

Thornton, Marisa

From: Thornton, Marisa on behalf of Collections.SubW
Sent: Thursday, May 21, 2015 8:24 AM
To: Thornton, Marisa
Subject: Fw: FW/FYI: GC's Letter to UMU Tribal Counsel
Attachments: GC Correspondence with UMU 3 16 15.pdf

From: Rosnick, Reid
Sent: Thursday, April 2, 2015 6:43 AM
To: Collections.SubW
Subject: FW: FW/FYI: GC's Letter to UMU Tribal Counsel

From: Harrison, Jed
Sent: Monday, March 23, 2015 12:56 PM
To: Flynn, Mike; Cherepy, Andrea; Edwards, Jonathan; Perrin, Alan; Peake, Tom
Cc: Rosencrantz, Ingrid; Rosnick, Reid; Littleton, Brian
Subject: FW/FYI: GC's Letter to UMU Tribal Counsel

I got this from Pat last week when I was on leave. It reads as though there's been coordination between OGC and ORIA on this, so hopefully no surprises.

Jed Harrison SENIOR ADVISOR FOR TRIBAL AFFAIRS

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF RADIATION & INDOOR AIR
(702) 784 8218 MOBILE: (702) 494 7050



4220 S. MARYLAND PARKWAY
BLDG. D, SUITE 800
LAS VEGAS, NEVADA 89119

From: Childers, Pat
Sent: Wednesday, March 18, 2015 8:58 AM
To: Harrison, Jed
Subject: FW: GC's Letter to UMU Tribal Counsel

Hey Jed

Can you circulate this with all the right radiation folks, Im afraid Ill forget someone.

From: Moffa, Anthony
Sent: Tuesday, March 17, 2015 5:55 PM
To: Siciliano, CarolAnn; Ward, W. Robert
Cc: Childers, Pat; Mitre, Alfreda
Subject: GC's Letter to UMU Tribal Counsel

Hello All,

As an **FYI**, I am attaching the correspondence from Avi to the counsel for the Ute Mountain Ute tribe in regards to her questions/concerns from the tribal attorney listening session. The letter was mailed to her in hard copy yesterday. I am happy to answer any questions you may have.

Thanks,

Anthony

Anthony Moffa
Cross-Cutting Issues Law Office
Civil Rights and Finance Law Office
Office of General Counsel
U.S. Environmental Protection Agency

(202) 564-1087



Moffa.Anthony@epa.gov

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Please consider the environment before printing this email.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

Office of
General Counsel

MAR 13 2015

Celene Hawkins
Associate General Counsel
Ute Mountain Ute Tribe
125 W. Mike Wash Road Tribal Complex
Towaoc, CO 81334

Dear Ms. Hawkins:

It was a pleasure to meet you in Washington at the Office of General Counsel's (OGC) inaugural tribal attorney listening session at EPA. I was excited to participate in this new opportunity to engage with you and other tribal attorneys in conjunction with the White House Tribal Nations Conference. This type of lawyer-to-lawyer engagement between tribes and the Agency attorneys working on the very same issues is critical to the success of our clients. As you heard me express there, and perhaps on prior occasions, I firmly believe that we, as Agency attorneys, need to nurture our partnerships, particularly with co-regulators, to explore and support our shared interests and responsibilities to protect public health and the environment. With respect to the protection of human health and the environment in Indian country, that means meeting with tribal attorneys and tribal leaders and looking to you for guidance on how to ensure that our laws and regulations work for your tribes and tribal communities. I am grateful that you took the time to actively participate in the listening session and provide just that type of guidance. It is in response to the concerns you raised there that I now write.

