

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
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Boston, MA 02109-3912

December 9, 2011

The Honorable Cheryl Andrews-Maltais  
Chairwoman of the Wampanoag Tribe  
of Gay Head (Aquinnah)  
20 Black Brook Road  
Aquinnah, MA 02535

Dear Chairwoman Andrews-Maltais:

The purpose of this letter is to notify you of the U.S. Environmental Protection Agency's preliminary decision to designate the Indian country of the Wampanoag Tribe as nonattainment for the revised 2008 ozone NAAQS, and to inform you of our approach for completing the designations for the revised ozone NAAQS.

On March 12, 2008, the EPA revised its national air quality standards for ground-level ozone to provide increased protection of public health and the environment. The EPA lowered the primary ozone standard from 0.08 parts per million (ppm) to 0.075 ppm to protect against health effects associated with ozone exposure, including a range of serious respiratory illnesses and increased premature death from heart or lung disease. The EPA revised the secondary 8-hour ozone standard, making it identical to the primary standard, to protect against welfare effects, including impacts on sensitive vegetation and forested ecosystems.

Within one year of promulgation of a new or revised NAAQS, the Clean Air Act requires the Governor of each state to submit to the EPA a list of all areas in the state, recommending designations with respect to the new or revised standard. Therefore, states were asked to submit their designation recommendations, including appropriate area boundaries, to the EPA by March 12, 2009 with respect to the revised ozone standards. Although tribes are not required to submit recommendations, we encouraged them to participate in the designations process, and provided them with an opportunity to submit recommendations if they chose to do so.

As a first step in implementing the 2008 ozone standards, the EPA asked states and tribes to submit their designation recommendations, including appropriate area boundaries, by March 12, 2009. In September 2009, the EPA announced it was reconsidering the 2008 ozone standards. The Agency later took steps to delay the designation process for the 2008 ozone standards pending the outcome of the reconsideration. In September 2011, the U.S. Office of Management and Budget (OMB) returned to EPA the draft final rule addressing the reconsideration of the

2008 ozone standards. On September 22, 2011, the EPA restarted the implementation effort by issuing a memorandum to clarify for state and local agencies the status of the 2008 ozone standards and to outline plans for moving forward to implement them. This memorandum was also provided to the tribes. In addition, several national conference calls were held with the tribes to describe the overall designations process. The EPA indicated that it would proceed with initial area designations for the 2008 standards, and planned to use the recommendations states and tribes made in 2009 as updated by the most current, certified air quality data from 2008-2010. While the EPA did not request that states and tribes submit updated designation recommendations, the Agency provided the opportunity for them to do so. We did not receive a recommendation letter from you. However, because the EPA is required to designate all areas of the country, we intend to promulgate an appropriate designation for your area of Indian country.

As required by the Clean Air Act, the EPA will designate an area as nonattainment if it is violating the 2008 ozone standards or contributing to a violation of the standards in a nearby area. Consistent with designations for previous ozone standards, the EPA intends to designate an area as unclassifiable/attainment if there are certified, quality-assured air quality monitoring data showing the area is meeting the ozone standards or there are no monitoring data for the area, and the EPA has not made a determination that the area is contributing to a violation in a nearby area.

After considering relevant technical information, including 2008-2010 air quality data and preliminary 2011 air quality data, the EPA intends to designate the Indian country of the Wampanoag Tribe as nonattainment along with the surrounding state area. The enclosed Technical Support Document provides details regarding our preliminary decision. If you have additional information that the EPA should consider, we ask that you submit it to us by February 29, 2012.

Please notify us by January 11, 2012, if you are interested in consulting with us regarding the designations process. When requested, consultation will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* ([www.epa.gov/tribal/consultation/consult-policy.htm](http://www.epa.gov/tribal/consultation/consult-policy.htm)).

The EPA will also make its preliminary designation decisions and supporting documentation available to the general public for review and comment. We will be announcing a 30-day public comment period shortly in the *Federal Register*. After considering additional information, the Agency plans to promulgate final ozone designations in spring of 2012.

EPA is committed to working with the states and tribes to share the responsibility of reducing ozone air pollution. Current and upcoming federal standards and safeguards, including pollution reduction rules for power plants, vehicles and fuels, will assure steady progress to reduce smog-forming pollution and will protect public health in communities across the country.



We look forward to working with you and your staff to develop area designations under the 2008 ozone NAAQS in a timely manner. If your tribe is interested in consultation or participating in further discussions or meetings with the EPA officials about the designations process, please do not hesitate to contact me or Anne Arnold of my staff at 617-918-1047.

Sincerely,



H. Curtis Spalding  
Regional Administrator

Enclosure

cc: Bret Stearns, Dir. of Natural Resources, Wampanoag Tribe  
Nancy Seidman, Bureau of Waste Prevention, MassDEP  
Gina McCarthy, Assistant Administrator for Air and Radiation, EPA  
Steven D. Page, Director, Office of Air Quality Planning and Standards, EPA