



**CONFEDERATED TRIBES OF  
COOS, LOWER UMPQUA AND SIUSLAW INDIANS  
TRIBAL GOVERNMENT OFFICES**

1245 Fulton Ave. • Coos Bay, OR 97420 • (541) 888-9577 • 1-888-280-0726  
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February 17, 2009

Michelle Pirzadeh, Acting Regional Administrator  
EPA - Region 10  
1200 6<sup>th</sup> Avenue, Suite 900  
Seattle, WA 98101

RE: Application for Treatment Similar to a State (TAS) under Sections 105 and 505(a)(2) of the  
Federal Clean Air Act

Dear Ms. Pirzadeh,

The Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians appreciate the opportunity to work with the United States Environmental Protection Agency (EPA) in an effort to protect and improve the land, water, and air quality within our Ancestral Territory and Tribal lands.

On February 8, 2009, our Tribal Council unanimously approved (Resolution #09-018) the enclosed Treatment Similar to a State (TAS) application for Sections 105 and 505 (a)(2) of the Federal Clean Air Act (CAA). The Tribal Council respectfully requests EPA to approve the enclosed TAS application.

We have submitted two separate TAS applications, under Sections 106 and 319 of the Federal Clean Water Act, which have successfully received EPA approval. These EPA TAS approvals have resulted in the implementation of two environmental programs that protect and improve tribal water quality. The Tribes' would like to build upon the success of these programs and implement an Air Quality Program that protects tribal member health and resources.

I look forward to working with the EPA to strengthen our land, water, and air environmental programs. If you have any questions regarding this TAS application, please contact Howard Crombie, Director, Department of Natural Resources, at (541) 888-9577.

Sincerely,

Robert Garcia, Chairman  
Confederated Tribes of the  
Coos, Lower Umpqua and Siuslaw Indians

Cc: Francis Somday, Tribal Administrator  
Howard Crombie, Department of Natural Resources



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**RESOLUTION NO:** 09-018  
**Date of Passage:** February 8, 2009  
**Subject (title):** Treatment in the same manner as States Application for Section 105 & 505(a)(2) of the Federal Clean Air Act

**WHEREAS:** This Council is the Governing Body of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians and is authorized to act on behalf of said Tribes;

**WHEREAS:** The Tribal Constitution requires that all final decisions on matters of temporary interest shall be embodied in resolutions;

**WHEREAS:** The Environmental Protection Agency's (EPA) final Tribal Authority Rule (TAR), published February 12, 1998, with rules at 40 C.F.R. Part 49, authorizes eligible tribes to have the same rights and responsibilities as States under the Federal Clean Air Act (CAA) and authorize EPA approval of tribal air quality programs meeting the applicable minimum requirements of the Act;

**WHEREAS:** Sections 301(d)(2) and 302(r), 42 U.S.C 7601(d)(2) and 7602(r), authorize the EPA Administrator to treat an Indian tribe in the same manner as a State (TAS) for the CAA under the provisions identified within the TAR;

**WHEREAS:** The Tribal Council has determined that is in the best interest of the Tribes and its members to request delegation of federal environmental authority for CAA Sections 105 and 505 (a)(2);

**WHEREAS:** The Tribal Council has determined that the Tribe's Department of Natural Resources shall have primary responsibility for administrating CAA Section 105 and 505 (a)(2) program delegations from EPA, subject to review and approval by the Tribal Council;

**WHEREAS:** The Tribal Council has reviewed the Application for TAS under CAA Sections 105 and 505 (a)(2) prepared by the Tribe's Department of Natural Resources;

**NOW, THEREFORE, BE IT RESOLVED,** that the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians requests EPA to approve the Tribe's TAS Application for delegation of CAA Section 105 and 505 (a)(2) Programs;

**BE IT FINALLY RESOLVED,** that the Tribal Council Chair or his designee is authorized to sign the TAS application and to take subsequent action consistent with this Resolution to obtain delegation of CAA Section 105 and 505 (a)(2) Programs to the Tribes from EPA.

