TAS and TIP

Swinomish Tribe and the Incremental Approach
Questions and Vision

• What Does the Tribal Leadership want in the long run?

• What does air program staff have the capacity to take on (in short – medium time frame)?

• What will Tribe gain at what cost?
Inherent Authority

- Tribes have all the powers of a sovereign except those withdrawn by Treaty or Congress (or Court interpretation).

- Authority to regulate trust land and members under tribal law is clear.

Treatment as a State (TAS)

• Regulatory authority, including over non-Indians on Reservation, may be delegated to Tribes under the Clean Air Act.

• Treat Tribe the same as a State for purposes of the Clean Air Act.

• Tribe may take authority for all delegable portion of the Act or for certain sections.
Clean Air Act Delegation

- Clear Congressional authority to delegate to Tribes regulation over all sources within the exterior boundaries of the Reservation.

- Only EPA or the Tribe may regulate air quality on Reservation. *Arizona Public Service Company v. EPA.* (2000).

- Delegable Programs include: Open Burning, Title V, Effected State, and soon, Minor NSR.
Swinomish Vision and Approach

- Long-term interest in taking delegation of entire CAA for sovereignty, health and environmental protection.

- Proceed Incrementally – small bites we can swallow.

- Already had burn permit program under Tribal ordinance with reasonable compliance.

- TAS would give federal hammer for few non-tribal who resist regulation.
Swinomish Air Quality Program

• Over 10 years of gaseous criteria pollutant monitoring.

• Due to major adjacent Title V sources and new Ozone and NOx Standards data shows Non-Attainment now for ozone and trend in NOx.

• Struggling to maintain monitoring funding.

• IAQ program and completed woodstove change-out.

• On-going Burn permits under Tribal ordinance.
Examples to Draw From

• Current Tribal Air Code

• Federal Rules for Reservations (FARR) in NW States – Open Burning Rules (meet or exceed).

• Surrounding jurisdictions (similar makes it easier to get non-tribal compliance).
Federal Air Rules for Reservations in WA, OR and ID (FARR)

- EPA has adopted FARR to implement the Clean Air Act on Reservations in the Northwest and “level the playing field.”

- Open Burning – prohibited materials, burn bans.

- Industrial Rules limiting visible and fugitive emissions, PM, sulfur dioxide, and sulfur in fuels.
Drafting TIP

- Air Analyst outlines what he would like to see including changes from current code.

- Drafting TIP – body is amended Tribal code with additional (non-code) sections to address CAA process and EPA requirements.

- Specific exclusion from TIP of portions of Tribal code EPA cannot approve under CAA.
Internal and Informal Review and Editing

- Review within Air Program – edit
- Send to certain EPA staff (Legal and Program) for informal comments.
- Edit and Explain based on comments.
- Swinomish Legal review and edits
- Back to EPA for second round of informal comments.
- Edit and explain in cooperation w/ Legal
Submission of Draft to EPA

- Final Draft developed with Tribal Legal
- Submission to EPA with cover letter from Chairman.
- EPA reviews and approves draft.
Tribal Formal Adoption and CAA Process

- Once EPA approves draft we start formal adoption process.
- Follow Tribal and CAA Notice and Hearing requirements for final adoption.
- Notice Requirements.
- Public Hearing (Swinomish Planning Comm’n)
- Submit to Tribal Senate (Council) for Adoption.
- Submission to EPA for final approval.
Federal Notice and Hearing
40 CFR 51.102

- Public hearing prior to tribal adoption and submission to EPA.
- “Reasonable Notice” to public at least 30 days prior to hearing.
- Notice to EPA Administrator, local air agencies and any state significantly impacted.
- Record of hearing (witness list and text).
- Certification that hearing was in accordance with fed regulations.
Swinomish Open Burning TIP Provisions

- Calling Burn Bans
- Burn Permits, conditions and fees
- Prohibited Materials
- Burn notifications and inspections
- Enforcement, Penalties and Damages
- Public information and hearings
- Appeals and Due Process
Swinomish Air Program Delegations

- TAS Section 105 Program
- Effected State
- TIP Open Burning (in review)

Future

- Section 126? – petition for finding a major source in violation of NAAQS.
- Minor NSR?
- Continued Monitoring and Designation issues.
Regulation of Non-Tribal Sources on Reservation

- Treatment as a State and an EPA approved TIP give clear Tribal Authority.

- Tribes may choose portions of the CAA that are most useful to their situation.

- Lack of resources and desire to proceed with caution may mean incremental approach best for some tribes.