



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

August 22, 2017

The Honorable Stephanie Bryan  
Chairwoman of the Poarch Band  
of Creek Indians  
5811 Jack Springs Road  
Atmore, Alabama 36502

Dear Chairwoman Bryan:

The purpose of this letter is to inform you of the U.S. Environmental Protection Agency's intended designations for the Poarch Band of Creek Indians' trust lands for the 2010 Primary National Ambient Air Quality Standard (NAAQS) for sulfur dioxide (SO<sub>2</sub>), and to offer you the opportunity to consult and coordinate on such designations. The designations for this NAAQS are an important part of the EPA's commitment to a clean, healthy environment.

On July 25, 2013, the EPA designated certain areas in 16 states as nonattainment, but did not at that time designate other areas. Additional areas were designated on June 30, 2016, and November 29, 2016. The Poarch Band of Creek Indians' trust lands were not designated in these previous actions.<sup>1</sup> Pursuant to a March 2, 2015, court-ordered schedule,<sup>2</sup> the agency must complete the remaining SO<sub>2</sub> designations by two specific deadlines: December 31, 2017, and December 31, 2020. Accordingly, pursuant to section 107(d)(1)(B)(ii) of the Clean Air Act (CAA), this letter is to notify you of the EPA's assessment of Alabama's recommended designations for areas the agency is required to designate by December 31, 2017, that contain the Poarch Band of Creek Indians trust lands.

The CAA requires the EPA to promulgate designations of all areas of the country, including areas of Indian country. The EPA conducts this process after soliciting recommendations for area designations from states and tribes. If a tribe does not submit any recommendations, the EPA, under its CAA authorities, will promulgate an appropriate designation for the relevant area of Indian country. The EPA has previously announced its intention to designate areas of Indian country consistent with the surrounding area in circumstances where the EPA does not receive an initial designation recommendation from the relevant tribe.<sup>3</sup> To the extent possible, the EPA will ensure that a single tribe's Indian country is not inadvertently split based on the use of other jurisdictional boundaries (e.g., counties) to designate the surrounding state areas.

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<sup>1</sup> A February 6, 2013, letter to the Poarch Band of Creek Indians from the EPA deferred designation of Indian country trust lands to future SO<sub>2</sub> designation actions. *See* docket ID # EPA-HQ-OAR-2012-0233-0170.

<sup>2</sup> *Sierra Club v. McCarthy*, No. 3-13-cv-3953 (SI) (N.D. Cal. Mar. 2, 2015).

<sup>3</sup> *See*, "Policy for Establishing Separate Air Quality Designations for Areas of Indian Country," Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Regions I-X, (December 20, 2011).

The Poarch Band of Creek Indians' trust lands are located in areas in Alabama that the EPA is required to designate by December 31, 2017. The Poarch Band of Creek Indian tribe did not submit designation recommendations for their areas of Indian country in Alabama. Therefore, the EPA is designating these areas of Indian country as part of the surrounding area (within the county in which the area of Indian country is located). In considering Alabama's designation recommendation, we have taken into account all available information, including any current (2014-2016) air monitoring data, and any air dispersion modeling analyses provided by the state or by a third party. Our review of this information indicates that it is not consistent with the state's recommendation due to either a lack of air dispersion modeling or unresolved air dispersion modeling issues, which would require a modification of the recommended designation. Therefore, the EPA intends to designate, as unclassifiable, certain areas in the state, including the county that contains the Poarch Band of Creek Indians' trust lands.<sup>4</sup>

Please notify us by September 29, 2017, if you are interested in consulting with us regarding the designations process. Consultation will be conducted in accordance with the "EPA Policy on Consultation and Coordination with Indian Tribes" and "EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights" (2016 Tribal Treaty Rights Guidance).<sup>5</sup> If you or your staff have additional information that the EPA should consider prior to finalizing these designations, please submit it as soon as possible but no later than October 23, 2017. You may submit additional information by sending it to the EPA's public docket for these designations, EPA-HQ-OAR-2017-0003, located at [www.regulations.gov](http://www.regulations.gov), and sending a copy to EPA Region 4. The EPA will also publish a notice in the *Federal Register* announcing a 30-day comment period for the public to provide input on the EPA's intended designations.

The EPA will promulgate the final designations for your trust lands by December 31, 2017. We are then required to designate all other remaining undesignated areas by December 31, 2020, consistent with the prescribed timing of the court order. Upon the completion of this designation action, the remaining area in Alabama to be designated by December 31, 2020, will be a portion of Shelby County.

We look forward to a continued dialogue with you and your staff as we work together to implement the 2010 primary SO<sub>2</sub> standard. For additional information regarding designations on the SO<sub>2</sub> standard, please visit our website at <https://www.epa.gov/sulfur-dioxide-designations>. Should you have any questions, please do not hesitate to contact me at 404-562-8357 or Beverly Banister of my staff at 404-562-9326 or [banister.beverly@epa.gov](mailto:banister.beverly@epa.gov).

Sincerely,



V. Anne Heard  
Acting Regional Administrator

cc: Kristi Weatherford, Environmental Director

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<sup>4</sup> See Chapter 3 of the Technical Support Document for the designations the EPA plans to complete by December 31, 2017, that addresses your trust lands within Alabama. The full Technical Support Document is available at <https://www.epa.gov/sulfur-dioxide-designations/sulfur-dioxide-designations-regulatory-actions>.

<sup>5</sup> Available at <https://www.epa.gov/tribal/consultation/consult-policy.htm> and <https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes-guidance-discussing-tribal-treaty.htm>.