Message

From: Byrne, Andrew [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7780BA77939E4CB3A5F8AED1EDA8C70A-BYRNE, ANDREW]
Sent: 7/23/2020 3:39:33 PM
To: Wright, Felicia [wright.felicia@epa.gov]
Subject: FW: SAFETEA
Attachments: SAFETEA_request_to_Administer_final.01.pdf

Felicia – below is a draft email to Scott for your consideration, I recommend forwarding him Randy's message and CC'ing me.
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Ex. 5 Deliberative Process (DP)

From: Gee, Randy <Gee.Randy@epa.gov>
Sent: Thursday, July 23, 2020 11:05 AM
To: Wright, Felicia <Wright.Felicia@epa.gov>
Cc: Blanco, Arturo <Blanco.Arturo@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>; Byrne, Andrew <Byrne.Andrew@epa.gov>; Post, William <post.william@epa.gov>
Subject: SAFETEA

Good morning Felicia,

I wanted to thank AIEO and in particular Will for working to have Chad and Scott join our RTOC meeting yesterday. They provided good information yesterday. One item I wanted to follow up on is the State's activation of SAFETEA (see news story and attached letter) and to start thinking about tribal consultation. When Oklahoma applied for the coal combustion residual program our office checked with ORCR to see who would take the consultation lead since the program was not delegated to the Region. The Region took the lead. Since the SAFETEA activation was sent to the Administrator I see a similar situation that I wanted get on your radar.

Thanks Randy.

Oklahoma seeks continued authority to oversee environmental programs in state's Indian territories

Oklahoma is asking the EPA to grant it the authority to continue regulating environmental issues across areas of the state designated as Indian Territory before statehood.

The state seeks the authority under a provision that is part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA) of 2005.

Its request comes as Oklahoma and the Five Tribes continue to discuss ramifications from the U.S. Supreme Court's 5-to-4 decision that Congress failed to dissolve the Creek Nation's reservation in 1907.

While the case dealt specifically with a criminal matter that happened within the Creek Nation's pre-state territory, tribal and state officials interpreted its outcome as more broadly applicable to areas of eastern and southern Oklahoma held by the Five Tribes before Oklahoma joined the union in 1907.

"What this does is maintain the status quo for programs Oklahoma administers for the EPA," said Kenneth Wagner, Oklahoma's secretary of energy and environment. "We have worked with the tribes for years and years and years on these cooperative programs with the federal government. This isn't a surprise to the tribes — they are aware of it."

Under SAFETEA, Environmental Protection Agency Administrator Andrew Wheeler is authorized to grant Oklahoma the continued authority to administer environmental programs his agency previously allowed the state to oversee.

If granted, Oklahoma would continue to have authority to administer environmental programs on lands within the Five Tribes historical territories that aren't Indian allotments, held in trust by the U.S. on behalf of an individual Indian or tribe or owned by a tribe.

Involved programs include:

• Resource Conservation and Recovery Act programs, including those that govern the handling of hazardous and non-hazardous solid wastes and coal residuals.

• Underground Injection Control oversight programs for wells that pump saltwater or other industrial wastes into subsurface formations.

• Clean Air Act programs including air monitoring and emissions standard rules and lead-based paint oversight programs.

• Clean Water Act programs including sewage and animal feeding operations discharge standards and surface and groundwater rules and water quality standards.

• Underground petroleum storage tank monitoring and remediation programs.

Oklahoma's Department of Environmental Quality, the Oklahoma Department of Agriculture, Food and Forestry, the Oklahoma Water Resources Board and the Oklahoma Corporation Commission have historically overseen those programs.

Wagner noted the state asked for and received authorization to continue administering those programs in 2019 under the SAFETEA measure while justices on the U.S. Supreme Court considered a related case tied to the

question of whether or not Congress had officially terminated the Muscogee (Creek) Nation's reservation when Oklahoma became a state.

Oklahoma's request to Wheeler, sent by Gov. Kevin Stitt, was applauded late Wednesday by the Petroleum Alliance of Oklahoma.

"Gov. Stitt delivered for all Oklahomans, regardless of whether they are tribal members or non-Indians," Brook A. Simmons, the alliance's president, stated as part of a news release. "He acted to make sure trusted and experienced state agencies ... can continue to enforce regulations delegated to the state by EPA in Indian country."

