Fall 2020 RTOC Action Items

2/2/2021

Identifier	Action Items	Tribal Contact	Lead	Status	Category/Topic	Response
1	Request EPA collaborate with Tribes to develop a process whereby ETEP development can be streamlined and made more useful, and provide access to the R10 database of ETEP components - R10 gave a presentation on a database tool they are using to assist the process; Would like access to this database of ETEP components	Rob Roy, Southern Cal	Jeremy Bauer	In progress	GAP (ETEP)	Willard Chin led a call with Rob Roy, Lisa Gover, and Shausta Gaughen to discuss ETEP development best practices and opportunities for improvement, including what additional, guidance, templates and tools may be useful. Tribal Caucus will discuss on February 2 and follow up with proposed next steps.
2	Is there an update from EPA on the COVID pandemic, alterations to normal regulations or procedures such as relaxing release reporting, and what is EPA's position related to ongoing assistance to tribes during the pandemic? Will EPA provide any funding for the ongoing and increased need for assistance with O&M? - A lot of what has been shared is from other organizations? - How can tribes get more attention to things like drinking water O&M? Pandemic shows that this is a strong need.	Rob Roy, Southern Cal	Emmanuele Rapicavoli	Ongoing	D and Drinking	Emmanuelle's response regarding drinking water O&M: Ensuring the provision of safe drinking water and sanitation to tribal communities is a top priority for EPA. We understand that the pandemic and the wildfires have only compounded the need for operations and maintenance support for tribal water utilities. Unfortunately, Congress has not granted EPA either the authority or the appropriations to fund operations and maintenance activities for water utilities. Region 9 has utilized the flexibilities allowed by congress to fund O+M training and technical assistance to support tribal water operators. Some examples of this include the funding we provide to our contractor, RCAC, to provide one-on-one technical assistance and extensive training programs for tribal utilities in the region. Region 9 has also funded drinking water operator training courses and certification services through the Inter-tribal council of Arizona. Lastly, EPA partners closely with other federal agencies such as the Indian Health Service and BIA who have broader authorities to support operations and maintenance at Tribal water systems. If your water utility has a specific training, technical assistance or O+M need, I encourage you to contact me or your tribal drinking water program manager. The tribal DW team, working with our contractors and federal partners, will help to identify the resources that can best assist each utility. EPA has not "relaxed" drinking water requirements as a result of COVID-19. If a drinking water utility has experienced changes to their population, service connections, infrastructure, or had other operational changes, please contact your EPA Drinking Water program manager. The program manager will determine the appropriate monitoring requirements and frequency of sample collection for the water system. EPA's national webpage for coronavirus resources for tribal drinking water utilities is here: https://www.epa.gov/coronavirus/tribal-water-utility-resources-covid-19-pandemic And for all utilities here: https://www.epa.gov/coronavirus/coronavirus-and-drinking-water-and-wastewater
3	Request update on the EPA role in and response to OK Governor request (midnight rider) - So far, the tribes have been able to maintain their programs since they are mostly non enforcement programs - Tribes wanted to consult with EPA but the OK Governor wanted to be part of that - How will McGirt decision affect or be affected by this?; McGirt is criminal so will likely have no effect.	Rob Roy, Southern Cal	Tod Siegel and Andy Bryne	Complete	Legal	Email shared with Caucus with responses on 11/2/20; See "Fall 2021 RTOC Action Items Attachment 1"
	Questions: 1. This is still alarming in the sense that if this could be tacked on as a rider, what stops Congress from doing the same thing throughout Indian County? (Shasta Gaughen, Pala) 2. Is it possible to get a copy of Governor request to EPA (Lisa Gover, CA) Note: Copy of the OK Governor's Letter is in the TCOTS listing (Wilfred) - link was shared	Various				
4	NTAA to collaborate with the RTOC California Workgroup with regard to the Daimler-Chrysler Consent Decree, Supplemental Environmental Projects (SEP). CARB contacted NTAA to coordinate efforts and develop opportunities for Tribes.	Wilfred Nabahe, Arizona		In progress	Air	Wilfred will provide a status update at our next RTOC.

