Implications of Tribal Lands Being Designated as Class I Areas

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overview

• what is a Class I area?
• why tribes have said they want to redesignate
• why is this topic relevant now?
• what is the process for redesignation?
• how would redesignation impact the regulated community?
### what is a Class I area?

<table>
<thead>
<tr>
<th>class</th>
<th>description</th>
<th>examples</th>
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</thead>
</table>
| Class I  | “pristine” areas                   | • national parks
          |                                    | • wilderness areas
          |                                    | • designated tribal lands          |
| Class II | all areas that are not Class I or Class III | • everywhere else |
| Class III| industrial/planned high growth area| • none have been designated                                   |
allowable air degradation increment
why tribes have said they want to redesignate

- to protect the air quality on their lands
- to play a greater role in the air permitting of future projects
- to exercise tribal sovereignty
why is this topic relevant now?

- Fond du Lac (FDL) Band of Lake Superior Chippewa declared their intent to redesignate their core Reservation land to Class I status on July 28, 2014
- FDL is actively pursuing redesignation
- Bad River Band of Lake Superior Chippewa has also declared their intent to redesignate
what is the process for redesignation?

Tribe proposes redesignation (follows checklist)

EPA rulemaking and dispute resolution process

EPA issue final rule
<table>
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<tr>
<th>Status</th>
<th>Task Description</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓</td>
<td>notify affected states, tribes, FLMs</td>
<td>8/5/2014</td>
</tr>
<tr>
<td>✓</td>
<td>document reasons for and impacts from redesignation (technical report)</td>
<td>8/5/2014</td>
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</tbody>
</table>
| ✓        | hold public hearing                                                              | 10/2/2014  
                           | public comment ended 11/10/2014                                                |
| ✓        | consult with affected government agencies (tribal, federal, state, local)        | 10/8-10/2014|
EPA process follows tribe submittal

- review tribal submittal including comments and responses
- begin dispute resolution process
  - designated process for EPA administrator to resolve disputes per 40 CFR 52.21(t)
- hold public hearings
- respond to public comments
- issue final redesignation rule
How would redesignation impact the regulated community?

- Projects within 10 km are more likely to require a “PSD” air permit
  - 40 CFR 52.21(b)(23)(iii)
- Other projects that could impact the Class I area must perform additional analyses
  - Must show compliance with Class I increment and AQRVs
How would redesignation impact the regulated community?

- Obtaining an air permit for impacted projects will take longer and cost more
  - additional analyses and negotiation
  - may require additional capital investment
- Could discourage projects
potential area of impact
potential area of impact
example affected facilities

- power plants / electrical generators
- pulp and paper mills
- industrial steam generators
- oil refineries
- mining and processing operations
increment

- the allowable increase in pollutant concentrations after “baseline date(s)”
- baseline dates vary by pollutant
uncertainties regarding increment

• redesignated area could be subject to existing Minnesota (county-based) minor source baseline dates

• redesignated area could have its own minor source baseline dates

• FDL’s reports are inconsistent on the issue of minor source baseline dates and increment analyses.
Legend

Class II Increment
- <50%

Class I Increment
- <50%
- 50-75%
- 75-100%
- >100%

Maximum FDL Receptor

FDL Reservation Boundary

PM$_{2.5}$ 24-Hour Increment
High 2nd High Concentration
Class II - 9 µg/m$^3$
Class I - 2 µg/m$^3$

Maximum FDL
2nd High Concentration
3.54 µg/m$^3$

Figure 1
PM$_{2.5}$ 24-Hour Increment Results
USG Interiors, LLC
2012 Permit
Cloquet, MN
AQRVs

• Air Quality Related Values (AQRVs)
  – visibility
  – water (deposition)
  – and more …

• generally the limiting factor in Class I analysis
  – definition not required for redesignation
  – current FDL proposal doesn’t address directly
providing input to redesignation process

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<tr>
<th>type</th>
<th>who</th>
<th>when</th>
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<tbody>
<tr>
<td>public comment</td>
<td>anyone</td>
<td>tribal process – closed Nov. 10</td>
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<tr>
<td></td>
<td></td>
<td>EPA process - TBD</td>
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<tr>
<td>negotiation</td>
<td>anyone</td>
<td>tribal discretion</td>
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<tr>
<td>consultation</td>
<td>state and local governments</td>
<td>tribal process – ongoing(?)</td>
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<tr>
<td>mediation</td>
<td>states</td>
<td>EPA dispute process</td>
</tr>
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</table>
public comments received by FDL

• effects modeling did not include nearby and/or existing sources
• need to determine minor source baseline dates and impacts on increment availability
• concerns regarding undefined AQRVs
• concerns about economic assessment methods and assumptions
• more time needed to evaluate implications
presumed next steps

- FDL responds to comments
- FDL may engage in further consultations
- FDL submits request for redesignation to EPA
- EPA review and rulemaking process begins
questions
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