

GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

William R. Rhodes
Governor



Joseph Manuel
Lieutenant Governor

May 27, 2010

Lisa Jackson
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

RE: Designation Recommendation Process and Consultation for the Gila River Indian Community under the 1987 24-hour PM₁₀ National Ambient Air Quality Standard (NAAQS).

Dear Ms. Jackson:

The Gila River Indian Community ("GRIC" or the "Community") is submitting this letter as a response to the December 30, 2009 letter from Mr. Jared Blumenfeld, Regional Administrator, U.S. Environmental Protection Agency - Region IX. The letter indicates that the U.S. Environmental Protection Agency's (EPA) intends to designate portions of Pinal County as a non-attainment area for the PM₁₀ National Ambient Air Quality Standards (NAAQS). Any designation made by EPA under the PM₁₀ NAAQS may potentially affect the Gila River Indian Community's health, economic well-being, tribal sovereignty, in addition to the historical and cultural integrity and governmental operations. The Community is unable to submit an accurate designation recommendation, as requested in your December 30, 2009 letter, until formal consultation, in accordance with Clean Air Act requirements and EPA commitments made pursuant to Executive Order 13175, is conducted. The consultation must include informing Community leadership, Community members and other stakeholders on all aspects of the designation process prior to the Community submitting a designation recommendation. In addition, any designation review for GRIC requires assessment of all the Community's monitoring data including the flagged exceptional events. EPA Region IX has conducted consultation with surrounding jurisdictions (e.g., Maricopa County, Pinal County and Arizona Department of Environmental Quality) but has conducted no consultation with the Community. GRIC is one of the few tribal governments in the nation to have received full Clean Air Act authority "Treatment as a State", including authority for Section 107 (d) designation recommendations and should be treated in the same manner as a state for purposes of area designations.

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The northern third of the Community was designated non-attainment for particulate matters when Maricopa County was designated in the 1970's. GRIC was not consulted and was not provided an opportunity to comment on the boundary of the non-attainment area at that time. Establishment of the Maricopa County non-attainment area for PM₁₀, created a cross jurisdictional and legal problem because the County and State had no legal or jurisdictional authority to regulate activities on the Community, but the Community could not develop a non-attainment area plan for that part of the area that covered Community land because the affected Community land was in attainment for PM₁₀.

Through the 8-hour ozone designation process in 2001, EPA corrected this cross jurisdictional/ legal problem as it applied to the ozone NAAQS when it designated GRIC attainment/unclassifiable under the 8-hour ozone standard and made GRIC a separate "Air Quality Control Region" based on the exterior boundaries of the Community. EPA has also informed GRIC of its intent to recommend that GRIC be designated attainment/unclassifiable for the PM_{2.5} NAAQS and made a separate Air Quality Control Region based on the exterior boundaries of the Reservation. GRIC has requested that EPA take this same approach under the PM₁₀ designation process and designate GRIC lands a separate "Air Quality Control Region". The Community is a sovereign government and EPA has a trust and legal responsibility to work with GRIC on a government-to-government basis during the designation process and that is the purpose of this request.

During formal consultation, we will oppose the use of data from a separate jurisdiction as a basis for designation. GRIC has a well established monitoring network, an EPA Approved Quality Assurance Project Plan (QAPP). Moreover, the GRIC network is the only Tribal monitoring program to have undergone and passed a full systems audit from EPA, Region IX. The GRIC Air Program submits all the data collected to the EPA AQS data base after validation. Thus, given the robust GRIC ambient air quality data base for PM₁₀, there is no reason for EPA to rely on data from off-Community monitors as the basis for determining the designation status for GRIC lands.

Also, during consultation, we will note that EPA Region IX monitoring personnel have been working with ADEQ personnel on the evaluation process for data sets flagged by ADEQ as exceptional events. EPA Region IX has indicated that the ADEQ data sets being evaluated as potential exceptional events will be used as a basis for approving or disapproving data flagged as exceptional events by GRIC. This approach is unacceptable to the Community. The GRIC Air Program has flagged a limited number of data sets as exceptional events (high wind episodes 20 miles per hour or greater) over the past three years. To date, EPA has not responded to the data submissions flagged as exceptional events by GRIC. Section 107(d) of the Clean Air Act requires that GRIC be treated in the same manner as a state for the purposes of designations. This includes evaluating GRIC's air quality monitoring data, including data flagged as exceptional events, separately from the State of Arizona and surrounding jurisdictions. In addition, EPA has not fully explained what type of data and support information is needed to allow EPA Region IX monitoring staff to validate GRIC exceptional events. Since the designation status of GRIC lands is completely based on the outcome of the exceptional events validation process, EPA Region IX should provide this information and work with GRIC Air Program personnel to ensure the correct data is provided.

In conclusion, the Gila River Indian Community cannot submit a designation recommendation for the PM₁₀ NAAQS at this time because formal consultation with EPA on the designation process

must be conducted first. During consultation, GRIC will request that EPA re-evaluate its process of using County boundaries as designation boundaries, only rely on monitoring data from the GRIC monitoring network as a basis for final designation of GRIC lands and evaluate data sets flagged as exceptional events by GRIC separately from data from the State and surrounding jurisdictions.

The Gila River Indian Community is committed to continue to work closely and constructively with developed between GRIC and EPA on air quality and other environmental issues.

Sincerely,

Handwritten signature of William Rhodes, dated 6-3-10.

William Rhodes, Governor
Gila River Indian Community

cc: Gina McCarthy
Jared Blumenfeld
Deborah Jordan
Colleen McKaughan