



MANDAN, HIDATSA & ARIKARA NATION
Three Affiliated Tribes • Ft. Berthold Reservation
404 Frontage Road • New Town, ND 58763-9402

Mr. Horace Pipe/ Project Engineer
Oil & Gas Refinery
Three Affiliated Tribes
404 Frontage Road
New Town, North Dakota
58763

April 4, 2005

Dear Mr. Pipe

The Cultural Preservation Office of the Three Affiliated Tribes, and in coordination with the State Historical Society of North Dakota has completed a Class I survey of NW1/4 of Section 20; Township 152 North; Range 87 West, and the North ½ of Section 19; Township 152 North; Range 87 West.

The Cultural Preservation office of the Three Affiliated Tribes gives a “**No Historic Properties Effected**” for the two sites for the Oil Refinery, which will be located on the above mentioned land description. No sites or previous cultural resources were located.

However, there's always the possibility of inadvertent discoveries of Archaeological and Cultural Resources during the construction phase of the project, i.e.; access roads, water & sewer etc. **If there is a discovery, all work must stop and my office is to be contacted immediately.** If you have any further questions or concerns, please feel free to call me @ 627-4781 or stop by my office. Thank you.

File

Elgin Crows Breast

Cultural Preservation Office
Three Affiliated Tribes
404 Frontage Road
New Town, No. Dakota
58763



STATE
HISTORICAL
SOCIETY
OF NORTH DAKOTA

John Hoeven
Governor of North Dakota

North Dakota
State Historical Board

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Merlan E. Paaverud, Jr.
Director

Accredited by the
American Association
of Museums

24 March 2005

Elgin Crows Breast
Cultural Preservation Office
Three Affiliated Tribes
404 Frontage Road
New Town ND 58763

RE: SHPO#98-0343; MHA Nation's Clean Fuel Refinery Project

Dear Elgin:

We have reviewed the locations of the proposed refinery, as requested. For both T152N R87W Section 20 NW1/4 and T152N R87W Section 19 N1/2 there are no recorded sites but there has not been a cultural resource inventory. Based on the proposed location this area appears to have a low probability for cultural resources. If consulted by the lead federal agency, we would recommend a *no historic properties affected* determination.

Thank you for the opportunity to review these projects. If you need additional information, please feel free to contact me at 701-328-3575.

Sincerely,

Fern Swenson
Deputy State Historic
Preservation Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8P

MAR 08 2007

Marcus Wells, Jr., Chairman
Three Affiliated Tribes
404 Frontage Road
New Town, North Dakota 58763

Re: Mandan, Hidatsa, and Arikara Nation's
Proposed Clean Fuels Refinery Project

Dear Chairman Wells:

The EPA is working with BIA to prepare a response to the comments received from the public on the Draft Environmental Impact Statement (DEIS) and draft National Pollutant Discharge Elimination System (NPDES) permit for the proposed refinery. The issue of the Tribes' ability to pay for any clean-up that may be required as a result of refinery operations or future closure appears to be of significant concern to the public. EPA believes that it is important that the Tribes have sufficient funds available for clean-up and closure regardless of the chosen construction alternative.

EPA has previously discussed the need for an adequate clean-up fund with the Tribes to address either a substantial chronic release or a catastrophic event at the refinery. If Option 1A (the Tribes' original proposed alternative) is selected as the preferred alternative, a demonstration of financial assurance (in the form of a clean-up funding mechanism) will be required by a Resource Conservation and Recovery Act (RCRA) permit.

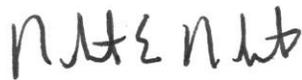
We understand from your letter of January 22, 2007, that the Tribes now favor Option 4A. Under Option 4A, a demonstration of financial assurance is not required pursuant to RCRA, as long as the proposed refinery operates as a generator. Please note, however, that the proposed refinery could lose its generator-only status by, for example, storing hazardous waste for greater than 90 days. In the event of a loss of generator-only status, the facility will be required to obtain a RCRA permit and to demonstrate financial assurance.

We also understand that there was a January 16, 2007 meeting between Mr. William Benjamin, Regional Director, BIA, and the Tribal Business Council for TAT, during which the Tribes committed to establishing such a clean-up fund on a voluntary basis. EPA strongly supports this action. We have provided TAT via electronic mail and during teleconference discussions, a range of potentially suitable financial tools, as well as estimates for conducting environmental response activities at refinery facilities.