**CERTIFICATION:**

On February 8, 2009, this Resolution recommendation was approved at a Tribal Meeting Regular held this date, and the vote was:

7 FOR

0 AGAINST

0 ABSTAIN

Bob Garcia, Chair

Mark Ingersoll, Vice-Chair

**THE CONFEDERATED TRIBES OF THE  
COOS, LOWER UMPQUA, & SIUSLAW INDIANS**



**APPLICATION FOR TREATMENT SIMILAR TO A STATE  
PURSUANT TO SECTION 105 AND 505 (A)(2)  
OF THE CLEAN AIR ACT**

**PREPARED BY:  
CONFEDERATED TRIBES OF THE  
COOS, LOWER UMPQUA, AND SIUSLAW INDIANS  
DEPARTMENT OF NATURAL RESOURCES**

**JANUARY 28, 2009**

## **I. GENERAL ADMINISTRATIVE INFORMATION**

- A. Applicant:** Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians
- B. Applicant's Address:** 1245 Fulton Avenue, Coos Bay, Oregon 97420
- C. Applicant's Telephone & Fax Number:** 541.888.9577 & 541.888.2853
- D. Applicant's Representatives:** Representatives with regard to this application are as follows:
- i. Robert Garcia, Chairman
  - ii. Francis Somday, Tribal Administrator
  - iii. Howard Crombie, Director, Department of Natural Resources
  - iv. Patricia Davis, Tribal Attorney
- E. Purpose of the Application:** The Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians (CTCLUSI) seeks treatment in the same manner as a state (TAS) pursuant to the Air Quality Planning and Management Rule for Indian Tribes (TAR) of February 12, 1998, 63 Fed. Reg. 7254, for purposes of implementing the Clean Air Act, 42 U.S.C. 7401 et. Seq. as amended by Pub L. 101-549, 104 Stat. 2399 (Nov. 15, 1990). The Administrator has the authority pursuant to Section 301(d)(2) and 302(r) of the Clean Air Act (CAA), 42 U.S.C. Section 7401 et. Seq. The CTCLUSI seeks a determination by the Administrator that the CTCLUSI shall be delegated TAS for the purposes of the provisions outlined in 40 C.F.R Section 49.3, specifically for receiving TAS for assuming Section 105 and 505(a)(2) of the CAA.
- F. Date of Application:** January 28, 2009

## II. ELGIBILITY REQUIRMENTS

The CTCLUSI seek EPA recognition to implement Tribal programs and acquire the status afforded in the CAA to “affected states” under Sections 105 and 505(a)(2) of the CAA on the airshed over and above the CTCLUSI Reservation and lands held by the United States in trust for the CTCLUSI (Tribal trust lands). A detailed list and maps showing the location of these CTCLUSI lands are included as **Exhibit 1**. The following TAS application establishes that the CTCLUSI meet the following four requirements that are identified in 40 C.F.R. 49.6, and that with the foregoing information the Administrator may make the determination that the CTCLUSI may receive TAS for purposes of the CAA provisions identified in Section 49.3.

**A. The applicant is an Indian tribe recognized by the Secretary of the Interior.**

The CTCLUSI appear on the United States Department of Interior’s Federal Register List of Federally Recognized Indian Tribes published by the Department of Interior’s Bureau of Indian Affairs at 73 FR 18853, April 4, 2008. This list has been included as **Exhibit 2**.

**B. The Indian Tribe has a governing body carrying out substantial government duties and functions.**

Federal recognition was restored to the CTCLUSI by the Coos, Lower Umpqua, and Siuslaw Restoration Act (25 U.S.C § 714). A copy of the Restoration Act is included as **Exhibit 3**. Section 6 of the Restoration Act authorized the CTCLUSI to adopt a Tribal Constitution and Bylaws. The CTCLUSI adopted the Tribal Constitution on May 23, 1987. Ross O. Swimmer, Assistant Secretary – Indian Affairs, approved the Tribal Constitution by authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated by 209 D.M. 8.3, on June 23, 1987. A copy of the CTCLUSI Constitution is included as **Exhibit 4**.

The CTCLUSI Constitution established a seven-member Tribal Council, which is elected by the Tribe’s General Council. The Tribal Council is responsible for the

social and economic welfare of the Tribes and in this particular instance, the development of polices and procedures for the administration and laws that govern the Tribal people. The Tribal Council meets twice monthly to conduct Tribal business. The Tribal Council consists of a Tribal Chief, elected by the General Council for a term of 10 years, and six (6) Tribal Council Members, elected by the General Council to terms of office of four (4) years each. The Tribal Council elects a Chair and Vice-Chair. The Tribal Chief is a voting member of the Tribal Council. The Tribal Council has the authority to exercise all legislative and executive authority of the Tribes, except that specifically vested to the General Council by the Tribal Constitution as provided for in Article VI. Section 2.

