UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

July 13, 2012

The Honorable A.D. Ellis
Principal Chief
Muscogee (Creek) Nation
P.O. Box 580
Okmulgee, OK 74447

Dear Principal Chief Ellis,

The U.S. Environmental Protection Agency (EPA) Region 6 is engaging your tribe in consultation and coordination regarding the partial program authorization for the Oklahoma Department of Agriculture, Food, and Forestry (ODAFF). ODAFF intends to assume responsibility for the National Pollutant Discharge Elimination System (NPDES) permitting program, including compliance and enforcement, for Oklahoma dischargers within its jurisdiction. Upon program authorization, ODAFF would implement the federal NPDES program for wastewater discharges from concentrated animal feeding operations (CAFOs), silviculture, pesticides application, and storm water discharges from these activities as well as other agriculture related activities in the state of Oklahoma. EPA remains the authority for all permitting, compliance oversight, and enforcement for wastewater discharges to Tribal waters within Indian Country.

We are establishing opportunities for formal as well as informal discussion to further facilitate consultation and coordination. EPA anticipates the ODAFF formal request for authorization will be submitted on or about August 1, 2012. We will make these documents available to you upon our receipt of them.

We want to kick off our government to government consultation with any interested tribes by holding a conference call on Tuesday, July 24, 2012, at 1:00 PM CST. The conference call phone number is 866-299-3188 and the access code is 2146657396#. On the call, we will describe the program authorization process that is required by federal law for us to follow when any state or tribe requests NPDES program authority. We will explain the scope of this action and the anticipated schedule for EPA's program authorization review and decision making. We also will describe the opportunity for public comment. We can provide brief explanations of the current permit requirements for CAFO, pesticides application, and storm water discharges.

Tribal consultation will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (www.epa.gov/tribal/consultation/consult-policy.htm). EPA Region 6 invites you and your designated consultation representative(s) to participate in this process. Enclosed are EPA's planned consultation and coordination timeline and a fact sheet that describes the action under consultation.

If you have any questions, suggestions, or wish to discuss this action or the NPDES program in Oklahoma, please contact me at (214) 665-7101 or have your staff contact Denise Hamilton of my staff at (214) 665-2775 with any questions. Any questions about the consultation and coordination policy should be directed to Jeannine Hale, Region 6 Tribal Consultation Advisor, at 214-665-2136.

Sincerely,

William K. Honker, P.E.
Acting Director
Water Quality Protection Division

Enclosures

Government to Government Consultation and Coordination Timeline
Fact Sheet on ODAFF Program Authorization

cc: Glenn Moore, Environmental Director

Government to Government Consultation Timeline

July 24, 2012 – EPA and Tribes hold kick-off teleconference. Region 6 will describe the action, federal regulatory requirements for program authorization, and the associated timeline. A time will be reserved to answer any questions.

Date to be determined; anticipated not later than August 1, 2012 – ODAFF will submit their formal request for program authorization. EPA will inform the Tribes that we have received the formal documents and will make them available for review and comment. This date starts EPA's 90-day period for either approving or denying the program authorization.

August 8, 2012 – EPA will attend the ITEC meeting in Tulsa, Oklahoma to present information about the program authorization and will answer questions.

Date to be determined; between September 4 and 10, 2012 – EPA will hold a public hearing in Oklahoma City. To continue Tribal and EPA consultation and coordination, EPA will be available on this day to meet with interested Tribes.

Date to be determined; tentatively October 1, 2012 – Any formal comments by Tribes regarding the program authorization shall be submitted by the end of the Agency action publiccomment period.

Two weeks prior to the final Agency action date, on date yet to be determined; tentatively October 15, 2012 – The government to government consultation concludes with EPA transmitting the consultation completion letter and record of the consultation.

Estimated October 30, 2012 – Final Agency Action is issued on ODAFF's request for program authorization.

Fact Sheet: Authorization of NPDES Program for Agriculture Related Discharges to Oklahoma Department of Agriculture, Food and Forestry

INTRODUCTION

In light of the EPA's commitment to consultation and coordination with Federally Recognized Indian Tribes, Region 6 of the EPA extends the opportunity for you to learn more about this federal action. The NPDES Permits and TMDLs Branch is the point of contact for program authorization and is collaborating with the Region 6 Office of Environmental Justice and Tribal Affairs to consult/coordinate with potentially affected tribes regarding the Oklahoma Department of Agriculture, Food and Forestry (ODAFF) program authorization for the NPDES (National Pollutant Discharge Elimination System) program falling under its jurisdiction, namely, discharges to waters of the US from concentrated animal feeding operations CAFOs, pesticides application, silviculture, and storm water from these and other agricultural-related activities.

THE ACTION

The Oklahoma Department of Agriculture, Food and Forestry (ODAFF) is pursuing NPDES authorization for discharges under its jurisdiction. Like the Oklahoma Department of Environment Quality (ODEQ), ODAFF would run a federal NPDES (National Pollutant Discharge Elimination System) permit program in the State of Oklahoma by issuing and ensuring compliance with certain wastewater discharge permits. To date, EPA has retained that part of NPDES permitting and compliance/enforcement within ODAFF's jurisdiction because although ODEQ began writing permits for most Oklahoma wastewater dischargers (municipalities and industries) in 1997, it has no state granted jurisdiction over agriculture related discharges. Upon authorization, EPA will oversee ODAFF's NPDES program implementation, as we currently do ODEQ's. This action will not alter regulation of any discharges to Tribal waters in Indian Country as the EPA will retain authority for permitting and compliance/enforcement.

The Clean Water Act does not require a tribe or state to apply for authority to administer the NPDES program; however, under Section 402(b) the EPA must approve a request after ensuring adequacy of an applicant's legal authority, procedures and ability to administer the program. The EPA - Region 6 and Headquarters, are currently reviewing the ODAFF draft program authorization documents for assurance of ODAFF's legal authority, procedures, and ability to run a permit program for its state-granted area of jurisdiction. Once ODAFF makes formal application for the program, EPA has 90 days to make a determination that ODAFF may assume the program or not.

CONTACT

Should you need additional information about this action, please contact Denise Hamilton of the EPA, Region 6 NPDES Oversight Section at (214) 665-2775 or email to hamilton.denise@epa.gov. You also may coordinate with our Office of Environmental Justice and Tribal Affairs, Randy Gee, (214) 665-8355 or email to gee.randy@epa.gov.