As this issue is related to our completion of the Response-To-Comments and Final Environmental Impact Statement (FEIS), we request that the Tribal Business Council confirm its intent by March 27, 2007, to establish a voluntary clean-up fund for the proposed refinery. EPA will continue to work with TAT and BIA to develop and implement the necessary tools to address any potential long-term contamination of the proposed refinery site.

We have enclosed the information previously provided to you concerning different financial instruments and a general range of clean-up costs for your consideration. We look forward to your response. If you have any questions about this letter, please contact Steve Wharton, Team Leader for this project, at 303-312-6935 or Carol Campbell, Senior Leadership Champion at 303-312-6340.

Sincerely,



Robert E. Roberts
Regional Administrator

Enclosures

cc: Horace Pipe (HD Geological, Refinery Project Manager)
William Benjamin (Regional Director, BIA, Aberdeen Regional Office)
Diane Mann-Klager (BIA, Aberdeen Regional Office)
Roger Bird Bear (TAT Legal Department)
Frank White Calf (Treasurer, TAT Business Council)
Mervin Packineau (TAT Business Council)
Nathan Hale (TAT Business Council)
Malcolm Wolf (TAT Business Council)
Judy Brugh (TAT Business Council)
Barry Benson (TAT Business Council)
Chris Many Deeds (TAT BIA Agency Superintendent)
Elton Spotted Horse (Director, TAT Environmental Department)
Bob Woolley (Triad)

**U.S. EPA Region 8
Solid and Hazardous Waste Program**

**Three Affiliated Tribes Proposed Refinery DEIS
Response to Comments**

Estimated Potential RCRA-Related Cleanup Costs

March 7, 2007

Introduction and Background

This document provides an estimated range of potential RCRA-related cleanup costs for the Three Affiliated Tribes (TAT), Fort Berthold, North Dakota proposed petroleum refinery. The estimates shown below were developed as part of EPA's response to public comments on the Draft Environmental Impact Statement (DEIS) and to assist the project proponents in planning for potential cleanup costs regardless of the selected alternative.* The amounts are based on the use of contractor personnel only, and are based on the size, type, design, operational practices, operational life, and potential for releases from the facility.** As discussed below, **the average annual potential cleanup costs could range from \$100,000 to \$1,000,000 for each year that the refinery operates.** The potential range of costs was estimated by considering likely cleanup activities and the types of professionals needed to conduct those activities.***

Potential Facility Investigations and Remedial Activities

The following is a listing of potential facility investigation and remediation activities related to corrective action at RCRA facilities. Such activities could include:

- Preparation of work plans
- Investigations of and responses to leaks, spills, and releases
- Ground water monitoring wells installation and monitoring
- Soil borings installation and sampling
- Surface water monitoring
- Wetlands monitoring and restoration
- Laboratory analysis of environmental data
- Removal actions for contaminated soil and wastes
- Transportation of wastes to off-site locations
- Off-site treatment and disposal of wastes
- Ground water remediation systems operation
- Subsurface hydraulic containment systems or barrier walls installation
- Soil vapor extraction systems operation
- Insitu treatment systems operation
- Installation of caps over contamination including Corrective Action Management Units
- Installation of waste unit liners

- Installation and operation of waste treatment units
- Emergency responses
- Health and safety concerns
- Implementation of interim measures
- Data quality assurance
- Community outreach
- Determination of remedial goals
- Implementation of long-term final remedial goals
- Periodic review of selected remedies
- Reporting

Contractor Personnel Likely Needed

The following is a listing of contractor personnel that would likely be needed to perform the types of tasks listed above:

- Project Manager
- Hydrogeologist
- Geologist
- Toxicologist
- Biologist
- Risk Assessment Specialist
- Senior Engineer
- Staff Engineer
- Senior Chemist
- Staff Chemist
- Environmental Scientist
- GIS Analyst
- Public Involvement Specialist
- Health and Safety Specialist
- Database Programmer
- Clerical / Administrative
- Records Management Specialist
- Financial Analyst
- Field Technicians
- Training Specialist
- Subcontractors

Rough Assumptions

As this is a proposed facility, a number of rough assumptions about potential cleanup costs must be made. The cost for future cleanup expenses could potentially range anywhere from \$100,000 per year to \$1,000,000 per year depending on the amount, type, and distribution of contamination. The operational life of the refinery is assumed to be at least 25-years. The costs estimates provided below are potential average annual costs over the life of the refinery. The design and operational practices of the refinery are the most important

variables in determining potential cleanup cost estimates. Other methods to calculate potential cleanup costs are also available***. Two examples are provided below to illustrate a \$100,000 to \$1,000,000 range of potential annual cleanup expenses:

Example #1 - The Refinery is Well Designed and Well Operated to Prevent and/or Immediately Respond to Releases- Potential Average Cleanup Costs: \$100,000 per year.

