

# APPLICATION FOR TREATMENT IN A MANNER SIMILAR TO A STATE UNDER THE CLEAN AIR ACT

September 2014

Prepared for  
**U.S. Environmental Protection Agency**



Prepared by  
**Quapaw Tribe of Oklahoma**



# QUAPAW TRIBE OF OKLAHOMA

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September 22, 2014

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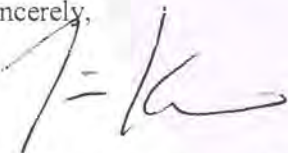
Dear Mr. Curry:

The Quapaw Tribe of Oklahoma is requesting treatment-in-a-similar-manner-as-a-state (TAS) eligibility to administer various regulatory programs and provisions under the Clean Air Act (CAA). Enclosed is a copy of the Quapaw Tribe's application for determination by the Environmental Protection Agency (EPA) that the tribe meet the eligibility requirements of 40 C.F.R. § 49.6 for CAA program approval; (2) approval of grant program authority under 105 of the Act; (3) recognition of the tribe as an "affected State" for the purposes of Section 505(a)(2) of the Act; and (4) approval of treatment as a state for any additional provisions of the CAA for which no separate tribal program is required.

The tribe has submitted, in the past, a similar application under Section 319 of the Clean Water Act, in which it was determined by EPA that the tribe can receive funding under the above mentioned section of the Clean Water Act. This prior determination letter (as received by the Tribe on October 14, 2009) has been provided in Appendix A of the enclosed, as a means of streamlining the determination process.

Thank you for your time and consideration of the Quapaw Tribe's application for TAS eligibility. Please do not hesitate to call our office at (918) 542-1853 or email me at [tkent@quapawtribe.com](mailto:tkent@quapawtribe.com) with any questions or concerns you may have concerning this determination.

Sincerely,



Tim Kent, Environmental Director  
Quapaw Tribe of Oklahoma

Enclosures

cc: Aunjanee Gautreaux, U.S. EPA Region VI Project Officer

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## **APPLICATION FOR TREATMENT IN A SIMILAR MANNER AS A STATE**

The Quapaw Tribe of Indians submit this request for: (1) a determination by the Environmental Protection Agency (EPA) that the tribe meet the eligibility requirements of 40 C.F.R. § 49.6 for Clean Air Act (CAA) program approval; (2) approval of grant program authority under 105 of the Act; (3) recognition of the tribe as an “affected State” for the purposes of Section 505(a)(2) of the Act; and (4) approval of treatment as a state for any additional provisions of the CAA for which no separate tribal program is required.<sup>1</sup>

### **1. THE TRIBE IS FEDERALLY RECOGNIZED (§ 49.7(a)(1)).**

The Quapaw Tribe of Indians is an Indian Tribe recognized by the Secretary of the Interior. It is identified on the list of recognized tribes published in the Federal Register by the Department of Interior pursuant to Section 104 of the Act on November 2, 1994, as “The Quapaw Tribe of Indians.” *See* Federal Register Notice Volume 79, No. 19 (Wednesday, January 29, 2014). The Quapaw Tribe of Indians have already received treatment in a similar manner as a state (TAS) under Clean Water Act § 518 for the purpose of eligibility to receive grant funding available under CWA § 319 and § 106 to assist the tribe in controlling non-point sources of pollution that can affect water resources. A copy of the approval letter (received October 14, 2009) for Section 319 funding under the Clean Water Act is attached in **Appendix A**.

### **2. THE TRIBE IS CURRENTLY CARRYING OUT SUBSTANTIAL GOVERNMENTAL DUTIES AND FUNCTIONS OVER A DEFINED AREA (§49.7(a)(2)).**

#### **A. Form of Tribal Government (§ 49.7(a)(2)(i)).**

With respect to the issue of governmental duties and powers, The Quapaw Tribe of Indians is governed by the Quapaw Tribal Business Committee, a seven member body, one of which members is the tribal chairperson. The Quapaw Tribal Business Committee enacts legislation, tribal resolutions and has the authority to act on behalf of the Quapaw Tribe. The tribal Administrator is the chief executive officer of the Quapaw Tribe, and is supervised by the tribal chairperson. Elections for all business committee offices, including that of the chairperson, are held once a year with members holding staggered two-year terms.