At the listening session, you raised concerns on behalf of your Tribe regarding the potential impact of an ongoing rulemaking. EPA recently proposed to revise Subpart W National Emission Standards for Hazardous Air Pollutant (NESHAP), 40 C.F.R. Parts 61.250-256, which regulates the emission of radon-222 from uranium mills and their associated tailings. It is my understanding that due to the presence of a uranium mill approximately three miles from tribal lands (the White Mesa Mill facility), the Ute Mountain Ute engaged with the EPA staff working on this proposed rulemaking, both formally and informally. The concerns you raised

at the listening session related to both the substance and the process of those past consultations.

As you are probably aware, Administrator McCarthy just recently received a letter from Chairman Heart requesting a second formal consultation on the Subpart W rulemaking. I understand that the Office of Air and Radiation staff spoke with Tribal members, including Scott Clow (the Ute Mountain Ute Environmental Director) and the Tribal Air Programs staff, in regard to the consultation request. Moving forward, EPA staff will coordinate with the Tribe on scheduling the second consultation at a time that will be most productive for all involved. Mike Flynn, the Director of the Office of Radiation and Indoor Air, has sent a letter to Chairman Heart communicating that agreed-upon plan of action. My staff in OGC will monitor the developments on this upcoming consultation to ensure that EPA continues to conform to its consultation policy. *See* EPA Policy on Consultation and Coordination with Indian Tribes (2011), <http://www.epa.gov/tp/pdf/cons-and-coord-with-indian-tribes-policy.pdf>. I expect that the discussion at the upcoming consultation will address any remaining substantive concerns the Tribe may have with the Subpart W rulemaking.

With respect to the process concerns you articulated, particularly the Tribe's displeasure with the tone of consultation thus far, I want to assure you that EPA stands by the commitment we made in our 1984 Indian Policy to honor the unique legal and historical relationship between the United States and Indian tribes. This special government-to-government relationship only functions properly when there is mutual respect between the sovereigns involved. I have reached out to the EPA officials involved in the consultation and am confident that they in no way meant to dismiss the Tribe's concerns offhand. In fact, they expressed an appreciation for the level of sophistication with which the Tribe approached the consultation. It is my hope and belief that the upcoming consultation will be respectful and productive.

You also expressed some frustration with the lack of information that was shared with the Tribe on the text of the proposed rule prior to its publication in the Federal Register. I understand your concern; indeed, many tribes ask to see the text of proposed rules before EPA publishes them for public comment. EPA does not share the text of proposed rules with any party outside the Agency, including tribes, before signature and publication. Nonetheless, as I understand it, key aspects of the proposed rule were discussed with stakeholders including the Ute Mountain Ute prior to publication of the proposal. The initial meeting with tribes in 2010 and the quarterly stakeholder calls were meant to give tribes, and other

stakeholders, an opportunity to inform the content of the proposed rule from the very beginning of the drafting process.

Finally, I encourage you and the tribal members to review the public rulemaking docket, as responses to the Tribe's comments will be published there and will likely provide the basis for the upcoming consultation. *See* <http://www.epa.gov/radiation/neshaps/subpartw/rulemaking-activity.html>.

I have spoken to Robert Ward, the Regional Counsel in Region 8, as well as EPA staff in the Office of Air and Radiation and the Office of Solid Waste and Emergency Response about the events that gave rise to the Tribe's concerns and about opportunities for improved engagement with the Tribe in the future.¹

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Sincerely,

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Avi S. Garbow
General Counsel

cc: Robert Ward, Region 8
Alfreda Mitre, Region 8
Carol Ann Siciliano, OGC
Pat Childers, OAR

Thornton, Marisa


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Sent: Thursday, April 2, 2015 6:43 AM
To: Collections.SubW
Subject: FW: GC's Letter to UMU Tribal Counsel

From: Jackson, Scott
Sent: Thursday, March 19, 2015 2:14 PM
To: Rosnick, Reid
Subject: RE: GC's Letter to UMU Tribal Counsel

Thanks, Reid.