5	FOIA Questions 1. As a requirement Tribes are to be notified of FOIA request when specific information is pertinent to that individual Tribe along with information to be provided. Specific materials are exempt from FOIA that should be provided opportunity to confirm whether this information is to be shared. (John Parada) 2. It would be helpful to see what EPA tribal summaries are so an idea of the type of information to be released. (Teri Red Owl) 3. What type of information is included in the Tribal reports? (Shasta Gaughen, Teresa Romero, John Parada) 4. Will USEPA respect the exemption allowable for FOIA requests? This requires notification to each specific Tribe. (John Parada) 5. Will USEPA make the determination on exemptions applicable to documents? Sensitive information determined by a specific Tribe? (John Parada) 6. Who updates the fact sheets? Are they done on a regular basis or as needed (e.g. change in leadership, reservation size, etc.)? (Kelcey Stricker) 7. Is there any reasoning why he (requestor) wants the information? (Meyo Marrufo)	Various	Jeremy Bauer	Ongoing	FOIA	Email shared with Caucus with responses on 11/2/20; See "Fall 2021 RTOC Action Items Attachment 2"
6	Annual Reports: Can Jeremy talk about annual reports in addition to quarterly reports? Some Project Officer's or Programs want them, other do not. Should the Fourth Quarter GAP report also give a summary of the year? (Rob Roy) Laura - if your reports are cumulative; you satisfy two requirements in one. If not, requirements may vary by program. That may be something we can present on at the next RTOC?	Rob Roy, Southern Cal	Jeremy Bauer	Complete	GAP	Webinar on Nov 12th addressed this point; information shared in an email with Caucus on 11/2/20; See "Fall 2021 RTOC Action Items Attach3ent 1" ; can answer further questions on this during Winter 2021 RTOC
7	Summer RTOC Action Item # 10 Mervin to provide the "One Drive" information to Tribal Caucus		Mervin Wright	In progress	RTOC	
8	Spring 2020 RTOC Action Item #14 What are your recommendations when local law enforcement cuts down marijuana plants but wont remove due to illegal pesticides?" Juliann will share the guidance document on EPA's approach to marijuana sites with RTOC when final (before the end of the calendar year).		Peter Guria	In progress	Emergency Response	EPA R9 is in the process of creating a fact sheet that will be used to inform response personnel about common hazards that may be present along with fate and transport characteristics, and state and federal resources that may be available for cleanup activities from marijuana farming. Please contact Pete Guria at EPA R9 with any specific scenerios in the meantime (Guria.Peter@epa.gov, 415-972-3043).

Attachment 1

Please see below the questions on the McGirt case from the Region 9 Fall RTOC and EPA's responses.

What is EPA's role in and response to Oklahoma's Governor request (midnight rider) (Rob Roy, Southern CA)
The State of Oklahoma requested approval to administer all of its EPA-approved environmental programs in areas of the State that are in Indian Country (except for areas outlined as "Exceptions to Request" – i.e., trust lands, allotments and treaty fee lands) pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 ("SAFETEA"), Public Law 109-59, 119 Stat. 1144 (Aug. 10, 2005). EPA generally excludes Indian country from its approvals of state environmental regulatory programs. However, where a federal statute expressly provides for state program administration in Indian country, EPA must apply that law and approve a proper request for such state administration. Section 10211(a) of SAFETEA is such a law. The statute mandates that EPA approve a request from the State of Oklahoma to administer regulatory programs in areas of the State that are in Indian country where the statute's elements are met. EPA approved the State's request on October 1, 2020.

This is still alarming in the sense that if this could be tacked on as a rider, what stops Congress from doing the same thing throughout Indian County? (Shasta Gaughen, Pala)
Congress could potentially pass other laws affecting environmental programs administered under EPA's statutes as they apply in Indian country. EPA would review and apply any such laws consistent with their terms. EPA staff is not aware of any such pending legislation, however. Tribes may also choose to consult with their legal counsel, who could have additional information about potential legislation.

Is it possible to get a copy of Governor request to EPA (Lisa Gover, CA)
Attached is the letter and response.