According to the Tribal Constitution, the General Council consists of all enrolled Tribal Members of the CTCLUSI who are eighteen (18) years of age or older.

Members of the General Council have the power to:

- Vote in all Tribal Elections.
- Elect Tribal Council members and approve or disapprove any salary wages paid for performance of Tribal Council duties.
- Exercise the powers of initiate and referendum.
- Recall elected Tribal Officials.
- Amend the Tribal Constitution.
- Make advisory recommendations to the Tribal Council.
- Approve any fundamental changes in the Tribe's jurisdiction, reservation lands, or rights.

The CTCLUSI Government offices are located in Coos Bay, Oregon. The CTCLUSI Government provides a broad range of tribal programs and services for the benefit of the Tribal Membership residing within the Tribe's Five County Services Area which includes Curry, Coos, Douglas, Lane, and Lincoln Counties within Southwestern Oregon. A map showing the CTCLUSI's Five County Service Area is included as **Exhibit 5**. The Tribal Administration is responsible for overseeing these programs and services and provides oversight for the following Tribal Departments: Finance, Culture, Family Services,

Education, Health, Economic Development, Enrollment, Housing, Legal, and Natural Resources. Tribal outreach offices are located in Florence and Springfield, Oregon. A CTCLUSI Government Organizational Chart has been included as **Exhibit 6**.

The CTCLUSI have a Tribal Court to carry out judicial functions and to exercise the CTCLUSI's Sovereignty by providing resolution of conflicts within the Tribal Court pursuant to Article VII of the CTCLUSI's Constitution. The Tribal Court hears cases on the following Civil matters:

- Law and Equity
- Appeals on Decisions of Committees, Boards
- Contract Matters
- Tort Claims
- Peacegiving
- Housing & Eviction
- Employee Rights
- Civil Violations
- Small Claims
- Employment Review
- Juvenile Matters

The CTCLUSI have a Tribal Police Department under the supervision of the Tribal Council. The mission of the Tribal Police Department is to protect life and property, and enhance the quality of life for all who reside upon or visit our Tribal Lands. Currently, all CTCLUSI lands held in federal reservation or trust status are protected by the Tribal Police Department. While the Tribal Police have some county cross deputization agreements, efforts are under way to acquire Memorandums of Agreements and Cross Deputization Agreements with the State of Oregon so that the Tribal Police Department will have full police power anywhere within the CTCLUSI's Five County Service Area.

**C. The Functions to be exercised by the Indian Tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction.**

The CAA establishes a framework for a Federal-State partnership to regulate air quality. The provisions of the 1990 Amendments to the CAA are an attempt by Congress to increase the role of Tribal Governments in this partnership. The CAA grants States primary responsibility for assuring that air quality meets national standards. In order to do this, States develop and submit State Implementation Plans (SIPs) to EPA. Likewise, under the CAA, Tribes may submit Tribal Implementation Plans (TIPs) to EPA. In the 1990 Amendments to the CAA, Congress granted the EPA authority to treat Indian Tribes similar to States (Section 301 (D)(1)), if the Tribes met certain requirements. In 1998 the EPA proposed rules to implement the 1990 CAA Amendments, including the final Tribal Authority Rule (59 Fed. Reg. 43,956). The EPA determined that Congress delegated to Tribes the authority to regulate air quality in areas within the exterior boundaries of the reservation.

In Arizona Public Services v. EPA, 211 F.3d.1280, (2000), petitioners sought review of the Tribal Authority Rule promulgated by EPA. The courts upheld this EPA rule that provided for Tribal regulation of air pollution sources. Therefore, under the CAA, Indian Tribes have Congressional authority to regulate air pollution within their exterior boundaries of the reservations, just as States have the ability, with the approval of the EPA. The CTCLUSI's Administrative Legal Attorney has provided a letter that verifies the CTCLUSI assertion of authority – including the nature or subject matter of the asserted regulatory authority – to manage and protect air resources within the territory of the CTCLUSI which is included as **Exhibit 7**.

