

**MEMORANDUM OF AGREEMENT
BETWEEN
THE GILA RIVER INDIAN COMMUNITY'S
DEPARTMENT OF ENVIRONMENTAL QUALITY
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IX
REGARDING
DELEGATION OF NATIONAL EMISSION STANDARDS
FOR HAZARDOUS AIR POLLUTANTS**

I. INTRODUCTION

This Memorandum of Agreement (hereinafter "Agreement") establishes procedures to facilitate delegation to the Gila River Indian Community Department of Environmental Quality ("GRIC-DEQ") of the authority to implement and enforce federal rules, emission standards, and requirements promulgated under Section 112 of the Clean Air Act, 42 U.S.C. § 7412 (hereinafter referred to as the "Section 112 federal rules"). This Agreement further sets forth the manner in which the United States Environmental Protection Agency, Region IX ("EPA"), and GRIC-DEQ will coordinate their respective responsibilities to ensure expeditious delegation of the Section 112 federal rules to GRIC-DEQ. EPA and GRIC-DEQ will review this Agreement as the need arises.

Pursuant to Section 112, EPA promulgates national emission standards for hazardous air pollutants, i.e., the Section 112 federal rules. Under Section 112(l), a tribal authority may develop and submit to EPA for approval a program for the implementation and enforcement of promulgated Section 112 federal rules, provided certain specified approval criteria have been met. On November 26, 1993, EPA promulgated regulations, codified at 40 C.F.R. Part 63, Subpart E (hereinafter "Subpart E"), to provide guidance useful to state, local, and tribal authorities in developing programs for submittal under Section 112(l). Subpart E was later revised on September 14, 2000. *See* 65 Federal Register 55809. While a tribal authority's submission of rules or programs under 112(l) is voluntary, a tribe seeking to implement and enforce some provisions of its own program in lieu of a Section 112 federal rule needs to obtain EPA approval under Subpart E. Once granted approval, the approved tribal rules or programs would be federally enforceable and would substitute for the otherwise applicable Section 112 federal rule within that tribe's jurisdiction. Regardless of whether a tribal rule or program is approved or disapproved, nothing shall prohibit EPA from enforcing any applicable emission standard or requirement under Section 112. *See* Section 112(l)(7) and 40 C.F.R. § 63.90(d)(2).

Subpart E includes several options for requesting approval of tribal rules or programs. Under one of these options, a tribe may request delegation of Section 112 federal rules as promulgated without changes. To obtain approval under this option, a tribe need only meet the criteria in 40 C.F.R. § 63.91. This Agreement establishes procedures to facilitate this delegation process.

II. POLICY STATEMENT

EPA and GRIC-DEQ are responsible for ensuring that their respective obligations under this Agreement are met. In summary, GRIC-DEQ has the responsibility to incorporate the Section 112 federal rules into tribal codes of regulation by reference and to initiate the delegation process by submitting an application that conforms with Subpart E; while EPA has the responsibility to provide GRIC-DEQ with information regarding upcoming Section 112 federal rules and to review GRIC-DEQ's applications. EPA and GRIC-DEQ agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective delegation of the Section 112 federal rules.

III. INFORMATION SHARING

A. GENERAL

EPA and GRIC-DEQ agree to participate in conference calls and other exchanges of information in written form, as needed, to discuss legal, policy, resource, or technical issues related to delegation of Section 112 federal rules.

B. EPA

1. EPA will update GRIC-DEQ periodically on important developments under Section 112, including progress on the proposal and promulgation of Section 112 federal rules and development of EPA policies. EPA agrees to provide GRIC-DEQ with the names, addresses, and phone and fax numbers of the EPA contacts for each Section 112 federal rule, as well as any information regarding delegation.
2. EPA agrees, when reasonably foreseeable, to communicate to GRIC-DEQ that the implementation and enforcement of any new Section 112 federal rule may require additional legal, technical, or financial resources on the part of GRIC-DEQ.
3. EPA will provide GRIC-DEQ with any information EPA may have collected regarding sources within GRIC-DEQ's jurisdiction that may be subject to a Section 112 federal rule.

C. GRIC-DEQ

1. GRIC-DEQ will work cooperatively with EPA to identify all sources within GRIC-DEQ's jurisdiction that may be subject to a Section 112 federal rule.

2. GRIC-DEQ agrees to notify EPA in advance of any proposed program changes that may affect GRIC-DEQ's ability to implement or enforce any Section 112 federal rule for which GRIC-DEQ has received delegation or will request delegation. Program changes of concern include modification of GRIC-DEQ's legal authorities (e.g., statutes, regulations, or judicial or legislative actions affecting those authorities), modification of resource levels, modification of implementation schedules, etc., that were part of any approval under Section 112 or Subpart E.
3. GRIC-DEQ understands that EPA may request GRIC-DEQ to provide the information or the demonstrations referenced in 40 C.F.R. § 63.96(a) (Review And Withdrawal Of Approval).