From: Gee, Randy
Sent: Tuesday, July 14, 2020 4:17 PM
To: Hicks, Curtis <hicks.curtis@epa.gov>; Allen, Mark <Allen.Mark@epa.gov>; Gomez, Salina <Gomez.Salina@epa.gov>; Harris, Fincher <harris.fincher@epa.gov>; Hight, Ira <Hight.Ira@epa.gov>; Olson, Alexandra <olson.alexandra@epa.gov>
Cc: Blanco, Arturo <Blanco.Arturo@epa.gov>; Acosta, Gerardo <acosta.gerardo@epa.gov>
Subject: RE: RTOC Meeting Question

I think we need to start initial planning on how the Region would outreach to Oklahoma tribal partners if the State of Oklahoma invoked the SAFETEA rider (attached). It has been awhile since outreach was conducted (attached) and we don't have the use of an in-person meeting. We can discuss at the huddle tomorrow.

From: Hicks, Curtis <hicks.curtis@epa.gov>
Sent: Tuesday, July 14, 2020 11:22 AM
To: Gee, Randy <Gee.Randy@epa.gov>; Allen, Mark <Allen.Mark@epa.gov>; Gomez, Salina <Gomez.Salina@epa.gov>; Harris, Fincher <harris.fincher@epa.gov>; Hight, Ira <Hight.Ira@epa.gov>; Olson, Alexandra <olson.alexandra@epa.gov>
Cc: Blanco, Arturo <Blanco.Arturo@epa.gov>; Acosta, Gerardo <Acosta.Gerardo@epa.gov>
Subject: RE: RTOC Meeting Question

Some of the tribal attendees may be participating by sharing a line. Cherokee Nation, for an example, may have a few attendees (5-10), but share 2-3 lines? This may not be factored in your concern. When you send out an invite, you may request # of lines a tribe will need.

How realistic is that you will get 75% of 200 invitees? If you get 75%, that could be 50 unobligated lines that you didn't consider.

If the trend continues of confirmed cases of COVID-19 in Oklahoma, you may not have as many Oklahoma tribes participate, as expected.

Related to RTOC call but not to your request, has there been any action to address questions/concerns related to ruling of McGirt case? I'm sure that the topic will be brought up during the call.

Just my 2 cents.....

From: Gee, Randy <Gee.Randy@epa.gov>
Sent: Tuesday, July 14, 2020 8:52 AM
To: Allen, Mark <Allen.Mark@epa.gov>; Gomez, Salina <Gomez.Salina@epa.gov>; Harris, Fincher <harris.fincher@epa.gov>; Hicks, Curtis <hicks.curtis@epa.gov>; Hight, Ira <Hight.Ira@epa.gov>; Olson, Alexandra <olson.alexandra@epa.gov>

Cc: Blanco, Arturo <Blanco.Arturo@epa.gov>; Acosta, Gerardo <Acosta.Gerardo@epa.gov>
Subject: RTOC Meeting Question

Good morning,

I have a question on a possible issue next week. As you know we are using MS Teams next week for the virtual meetings. MS Teams has a participant limit of 250 call attendees. I have sent calendar invites to the tribal mailing list, EPA senior staff and guests who are to speak. The invitee list is at 200. I have not sent to the RIWG and RIWG list totals 80 EPA staff.

I am somewhat concerned that we might max out the call. For a regular in-person RTOC meeting we might have 100 attendees at the most and a few on the conference line, but this is new for us. IT cannot add additional capacity for MS Teams. I do have some control in MS Teams in allowing attendees to the meeting.

Some options I have thought of:

Request the tribal invitees to advance register by accepting the invite by a certain date if they are attending and base EPA invite list off of the acceptances. Some tribal invitees have already sent acceptances.

Wait after the Tribal Caucus meeting to see actual tribal attendance before sending the invite to the RWIG.

For either above option, set a time that allows tribal attendees and key EPA attendees to join first, and then allow the RIWG and other attendees to join after that time.

The factor I go back to is the RTOC meeting is for primarily for the benefit of tribal partners, that is why we have the meetings supported with grant funding and not contract funding. I am hesitant to require tribal partners to advance register by accepting the meeting invites. However, I know the RIWG is interested in the meeting.

Any thoughts and options to discuss are welcome.

Thank you,

Randy Gee
EPA Region 6 Office of Communities, Tribes and Environmental Assessment
Office Phone: 214-665-8355