#### **B. Type of Governmental Functions Currently Performed (§ 49.7(a)(2)(ii)).**

**1. Quapaw Tribe Environmental Protection Commission.** In 1994, the Quapaw Tribe created the Quapaw Tribe Environmental Protection Commission (QEPC), a three Commissioner body, with its authority clearly defined in Part D of Title 15, Section 101 of the Code of Laws of the Quapaw Tribe of Oklahoma. The Quapaw Tribe of Indians have already received treatment in a similar manner as a state (TAS) under Clean Water Act § 518 for the purpose of eligibility to receive grant funding available under CWA § 319 and § 106 to assist the tribe in controlling non-point sources of pollution that can affect water resources.

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<sup>1</sup> These additional provisions include: Section 107(d)(3), which requires notice of information that an area should be redesignated for purposes of the Act’s nonattainment provisions; Section 112(r)(7)(B)(iii), which requires that risk management plans be submitted by stationary sources to states in which the source is located; Section 126, which requires notice to affected states of the construction or new or modified major stationary sources; and Sections 176A and 184 which govern the establishment of interstate air pollution and visibility transport regions and commissions.

**2. Quapaw Tribal Court.** The tribal court administers and enforces the The Quapaw Code, and serves the Quapaw Tribal members and business entities in civil matters, and criminal adjudication for acts on trust land and business entities by Native Americans.

**C. Source of Authority to Carry Out Governmental Functions (§ 49.7(a)(2)(iii)).**

The Tribe’s authority to carry out governmental function is rooted in their inherent sovereignty over their members and Reservation lands and waters are recognized in the 1834 Treaty establishing the Quapaw Tribe of Indians. The Tribe has exercised their inherent sovereignty to adopt a system of laws within their jurisdiction, many of which are compiled in The Quapaw Code.

The October 2009 determination letter from EPA Region 6 stated that the governing bodies of the Quapaw Tribe do exercise “substantial governmental duties and responsibilities” and therefore meet the requirements of the Clean Water Act. The governmental functions currently performed by the Quapaw Tribe are essentially the same as when previously determined and should be of adequate documentation for the requirements under the Clean Air Act as well.

**3. THE TRIBES’ AUTHORITY TO REGULATE AIR QUALITY (§ 49.7(a)(3)).**

**A. Geographical Area (§ 49.7(a)(3)(i)).**

The Tribe seeks to assert authority to manage and protect air quality resources within the exterior boundaries of its jurisdiction, located within Ottawa County in northeast Oklahoma and Cherokee County, in southeast Kansas. The tribe’s Environmental Code expressly authorizes the Quapaw Tribal Business Committee to “encourage productive and enjoyable harmony between human beings and their environment; to enrich the understanding of the ecological systems and natural resources important to the Quapaw Tribe” within the tribe’s jurisdictional boundaries. The jurisdiction of the Quapaw Tribe of Oklahoma (O-Gah-Pah) is located in the extreme northeast corner of Ottawa County, Oklahoma, bound on the north by Kansas and the east by Missouri consisting of 56,685 acres of land. The boundary of The Treaty with the Seneca, Mixed Seneca and Shawnee, Quapaw, Etc., 1867 established the boundary that is still identified as the Tribe’s exterior boundary today. Of the 56,685 allotted acres approximately 35% is still held in trust or restricted status for the Tribe and/or individuals or held in fee by the Tribe. The number of enrolled Quapaw Tribal members is 4,646 individuals with a large percentage of the Tribe’s members located within the Tribe’s service area. A map showing the various statuses of land mentioned above is attached and labeled **Appendix B**.

A map attached in **Appendix B** depicts tracts of land, color-coded to show which tracts are “trust land”, “restricted land”, and “fee land”. A listing of the land ownership within the Tribes jurisdictional area is attached also attached in **Appendix B**.

**B. Statement of tribe’s Legal Counsel of the Basis for the tribe’s Assertion of Authority (§ 49.7(a)(3)(ii)).**

The State of the Tribe’s Legal Counsel attached as **Appendix C** includes an electronic compilation of documents which provide historical context for the tribe’s position on the boundaries of the Quapaw Tribe of Oklahoma, this includes a legal description, acreage, and ownership interest for each tract in trust shown on the Map provided in **Appendix B**. Hard copies of these documents are available on request.

**4. THE TRIBE IS CAPABLE OF ADMINISTERING GRANTS AWARDED UNDER SECTION 105, ACTING AS AN AFFECTED STATE UNDER SECTION 505(A)(2), AND PARTICIPATING IN PROVISIONS OF THE ACT FOR WHICH NO SEPARATE TRIBAL PROGRAM IS REQUIRED (§ 49.7(a)(4)).**

**A. Previous Management Experience (§ 49.7(a)(4)(i)).**

With respect to the issue of tribal capacity, the Quapaw Tribe of Oklahoma, with its relevant supporting agencies, does indeed have the regulatory and technical capacity to manage a regulatory program under the CAA. The Quapaw Tribe Environmental Office has successfully managed an Air Quality Program under Section 103 of the CAA since 2002, as well as various other environmental programs, focused on the mission of protecting human health, the environment, and the cultural heritage of the Quapaw people through applying sound scientific methods in understanding impacts to our natural world. **Appendix D** recognizes the staff of the Quapaw Tribe Environmental Office.

