

US EPA ARCHIVE DOCUMENT

**Ak-Chin Indian Community  
Community Government**

42507 W. Peters & Nall Road, Maricopa, Arizona, 85239  
Telephone: (602) 252-2286; • (520) 568-4769; • Fax: (520) 568-8857



Felicia Marcus  
Regional Administrator  
U.S. Environmental Protection  
Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

**RE: Ak-Chin Indian Community's Recommended Area Designations For The Revised  
Ozone And Particulate Matter NAAQs**

Dear Ms. Marcus,

Before commenting on Ak-Chin Indian Community (ACIC) recommendations for designating Reservation land as attainment, unclassifiable or nonattainment with the 8-hour National Ambient Air Quality Standard (NAAQS), EPA should know that the ACIC is committed to protecting "human health and the environment". As a Native American community we believe in our heritage and our sovereignty; we also believe that as Native Americans we are more committed to human health and the environment than most states.

**Background**

The Ak-Chin Indian Community and Reservation was established by Executive Order 1538, issued on May 28, 1912 by President Taft who initially signed for a 47,600 acre reservation in Pinal County, Arizona. However, the following year (September 2, 1913) he rescinded that order and reduced the reservation to its current size of 21,840 acres. The Ak-Chin inhabitants refer to themselves as an Indian community rather than a tribe because they are descended from the Tohono O'odham (Papago), and Akimel O'odham (Pima), who have lived together at Ak-Chin for more than a century.

The Ak-Chin Indian Community (the "Community") is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of June 18, 1934, with Articles of Association (the "Articles") approved by the Secretary of the Interior, December 20, 1961. This allowed for governance and membership status and the latest survey of the Ak-Chin Indian Community rolls indicates that about 638 members are enrolled, 426 live on the reservation and 212 live off the reservation. A Total of 105 non-members live on the reservation.

Ak-Chin's governing body is an elected five member Community Council. Various administrative duties and powers are delegated to the elected Community Council which is comprised of two (2) officers: Chairman and Vice-Chairman; and three (3) Council Members.

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The Ak-Chin Indian Community and Reservation is located in southwestern Pinal County, Arizona. More specifically, the Reservation is located approximately thirty-five (35) miles southwest of Phoenix and seventy-five (75) miles northwest of Tucson; exterior boundaries are defined by Pinal County, Arizona. The land area of the Reservation is primarily agrarian. The land base is about 22,000 acres with about 16,000 acres of crop lands operated through a Community Farm.

Crops are cotton, nuts, alfalfa, small grains and most recently potatoes. The Reservation is also located about 22 miles from the Gila River Indian Community, whose Reservation boundary is at certain points only a mile or two from the Ak-Chin Reservation boundary.

As the towns, villages, and neighboring farmers have recognized the uniqueness of the Ak-Chin Indian Community's government and status, relationship building has been on the increase. Evidence of recent successes has encouraged the Council to further develop and maintain relationships with it's neighbors.

Although the Community has allowed the state of Arizona to regulate pesticide application and its related activities, such arrangements subject the Community to jurisdiction in state courts, an unfavorable position for tribes.

Therefore, the Community deemed it necessary to develop its own environmental protection programs and enforceable laws since it is responsible to regulate the environment of the existing Community and prospective tenants of the Community and Industrial Park.

In the Table below is an excerpt from the Community's "Strategic Plan for the Ak-Chin Indian Community" (July 31, 1996).

**Mission**

The purpose of the Ak-Chin Indian Community is to provide for the general well-being of its members through the applications of education, community services, and economic development with justice and equality for all in a secure and safe environment guided by cultural and traditional values.

A "Draft Tribal Environmental Plan" between the U.S. Environmental Protection Agency - Region IX and the Ak-Chin Indian Community was completed in August 2000. After review by Ak-Chin's Environmental Protection Department the Draft Tribal Environmental Plan will be presented to Ak-Chin's Community Council for review/approval. Once the Council approves the Plan, it will be forward to EPA for review/approval.



Excerpts from the Ak-Chin's "Draft Tribal Environmental Plan" are shown in the Table below: Please Note: Ak-Chin's commitment to human health and the environment.

