



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1868

**MEMORANDUM OF AGREEMENT BETWEEN ST. REGIS MOHAWK TRIBE AND
US EPA REGION II, PURSUANT TO 40 CFR § 49.8**

This Memorandum of Agreement (MOA) between the St. Regis Mohawk Tribe ("Tribe") and the US EPA Region II ("EPA"), is entered into this 20 day of November, 2003:

WHEREAS, the Tribe is a duly sovereign, federally recognized Tribal entity that is governed by the St. Regis Mohawk Tribal Council; and,

WHEREAS, the Tribal Council has delegated to the Tribe, Environment Division, the authority to regulate the Reservation environment; and,

WHEREAS, the Environment Division has exercised this grant of authority and actively regulates the quality of the Tribe's air, water, and environmental health; and,

WHEREAS, on or about February 12, 1998, EPA promulgated a final rule implementing the mandate of the Clean Air Act (CAA) to promulgate regulations specifying those provisions of the Act for which it is appropriate to treat Indian Tribes in the same manner as states; and,

WHEREAS, the Tribal Authority Rule sets forth the CAA provisions for which it is appropriate to treat Indian Tribes in the same manner as states; and,

WHEREAS, EPA granted the Tribe's request for an eligibility determination for the purposes of Sections 105 and 505(a)(2) of the CAA on or about September 19, 2000; and,

WHEREAS, on or about December 10, 2001 the Tribe applied to EPA for an eligibility determination under the provisions of 40 CFR § 49.6 for the purposes of developing and implementing a federally enforceable Tribal Implementation Plan for Air Quality; and,

WHEREAS, EPA regulations for Indian Tribal Air Compliance and Enforcement Programs at 40 CFR § 49.8 requires that an Indian Tribe that obtains program approval must establish a MOA with the EPA Regional Administrator which includes provisions for the timely and appropriate provision of investigative leads to the Regional Administrator, and by this agreement, to the selected representative of the New York Area Office of the EPA Criminal Investigation Division (EPA/CID) for enforcement by the United States Department of Justice of alleged criminal violations where the Tribe does not have jurisdiction to address such violations; and,

WHEREAS, the Tribe and EPA are negotiating a Tribal-EPA Environmental Agreement which provides for government-to-government consultation and coordination with respect to the enforcement of Federal Environmental Law in Mohawk Indian Country; and,

WHEREAS, this MOA satisfies the requirements of 40 CFR § 49.8.

NOW THEREFORE the parties agree as follows:

ARTICLE 1. Liaisons and Communications

- A. The EPA Regional Administrator will appoint a Regional Civil Enforcement Liaison and a Regional Criminal Enforcement Counsel Liaison, the EPA/CID Special Agent-In-Charge will appoint a CID Special Agent Liaison and the Tribe will appoint a Tribal Enforcement Liaison to fulfill the roles and responsibilities of this MOA;**
- B. All communication between the Tribe and EPA or representatives of the United States concerning civil and criminal investigations and enforcement of matters covered by this Agreement will be treated as confidential and sensitive enforcement information not subject to disclosure under the Federal Freedom of Information Act to the extent permitted by law. The parties will take steps to ensure the confidentiality of all such communications and information, and, to the extent permitted by law, shall not disclose that information to anyone outside of the Governments without the consent of both parties except as part of an enforcement proceeding.**

ARTICLE 2. When the Tribe Will Submit an Allegation of a Criminal Violation to EPA.

- A. The Tribal Environment Division, in coordination with the Tribal Police Force, and St. Regis Mohawk Tribal Conservation Officers, shall provide to any of the following agencies: The EPA/CID New York Area Office, the appropriate US Attorney's Office or any other criminal investigative organization with appropriate jurisdiction; all information concerning alleged violations of the CAA in the following circumstances:**
 - 1. When the alleged violator is a non-Indian. A non-Indian is a person who is not an enrolled member of an American Indian Tribe or Alaska Native Village recognized by the U.S. Department of Interior/Bureau of Indian Affairs as a Federally-Recognized Indian Tribe; or,**
 - 2. All alleged criminal activity where the potential fine required is greater than \$5,000 or where the penalty would require imprisonment for more than one year in accordance with 25 USC § 1302.**
- B. The Tribe agrees to establish criteria to help determine when an alleged criminal violation by an Indian cannot be adequately addressed by the Tribe pursuant to its EPA approved program.**

ARTICLE 3. Process for Providing Investigative Leads for Appropriate Criminal Cases to EPA/CID and EPA Region II Regional Criminal Enforcement Counsel

- A.** The Tribe shall determine as soon as possible, but at a maximum within ten days after an inspection that uncovers an alleged violation, whether there is reason to suspect that the alleged violation was committed knowingly or willfully such that it may merit prosecution under criminal laws. If the alleged violation presents a serious risk of flight of an alleged suspect or suspects, or if delay would damage the development or preservation of evidence, or if the alleged violation presents a serious threat to human health and/or the environment, the Tribe shall immediately contact by telephone both EPA/CID and the EPA Region II Emergency Response Program, as appropriate. In addition, in the event of an alleged violation which creates an emergency situation as described immediately above, the Tribe shall contact non-EPA emergency response and/or law enforcement authorities as appropriate.
- B.** Once the Tribe determines that the alleged criminal violation possibly meets the criteria for transmitting a criminal investigative lead to EPA, and provided it has determined that the situation is not an emergency as defined above, it shall transmit the investigative lead to EPA in the following manner:
1. Contact the appointed EPA/CID criminal enforcement contact within 15 days of the inspection that revealed the alleged criminal violation.
 2. Send to EPA/CID the appropriate inspection report and all other credible evidence supporting the presumption of an alleged criminal violation. The investigative lead letter accompanying the inspection report in evidence shall, to the greatest extent practicable:
 - i. Explain the basis of the Tribe's belief that the event constitutes a criminal violation that meets the criteria for the sending of an investigative lead to EPA/CID;
 - ii. Describe the applicable statutory and regulatory requirements that were allegedly violated;
 - iii. Describe the specific acts of the alleged violation (e.g., date, time, location, activity);
 - iv. Provide the identity of the parties to the alleged violation (names, addresses, compliance history);
 - v. Describe any civil enforcement actions that the Tribe is considering or has commenced;

- vi. Provide any other information about the alleged violators or the alleged violation that may be relevant to EPA's consideration thereof.
3. After providing the initial investigative lead to EPA, the Tribe will continue to assist EPA, when requested, in collecting any additional evidence needed to support the case, and will make available inspectors or other employees of the Tribe who witnessed the alleged violations or are otherwise in the chain of custody for evidence in the incident under consideration.

ARTICLE 4. Miscellaneous Provisions.

- A. Reservation of Rights. This Agreement is intended solely for the purposes of facilitating intergovernmental cooperation between the parties. Nothing in this Agreement changes any preexisting Agreements between the parties, and does not affect the jurisdiction or governmental authority of the Tribe or EPA. This Agreement creates no rights in third parties, including the right of judicial review.
- B. Modification of the Agreement. This Agreement may be modified only by written instrument and signed by all the parties.
- C. Effective Date. This Agreement will become effective on the date it is signed by all parties.