



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUL 30 2012

E-19J

Mr. Scott Doig  
Regional Environmental Protection Specialist  
Bureau of Indian Affairs  
Midwest Region  
5600 West American Boulevard, Suite 500  
Bloomington, Minnesota 55437

REPLY TO THE ATTENTION OF:

Re: Comments for the Final Environmental Impact Statement for the Menominee Indian Tribe of Wisconsin's Proposed 223-Acre Fee-To-Trust Transfer and Hotel and Casino Project in the City of Kenosha, Kenosha County Wisconsin. EIS No. 20120210

Dear Mr. Doig:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the U. S. Environmental Protection Agency (EPA), Region 5 has reviewed the Final Environmental Impact Statement (EIS) for the Menominee Indian Tribe of Wisconsin's Proposed 223-Acre Fee-To-Trust Transfer and Hotel and Casino Project.

The proposed project is designed to expand the Menominee Tribe's revenue base through gaming, hospitality, and entertainment as authorized under the Indian Gaming Regulatory Act (IGRA). This would allow the Tribal government to provide better services to Tribal members. The revenues from the Casino-Hotel are slated to be used for land purchases, business and community development, and proportionate share allocations to local government in accordance with the Inter-Government Agreement (IGA) between the Tribe and the City of Kenosha.

In our November 21, 2005 comment letter, EPA rated the Draft EIS as "Environmental Concerns-Insufficient Information" or "EC-2." This rating is based upon impacts from the construction and operation of the proposed project and the need for additional information that is required to support the analysis and findings stated within the document. Our Draft EIS comments focused on concerns with air quality, energy and water conservation, as well as the cumulative impact analysis.

After review of the Final EIS, we retain our concerns on the proposed project. The Final EIS lacked current data and air modeling for general conformity with the Wisconsin State Implementation Plan. The project has potential impacts to local air quality. The FEIS would have benefited from overall updated information.

EPA has determined that much of the data in the Final EIS is outdated, having been collected around 2005 or 2006 when the Draft EIS was released. Current data is essential for the Clean Air Act's General Conformity data and modeling requirements, other air quality standards, information pertaining to attainment status, and National Ambient Air Quality Standards data. In order for this

project to comply with requirements for General Conformity with the State Implementation Plan, current and relevant data and information must be presented.

On June 11, 2015, EPA designated a portion of Kenosha County as nonattainment for the 2008 8-hour ozone standard. This project is proposed to be located in Kenosha County. As noted in Appendix L of the Final EIS, the mobile emissions associated with this project are included in the Southeastern Wisconsin Regional Planning Commission's (SEWRPC) 2005-2007 Transportation Improvement Program (TIP) and Regional System Plan (Plan) conformity determinations. BIA should verify that the planning assumptions in the Final EIS are still valid. Specifically, BIA should ensure that mobile source emissions associated with the preferred alternative are documented as being included in the current SEWRPC Transportation Demand Model and Transportation Conformity determination. If the traffic emissions are included in SEWRPC's transportation conformity determination, then they would not count toward the de-minimus calculation for General Conformity. By addressing the applicability analysis and including the proper data to prove that the levels are below the de-minimus "trigger," a separate conformity analysis will not need to be done. Any mitigation that is prescribed to be conducted in order to stay below the de-minimus level should be committed to in the Record of Decision (ROD).

We also have some concerns with the air quality mitigation measures listed in Section 5.2.4. The described methods are outdated. This section should be updated to reflect the implementation of the new federal standards for constructions equipment.

Below are a few of the outdated mitigation measures from Section 5.2.4 of the FEIS:

*BMP B. To the extent that equipment and technology are available and cost-effective, the Tribe shall encourage contractors to use catalyst and filtration technologies, such as a diesel oxidation catalyst (DOC), and retrofit existing engines in construction equipment. By adding these technologies to construction equipment, unburned fuel and oil would be oxidized to reduce overall emissions.*

**R5 EPA response** - DOCs are no longer a cost effective measure.

*BMP C. All diesel-fueled engines used in the construction of the project shall use low sulfur diesel fuel containing no more than 500-ppm sulfur or alternative fuels (i.e., reformulated fuels, emulsified fuels, compressed natural gas, or power with electrification). The use of low sulfur fuels with significant reductions in sulfur oxide and particulate matter emissions would be achieved.*

**R5EPA response** - Diesel fuel for non-road construction equipment is currently at 15 ppm sulfur content. This mitigation measure is no longer valid.

*BMP D. All construction diesel engines, which have a rating of 50 hp or more, shall meet, at a minimum, the Tier 2 Emission Standards for Non road Diesel Engines as specified in 40 CFR Parts 9, 86, and 89 unless certified by the on-site Air Quality Construction BMP Manager (AQCBM) that such engine is not available for a particular item of equipment. In the event a Tier 2 engine is not available for any off-road engine larger than 50 hp, that*

*engine shall be a Tier 1 engine. In the event a Tier 1 engine is not available for any off-road engine larger than 50 hp, then that engine shall be a 1996 or newer engine. The AQCBM may grant relief from this requirement for that engine if compliance with this requirement is not feasible.*

**R5EPA response** – The tier values listed above are no longer valid. The current tier values for construction equipment can be found at:

**<http://epa.gov/otaq/standards/nonroad/nonroadci.htm>.**

We ask that this information be addressed and the appropriate requested data be included in the Record of Decision.

Our comments on the Draft EIS asked that a water and energy conservation plan be designed. Such a proposal was included in the Final EIS. EPA commends the efforts of the Tribe and BIA in creating a water and energy conservation plan. Appendix W describes a detailed plan for the project. The Final EIS states that the Tribe plans to designate an Environmental Resource Manager to monitor the implementation of the plan. This plan will focus on aspects of construction, building operation and maintenance, and landscaping for water conservation. For energy conservation, the plan includes design, construction, and building operations and maintenance. While this plan is adequate, the information presented dates back to 2006. The current plan may need to be updated and revised to reflect new technologies for water and energy conservation. Some areas that may be further explored include proper insulation, energy efficient windows, use of natural sunlight, renewable technologies, green roofs, and roof top wind turbines. EPA commends the conservation efforts as described and we recommend that the ROD include commitment for appropriate measures, including the latest relevant technologies for conservation.

We appreciate the opportunity to review the Final EIS. Please send a copy of the ROD once it has been signed to me at the address stated above. If you have any questions or comments, please contact Shanna Horvatin of my staff at (312) 886-7887 or via email at [horvatin.shanna@epa.gov](mailto:horvatin.shanna@epa.gov). For Air Quality questions, please contact Michael Leslie of the Air and Radiation Division at (312) 353-6680 or by e-mail at [leslie.michael@epa.gov](mailto:leslie.michael@epa.gov).

Sincerely,



Kenneth A. Westlake  
Chief, NEPA Implementation Section  
Office of Enforcement and Compliance Assurance