**B. Existing Environmental Programs (§ 49.7(a)(4)(ii)).**

The Quapaw Tribe Environmental Office is currently administering seven U.S. EPA grants. The grants include: GAP (17<sup>th</sup> year), Superfund Region 6 Management Assistance Grant (16<sup>th</sup> year), Superfund Region 6 Remedial Response Cooperative Agreement (1<sup>st</sup> year), Superfund Region 7 Management Assistance (1<sup>st</sup> year), Superfund Region 7 Remedial Response (1<sup>st</sup> year), Clean Water §106 (15<sup>th</sup> year), and Clean Air §103 (12<sup>th</sup> year). The tribe also manages separate tribal programs relating to public health and housing and tribal utility departments which manage public water and sewer systems.

**C. Entities Exercising Executive, Legislative and Judicial Functions (§ 49.7(a)(4)(iii)).**

As set forth above, the Quapaw Tribal Business Committee exercises both executive and legislative functions. Judicial power is vested in the tribal court which has established The Quapaw Code.

The tribe exercises its inherent power that includes the authority to:

- (1) Negotiate with federal, state and local governments;
- (2) Manage tribal economic affairs and enterprises;
- (3) Levy and collect taxes or license fees from members and nonmembers;
- (4) Exclude nonmembers;
- (5) Promulgate and enforce laws governing the conduct of tribal members and nonmembers and provide for the maintenance of law and order and the administration of justice by establishing a tribal court; and
- (6) Regulate the conduct of trade and the use and disposition of tribal property so as to safeguard and promote the safety and general welfare of residents within tribal jurisdiction.

The Quapaw Tribal Business Committee has the power to delegate their authority to subordinate boards, such as the Quapaw Tribe Environmental Protection Commission, with respect to any of the foregoing powers, while reserving the right to review any action taken by such body. The Tribe's inherent powers provide the Tribe with ample authority to manage and protect air quality resources within the exterior boundaries of its jurisdiction.

**D. Tribal Agency Administering Clean Air Act Programs (§ 49.7(a)(iv)).**

The Quapaw Tribe Environmental Office has primary responsibility for developing and administering the Tribe's air quality program. The Quapaw Tribe Environmental Office was established in 1997 through the EPA Region 6 General Assistance Program (GAP). The Tribe's air quality program was established in 1999 with funding under Section 103 of the CAA to address the tribe's primary concern of exposure to lead dust in relation to the Tar Creek Superfund site. Additional concerns included the exposure to ground-level ozone and particulate matter.

**E. Technical and Administrative Capabilities (§ 49.7 (a)(v)).**

The aforementioned discussion shows that the Quapaw Tribe Environmental Office has extensive management and administrative experience and will be capable of administering grants awarded under Section 105 of the CAA, affected state status under Section 505(a)(2) of the CAA, and participating as a state in other provisions of the CAA for which no specific tribal program is required. Described below are the capabilities of the air quality program as they relate to these specific provisions of the CAA.

**a. Section 105 Grant Program**

The Tribe has sufficient capabilities to administer grants awarded under Section 105 of the CAA. Currently, the tribe's air quality program is funded through grants provided under Section 103 of the CAA. The air quality program has focused on air quality monitoring collection, validation and verification with the tribe's exterior boundaries of its jurisdiction. The Tribe's experience administering grants under Section 103 has allowed them to develop the capacity necessary to administer grants under Section 105. The tribe has also completed an emissions inventory that provides a baseline estimate of the air pollutant emissions within the exterior boundaries of its jurisdiction. In the future, the tribe would like to update their emissions inventory and potentially conduct a Level 3 emissions inventory that would include sampling of local emission sources. The tribe also strives to collect accurate, defensible data through quality assurance and control. Every year, the tribe updates and submits to EPA Region 6 their Quality Assurance Project Plan (QAPP) for their (the Tribe's) ambient air monitoring program for review and approval by EPA Region 6. The most recent QAPP approval by EPA Region 6 was on June 17, 2014 and will expire June 17, 2015.