Section 7 of the Coos, Lower Umpqua, and Siuslaw Restoration Act (25 U.S.C § 714) established the CTCLUSI Reservation. As stated above, Exhibit 1 shows the location of these lands under CTCLUSI jurisdiction.

Since the initial establishment of the CTCLUSI Reservation, the CTCLUSI have acquired additional lands that are under CTCLUSI jurisdiction. These tribal lands, commonly known as tribal trust lands, are identified in Exhibit 1. The CTCLUSI under Article 1 of their Constitution asserts, to the fullest extent possible, jurisdiction over these tribal trust lands. Tribal trust land qualifies as reservation for tribal immunity purposes where, the land has been validly set apart for the use of the Indians under the superintendence of the Government. *Oklahoma Tax Commission v. Citizen Band, Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991); *United States v. John*, 437 U.S. 634, 648-649. Simply said, tribal trust land is the equivalent of a reservation and thus Indian Country. Indian Country is defined by 18 U.S.C. 1151. The relevant provision for this application is “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 reservation. 18 U.S.C. 1151(a). The Supreme Court has stated that the “intent of Congress as elucidated by court decisions, was to designate as Indian country all lands set aside by whatever means for the residence of tribal Indians under federal protection, together with trust and restricted Indian allotments.” *Okla. Tax Comm’n v. Sac & Fox Nation*, 508 U.S. 114, 125 (1993). The Court also stated that “Congress has defined Indian Country broadly to include formal and informal reservations, dependent Indian communities, and Indian allotments, wheter restricted or held in trust by the United States.” *Okla. Tax Comm’n v. Sac & Fox Nation*, 508 U.S. 114, 123 (1993).

The CTCLUSI have also acquired lands that are in fee ownership status. The majority of these fee ownership lands are in the fee-to-trust conversion process in accordance to 25 U.S.C. Section 465; 25 CFR Part 151.10 – 151.12. Once any of these fee-to-trust conversions are completed or any congressionally delegated lands is held in trust or reservation status by the BIA for the CTCLUSI, these lands will immediately become part of the CTCLUSI’s land base and jurisdiction. The CTCLUSI will submit maps and any other EPA requested information to update this TAS Application to accurately represent the CTCLUSI Reservation and Trust lands.

**D. The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, or carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations.**

The Tribal Council established the Department of Natural Resources (DNR) within the Tribal Administration. The DNR is responsible for the management and protection of the natural and cultural resources within the Tribe's Ancestral Territory. The DNR includes two divisions: the Environmental Division and Cultural Division. The Environmental Division's mission is to research, monitor, assess, manage, use, conserve, protect, and restore the natural resources of the Confederated Tribes' Ancestral Territory consistent with Tribal values. In an effort to accomplish this mission, the DNR manages a variety of air, land, and water environmental programs. The DNR is responsible for all environmental programs that EPA delegates TAS approval, including the Clean Air Act.

**Capability of Taking on Clean Air Act Section 105 & 505(a)(2) Programs**

The DNR has established an excellent history with Federal Agencies, in particular EPA Region 10, in regards to developing and implementing environmental programs. The DNR has received EPA delegation for TAS under Sections 106 and 319 of the Clean Water Act. These approved TAS documents and EPA approval letters are included as **Exhibit 8**.

As of 2008, the DNR manages five environmental programs that are funded by EPA grants. The environmental programs are listed below with the EPA funding source in parentheses:

- Environmental Capacity Building Program (Indian General Assistance Program)
- Air Quality Program (Indian General Assistance Program and Clean Air Act Section 103)
- Water Quality Program (Clean Water Act Section 106)
- Non-Point Source Water Pollution Program (Clean Water Act Section 319)

- Tribal Response Program (Comprehensive Environmental Response, Compensation, and Liability Act Section 128 (a))

In addition to managing the current environmental programs, the DNR is capable of managing two additional EPA delegated environmental programs under Section 105 & 505 (a)(2) of the CAA.