J. Kevin Stitt
Office of the Governor
State of Oklahoma

July 22, 2020

Andrew Wheeler, Administrator
Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: The State of Oklahoma's Request to Administer EPA Approved Environmental Programs in Areas of the State that are in Indian Country

Dear Administrator Wheeler:

Consistent with the extent to which the State of Oklahoma implemented environmental programs throughout the State prior to the U.S. Supreme Court's recent decision in *McGirt v. Oklahoma*, 591 U.S.____(2020), the State of Oklahoma requests approval to administer all U.S. Environmental Protection Agency ("EPA") approved environmental programs in areas of the State that are in Indian Country (except as outlined below under "Exceptions to Request") pursuant to § 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 ("SAFETEA"), Public Law 109-59, 119 Stat. 1144 (Aug. 10, 2005).[1] This request includes all Oklahoma environmental programs approved by EPA, and specifically includes but is not limited to the following programs:

Oklahoma Department of Environmental Quality:

Land Protection Division -

- Resource Conservation and Recovery Act ("RCRA") Programs
    - Subpart C hazardous waste program, 40 C.F.R. Part 262, Subpart LL

[1] This request is only seeking approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014) and the Stigler Act, 25 U.S.C. §§ 331 *et seq*.

- Subpart D permit program, 59 Fed. Reg. (Aug. 16, 1994)
- Coal Combustion Residual ("CCR") State Program: program approval, 83 Fed. Reg. 30356 (June 28, 2018)

- **Safe Drinking Water Act, 42 U.S.C. § 300h *et seq*., Underground Injection Control Programs –**

  - Underground Injection Control ("UIC") for Classes I, III, IV and V wells, 40 C.F.R. Part 147, Subpart LL, § 147.1850

Air Quality Division -

- **Clean Air Act Programs –**

  - State Implementation Plan (40 C.F.R. Part 52, Subpart LL, §§ 52.1920 – 52.1960)
  - State Operating Permits Program ("Title V Program"), 40 C.F.R. Appendix A-2, Part 70 (State of Oklahoma)
  - Standards of Performance for New Stationary Sources ("NSPS"), 40 C.F.R. Part 60, Subpart A, § 60.4(b)(38)
  - National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 C.F.R. Part 61, Subpart A, §§ 61.04(b)(38) and 61.04(c)(6)(iv)
  - Approval and Promulgation of State Plans for Designated Facilities and Pollutants, 40 C.F.R. Part 62, Subpart LL, §§ 62.9100 *et seq*.
  - National Emission Standards for Hazardous Air Pollutants ("NESHAP"), Delegation Status for Part 63 Standards - State of Oklahoma, 40 C.F.R. Part 63, Subpart A, § 63.99(a)(37)
  - Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities ("Lead-Based Paint Program"), 63 Fed. Reg. 49574 (Sept. 16, 1998)
  - Lead-Based Paint Renovation, Repair and Painting, and Pre-Renovation Education Activities in Target Housing and Child Occupied Facilities ("RRP Program"), 79 Fed. Reg. 1799 (Jan. 10, 2014)
  - Ambient Air Monitoring Reference and Equivalent Methods, 40 C.F.R. Part 53 and Ambient Air Quality Surveillance, 40 C.F.R. Part 58

Water Quality Division -

- **Clean Water Act, 33 U.S.C. §1251 *et seq*., Delegated Programs -**

  - Water Quality Related Effluent Limitations, 33 U.S.C. § 1312
  - Effluent Limits, 33 U.S.C. § 1311
  - National Performance Standards, 33 U.S.C. § 1316
  - Toxic and Pretreatment, 33 U.S.C. § 1317
  - National Pollutant Discharge Elimination System, 33 U.S.C. § 1342

- Disposal of Sewage Sludge, 33 U.S.C. § 1345

- **Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq*., Primacy Programs -**

  - Interim Enhanced Surface Water Treatment Rule
  - Stage 1 Disinfection Byproducts Rule
  - Consumer Confidence Rule
  - Administrative Penalty Authority
  - Arsenic Rule
  - Public Notification Rule
  - Radionuclide Rule
  - Filter Backwash Recycling Rule
  - Long Term 1 Surface Water Treatment Rule
  - New PWS Definition
  - Lead and Copper Rule
  - Stage 2 Disinfection Byproducts Rule
  - Long Term 2 Surface Water Treatment Rule
  - Ground Water Rule
  - Revised Total Coliform Rule
  - Variance and Exception Rule

Oklahoma Department of Agriculture, Food and Forestry:

- **Clean Water Act, 33 U.S.C. §1251 *et seq.*, Delegated Programs –**

  - National Pollutant Discharge Elimination System, 33 U.S.C. § 1342 (includes Concentrated Animal Feeding Operations, Pesticides, and Storm water from agricultural construction)

Oklahoma Water Resources Board:

- **Clean Water Act, 33 U.S.C. §1251 *et seq*. –**

  - Water Quality Standards and Implementation plans, 33 U.S.C. § 1313

Oklahoma Corporation Commission:

- State Underground Storage Tank Prevention Detection and Compliance (2 C.F.R. § 200; 2 C.F.R. § 1500; 40 C.F.R. § 33; 40 C.F.R. § 35(a))

- Leaking Underground Storage Tank Trust Fund Program (Corrective Action) (2 C.F.R. § 200; 2 C.F.R. § 1500; 40 C.F.R. § 33)

- State & Tribal Response Program (2 C.F.R. § 200; 2 C.F.R. § 1500; 40 C.F.R. § 33; 40 C.F.R. § 35(a))

- State Underground Water Source Protections (2 C.F.R. § 200; 2 C.F.R. § 1500; 40 C.F.R. § 33; 40 C.F.R. § 35(a); 40 C.F.R. § 147.1851)

EXCEPTIONS TO REQUEST

This request does not seek approval to administer any programs in Indian country on lands, including rights-of-way running through the same, that -

(A) Qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. § 1151(c);

(B) Are held in trust by the United States on behalf of an individual Indian or Tribe; or

(C) Are owned in fee by a Tribe, if the Tribe –

(i) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party; and

(ii) never allotted the land to a member or citizen of the Tribe.

Furthermore, this request does not seek approval to administer the Oklahoma Corporation Commission ("OCC")'s UIC Program for Class II wells (40 C.F.R. Part 147, Subpart LL, § 147.1851) in Osage County, Oklahoma.

The environmental programs covered by this request include but are not limited to programs administered by the following State agencies: the Oklahoma Department of Environmental Quality; the Oklahoma Department of Agriculture, Food and Forestry; the Oklahoma Water Resources Board; and the OCC. The State of Oklahoma reserves the right to amend this request or make future requests for approval pursuant to SAFETEA.

Thank you for your consideration and action on this request. If you have any questions or need further information, please contact Kenneth E. Wagner, Oklahoma Secretary of Energy & Environment, at Kenneth.Wagner@ee.ok.gov or (405) 522-7099.

SiSSincerely,

Kevin Stitt
Governor of the State of Oklahoma

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

October **1,** 2020

THE ADMINISTRATOR

The Honorable J. Kevin Stitt
Governor of the State of Oklahoma
Oklahoma State Capitol
2300 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Re: Approval of State of Oklahoma Request Under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005

Dear Governor Stitt:

On July 22, 2020, the Governor of the State of Oklahoma requested approval under Section 1021 l(a) of the Safe, Accountable , Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users , Pub. Law 109-59, 199 Stat. 1144 , 1937 (August 10, 2005) ("SAFETEA"), to administer in certain areas of Indian country the State ' s environmental regulatory programs that were previously approved by the U.S. Environmental Protection Agency (" EPA") outside of Indian country. EPA hereby approves Oklahoma's request.

SAFETEA

The applicable provision of SAFETEA, which is limited to Okla homa , states as follows:

> SEC. 10211. ENVIRONMENT AL PROGRAMS.
>
> (a) OKLAHOMA.- Notw ithstand in g any other provision of law , if the Administrator of the Environmental Protection Agency (referred to in this section as the "Administrator") determines that a regulatory program submitted by the State of Oklahoma for approval by the Administrator under a law administered by the Administrator meets applicable requirements of the la w, and the Administrator approves the State to administer the State program under the law with respect to areas in the State that are not Indian country, on request of the State, the Administrator shall approve the State to administer the State program in the areas of the State that are in Indian country, without any further demonstration of authority by the State.

Pub. Law 109-59, 199 Stat. 1144 , 1937.

EPA recognizes that typica lly, in the absence of express authorization from Congress states do not have jurisdiction in Indian country [1] to implement regulatory programs under the federal environmental laws administered by EPA. *See, e.g., Alaska v. Native Village of Venetie Tribal Gov't,* 522 U.S. 520, 527 n.1 (1998). Therefore, EPA generally excludes Indian country from its approvals of state environmental regulatory programs. However, where a federal statute expressly provides for state program administration in Indian country, EPA must apply that law and approve a proper request for such state administration.