IV. DELEGATION PROCEDURES

A. GRIC-DEQ

1. As noted above, GRIC-DEQ intends to obtain the regulatory authority necessary to accept delegation of the Section 112 federal rules by incorporating these rules into tribal codes of regulation by reference. For the Section 112 federal rules for which GRIC-DEQ will seek delegation, GRIC-DEQ agrees to incorporate the Section 112 federal rules by reference into the GRIC Air Quality Management Program Plan as expeditiously as possible.
2. For each Section 112 federal rule (or group of rules) for which GRIC-DEQ will seek delegation, GRIC-DEQ agrees to submit a letter as soon as practicable (if possible, immediately after the relevant tribal regulatory action is complete or within six months following such action) to the Director of EPA Region IX's Air Division requesting delegation of the Section 112 federal rule. GRIC-DEQ shall include with this letter, proof that GRIC-DEQ has obtained the necessary regulatory authority to fully implement and enforce the Section 112 federal rule for which it is seeking delegation. This proof shall include a certification of adoption and a copy of the regulatory provisions by which the Section 112 federal rule was adopted.

B. EPA

1. In response to a letter requesting delegation of a Section 112 federal rule, EPA agrees to expeditiously review the request and respond in writing as to whether the delegation is approved or disapproved.
2. If the delegation request is approved, the effective date of the delegation of the Section 112 federal rule will be the date when the Director of EPA Region IX's Air Division signs the approval letter.

3. Periodically, EPA will publish in the Federal Register an updated list of the Section 112 federal rules that have been delegated.

V. POST-DELEGATION

A. EPA

1. After delegation of a Section 112 federal rule, EPA agrees to continue to provide assistance to GRIC-DEQ in the implementation or enforcement of the Section 112 federal rule.
2. Pursuant to 40 C.F.R. §§ 63.9(a)(4)(ii) and 63.10 (a)(4)(ii), EPA hereby waives the requirements that notifications and reports be submitted to EPA for any Section 112 federal rules for which GRIC-DEQ has received delegation (i.e., upon delegation, affected sources need only submit required notifications and reports to GRIC-DEQ). EPA reserves the right to reevaluate the appropriateness of such a broad waiver in the event of programmatic changes or on a source category basis.

B. GRIC-DEQ

1. GRIC-DEQ understands that for any Section 112 federal rule for which it requests and receives delegation, it will be the primary implementing agency and will be responsible for implementing and enforcing the Section 112 federal rule independent of and in addition to the conditions of any affected source's operating permit under 40 C.F.R. Part 70.
2. GRIC-DEQ agrees to retain records required by Section 112 federal rules, and make records available to EPA upon request.
3. GRIC-DEQ understands that certain authorities are retained by EPA and are not delegable to GRIC-DEQ. *See*, for example, 40 C.F.R. §§ 63.90(d) and 63.91(g)(2). In general, authorities that are not delegable include those functions that require rulemaking in the Federal Register or those situations where federal oversight is the only way to ensure national consistency in the application of the standards.
4. GRIC-DEQ agrees that delegation of 40 C.F.R. Part 63, Subpart A will include the "Category I" authorities listed in 40 C.F.R. § 63.91(g)(1)(i). EPA retains the authority to make decisions according to the "Category II" authorities listed in 40 C.F.R. § 63.91(g)(2)(ii).
5. GRIC-DEQ agrees to forward to EPA a copy of all decisions made pursuant to "Category I" authorities (as mentioned in 40 C.F.R. § 63.91(g)(1)), as well as any determinations made pursuant to 40 C.F.R §§ 63.6(i) or 63.5(f). In addition, GRIC-DEQ agrees to provide EPA with a copy of any requests sent to GRIC-

DEQ for minor or intermediate alternatives to MACT standard test methods or monitoring, prior to approval or disapproval by GRIC-DEQ.

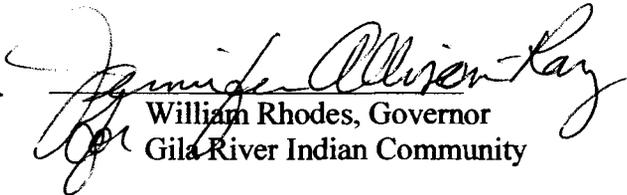
VI. DISCLAIMERS

1. This Agreement is for the benefit of EPA and GRIC-DEQ. This Agreement does not create any rights, duties, or obligations, implied or otherwise, in any third parties.
2. As stated above, nothing shall prohibit EPA from enforcing any applicable emission standard or requirement under Section 112.

This Agreement shall become effective when signed by all parties.


Margaret Cook, Director
Department of Environmental Quality
Gila River Indian Community

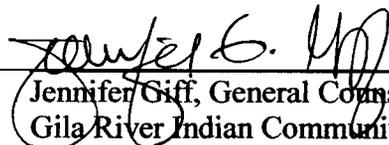
Date: 9/25/08


William Rhodes, Governor
Gila River Indian Community

Date: 11/10/08


Deborah Jordan
Director, Air Division
U.S. EPA Region IX

Date: 10/14/08


Jennifer Giff, General Counsel
Gila River Indian Community

Date: 11/10/08