



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

OFFICE OF THE
REGIONAL ADMINISTRATOR

OCT 16 2008

Diane Enos
President
Salt River Pima Maricopa Indian Community
10,000 E. Osborn Rd.
Scottsdale, AZ 85256

Dear President Enos:

I am pleased to formally announce that the Salt River Pima Maricopa Indian Community has met the eligibility requirements of the Clean Air Act (CAA) Tribal Authority Rule (TAR), and has been approved to receive a CAA § 105 continuing air pollution control program grant, provide comments in the same manner as a state for air quality designations, and be notified of large sources of air pollution that are constructed or modified near your reservation.

I would like to commend the Tribe's effort in preparing an excellent application which resulted in a final approval. It has been a pleasure to work with your staff to achieve this important milestone. We would like to publicly acknowledge and celebrate this accomplishment at an upcoming Region 9 Tribal Operations Committee meeting, and we will be in touch with your staff to coordinate this. We look forward to continuing this productive relationship as we work together to protect and enhance the Community's air resources.

If you have any questions, please contact Maeve Foley of our Air Division at (415) 947-4105, or Vali Frank of our Office of Regional Counsel at (415) 972-3916.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne Natri".

Wayne Natri
Regional Administrator

cc: Ondrea Barber, SRPMIC EPNR
Chris Horan, SRPMIC EPNR
Steven Owens, Director, Arizona Department of Environmental Quality



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**ELIGIBILITY DETERMINATION FOR THE SALT RIVER PIMA MARICOPA
INDIAN COMMUNITY TO BE TREATED IN THE SAME MANNER AS A STATE
UNDER THE CLEAN AIR ACT FOR § 105 GRANTS, AIR QUALITY DESIGNATION
RECOMMENDATIONS, AND NOTIFICATION PROVISIONS OF THE TITLE V
PERMIT PROGRAM**

The Office of Regional Counsel (“ORC”) and the Air Division have reviewed the Salt River Pima Maricopa Indian Community’s (“Tribe”) request for a determination under the Clean Air Act (CAA) Tribal Authority provisions found at 40 C.F.R. Part 49, for the following programs: (1) grants for support of air pollution planning and control programs pursuant to CAA §§ 105 and 106; (2) air quality designations pursuant to CAA § 107(d); and (3) Title V permit notification as an “affected State” pursuant to CAA § 505(a)(2), and they have recommended a finding of eligibility. Based on this review and recommendation, I have determined that the Salt River Pima Maricopa Indian Community has met the requirements of 40 C.F.R. § 49.6 for the following purposes: receiving a grant under CAA § 105, submitting air quality designation recommendations, and being treated as an “affected State” under the notification provisions of the CAA Title V operating permit program.

Eligibility Requirements

The substantive requirements for this eligibility determination are identified in the Tribal Clean Air Act Authority provisions at 40 C.F.R. § 49.6¹, and the application requirements are outlined at 40 C.F.R. § 49.7. The substantive requirements identified at 40 C.F.R. § 49.6 are as follows:

a) The applicant is an Indian tribe recognized by the Secretary of the Interior;

The Tribe demonstrated that it fulfilled this requirement by referencing the list of “Indian Entities Recognized and Eligible to Receive Services from the United States and the Bureau of Indian Affairs,” published by the Department of the Interior on March 13, 2000 in the Federal Register (65 Fed. Reg. 13298-01, p 71196). This list includes the Tribe.

¹ The Tribal Authority Rule establishes the implementing regulations for the Clean Air Act provisions that apply to Tribes, including CAA § 301(d)(1)(A), 42 U.S.C. § 7601(d)(2), which provides that the Administrator “is authorized to treat Indian tribes as States under this chapter. . . [.]” and CAA § 302(r), 42 U.S.C. § 7602(r), which defines “Indian tribe” as “any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”

b) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

The Salt River Pima Maricopa Indian Community demonstrated that it fulfilled this requirement by referencing Article IV of the Tribe's constitution, which provides that the Community Council is the Tribe's governing body.

Several provisions of the Tribe's constitution expressly authorize the Community Council to exercise powers that concern and encompass regulation of air quality within the Tribe's boundaries. These provisions include: Article VII, Section 1 (d) (authorizes regulation of the Tribe's natural resources); Article VII, Section 1 (d) (5) (authorizes the community council to prevent the misuse of natural resources); Article VII, Section 1 (h) (authorizes the council to enter into agreements with the Federal government on behalf of the Tribe); Article VII, Section 1 (c) (4) (provides for the protection of public health); and Article VII, Section 1 (k) (authorizes the council to make laws and take action to carry out the Tribe's constitution).

c) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

The Office of Regional Counsel has reviewed the Tribe's application and found that the Salt River Pima Maricopa Indian Community has met this requirement. The Tribe has provided detailed maps and a detailed legal description of the boundary. There are no non-Indian owned fee lands within the Tribe's boundaries. The specific functions described under this application for eligibility determination are not regulatory in nature.

d) the Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations.

The Air Division reviewed the Tribe's capability to administer its "affected State" responsibilities under Title V of the CAA. The Tribe has successfully managed a CAA § 103 grant since 1997, and has a history of involvement in air quality issues in Arizona. The Air Division has reviewed the staff and administrative capability to manage a grant under the CAA § 105 program, provide air quality designation recommendations, and be notified under nearby Title V sources, and concludes that the Tribe has the capability to carry out these functions.

In sum, the Office of Regional Counsel and the Air Division find that the Tribe has met all of the requirements of CAA §§ 301(d)(2) and 302(r), and 40 C.F.R. § 49.6, for the following purposes: receiving a grant under CAA § 105, submitting air quality designation recommendations, and being treated as an "affected State" under the notification provisions of the CAA Title V operating permit program.

Notification of “Appropriate Governmental Entities”

40 C.F.R. § 49.9(b) provides that the Regional Administrator shall notify appropriate governmental entities upon receipt of a Tribe's initial, complete application for an eligibility determination under the CAA. Notification was provided to the Arizona Governor's Office, the Arizona Department of Environmental Quality, Maricopa County, Pima County, the Ak-Chin Indian Community, the Fort McDowell Yavapai Nation, and the Gila River Indian Community.

Consistent with EPA policy, public notice was provided in the form of an advertisement in the Arizona Republic. This paper is widely read and has the largest number of subscribers in the area where the Tribe is located. One comment was received on the Tribe's application from the Arizona Department of Environmental Quality (ADEQ). This comment encouraged EPA to grant the Tribe's request and stated that ADEQ has no comments on the boundary of the reservation.

Determination

Based on the information provided to me by the Air Division and the Office of Regional Counsel, I have determined that the Salt River Pima Maricopa Indian Community has met the requirements of CAA § 301(d)(2) and 302(r) and 40 C.F.R. § 49.6 for the following purposes: (1) grants for support of air pollution planning and control programs pursuant to CAA §§ 105 and 106; (2) air quality designations pursuant to CAA § 107(d); and (3) Title V permit notification as an “affected State” pursuant to CAA § 505(a)(2).

Date: 10/16/08


Wayne Nastri, Regional Administrator