

EPA approves KBIC application for TAS in air quality

February 10, 2020

The Keweenaw Bay Indian Community (KBIC) is proud to announce that in October 2019, the Environmental Protection Agency (EPA) approved KBIC's application for Treatment as a State (TAS) status for Air Quality. KBIC is the first tribe in Michigan to achieve TAS authority for air quality. TAS approval provides for Clean Air Act (CAA) 105 grant funding eligibility to administer the KBIC Air Quality Program, and also, the advantage of Section 505(a)(2) which provides KBIC early notification of Title V air permit requests within 50 miles of the L'Anse Indian Reservation boundaries. At this time, KBIC TAS authority is non-regulatory which means that KBIC cannot directly make decisions on or issue permits. However, TAS increases KBIC capabilities to review permit requests and provide recommendations to the Michigan Department of Environment, Great Lakes and Energy (EGLE) and the EPA on issues that may contribute to compromised air quality in our region.

What is TAS?

TAS is an acronym, short for 'Treatment as a State.' KBIC and others are beginning to interpret TAS to stand for 'Treatment as a Sovereign.' TAS as a legal status means 'treatment in a similar manner as states (TAS)' and it refers to [the transfer of specific authorities](#) from the federal government to federally-recognized Indian tribal governments. When federal regulations such as the Clean Air and Water Acts were first written, the law included delegated authority to state governments for administering these programs. Through the last few decades, federal environmental statutes increasingly recognized the role of Indian tribes to administer their own management programs on Indian lands. Thus tribal capacity has grown and strengthened to assume authorities similar to that of states. Rather than rewrite an entirely new set of laws and procedures to be inclusive of tribal nations, the federal government mandated TAS so that in all laws where 'states' are articulated, it is known that tribes may also legally act 'in a similar manner as states.' EPA actively encourages tribal and state governments to apply environmental standards that are specific to their local environments; local standards are more relevant for communities and thus more protective of community needs.

Why is TAS important to KBIC?

TAS is important to KBIC for many reasons. First and foremost, TAS is a responsibility stipulated by the First Treaty. In implementing TAS, we are honoring our First Treaty with all orders of creation which include our obligations and connections to the natural environment. Second, KBIC is a co-management partner with state and federal government agencies; many of our natural resources, such as fish and wildlife, are included in our shared stewardship responsibilities alongside other entities. Finally, TAS provides for locally relevant considerations of environmental quality. Within our area, including both the tribal and non-tribal communities, there is greater dependence on locally harvested foods such as wild fish and game. Therefore, local environmental standards can ensure greater protections for the good of the community as a whole.

Where does tribal authority come from?

Tribal government authority to legally assume responsibility for programs such as air quality is rooted in their status as sovereign nations. In a series of 18 and 19th centuries [treaties](#), federal and tribal governments negotiated agreements between the U.S. and American Indian Nations in the Great Lakes

region. These treaties established the unique government-to-government relationship, including shared governance and federal trust responsibilities. Treaties can only be established between sovereign nations, and in the U.S., treaties are sanctioned by the Constitution and upheld as the “supreme law of the land.” In the current era, tribal nation sovereignty has been reaffirmed by [a number of key federal statutes, agreements, and Supreme Court decisions](#) by both states and U.S., many of which provide governance authority foundations for KBIC TAS. For more information on Tribal National Air Quality programs, please visit the [National Tribal Air Association](#), which includes the [2019 Status of Tribal Air Report](#) and [2019 EPA Region 5 Tribal Air Resources Journal](#).

How does KBIC TAS for Air Quality help our region?

KBIC TAS will greatly support strengthening the KBIC Air Quality Program which has been steadily growing since its establishment in 2012. KBIC began its program with a CAA Section 103 project to conduct an air emissions inventory and gather published data to assess air quality in the region. Currently, the KBIC air program is also focused on indoor air quality, assessing community homes and KBIC housing, primarily for radon and mold. TAS will provide CAA 105 grant funding to continue administering this important work, and also, to build program capacity towards creating an ambient air monitoring program for our region. At the same time, KBIC Natural Resources staff will use early permit notifications provided by Section 505(a)(2) to research and review technical reports, seek out experts, and engage in other fact finding that will contribute to composing a response to permit requests. Although the KBIC TAS designation is non-regulatory, KBIC will continue to work in partnership with EGLE and the EPA to examine potential impacts of both point and non-point sources and to protect air quality in the Keweenaw Bay region.

Following a KBIC request, the State of Michigan offered thoughts on the KBIC TAS designation, “EGLE welcomes the opportunity to collaborate with the Keweenaw Bay Indian Community (KBIC) to fulfill our shared goals of preserving and protecting our natural resources and public health,” said Mary Ann Dolehanty, Air Quality Division director at the Michigan Department of Environment, Great Lakes, and Energy (EGLE). “We are pleased KBIC has received this designation, and with their demonstrated commitment to improving air quality and quality of life on the L’Anse Reservation.”

The EPA also shared thoughts on KBIC's TAS under the CAA, "The Keweenaw Bay Indian Community is one of EPA's important partners in protecting human health and the environment on the reservation and the community at large," said EPA Region 5 Administrator Kurt Thiede. "KBIC is a leader and I applaud their efforts to build the capacity to reduce air pollution in their community."

For more information about TAS, we welcome you to visit these websites:

<https://elr.info/sites/default/files/articles/23.10579.htm>

<https://www.ntaatribalair.org/>

<https://www.ntaatribalair.org/status-of-tribal-air-report/>

<https://www.ntaatribalair.org/wp-content/uploads/2019/12/Region-5-Tribal-Air-Resources-Journal-2019-11th-Year-12-18-19.pdf>