA is proposing to approve the methods, requirements and procedures for source surveillance in the SRMT's proposed TIP.

#### 5. Open Burning

Section 15 of the proposed TIP contains the open burning program. The SRMT incorporated the Tribal Burn Regulation into Tribal Council Resolution 2002–59 (appendix I of the proposed TIP) and reaffirmed it in Tribal Council Resolution 2003–06 (appendix K of the proposed TIP) on January 13, 2003. The Tribal Burn Regulation is located in appendix J of the proposed TIP. The regulation prohibits burning of solid waste, food garbage, municipal solid waste, hazardous waste, household hazardous waste, refuse, rubbish from salvage, land clearing, or generated by residential or

commercial activities as a means of on-site disposal, field fires, and tires. Some types of burning (land clearing, community burning, burning in specifically designated areas) may be allowed by a permit issued by the Air Quality Program, if it is not contrary to other Tribal laws. This may include burning, at appropriate designated sites, of toxic, explosive, or dangerous materials for a specific period. Permits for planned burning are required for the purposes of weed abatement, prevention of fire hazard, and disease and pest prevention.

Permits are not required for fires for the cooking of food, providing of warmth for human beings, recreational purposes, religious or ceremonial purposes, orchard heaters for the purpose of frost protection in farming or nursery operations, fire department and criminal enforcement training, and emergency control fires.

All burning permits are valid for the date specified on the permit. Violators of open burning regulations are subject to financial penalties, fines, and/or other forms of penalties which will be levied by the Tribal Court. EPA is proposing approval of the proposed SRMT TIP's open burning regulations.

#### 6. Enforcement

Through the Safety and Civil Obedience Plan (appendices L, M, and N of the proposed TIP), the St. Regis Mohawk Tribal Police respond to complaints, requests for assistance, reports of problems and/or any other type of inquiry reasonably related to their official duties as police officers. The St. Regis Mohawk Tribal Police and Conservation Officers will assume enforcement activities for the purpose of air regulations compliance. Individuals or owners of sources of air contaminants will be advised of their activities and issued a summons which will detail the exact provision of the TIP that was allegedly violated and the date and time of violation. The Peacemakers Court-Civil Disobedience Division (Court) shall be the arbiter of all summons and complaints filed by tribal authorities under this proposed TIP. Air contamination sources may be sealed if they have not complied within the time period allotted by the Court. Sealing a source means labeling or tagging a source in order to notify any person that operating the source is prohibited and includes physical means of preventing the source from operating. The physical means are non-destructive and include, but are not limited to, bolting, chaining, and wiring shut control panels. Sources that are sealed will not be operated until modifications are made to sources so

that they meet requirements. Sources that are sealed will only be unsealed by persons authorized by the Court. EPA finds the SRMT has adequately established an enforcement mechanism to compliment its regulations, and EPA proposes to approve it.

#### 7. Review of State Permits

The Air Quality Program will evaluate and comment on air permit notices and draft permits for facilities located in contiguous areas where the air emissions may affect the Reservation's air quality and/or facilities located within 50 miles of the area covered by this proposed TIP. This is consistent with EPA's September 19, 2000 determination that the Tribe is eligible for TAS for the purpose of performing such reviews in accordance with Section 505(a)(2) of the Act.

#### 8. Regional Haze Planning

Regional haze planning is incorporated into the proposed TIP in section 20. The purpose of regional haze plans is to improve visibility in mandatory Federal Class I areas (primarily national parks and wilderness areas). In 1999, EPA issued regional haze regulations that require states to work together to address this air quality concern. The final regional haze rule provides for eventually reaching natural background condition in Class I areas by 2064. Because emissions that cause haze are emitted over wide areas and haze precursors are transported by winds, a regional program to implement the EPA's final rule helps to improve visibility not only in parks and wilderness areas, but in many other areas of the ozone transport region as well.