Section 1021 l(a) of SAFETEA is such a law. The statute mandates that EPA approve a request from the State of Oklahoma to administer regulatory programs in areas of the State that are in Indian country where the statute's elements are met. The statute applies to (1) any regulatory program, (2) submitted by Oklahoma for approval by EPA under a law administered by EPA, where EPA has (3) determined that the program meets applicable requirements of the law, and (4) approved the program with respect to areas in the State that are not Indian country, and (5) the State requests to administer the program in areas of the State that are in Indian country. So long as these circumstances are present, SAFETEA requires approval of the State's request "[n]otwiths tand in g any other provision of law" and " without any further demonstration of authority by the State." Consistent with Congress's plenary authority over Indian affairs, the statute expressly abrogates any prior potentially inconsistent legal requirement or limitation of law , including any potential jurisdictional impediment to the State's regulation in Indian country or other requirement under federal environmental laws administered by EPA. The statute provides EPA no discretion to weigh additional factors in rendering its decision.

Oklahoma's July 2020 request seeks approval under SAFETEA to administer environmental regulatory programs submitted by the State that EPA has determined meet applicable requirements of federal environmental law and has approved outside oflndian country.[2] Because these basic statutory criteria are met, EPA is required to approve the State's request to

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[1] Section I0211 of SAFETEA does not define Indian country. Indian country , however , is defined under federal law at 18 U.S.C. § 1151 to mean (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government , notwithstanding the issuance of any patent , and, including rights-of-way running through the reservat ion , (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof , and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Although this definition is codified in the federal criminal code, it is also relevant for purposes of civil jurisdiction. *See, e.g., DeCoteau v. District County Court,* 420 U.S. 425, 427 n.2 (1975) .

[2] As described above , Section I 021 I (a) requires approval of the State's request where EPA previously has determined that a regulatory program submitted by the State meets applicable requirements of federal environmental law, and EPA has approved the program to apply outside of Indian country. EPA interprets the required determination that the State's program meets applicable requ i rement s of federal environmental law as applying at the time the program was previously approved outside of Indian co un try. This is consistent with Congress's intent to mandate approval of the State's request under SAFETEA "[n]otw iths tand i ng any other provision of la w," which includes the provisions of the statutes administered by EPA. Although SAFETEA thus mandates approval in the first ins tance , EPA notes that the Agency's ordinary statutory and regulatory authorities to oversee and review state programs will continue to apply as the programs are implemented.

administer these previously approved regulatory programs in the areas oflndian country described in the State's request.

Geographic Scope of Approval

As described in the State's July 2020 letter, the impetus for the State' s request was the recent decision of the U.S. Supreme Court in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). In that case, the Supreme Court held that the Creek Nation's Reservation in eastern Oklahoma had not been disestablished by Congress and remained Indian country under federal law. Prior to *McGirt* , the State had, as a practical matter, implemented environmental programs in much of the area that was held by the Supreme Court to be Indian country. EPA understands the State's reference to *McGirt* as an explanation of the State's intent substantially to reestablish the geographic scope of the State's environmental programs as implemented prior to the Supreme Court's decision, but at this time generally not to extend the State's programs into areas of Indian country over which the State had not previously implemented such programs. [3] In keeping with this general intent , the State' s request applies to Indian country throughout the State, but expressly excludes three categories of land over which the State had not administered regulatory programs prior to *McGirt.* As stated in the request:

> This request does not seek approval to administer any programs in Indian country on lands , including rights-of-way rmming through the same, that -
>
> (A) Qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S. C. § 1151(c);
>
> (B) Are held in trust by the United States on behalf of an individual Indian or Tribe; or
>
> (C) Are owned in fee by a Tribe, if the Tribe -
>
> (i) acquired that fee title to such land, or an area that included such la nd, in accordance with a treaty with the United States to which such Tribe was a party; and
>
> (ii) never allotted the land to a member or citizen of the Tribe.