The Tribe has the capability to ensure that EPA grant monies are adequately accounted for and properly expended. The Quapaw Tribe Environmental Office already prepares quarterly and annual reports on the air program as part of its Section 103 grant. In addition, fiscal controls are in place to ensure adequate accounting of funds, including personnel and procurement policies. The Tribe's accounting department is responsible for monetary drawdowns and expenditures of federally granted funds. An accounts system is in place that ensures itemized posting of expenditures. The Quapaw Tribe Environmental Office Grants Manager follows up on these activities with the accounting department to ensure that grant dollar drawdowns and posting of expenses to the proper grants are being carried out. This individual is trained in the EPA's governmental cost accounting practices and policies, and attends training and workshops given by EPA when available.

**b. Affected State Status.**

Under Section 505(a)(2) of the CAA, a Title V permitting authority must provide notice of permit applications and proposed permits to all states whose air quality may be affected and that are contiguous to the state in which the emission originates or within 50 miles of the emission source. The permitting authority must also provide affected states with an opportunity to submit written recommendations respecting issuance of the permit and its terms and conditions. If any part of those recommendations are

not accepted by the permitting authority, the permitting authority must notify the affected state and the EPA in writing of its failure to accept the recommendations and the reason for the failure.

The Tribe also has both the need and the capability to be treated as an “affected state” for purposes of Section 505(a)(2) of the CAA. Notice of new permit applications, proposed permits and construction of new major sources will allow the tribe to better track adverse changes in air quality within the exterior boundaries of its jurisdiction and protect air quality from significant deterioration by activities outside of the exterior boundaries of its jurisdiction.

Once affected state status is approved, all notice required by Section 505(a)(2) would be received by the Quapaw Tribal Business Committee Chairperson and forwarded onto the director of the Quapaw Tribe Environmental Office for review and comment. The Quapaw Tribe Environmental Office will utilize its existing expertise when commenting on applications and proposed permits and making recommendations on permit conditions. If necessary, the Quapaw Tribe Environmental Office may retain outside consultants to analyze complex applications that may have significant effects on air quality within the exterior boundaries of the tribe’s jurisdiction.

c. Provisions for Which No Specific Tribal Program Is Required.

The preamble to EPA’s Tribal Authority Rule lists a number of additional provisions of the CAA under which tribes may be treated as states but where no specific tribal program is required. These additional provisions include: Section 112(r)(7)(B)(iii), which requires that risk management plans be submitted by stationary sources to the state in which the source is located; Section 126, which requires states to provide notice of the impending construction of new major stationary sources to affected states; and Section 176A and 184 which govern the establishment of interstate air pollution and visibility transport regions and commissions.

The Tribe would benefit and have the capacity to receive timely notice of any changes in designation of a portion or portions of the exterior boundaries of its jurisdiction as a nonattainment area. It is likely that the tribe would wish to provide technical comments on such a proposed re-designation and to consult with EPA about the economic and environmental ramifications of such a re-designation.

Notice under Section 112(r)(7)(B)(iii) would be forwarded by the Quapaw Tribal Business Committee Chairperson to the director/coordinator of the Quapaw Tribe Environmental Office and tribal Response Program. Such notice would be valuable to tribal first responders in the event of a release of hazardous materials from a stationary source. The tribal Response Program has the capacity to respond to a variety of hazardous material spills within the exterior boundaries of the tribe’s jurisdiction.

Under Section 126 of the CAA, state implementation plans must provide notice of the construction of any new or modified major stationary sources that may affect pollution levels in nearby states. Notices required by Section 126 would be received by the Quapaw Tribal Business Committee Chairperson and forwarded to the director of the Quapaw Tribe Environmental Office for incorporation in the emissions inventory of the tribe’s.

The remaining revisions of the CAA – Sections 176A and 184 – generally afford the tribe the opportunity to participate in interstate commissions addressing interstate air pollution and visibility concerns. The Quapaw Tribe Environmental Office already interacts with state and federal agencies, including EPA, the Oklahoma Department of Environmental Quality, the Bureau of Land Management, the Bureau of Indian Affairs, Bureau of Reclamation, Fish and Wildlife Service, and the United States Department of Agriculture.



Quapaw Tribe Environmental Office personnel also regularly participate in the Four States Clean Air Alliance that addresses interstate air quality issues. Given these prior activities, the tribe has the capability to participate as a state in a variety of interstate processes affecting air quality within the exterior boundaries of its jurisdiction.

## 5. CONCLUSION

The Quapaw Tribe of Indians respectfully request that the EPA determine that the tribe meet the eligibility requirements of 40 C.F.R. § 49.6 for Clean Air Act program approval and approve its application for Section 105 program authority.

Respectfully submitted this 20 th day of September, 2014

  
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John Berrey, Chairperson  
Quapaw Tribal Business Committee