The new refinery has been well designed and operated in environmental terms and there have been only minor spills, leaks, and releases. This includes the use of double wall and double bottom tanks with leak detection and recovery systems. This also includes double wall pipelines with leak detection and recovery systems for all underground pipelines. All spills and leaks are properly responded to immediately. As such, the following assumptions could be made:

1. Average annual salary of the above personnel: \$100,000
2. Average number of full-time personnel needed per year (from all contributions of personnel listed above): 0.5
3. Average annual cost of monitoring and remediation equipment installation, maintenance, and monitoring: \$30,000
4. Average annual off-site laboratory costs: \$10,000
5. Average annual off-site remediation waste shipping, treatment and disposal costs: \$10,000

The total annual cost of items 1 through 5 above is \$100,000. Therefore, financial assurance for annual cleanup costs in this amount may be appropriate. [Note: Actual cleanup costs could be lower or higher for any given year.]

Example #2 - The Refinery is Designed and Operated Such That Significant Releases Occur- Potential Average Cleanup Costs: \$1,000,000 per year.

The refinery is operated such that there are a number of significant spills, leaks, and releases. Tanks do not have double walls, double bottoms and leak detection and recovery systems. Not all underground pipelines have double walls with leak detection and recovery systems. Spills and leaks are not always responded to immediately and adequately. As such, the following assumptions could be made:

1. Average annual salary of the above personnel: \$100,000
2. Average number of full-time personnel needed per year: 6
3. Average annual cost of monitoring and remediation equipment installation, maintenance, and monitoring: \$300,000

4. Average annual off-site laboratory costs: \$50,000
5. Average annual off-site remediation waste shipping, treatment, and disposal costs: \$25,000
6. Miscellaneous costs: \$25,000

The total annual cost of items 1 through 6 above is \$1,000,000. Therefore, financial assurance for annual cleanup costs in this amount may be appropriate. [Note: Actual cleanup costs could be lower or higher for any given year. It should also be noted that total cleanup costs at refineries may be much higher (see examples from other refineries provided below).]

Conclusions and Recommendations

The estimated range of potential average annual cleanup costs using the approach outlined above is \$100,000 to \$1,000,000. Other methods could also be used to calculate a range of potential cleanup costs.*** However, as this is a proposed facility, the types, amounts and distribution of contamination that could occur are not known. As such, the estimates in this paper are valid based on our best professional judgment.

It is recommended that some type of financial assurance mechanism be established for the proposed project to cover the potential range of cleanup costs discussed above. We suggest that the MHA Nation establish a financial assurance mechanism in the mid-range of these values as a conservative approach for planning for cleanups. The type and duration of the instrument should be one that would be acceptable to all MOA parties.

Financial assurance for cleanup costs would be required under a RCRA permit as part of corrective action. The type and amount of financial assurance would be specified in the RCRA permit. A RCRA permit would be required for all alternatives except Alternative 4&A. Under Alternative 4&A, the facility would be a RCRA generator only, and would not be subject to RCRA permitting requirements. In that case, EPA strongly recommends that a financial assurance mechanism still be established to cover potential cleanup costs. This will help ensure that the facility is properly cleaned-up during and after its operational life regardless of the selected alternative.

Supporting Information

Examples of RCRA Cleanup Cost at Selected Refineries:

Examples of RCRA cleanup costs at an existing and a former refinery are provided below:

-Existing Refinery: Giant Refining, Yorktown, Virginia. Period of operation: 1956-present. Production capacity: approximately 56,000 barrels per day. Products include: gasoline, diesel, fuel oil, and liquid propane gas. Approximate cleanup costs: \$25,000,000 to \$30,000,000 (Source: Robert Greaves, EPA Region 3)

-Former Refinery: BP Amoco, Casper Wyoming. Period of operation: 1912-1991. Former production capacity: approximately 48,000 barrels per day. Products included: gasoline, diesel, fuel oil, liquid propane gas, and asphalt. Approximate cleanup costs: >\$100,000,000 (Source: Felix Flechas, EPA Region 8)

Notes:

* Under Alternative 4&A, the facility would be a RCRA generator only, and would not be subject to RCRA permitting requirements which would include financial assurance for corrective action as appropriate.