#### Financial and Administrative Capabilities

The CTCLUSI have managed a variety of grants and contracts for well over twenty five years. For 2008, the CTCLUSI are responsible for managing over 75 grants and contracts that total approximately 12.5 million dollars. This includes the administration of programs and services authorized by the Indian Self-Determination Act, as amended. A copy of the 2008 Annual Funding Agreement between the CTCLUSI and the BIA describes the programs that the CTCLUSI administer under the Indian Self-Determination Act (as amended) has been included as **Exhibit 9**. In addition to Tribal Government operations, the CTCLUSI own and operate the Three Rivers Casino and Hotel located near Florence, Oregon.

#### Qualifications of Key Staff

The DNR has been successful in identifying, developing, and implementing environmental programs. This success is attributed to hiring and maintaining a highly skilled staff. All DNR staff have acquired college level degrees from accredited universities related to their specific discipline. A DNR Organizational Chart has been included as **Exhibit 10**.

The DNR has been committed to developing and implementing an Air Quality Program (AQP). The Indian General Assistance Program has provided the CTCLUSI with the funding to develop the capacity for the DNR to develop an AQP. Initial capacity building efforts were focused on providing DNR staff with capacity building trainings. DNR staff focused on trainings provided by the

USEPA, the Institute for Tribal Environmental Professionals (ITEP), and the National Tribal Environmental Council (NTEC). The following trainings have been attended by DNR staff:

- Management of Tribal Air Programs and Grants, ITEP, March 2005.
- Federal Air Rules for Reservations Workshop, EPA Region 10, June 2005.
- Air Pollution Technology, ITEP, November 2005.
- Meteorological Monitoring, ITEP, February 2006.
- Advanced Air Program Management, USEPA, ITEP, February 2007.
- Improve and Protect Air Quality in Indian Country, USEPA, NTEC, ITEP, March 2007.

The result of these trainings has been the completion of an Air Quality Assessment (**Exhibit 11**), near completion of an Emissions Inventory, and successful funding proposal to EPA for funding through a Clean Air Act Section 103 grant for a two year baseline Ambient Air Quality and Meteorological Monitoring Project. The DNR will continue to utilize the Indian General Assistance Program and other funding opportunities as available, including Tribal discretionary funds, to provide the capacity building opportunities to successfully implement an Air Quality Program.

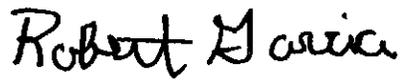
#### Pollution Discharges on CTCLUSI Lands

The Tribal Council passed Resolution Number 00-002 on January 9, 2002. The resolution is included as **Exhibit 12**. The resolution provides authority to the Tribal Chairperson, or in his absence, the Tribal Vice-Chairperson, to respond to pollution discharges on reservation lands. Within the resolution “pollution” has been defined as the pollution or pollutants under the Federal Clean Air Act (42 USC Section 7401 et seq.) and the Federal Water Pollution Control Act (33 USC Section 1251 et seq.).

### III. REQUEST FOR APPROVAL

Based on the above information, the Tribal Council of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians submits this request to the United States Environmental Protection Agency to approve this Treatment Similar to a State application for Section 105 and 505(a)(2) of the Clean Air Act.

Respectfully Submitted,

A handwritten signature in black ink that reads "Robert Garcia". The signature is written in a cursive style with a large, prominent "R" and "G".

Robert Garcia, Chairman  
Confederated Tribes of the  
Coos, Lower Umpqua, and Siuslaw Indians

## **List of Exhibits**

- 1 List and Maps of CTCLUSI Reservation and Trust Lands**
- 2 United States Bureau of Indian Affairs List of Federally Recognized Tribes  
(Federal Register / Vol. 73, No. 66 / Friday, April 4, 2008 / Notices Pages 18553-18557)**
- 3 Coos, Lower Umpqua, and Siuslaw Restoration Act**
- 4 CTCLUSI Tribal Constitution**
- 5 CTCLUSI Five County Service Area**
- 6 CTCLUSI Organization Chart**
- 7 Letter from CTCLUSI Administrative Legal Attorney**
- 8 CTCLUSI TAS Applications and EPA Approvals for Section 106 and 319 of the  
Federal Clean Water Act**
- 9 United States Bureau of Indian Affairs 2008 Funding Agreement (Number  
GTP01T15211) with the CTCLUSI**
- 10 CTCLUSI Department of Natural Resources Organizational Chart**
- 11 CTCLUSI Air Quality Assessment 1.0**
- 12 CTCLUSI Tribal Council Resolution No. 00-002**