Scott Jackson, Unit Chief
Indoor Air, Toxics and Transportation Unit
U.S. EPA Region 8
1595 Wynkoop Street (8P-AR)
Denver, CO 80202-1129

(303) 312-6107 

From: Rosnick, Reid
Sent: Thursday, March 19, 2015 5:38 AM
To: Jackson, Scott
Subject: FW: GC's Letter to UMU Tribal Counsel

Scott,

FYI, a letter to the UTE Mountain Ute from the Office of General Counsel.

Reid

From: Childers, Pat
Sent: Wednesday, March 18, 2015 3:19 PM
To: Rosnick, Reid
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
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

Office of
General Counsel

MAR 13 2015

Celene Hawkins
Associate General Counsel
Ute Mountain Ute Tribe
125 W. Mike Wash Road Tribal Complex
Towaoc, CO 81334

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Sincerely,

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Avi S. Garbow
General Counsel

cc: Robert Ward, Region 8
Alfreda Mitre, Region 8
Carol Ann Siciliano, OGC
Pat Childers, OAR

Thornton, Marisa

From: Thornton, Marisa on behalf of Collections.SubW
Sent: Thursday, May 21, 2015 8:24 AM
To: Thornton, Marisa
Subject: Fw: CMS Control Closed - Barbara Matthews - AX-15-000-4505
Attachments: AX-15-000-4505 Final Response Manuel Heart.pdf

From: Rosnick, Reid
Sent: Thursday, April 2, 2015 6:44 AM
To: Collections.SubW
Subject: FW: CMS Control Closed - Barbara Matthews - AX-15-000-4505

-----Original Message-----

From: Gillam, Connie
Sent: Tuesday, March 10, 2015 10:15 AM
To: Rosnick, Reid
Cc: Ferguson, Rafaela
Subject: FW: CMS Control Closed - Barbara Matthews - AX-15-000-4505

Good morning, Reid.

I am forwarding the message below in response to your question about whether or not Janet signed the Ute Mountain Ute response. I am also attaching a copy of the final.

-----Original Message-----

From: cmsadmin@epa.gov [mailto:cmsadmin@epa.gov]
Sent: Wednesday, March 04, 2015 11:49 AM
To: Painter, Michele; Labbe, Ken; Gillam, Connie; Matthews, Barbara
Subject: CMS Control Closed - Barbara Matthews - AX-15-000-4505

This is a notification that control AX-15-000-4505 was closed on 3/4/15 11:49 AM. No further action is required on your part. Please go to the CMS webpage to view the details of the control.

Summary Information -

Control Number: AX-15-000-4505
Control Subject: DRF - Daily Reading File - Second Governnient-to-Government Consultation between EPA and the Ute Mountain tlte Tribe, Rulemaking Activity 40 C.F.R. Part 61, Subpart W
From: Heart, Manuel

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at <https://cms.epa.gov/cms>. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

MAR 4 2015

Mr. Manuel Heart
Chairman
Ute Mountain Ute Tribe
P.O. Box 248
Towaoc, Colorado 81334-0248

Dear Chairman Heart:

Thank you for your letter to Administrator McCarthy of January 13, 2015, discussing the possibility of a second consultation regarding the proposed National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart W regulation. The Administrator has asked that I respond on her behalf.

On January 30, 2015, staff from my office and the Office of General Counsel held a conference call with Mr. Scott Clow and members of the Tribal Air Programs staff. They discussed a number of issues, among them the best time for a second consultation between the U.S. Environmental Protection Agency and the Tribe. We understand your desire to have the EPA respond to your public comments on the proposal, including the questions you submitted prior to the July 2014 consultation. We are happy to discuss your comments and questions in further meetings prior to and/or after publication of the final rule. However, while we can discuss your comments with you, we will be unable to provide you with a final resolution on them until after the final rule has been published. As EPA staff discussed with Mr. Clow and members of his staff on our January 30 call, the Agency received numerous comments from other entities on the same issues raised by the Tribe, and we are currently evaluating all of these comments and the information provided in them as we develop a final rule.