** Legal counsel costs are not included.

*** There are other ways to calculate potential cleanup costs. For example, one could also estimate the size, type, and duration of potential leaks, spills and releases. In that case, one could estimate the cubic yards of contaminated soil and waste to be removed for treatment or off-site disposal. One could also estimate the amount of contaminated ground water to be treated, etc. Models such as RACER (available from Earth Tech, Inc.) are available for developing such cost estimates for existing facilities with known contamination. However, in this case (a proposed facility) it may be difficult to come up with representative input parameters for such models.



THREE AFFILIATED TRIBES

Mandan, Hidatsa & Arikara · Fort Berthold Reservation
 404 Frontage Road · New Town, North Dakota 58763-9402
 Phone: (701) 627-4781 Fax: (701) 627-3503

FILE COPY

From Chairman's Office
 Marcus D. Wells, Jr. "Ee-Ba-Da-Gish"
 (Bald Eagle)

19 April 2007

Mr. Robert B. Roberts, Regional Administrator
 United States Environmental Protection Agency
 Region VIII
 1595 Wynkoop Street
 Denver, Colorado 80202-1129

Re: TAT Clean Fuels Refinery Project

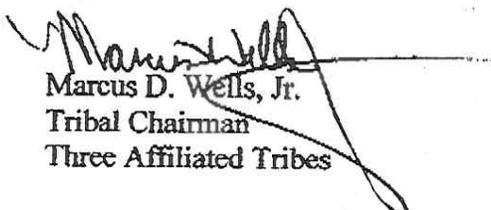
Dear Regional Administrator Roberts:

The Three Affiliated Tribes hereby confirm a commitment expressed during their conference with BIA Regional Director William Benjamin held January 16, 2007. Of course, that expression and this confirmation may apply only to the extent financial assurance may or may not be required by circumstance, the permit or applicable law.

EPA correctly understands that the Tribes favor Option 4A. As you are aware, Option 4A would not require a RCRA permit or subsequent demonstration of financial assurance because the refinery would operate as a generator rather than a storage facility. Even in the very remotest scenario, it is highly unlikely that the facility could ever store waste beyond the 90-day threshold because the operation would dispose waste well before the deadline.

Although the Tribes remain committed to pay for clean-up costs, selection of a specific funding method is premature because any selection must reconcile with BIA, which is unknown at this point. The Tribes appreciate EPA's assistance in developing the refinery, and look forward to completing this process. You may contact either Horace Pipe at (701) 726-5894 or Roger Birdbear at (701) 627-4781 for any questions regarding this matter.

Sincerely,


 Marcus D. Wells, Jr.
 Tribal Chairman
 Three Affiliated Tribes

xc: Tribal Business Council
 BIA Regional Director
 Triad.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501



RECEIVED

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GREAT PLAINS
REGIONAL DIRECTOR'S

MEMORANDUM

AUG 22 2006

To: Regional Director, Bureau of Indian Affairs, Great Plains Region
Aberdeen, South Dakota

From: *Jeffrey H. Dawson*
Field Supervisor, North Dakota Field Office
Bismarck, North Dakota

RECEIVED
AUG 30 2006
BRANCH OF NATURAL RESOURCES
ABERDEEN AREA OFFICE

Subject: Section 7 Consultation on the Proposed Construction and Operation of the
Mandan, Hidatsa and Arikara Nation's Clean Fuels Refinery

The U.S. Fish and Wildlife Service (Service) has reviewed the Bureau of Indian Affairs' (BIA) biological assessment related to the Mandan, Hidatsa and Arikara (MHA) Nation's proposal to construct and operate a clean fuels refinery on the Fort Berthold Reservation in Ward County, North Dakota. The Service offers the following comments in accordance with the provisions of the Endangered Species Act (16 U.S.C. 153 et seq.).

The MHA Nation proposes to construct and operate a new 15,000 barrels per day clean fuels refinery and produce forage for buffalo on a 469-acre tract of land on the Fort Berthold Reservation located near Makoti, North Dakota (N ½, Sec. 19 and NW ¼, Sec. 20, T. 152 N., R. 87 W., Ward County). A Draft Environmental Impact Statement (DEIS) has been prepared that analyzes the environmental impacts of the following Federal decisions pertaining to the MHA Nation's proposed refinery:

- Whether the BIA should accept a 469-acre parcel into trust for purposes of the MHA Nation's proposal to construct and operate a clean fuels petroleum refinery, and produce buffalo forage;
- Whether EPA should issue a NPDES permit for processed water discharges associated with operation of the proposed refinery.

