Designations for Indian Country

NATIONAL TRIBAL FORUM
June 2011
Overview

- Current Landscape and Designations Situation
- Tribal Issues to be Considered
- Goals of the Tribal Designations Effort
- Examples of Designation Considerations
- Proposed Process for Tribal Designations
- Open Discussion
Tribal Requests for Separate Designations

- Current requests for separate designations have been received from:
  - Morongo Band of Mission Indians
  - Pechanga Band of Luiseno Indians
  - Gila River Indian Community
  - Ak-Chin Indian Community
- Many tribes are watching and interested
The Landscape

- **Designations**
  - Tribal recommendations are optional
  - Unresolved cases where tribes seek separate nonattainment designation, attainment designation, or lower classification

- **Implementation**
  - Tribal exemption from certain planning obligations like attainment SIPs, infrastructure SIPs, etc.
  - Emission offsets generally not available to tribes

- **Redesignation to attainment**
  - EPA lacks policy for Indian country
  - Current process does not “fit” with tribal governance
Designations - Current Situation

- No clear policy or guidance for tribal designations and boundaries
  - EPA has varied in its approach
- Tribal lands have generally been designated as part of larger multi-jurisdictional areas
- Until recently Indian country was generally not recognized
  - At best it has been included as a footnote in the tables of 40 CFR Part 81
Tribal Issues to be Considered

- Tribes are sovereign nations
  - State/local agencies generally have no jurisdiction
  - EPA has jurisdiction
- Tribes need to be engaged early (and continuously) in designations process
- Many tribes receive pollution from upwind sources
- Equity and economic development issues
  - Tribes in nonattainment areas generally face administrative barriers to obtaining offsets and have limited tribal sources from which to obtain emission offsets
Goals of Tribal Designations Effort

- Develop consolidated process, policy and technical guidance that:
  - Protects air quality in Indian country
  - Engages tribes early (and continuously) in the designations process
  - Respects tribal sovereignty and promotes government-to-government interactions
  - Acknowledges trust responsibilities
  - Provides national consistency in tribal designations
Current Thinking on Tribal Designations

- Consider designating Indian country separately from surrounding areas as requested:
  - On a case-by-case basis
  - After consultation
  - If supported by the weight of evidence from multi-factor analyses and other relevant information
- Jurisdictional factor needs to recognize tribes, as sovereign nations, have a different status than the county or state jurisdiction
Examples of Designation Considerations

- Separate designation should be considered for those tribes that submit an adequate multi-factor analysis.
- All areas of Indian country with violating monitors or with emissions sources that contribute to nearby violations (on either tribal or state lands) can be designated as nonattainment.
  - Could also be designated as a separate tribal nonattainment area.
- Designation should ensure reservations are not split by county boundaries.
Factors Analysis

- Factors analysis will include review of:
  - Air Quality Data
  - Emissions Related Data
  - Meteorology
  - Geography/Topography
  - Jurisdictional Boundaries
Air Quality Data

- Does the tribe have a monitor?
  - Is it above or below the NAAQS?
- If not, is the nearest monitor representative of air quality on the reservation?
  - If so, is it above or below the NAAQS?
- Is the data sufficient quality to be used for designations?
- Is there other technical information that is available to characterize air quality?
Emissions – Related Data

- Source Emissions Data
  - Are there sources in Indian country?
  - Nearby and impacting Indian country?
  - Are sources far from the Indian country?
- Traffic and Commuting Patterns
  - What is the location of major transportation arteries?
  - Is there information on traffic volume and commuting patterns?
  - Is Indian country being impacted by traffic crossing the area?
- Population Density and the Degree of Urbanization
  - What are the population characteristics and trends of the areas?
  - What are the patterns of commercial and economic development?
  - Is the reservation or Indian country economically integrated with the surrounding area?
Meteorology - Geography/Topography

- Meteorology
  - How do meteorology conditions affect the direction and distance that the pollution moves from emissions sources?

- Geography/Topography
  - What are the physical features of the land that might define the airshed and affect the formation and distribution of the pollution over the area?
Jurisdictional Boundaries

- Tribal status as independent sovereign nation is different than county or state status
  - This difference can be used to wall off discussions of separate county non-attainment areas
- If tribe wants a separate designation, they must be willing to include tribal boundaries in the FR
  - Tribal boundaries, where applicable, can be indentified in reference to Bureau of Indian Affairs boundary information or in reference to TAS (but TAS is not required)
- Consultation will help make tribes aware of issues and concerns around planning and redesignation to attainment
Process for Tribal Designations

1. EPA promulgates final NAAQS and publishes announcement in Federal Register
2. EPA initiates education and outreach on NAAQS designations process
3. Letters to states and tribes on final NAAQS requesting recommendation and offering consultation
4. Tribes request consultation
5. Tribes decline consultation
6. No tribal recommendation
7. Tribes provide designation recommendations
8. EPA reviews recommendations and conducts its own analysis of data (e.g., multi-factor analysis)
9. EPA sends out 120 day letter to all tribes that submitted recommendation or where we propose non-attainment designation
10. Tribes have opportunity to submit further technical information if they disagree with intended designation
11. EPA provides additional consultation to tribes and evaluates any additional data
12. EPA develops final state and tribal designations
13. Administrator signs state and tribal designations. EPA publishes final state and tribal designations in Federal Register
14. EPA provides education and outreach to tribes on final designations process
Open Discussion

- What information will tribes who don’t want a separate boundary need to provide for recommendations?
- For tribes who want a separate designation, what special tribal issues should be taken into consideration on each factor?
- What information/training will you need to help develop the factors analysis?
- Other questions/comments?