[3] EPA has identified two instances in which the State' s July 2020 request deviates from the geographic scope of the State' s programs as implemented prior to *McGirt.* Fi rst , the State's request seeks extension of its Safe Drinking Water Act Underground Injection Control Program (other than Class II wells) into Osage Coun ty. Prior to *McGirt,* EPA had regulated all classes of wells und er this program in that county. Second, consistent with the D.C. Ci rc u it' s dec isio n in *Oklahoma Dept. of Environmental Quality v. EPA* , 740 F.3d 185 (D.C. Ci r. 20 14) , the State ' s Clean Air Act State Implementation Plan (" SI P") applies on non-re servat io n areas of Indian country - most no tab ly, Indian allotments - in the State. Prior to *McGirt,* the State had thu s i mp le ment ed its SIP on Indian allotments , including allotments that are now under stood (per the Supreme Co u rt ' s decision) to be located within the exterior boundaries of an Indian rese rvat io n. To the extent an allotment is located on an Indian reservat io n, it would be excluded from the D.C. Circuit's hold i ng that SIPs apply on non-reservation areas of Indian co untry . The State's July 2020 request excludes Indian allotments, and thus does not request extension of Oklahoma's SIP onto such reservation allotments.

The request also expressly excludes the Safe Drinking Water Act Class II Underground Injection Control program in Osage County , Oklahoma.[4]

Consistent with the State's letter, EPA's approval of the State's request applies to Indian country throughout the State but does not extend to any of the excluded areas. EPA will retain authority to directly implement environmental regulatory programs under statutes administered by the Agency in all such excluded areas. Nothing in this decision is intended to change or address tribal authority under tribal law outside the scope of a program under a statute administered by EPA.

Programmatic Scope of Approval

The State's July 2020 letter requests approval under SAFETEA with regard to all of the State' s existing EPA-approved environmental regulatory programs,5 including a series of programs identified in the letter that are administered by the Oklahoma Department of Environmental Quality, the Oklahoma Department of Agriculture , Food and Forestry, the Oklahoma Water Resources Board, and the Oklahoma Corporation Commission. Consistent with the State's request , EPA is approving the State under SAFETEA to administer all environmental regulatory programs approved by EPA to apply outside of Indian country, including, but not limited to, the environmental regulatory programs identified below. Each of the programs covered by this approval has been submitted to EPA - *i.e.*, they involve a submission by the State for EPA' s consideration under a law administered by EPA - and approved by EPA as meeting applicable requirements of federal environmental law outside of Indian country. These programs thus satisfy the necessary criteria of SAFETEA Section 1021 l(a). To the extent EPA's prior approvals of these State programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by this approval under SAFETEA. Because each of the programs identified below is now approved to include the requested areas of Indian country, any future revisions or amendments to these identified programs will similarly extend to the covered areas of Indian country without any further need for additional requests under SAFETEA.[6]

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[4] Section I 0211(a) of SAFETEA does not specify any required minimum geographic area of Indian country to be included in a request from Oklahoma. EPA interprets the provision as providing sufficient flexibility for the State to exclude certain areas of Indian country from its request and to mandate EPA approval of such a limited request so long as the basic criteria of the statute are met.

[5] Section I 021 I (a) of SAFETEA addresses only " regu latory program [s]" administered under federal environmental laws. The provision does not address funding provided under EPA grant programs. The provision also does not address any exercise of State regulatory authority outside the scope of a program approved by EPA under a federal environmental statute administered by EPA.

[6] However , should the State apply to EPA in the future for approval of any program that has not been previously approved outside of Indian country, the State would also need to submit a request under SAFETEA to the extent the State wishes to administer that program in any area of Indian count ry. This is consistent with the language of Section I 0211(a), which contemplates that a request from Oklahoma will relate to a regulatory program that has already been submitted to EPA and approved by EPA to apply outside of Indian country.