Both the EPA and BIA incorporated, into the DEIS, their respective biological assessments and subsequent affect determinations as stipulated in the Endangered Species Act, Section 7(c)(1). The Service's comments and concurrence language in this memorandum pertain only to BIA's affect determination to threatened and endangered species. A separate concurrence letter will be sent to EPA pertaining to their affect determination.

BIA's biological assessment considered the affect of their proposed action (taking 469 acres of land into trust for purposes of the MHA Nation's proposal to construct and

Route	Initial	Date
<input checked="" type="checkbox"/> Regional Director		
<input checked="" type="checkbox"/> Deputy Regional Director		
<input checked="" type="checkbox"/> 301		
<input checked="" type="checkbox"/> 208		

Aug 8/25/06

operate a clean fuels petroleum refinery, and produce buffalo forage) upon the following endangered, threatened or candidate species: gray wolf (*Canis lupus*), Dakota skipper (*Hesperia dacotae*), interior least tern (*Sterna antillarum*), whooping crane (*Grus americana*), pallid sturgeon (*Scaphirhynchus albus*), bald eagle (*Haliaeetus leucocephalus*), and the piping plover (*Charadrius melodus*).

BIA has determined, through its biological assessment, that the construction and operation alternatives discussed in the DEIS will have "no affect" on the gray wolf, Dakota skipper, interior least tern, bald eagle, and pallid sturgeon. Further, BIA has determined that the construction and operation alternatives "may affect, but are not likely to adversely effect" piping plovers and whooping cranes. The "not likely to adversely effect" determination is based on the required implementation of conservation measures the Service suggested in a memorandum dated January 11, 2006.

The Service concurs with both the "no affect" and "may affect, not likely to adversely effect" determinations. Under requirements of Section 7 of the Endangered Species Act, further consultation is not necessary. Should the construction and operation alternatives change from those described in the DEIS, a reassessment of impacts to threatened or endangered species and designated critical habitat is necessary.

The above comments and recommendations constitute the report of the Department of the Interior on the proposed BIA action, and serves as notice that we do not object to the action. Thank you for the opportunity to provide comments and if you have any questions or require additional information, please contact Kevin Johnson of my staff at (701) 250-4481, or at the letterhead address.

cc: EPA, Region 8, Water Program
(Attn: B. Kent)
USACE, Bismarck Regulatory Office
(Attn: D. Cimaresti)



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501



JAN 11 2006

MEMORANDUM

To: Regional Director, Great Plains Region, Bureau of Indian Affairs
Aberdeen, South Dakota

From: *Jeffrey K. Towner*
Field Supervisor, North Dakota Field Office
Bismarck, North Dakota

Subject: Development of an Environmental Impact Statement (EIS) for the
Mandan, Hidatsa and Arikara Nation's Clean Fuels Refinery

In response to your December 8, 2005, request, the U.S. Fish and Wildlife Service (Service) has reviewed the subject Draft Environmental Impact Statement (DEIS). The DEIS discusses the Three Affiliated Tribes' (Tribes) request that the United States Department of the Interior Bureau of Indian Affairs (BIA) accept 469 acres of land into trust status for the Tribes. This land is located within the Fort Berthold Indian Reservation boundaries. The Tribes plan to construct a clean fuels refinery on 160 acres of the 468 acres, with the remaining land being used for the production of feed for buffalo. The land proposed to be taken into trust is located in the northeast corner of the Fort Berthold Indian Reservation along the south side of North Dakota Highway 23, about 2 miles west of the turnoff to Makoti, North Dakota, in Sections 19 and 20 of Township 152 North, Range 87 West.

The Service offers the following general and specific comments under the authority of and in accordance with the requirements of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), Migratory Bird Treat Act (16 U.S.C. 703 et seq.), and the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.).