We value the input from the Ute Mountain Ute Tribe, and will work with your staff to identify a convenient time for a follow-up meeting. We will continue to work through Mr. Clow; please have your staff contact Reid Rosnick at 202-343-9563 or rosnick.reid@epa.gov for comments or questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Janet G. McCabe".


Janet G. McCabe
Acting Assistant Administrator

Thornton, Marisa

From: Thornton, Marisa on behalf of Collections.SubW
Sent: Thursday, May 21, 2015 8:24 AM
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Subject: Fw: GC's Letter to UMU Tribal Counsel
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From: Stahle, Susan
Sent: Thursday, April 2, 2015 9:47 AM
To: Collections.SubW
Subject: FW: GC's Letter to UMU Tribal Counsel

Susan Stahle
Attorney-Advisor
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency

202-564-1272  (ph)

202-564-5603  (fax)
stahle.susan@epa.gov

From: Rosnick, Reid
Sent: Thursday, March 19, 2015 6:25 AM
To: Edwards, Jonathan; Perrin, Alan; Peake, Tom; Schultheisz, Daniel
Cc: Ferguson, Rafaela; Cherepy, Andrea; Stahle, Susan
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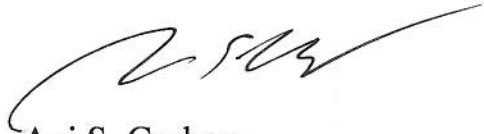
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Avi S. Garbow
General Counsel


cc: Robert Ward, Region 8
Alfreda Mitre, Region 8
Carol Ann Siciliano, OGC
Pat Childers, OAR


Thornton, Marisa

From: Thornton, Marisa on behalf of Collections.SubW
Sent: Thursday, May 21, 2015 8:24 AM
To: Thornton, Marisa
Subject: Fw: GC's Letter to UMU Tribal Counsel
Attachments: GC Correspondence with UMU 3 16 15.pdf

From: Stahle, Susan
Sent: Thursday, April 2, 2015 9:51 AM
To: Collections.SubW
Subject: FW: GC's Letter to UMU Tribal Counsel

Susan Stahle
Attorney-Advisor
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency


202-564-1272  (ph)

202-564-5603  (fax)
stahle.susan@epa.gov

From: Stahle, Susan
Sent: Thursday, March 19, 2015 12:53 PM
To: Rodman, Sonja
Subject: FW: GC's Letter to UMU Tribal Counsel

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From: Rosnick, Reid
Sent: Thursday, March 19, 2015 6:25 AM
To: Edwards, Jonathan; Perrin, Alan; Peake, Tom; Schultheisz, Daniel
Cc: Ferguson, Rafaela; Cherepy, Andrea; Stahle, Susan
Subject: FW: GC's Letter to UMU Tribal Counsel

FYI, OGC Correspondence with Ute Mountain Ute Tribe.

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To: Siciliano, CarolAnn; Ward, W. Robert
Cc: Childers, Pat; Mitre, Alfreda
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Thanks,

Anthony

Anthony Moffa
Cross-Cutting Issues Law Office
Civil Rights and Finance Law Office
Office of General Counsel
U.S. Environmental Protection Agency

(202) 564-1087 
Moffa.Anthony@epa.gov

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

Office of
General Counsel

MAR 13 2015

Celene Hawkins
Associate General Counsel
Ute Mountain Ute Tribe
125 W. Mike Wash Road Tribal Complex
Towaoc, CO 81334

Dear Ms. Hawkins:

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stahle.susan@epa.gov

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To: Stahle, Susan
Subject: Fwd: GC's Letter to UMU Tribal Counsel

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Sent from my iPhone


Begin forwarded message:


From: "Stahle, Susan" <Stahle.Susan@epa.gov>
To: "Rodman, Sonja" <Rodman.Sonja@epa.gov>
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Washington, D.C. 20460

Office of
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MAR 13 2015

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