The regional haze rule also started a process for the EPA to develop implementation plans for regional haze. Given the regional nature of the problem, in addition to endorsing regional planning, the rule endorsed the role of states and Indian tribes within regional planning organizations. The Mid-Atlantic Northeast Visibility Union was formed on July 24, 2001, and is the organization that encompasses the SRMT reservation (appendix E of the proposed TIP).

The SRMT Air Quality Program in conjunction with the Ozone Transport Commission, Mid-Atlantic States for Regional Air Management, the Northeast States for Coordinated Air Use Management, eleven states and the Penobscot Indian Nation of Maine are committed to a long-term strategy for implementing the final regional haze rule. EPA is proposing approval into the



TIP of the SRMT's commitment and planning as it applies to regional haze.

#### VI. What EPA action is being taken today?

With the exceptions below, the EPA is proposing approval of the proposed SRMT TIP, which contains programs to address: Ambient air quality standards for SO<sub>2</sub>, PM, NO<sub>2</sub>, and O<sub>3</sub>; Emissions Inventory; Permitting; Synthetic Minor Facilities; Source Surveillance; Open Burning; Enforcement; Review of State Permits; and Regional Haze Planning. The EPA is not taking action on the SRMT TIP regarding fluoride and other metal standards because the EPA has not promulgated ambient air quality standards for these metals that can be enforced through a federally-approved SIP or TIP. EPA is not taking action on the SRMT TIP lead standard because it is not equivalent to the EPA air quality standard. The public docket contains SRMT's proposed TIP, TAS Eligibility determination, and enforcement MOA with EPA. Contact the For Further Information Contact for additional information on the materials contained in the docket.

#### Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This proposed action merely proposes to approve laws of an eligible Indian tribe as meeting Federal requirements and imposes no additional requirements beyond those imposed by Tribal law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule proposes to approve pre-existing requirements under Tribal law and does not impose any additional enforceable duty beyond that required by Tribal law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by

tribal officials in the development of regulatory policies that have tribal implications." EPA has concluded that this proposed rule will have tribal implications in that it will have substantial direct effects on the SRMT. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. EPA is proposing to approve the SRMT's TIP at the request of the Tribe. Tribal law will not be preempted as the SRMT has already incorporated the TIP into Tribal Law on October 3, 2002. The Tribe has applied for, and fully supports, the proposed approval of the TIP. If it is finally approved, the TIP will become federally enforceable.

EPA worked and consulted with officials of the SRMT early in the process of developing this proposed regulation to permit them to have meaningful and timely input into its development. In order to administer an approved TIP, tribes must be determined eligible (40 CFR part 49) for TAS for the purpose of administering a TIP. During the TAS eligibility process, the Tribe and EPA worked together to ensure that the appropriate information was submitted to EPA. SRMT and EPA also worked together throughout the process of development and Tribal adoption of the TIP. The Tribe and EPA also entered into an enforcement MOA.

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255 (August 10, 1999)). This action merely proposes to approve a Tribal rule implementing a TIP over areas within the exterior boundaries of the St. Regis Mohawk Reservation, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885 (April 23, 1997)), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) do not apply to this proposed rule. In reviewing TIP submissions, the EPA's role is to approve an eligible tribe's submission, provided that it meets the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the Tribe to use voluntary consensus

standards (VCS), the EPA has no authority to disapprove a TIP submission for failure to use VCS. It would thus be inconsistent with applicable law for the EPA, when it reviews a TIP submission, to use VCS in place of a TIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the NTTAA do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

#### List of Subjects in 40 CFR Part 49

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 6, 2007.

**Alan J. Steinberg,**

*Regional Administrator, Region 2.*

[FR Doc. E7-15921 Filed 8-13-07; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-1986-0005; FRL-8454-2]

### National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Bailey Waste Disposal Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is issuing a notice of intent to delete the Bailey Waste Disposal Superfund Site located in Bridge City, Texas from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), have determined that all appropriate response actions under CERCLA, other than operation and