General Comments

Service Easements - The preferred alternative's newly constructed power lines and pipelines would cross, or run adjacent to, parcels where the Service administers wetland and grassland easements. Provisions of wetland easements prohibit draining, filling, leveling or burning; and provisions of grassland easements prohibit alteration or destruction of vegetative cover; and no haying, mowing, or seed harvesting until after

July 15. BIA and the Environmental Protection Agency (EPA) will need to coordinate with the Service's Audubon Wetland District Manager (701- 442-5474) and Lostwood Wetland District Manager (701-848-2466) to ensure compliance with existing or new right-of-ways in Ward and Mountrail Counties, respectively. The final EIS will need to discuss project impacts and implications to the easement encumbrances.

Wetlands - The final EIS needs to discuss in detail a wetland mitigation plan. Several wetlands will be impacted from construction activities outlined in the DEIS. These construction activities are subject to permitting and authorization under Section 404 of the Clean Water Act, and the provisions of Executive Order 11990. Thus, wetland impacts also will need to be mitigated subject to 404 permitting and EO 11990. The mitigation plan should outline acreages of wetlands impacted and mitigated, mitigation type, location of mitigation, and future management of these mitigation areas. The Service recommends unavoidable wetland losses be replaced on a functional value-for-value basis. Additionally, trees or shrubs should also be replaced on a 2:1 basis. If grasslands are disturbed during project construction, reseed disturbed areas with native grass species. If construction is unavoidable in or near wetlands, the Service recommends deferring the timing of construction to late summer (after July 15) or fall, so as not to disrupt waterfowl or other wildlife during the nesting season and to avoid high water conditions.

Constructed Ponds - The federally threatened piping plover breeds on wetlands within close proximity (3 miles) to the proposed refinery site. Plovers breed and forage on unvegetated, gravel shorelines of wetlands. It is reasonable to expect that plovers would use exposed shorelines of constructed ponds while foraging. Therefore, 4-6" rock (as opposed to gravel) should be used to line exposed in-slopes of all wastewater/storage ponds. Any ponds having the potential to hold contaminated water should be netted. The larger rock and netting will prevent the creation of an attractive nuisance for piping plovers and other migratory shorebirds.

Power Lines - The Service recommends for overhead lines that poles and other construction be sited to avoid placement of fill in wetlands along the routes. Projects which involve the burying of cable likely will not significantly affect wetlands, provided precautions are taken during installation of underground facilities to restore the existing basin contours and to compact trenches sufficiently through the wetlands to prevent any drainage along the trench or through bottom seepage. Procedures similar to those for wetlands should be applied in the restoration of stream channels.

To minimize the electrocution hazard to birds, the Service, with support from the Rural Utilities Service, recommends that new or updated overhead power lines be constructed in accordance with the current guidelines for preventing raptor electrocutions. The recommended guidelines can be found in "Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996". To increase power line visibility and reduce bird fatalities resulting from collisions with power lines, the Service recommends new power lines be modified according to "Mitigating Bird Collisions with Power Lines: The State of the Art in 1994". Both publications can be obtained by writing or calling the

Edison Electric Institute, P.O. Box 266, Waldorf, Maryland, 20604-0266, (1-800-334-5453) or visiting their website at www.eei.org.

Threatened and Endangered Species - The current DEIS states the preferred alternative will not affect any federally threatened or endangered species in North Dakota. The Service does not concur with that determination at this time. The Service believes the preferred alternative, as proposed in the DEIS, may affect, and is likely to adversely affect, threatened piping plovers and endangered whooping cranes. As stated above, without netting or use of proper substrate, the constructed ponds pose a risk to piping plovers. Additionally, the proposed overhead power lines pose a collision risk to plovers and endangered whooping cranes. Current and historic records show the proposed construction area to be an important corridor for the movements of both these species. However, if overhead power lines are either buried or have visual markers (as outlined in "Mitigating Bird Collisions with Power Lines: The State of the Art in 1994"), and netting and proper substrate are used on constructed ponds, then the preferred alternative may affect, but is not likely to adversely affect, threatened piping plovers and endangered whooping cranes.

Specific Comments

Page v: Delete "~~U.S. Fish and Wildlife Service, Bismarek, North Dakota~~" as a Cooperating Agency. The Service, in a December 12, 2005, memo to the BIA Great Plains Regional Office declined to participate as a Cooperating Agency in development of the EIS.

Page xiv; par. 4: "BIA asked the FWS to participate as a cooperating agency ~~because of its authority for threatened or endangered species under the Endangered Species Act (ESA). The FWS declined to participate as a cooperating agency. Although FWS will not participate as a cooperating agency, it did agree to provide information and data where it could and review documents.~~ BIA and EPA must determine if their decisions about the parcels of land and refinery "may affect" species listed as threatened or endangered or "adversely modify" critical habitats. If BIA or EPA determine their decisions "may affect" a listed species or "adversely affect" critical habitat, they must consult with FWS."