List of Programs[7]-

RCRA:

- Subtitle C hazardous waste program (42 U.S.C. § 6921, *et seq.;* 40 C.F.R. Part 272, Subpart LL)
- Subtitle D permit program (42 U.S.C. § 6941, *et seq.;* 40 C.F.R. Parts 239 and 258)
- Coal Combustion Residual State Program (42 U.S.C. § 6945(d); 40 C.F.R. Part 257, Subpart D)
- Subtitle I Underground Storage Tank Program (42 U.S.C. § 6991, *et seq.;* 40 C.F.R. § 282.86)

CAA:

- State Implementation Plan (42 U.S .C. § 7410; 40 C.F.R. Part 52, Subpart LL - 40 C.F.R. §§ 52.1920 -52.1960)
- Standards of Performance for New Stationary Sources (42 U.S.C. §§ 741 l(b) and (c), 7429; 40 C.F.R. Part 60
- National Emission Standards for Hazardous Air Pollutants (42 U.S.C. § 7412; 40 C.F.R. Part 61, Subpart A - 40 C.F.R. § 61.04(b)(38) and§ 61.04(c)(6)(iv))
- Approval and Promulgation of State Plans for Designated Facilities and Pollutants (42 U.S.C. §§ 741 l(d) and 7429; 40 C.F.R. Pait 62, Subpart LL - 40 C.F.R. §§ 62.9100 - 62.9191)
- National Emission Standards for Hazardous Air Pollutants , Delegation Status for Part 63 Standards-State of Oklahoma (42 U.S.C. § 7412; 40 C.F.R. Part 63, Subpart A - 40 C.F.R. § 63.99(a)(37))
- State Operating Permits Program (42 U.S.C. §§ 766la(d) - 766lf; 40 C.F.R. Part 70, Appendix A, Oklahoma)
- Ambient Air Monitoring Reference and Equivalent Methods and Ambient Air Quality Surveillan ce, 42 U.S.C. §§ 760 l (a), 7619 (40 C.F.R. Parts 53 and 58)

CWA:

- Pretreatment (33 U.S.C. § 1317; 40 C.F.R. Parts 129 and 403)
- National Pollutant Discharge Elimination System Programs authorized for Oklahoma Department of Environmental Quality and Oklahoma Department of Agriculture, Food, and Forestry (33 U.S.C. § 1342; 40 C.F.R. Parts 122-125)
- Disposal of Biosolids and Sewage Sludge (33 U.S.C. § 1345; 40 C.F.R. Part 503)
- Water Quality Standards and Implementation plans (33 U.S.C. § 1313 ; 40 C.F.R. Parts 130 and 131)

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[7] EPA has reorganized the list of regulatory programs included in Oklahoma's July 2020 letter to track the statutes administered by EPA, avoid unnecessary references and dup lic at io n, and reference relevant statutory and regulatory provisions that reflect the requested programs. Consistent with the State's reque st to include all regulatory programs approved by EPA outside of Indian country (and the statement that the list of programs included in the July 2020 letter was non-exc l us i ve) , EPA has included certain regulatory programs that were not separately identified in the State's July 2020 letter. Because Section I 0211(a) of SAFETEA applies only to regulatory programs , EPA has not included any references to environmental grant authorities under EPA statutes or regulations that were included in the State's Ju ly 2020 letter.

SDWA:

- Underground Injection Control (UIC) Program for Classes I, II (excluding Osage County, Oklahoma), III, IV and V wells, (42 U.S.C. §§ 300h-300h-8; 40 C.F.R. §§ 147.1850 and 1851)
- Public Drinking Water System Program (42 U.S.C. § 300f, *et seq.;* 40 C.F.R. Part 143-149)

FIFRA

- State Pesticides Certification and Training Plan (7 U.S.C. §136i; 40 C.F.R. Part 171)
- Experimental Use Permits (7 U.S.C. § 136c; 40 C.F.R. Part 172)
- Delegated State Enforcement and Training (7 U.S.C. § 136u)
- Enforcement Primacy (7 U.S.C. § 136w-1)
- Public Health , Quarantine , and Crisis Exemptions (7 U.S.C. § 136p; 40 C.F.R. Part 166)
- Special Local Needs Registrations (7 U.S.C. § 136v; 40 C.F.R. Part 162)

TSCA

- Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities ("Lead-Based Paint Program") (15 U.S.C. § 2682; 40 C.F.R. Part 745)
- Lead-Based Paint Renovation, Repair and Painting, and Pre-Renovation Education Activities in Target Housing and Child Occupied Facilities (15 U.S.C. § 2684; 40 C.F.R. Part 745)
- Asbestos in Schools (15 U.S.C. § 2643; 40 C.F.R. Part 763)

Tribal Consultation

EPA greatly values its government-to-government relationships with the federally recognized tribes in Oklahoma. Section 10211(a) of SAFETEA includes no procedural requirements to govern EPA's mandatory decision. However, consistent with longstanding Agency policy,[8] EPA invited Indian tribes located in Oklahoma to consult with the Agency and to provide their views regarding the State's July 2020 request. On September 8, 2020, EPA conducted a tribal consultation meeting open to all tribes in Oklahoma. The Agency also conducted individual consultation meetings with seven tribes in Oklahoma. EPA has carefully reviewed and considered input provided by the tribes in developing this decision.

