

Clean Air Act Forum (Part III):

State, Local and Federal Cooperation under the Clean Air Act

November 29, 2012

Participant Questions

1. In your agency's experience implementing the Clean Air Act (CAA), what is working well? What is not working well?

The Gila River Indian Community (GRIC), a federally-recognized tribe, is a rural community located on 374,000 acres in south-central Arizona. It has a on-reservation population of approximately 22,000 people. The Gila River Indian Community borders the city of Phoenix, one of the largest cities in the U.S., as well as, the cities of Chandler, Gilbert and Queen Creek on the North.

The Gila River Indian Community is extremely supportive of the CAA and its provisions, especially the provisions of the Tribal Authority Rule (TAR) which are very supportive of Tribal Sovereignty and Tribal cultural values. The Gila River Indian Community has developed one of the first comprehensive Tribal Air Quality Management Plans (TIP) in the nation to manage air quality within the exterior boundaries of the Community. In addition, GRIC has received full delegations to implement Clean Air Act (CAA) programs under sections 107d, 110, 111, 112, 114, 505 and Title V through the Treatment as a State (TAS) process.

The Community operates two industrial parks which contain approximately 50 industrial sources that will require Air Quality Operating Permits. Implementation of GRIC program elements have been progressing well, although issuance of Air Quality Operating Permits is taking longer than expected due in part to the limited number of staff. The GRIC program is one of the largest Tribal programs with five full time staff; three monitoring personnel and two personnel working on program implementation. The slower than expected progress with the permitting program is partly due to limited federal funding to hiring additional staff (e.g., Permit Engineer). GRIC greatly appreciates the level of federal funding it currently receives but additional federal funding would greatly expedite issuance of Air Quality Operating Permits.

2. Do state and local governments have sufficient autonomy and flexibility to address local conditions and needs?

The Tribal Authority Rule (TAR), promulgated by congress in 1998, provides a wide range of flexibility and autonomy for Tribes to develop a wide range of air quality programs to address their local conditions and needs. Some Tribes have few, if any air pollution sources and may decide an air quality program is not necessary while other Tribes may adopt a partial air quality program that may entail developing rules/regulations for a single source or just a few sources. Still other Tribes may develop a comprehensive air quality program (TIP) that is similar to a State Implementation Plan (SIP), such as the GRIC program. In those instances where Tribes decide not to develop an air program, EPA will retain the regulatory authority. Additionally, EPA is developing Tribal NSR rules to manage a wide range of sources in Indian Country including minor sources. Tribes can adopt the rules, develop their own rules or work with EPA to implement the rules jointly. The TAR and EPA's approach to air quality management in Tribal lands provides a wide range of flexibility to manage air resources in Indian Country.

In addition, the Gila River Indian Community has an excellent working relationship with state and local governments including Arizona Department of Environmental Quality (ADEQ), Maricopa County, Maricopa Association of Governments (MAG), Pinal County and surrounding cities. The GRIC Air Quality Program has been working closely with ADEQ, MAG, Maricopa County, and Pinal County to address designation issues surrounding the PM-10, PM-2.5 and ozone designation process. GRIC has been attending meetings and sharing emission inventory information with ADEQ, MAG, and Pinal County to establish air quality designations based on actual monitoring data, source information, land use and meteorology. GRIC has requested that the U.S. EPA designate GRIC lands separately from Maricopa County and Pinal County and make GRIC a separate Air Quality Control Region and base any designation for GRIC on data from within the exterior boundaries of the Community. This will prevent cross-jurisdictional problems and clarify legal authorities promoting Tribal sovereignty and compliance with the CAA.

3. Does the current system balance federal, state and tribal roles to provide timely, accurate permitting for business activities, balancing environmental protection and economic growth?

The current system does maintain a balanced system that addresses federal and Tribal roles and provides timely, accurate permitting for businesses that are classified as major sources at GRIC. Although EPA does permit major sources in Indian Country, there is currently a gap in permitting of non-major major sources. EPA is in the process of finalizing Tribal NSR rules to plug most of the minor source permitting gaps. EPA has been working closely with Tribes throughout the rule making process to ensure Tribal issues are included in the rule.

Again, GRIC and other Tribal governments would benefit greatly from additional federal funding to further support Tribal Air Quality Program development and program implementation including air quality permitting for businesses.

4. Does the CAA support a reasonable and effective mechanism for federal, state, tribal and local cooperation through State Implementation Plans? How could the mechanism be improved?

In most cases, states do not have jurisdiction over Tribal lands, therefore, the elements of State Implementation Plans do not apply within reservation boundaries. There are some limited exceptions to this case where Tribes have entered into an MOA or MOU for purposes of air quality permitting/regulation. The CAA mechanisms could be improved for Tribes by providing more training opportunities through Tribal training institutions (e.g., Institute for Tribal Environmental Professionals (ITEP), Tribal Air Monitoring Support Center (TAMs), additional federal funding and assistance with developing Tribal Implementation Plans (TIPs) to manage air quality resources in a manner that respects Tribal sovereignty and Tribal cultural values.

5. Are cross-state air pollution issues coordinated well under the existing framework?

There are numerous cases of cross state/cross jurisdictional pollution issues that concern individual Tribes across the U.S. These issues must be addressed on a case by case basis by the federal government and the individual Tribe. Several Tribes are adversely affected by pollution transport from sources outside of reservation boundaries. The Gila River Indian Community cannot comment on any individual case because each Tribal Government is a separate sovereign and these issues must be addressed on a government to government basis. Tribes can apply for and receive TAS authority under section 505 of the CAA (also known as Treatment as an Affected State). This authority allows a Tribal government to comment on new Title V permits and major modifications to existing Title V facilities within a 50 Km radius of Tribal lands. This authority does not cover existing facilities that are not making major modifications.

6. Are other issues, ideas or concerns relating to the role of federalization under the CAA that you would like to discuss.

One of the most concerning issues facing GRIC and many of the Tribal governments in the western United States is the Air Quality Designation process under the National Ambient Air Quality Standards (NAAQS). The U.S. EPA has traditionally used county boundaries as designation boundaries. In the western United States some counties are larger than some eastern states and contain several Tribal reservations within the county. Once a county is designated

non-attainment (poor air quality) measures must be taken to reduce the pollution levels. These measures may potentially impact economic development and will impact Tribal Sovereignty by arbitrarily imposing regulations from a separate jurisdiction (e.g., County) over Tribal lands. The current designation process that utilizes county boundaries as designation boundaries creates legal problems, adverse economic impacts on Tribes and ignores Tribal sovereignty even though Tribes in general do not cause or contribute significantly to the air pollution problems within the county. GRIC has been working closely with EPA in an attempt to resolve these designation issues for Tribes.