Page xv; par. 3: Delete "~~FWS~~"

Page 1-3, par. 4: "BIA asked the FWS to participate as a cooperating agency ~~because of its authority for threatened or endangered species under the Endangered Species Act (ESA). The FWS declined to participate as a cooperating agency. Although FWS will not participate as a cooperating agency, it did agree to provide information and data where it could and review documents.~~ BIA and EPA must determine if...

Page 1-4; par. 4: Delete "~~FWS~~"

Page 1-7; 2nd column; 1st line: “Protects federally listed threatened or endangered species and their designated critical habitats.”

Page 1-7; 3rd column; 1st line: “Any project activity that potentially affects species listed as or proposed for listing as threatened or endangered, and/or their designated critical habitats.”

Page 1-7; 3rd column; 2nd line: “All federally funded, permitted, or authorized surface disturbing activities.”

Page 1-7; 3rd column; 3rd line: “All federally funded, permitted, or authorized surface disturbing activities.”

Page 3-59; Special-Status Species; 1st line: “Several species that occur or potentially occur within the project area are classified as federally threatened or endangered...”

Page 3-63; par. 4: “FWS designated critical habitat for the Great Plains breeding population of piping plovers on September 11, 2002. North Dakota, Nebraska, and South Dakota contain critical habitat for the piping plover. Habitat included in the federal designation includes midstream sandbars of the Missouri and Yellowstone Rivers and along shorelines of saline wetlands (U.S. Fish and Wildlife Service 2004). North Dakota is the most important State in the U.S. Great Plains for nesting piping plovers. The State’s population of piping plovers was 496 breeding pairs in 1991 and 399 breeding pairs in 1996 (U.S. Fish and Wildlife Service 2004). Several areas of designated piping plover critical habitat are located within a 7 mile radius of the project site. The closest area of critical habitat (Section 9, T. 152 N., R. 87 W., Ward County) is approximately 3 miles northeast of the project site. There is a designated piping plover critical habitat east of the project are within a FWS Waterfowl Production Area wetland near Ryder, North Dakota.”

Page 3-64; par. 2: Delete the last sentence “Nesting locations occur along the Missouri and Yellowstone River in McKenzie, Mercer, and Williams Counties.”

Page 6-1; par. 1: Delete “FWS,”

Page 6-1; Table 6-3: Delete all of Table 6-3

Thank you for the opportunity to provide comments on the DEIS. I look forward to seeing another draft. If you have any questions, please have your staff contact Kevin Johnson, of my staff, or contact me directly at (701) 250-4481 or at the letterhead address.

cc: Chairman, Three Affiliated Tribes Business Council, New Town
Environmental Protection Agency, Denver
(Attn: M. Morales)
U.S. Army Corps of Engineers, Bismarck
(Attn: D. Cimerosti)
Audubon Wetland District Manager, Coleharbor
Lostwood Wetland District Manager, Kenmare
U.S. Fish & Wildlife Service, Region 6, Denver
(Attn: C. Young-Dubovsky)



Agency for Toxic Substances
and Disease Registry
Atlanta GA 30333

February 28, 2007

Carol Campbell
Deputy Assistant Regional Administrator
US EPA Region VIII
999 18th Street, Suite #300
Denver, CO 80202-2466

Dear Ms. Campbell,

Please consider this letter as the response to your April 21, 2006 request for ATSDR assistance resolving public/environmental health concerns associated with development of the proposed Mandan, Hidatsa and Arikara Nation (MHA) Clean Fuels Refinery at the Fort Berthold Indian Reservation in North Dakota. An initial ATSDR response letter, dated July 25, 2006, identified two specific areas where assistance/information could be provided to the U.S. Environmental Protection Agency (EPA):

- 1) "Coordinate a [supplemental] literature review summarizing what is known about the adverse health effects (i.e. cancer and asthma) observed in communities living near such refineries,"
- 2) "Conduct a baseline health assessment for the Fort Berthold Indian Reservation with an emphasis on asthma and cancer."