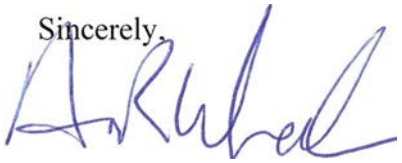
Consistent with the Agency's various statutory and regulatory authorities, EPA will continue to exercise oversight of the State's environmental programs as they are implemented throughout Oklahoma, including in the areas oflndian country covered by this approval, consistent with its general trust responsibility to federally recognized tribes. EPA encourages coordination and cooperation among the tribes, the State, and EPA, and the Agency is prepared to work collaboratively with our inter-governmental partners on environmental issues of mutual interest.

[8] *See, e.g.,* EPA Policy for the Administration of Environmental Programs on Indian Reservat ions , November 8, 1984; EPA Policy on Consultation and Coordination with Indian Tribes, May 4, 2011.

Conclusion

As required by Section 1021 l(a) of SAFETEA, EPA approves the State of Oklahoma's July 22, 2020, request to administer the enviromnental regulatory programs described above in the specified areas of Indian country.

Sincerely,



Andrew R. Wheeler

Attachment 2

Fall 2020 RTOC- Q&A re: FOIA request for Tribal summaries

Below are the comments/questions from the Fall 2020 RTOC that came in on the FOIA request for Tribal summaries and EPA's responses so far.

1. As a requirement Tribes are to be notified of FOIA request when specific information is pertinent to that individual Tribe along with information to be provided. Specific materials are exempt from FOIA that should be provided opportunity to confirm whether this information is to be shared. (John Parada)

Under development. More information to be provided in advance of Winter RTOC.

2. It would be helpful to see what EPA tribal summaries are so an idea of the type of information to be released. (Teri Red Owl)

These summaries can be found at FOIAOnline, here: https://www.foiaonline.gov/foiaonline/action/public/home, under FOIA request EPA-R9-2020-006258.

3. What type of information is included in the Tribal reports? (Shasta Gaughen, Teresa Romero, John Parada)

Tribal leadership, environmental director, publicly available summary statistics, relative location indicated by dot on state map, and information from each EPA media program that works with the tribe, focused on EPA grant funding levels and projects funded.

4. Will USEPA respect the exemption allowable for FOIA requests? Will USEPA make the determination on exemptions applicable to documents? Sensitive information determined by a specific Tribe? (John Parada)

EPA reviewed the factsheets and information that is not releasable, such as confidential or deliberative information, was redacted. EPA alone makes the final determination on whether information is withheld.

5. Who updates the fact sheets? Are they done on a regular basis or as needed (e.g. change in leadership, reservation size, etc.)? (Kelcey Stricker)

Factsheets are updated by EPA project officers as needed (e.g. if an EPA senior leader will be visiting a tribe) with the assistance of colleagues in each EPA Region 9 media office that works with the tribe.

6. Is there any reasoning why he (requestor) wants the information? (Meyo Marrufo)

We do not know the reason for the request.

Annual Reports (comments in Fall 2020 RTOC Chatbox):

> *Can Jeremy talk about annual reports in addition to quarterly reports? Some Project Officer's or Programs want them, other do not. Should the Fourth Quarter GAP report also give a summary of the year? (Rob Roy)*
>
> *Laura - if your reports are cumulative; you satisfy two requirements in one. If not, requirements may vary by program. That may be something we can present on at the next RTOC?*

For GAP reporting, this topic will be covered during the following webinar on **Thursday November 12th, 2020 from 2-4 pm Pacific Time**:
Webinar: GAP notification for FY22 work, quarterly reporting, reporting reviews, workplan development, and End-of-Year reports

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