ATSDR organized and worked closely with an interagency team to prepare a response to EPA's request. Representatives from the EPA Region 8, the Bureau of Indian Affairs (BIA) (Great Plains Regional Office, Aberdeen, SD), and an Indian Health Service (IHS) epidemiologist (Aberdeen, SD), met monthly with ATSDR to identify and obtain the necessary public health information. Assistance was also obtained from the North Dakota Health Department, and the Public Health Agency of Canada officials (Edmonton, Alberta).

ATSDR reviewed the available literature and public health information. The literature citations, public health and epidemiological information used by ATSDR to conduct the supplemental literature and the chemical review and the baseline health assessment are enclosed.

Below are summaries of the ATSDR activities:

1) Supplemental Literature Review

The goal of the literature review was to identify references and information not already cited in the draft EPA Environmental Impact Statement. The literature review targeted information pertaining to health outcomes of residents living near a refinery. The review also attempted to identify and describe chemicals and compounds present in the oil industry that might be related to cancer (e.g. criteria air contaminants, volatile organic compounds, and polycyclic aromatic hydrocarbons). To conduct the supplemental literature review, ATSDR queried staff at the Centers for Disease Control and Prevention (CDC) Library Resources who conducted a search, searched using the National Library of Medicine's PubMed, and contacted several air quality researchers and experts. The CDC Library Resources staff found 30 different sources of information; three articles were newly identified. Review of these articles revealed that health outcome studies conducted of conventional refineries using old technology did not adequately represent potential exposures that might result from the new technological processes at the proposed MHA Clean Fuels Refinery. Researchers and experts in air quality and adverse health outcomes associated with refineries were also contacted. These contacts shared industry-specific reports for projects in western Canada during the years 2001-2006 regarding chemicals of concern for an increased cancer risk. The list of chemicals of concern was included in the document, "Literature Review and Summary of Potential Adverse Health Effects Associated with Living near and/or Working at an Oil Refinery."

2) Baseline Risk Assessment for Cancer and Asthma, North Dakota

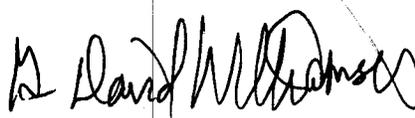
Cancer—Occupational studies of workers who have been exposed to high levels of oil or gasoline have indicated an increased incidence in cancers of the kidney and non-Hodgkin's lymphoma. Attached is the document, "Baseline Health Assessment for Cancer and Asthma, North Dakota;" Appendix A includes the reported age-adjusted average annual cancer incidence (per 100,000 population) for kidney cancer and non-Hodgkin's lymphoma in North Dakota between the years 1997-2004 for McLean, Mountrail, and Ward counties and for North Dakota; data were from the North Dakota Cancer Registry. The reported incidence of these cancers among persons living in these three counties is similar to the rate in all persons living in North Dakota. The small population size in each of the three counties hinders the ability to statistically detect changes in cancer rates.

Asthma—ATSDR used asthma data collected from the North Dakota Department of Health to determine baseline data regarding the prevalence of asthma among adults and children living in North Dakota. Between 2001 and 2005, the prevalence rate of lifetime asthma among North Dakota adults ranged from 9.1%

to 11.1%. In 2005, the lifetime asthma prevalence rate among children in North Dakota was 9.7% (range 7.8% to 11.6%). According to self-reported asthma surveillance, the prevalence rates of lifetime asthma in adults in North Dakota were similar to the U.S. and American Indian prevalence rates during this period. The method used to assess asthma prevalence rates hinders the statistical detection of changes in asthma incidence at the county-level.

ATSDR appreciates the assistance provided by the EPA, BIA, IHS, the Public Health Agency of Canada and the State of North Dakota. Please contact me if you have any questions or comments regarding this response.

Sincerely,



G. David Williamson, PhD
Director
Division of Health Studies
Agency for Toxic Substances and Disease
Registry

cc

Tina Forster, Director, Division of Regional Operations (DRO), ATSDR
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Sarah Patrick, IHS Contract Epidemiologist
Stephen Pickard, Medical Epidemiologist, North Dakota Department of Health

Enclosures:

1. Literature Review and Summary of Potential Adverse Health Effects Associated with Living near and/or Working at an Oil Refinery
2. Baseline Health Assessment for Cancer and Asthma, North Dakota
3. Appendix A. Average Annual Incidence Rates for Selected Cancers, North Dakota and McLean, Mountrail and Ward Counties, 1997-2004, North Dakota Cancer Registry
4. Appendix B. Childhood Reported Asthma, North Dakota