### **I. PARTIES**

This TRIBAL ENVIRONMENTAL PLAN (hereinafter referred to as "plan") between the Ak-Chin Indian Community (hereinafter referred to as "Tribe") and the U.S. Environmental Protection Agency, Region 9 (hereinafter referred to as "EPA") concerns the protection of human health and the environment on the Ak-Chin Indian Reservation.

### **II. STATEMENT OF PURPOSE**

It is the purpose of this Plan to promote strong environmental protection on Tribal lands; promote a government-to-government relationship in recognition of Tribal sovereignty in environmental protection of treaty resources; provide an understanding of the Tribe's individual and unique environmental needs and identify areas under which the Tribe intends to pursue program responsibilities; cooperatively develop, implement and maintain comprehensive Tribal environmental programs; build environmental capacity in order for the Tribe to operate programs for the long-term; identify areas where EPA needs to plan for and carry out direct implementation; include the Tribe in Agency planning while addressing specific Tribal problems; build equal partnerships and work collectively as the Tribe establishes its priorities for environmental protection; and enhance and foster communications between EPA and the Tribe.

### **III. ROLES AND RESPONSIBILITIES**

The above mentioned parties agree to work in partnership in the development of and implementation of programs to protect human health and the environment on the Ak-Chin Indian Reservation.

#### **EPA:**

EPA maintains responsibility for implementing all federal environmental programs, until such time as the Tribe is granted approval, authorization, delegation or primacy to implement such programs in lieu of EPA. EPA shall perform its duties in accordance with the principles of this Plan, all the principles included in the Agency's Indian Policy and Federal environmental laws and their implementing regulations and with respect to existing Tribal laws.

EPA will make all efforts to provide the Tribe with timely advice on available grants and other sources of available funding, training and on-going meetings that will affect the Tribe.

EPA recognizes that there are Tribal cultural concerns such as subsistence needs and traditional uses of natural resources that require protection beyond the scope of our federal authorities. To the degree that EPA can address these concerns when making agency decisions on implementing federal environmental programs, it will do so. EPA will also support the development of Tribal environmental programs to protect these resources, where the federal programs may not.

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**THE TRIBE:**

The Tribe will identify areas where EPA will need to plan for and carry out direct implementation. In addition the Tribe will identify for EPA their needs (resources, technical assistance, training) to build or maintain environmental capacity for environmental protection programs the Tribe wishes to operate over the long-term.

**BOTH:**

The parties to this Plan recognizes that communication is a key principle to successfully address environmental issues of mutual concern. And as such, both parties will aspire to communication which is open, clear, direct, timely and between persons authorized and responsible for addressing those concerns.

The Tribe and EPA recognize that accountability within each other's organization is critical to the successful implementation of this Plan. Therefore, the Chairman/Chairperson and/or his/her designee and the Regional Administrator will direct appropriate staff to follow the principles and guidelines of the Plan.

In order to successfully implement this Plan, the Tribe and the EPA will ensure that its organization, decision-making process and relevant personnel are known by the parties to the Plan.

As you can see from Ak-Chin's wish to work cooperatively with the EPA, that the Ak-Chin Indian Community continues to pursue sovereignty in its effort to steward the Ak-Chin Indian Reservation responsibly into the future, while protecting human health and the environment.

On June 18, 1997, the U.S. Environmental Protection Agency ("EPA") adopted a new 8-hour standard for ozone, a new 24-hour and annual National Ambient Air Quality Standards ("NAAQS") for PM<sub>2.5</sub> and revised method for determining compliance with the 24-hour and annual PM<sub>10</sub> NAAQS. Section 107 (d) of the Clean Air Act ("CAA" or the "Act") establishes procedures for assigning area designations when NAAQS are revised. Section 107(d)(1)(B) of the Act, as modified by the Transportation Equity Act of the 21<sup>st</sup> Century, gives state governors until July 1999 to recommend to EPA those areas under their jurisdiction that attain, do not attain or cannot be classified as attaining the revised ozone and PM<sub>10</sub> NAAQS. Under Section 301(d) of the Act, EPA "is authorized to treat Indian tribes in the same manner as states under this Act." EPA, by its adoption of 40 C.F.R. § 49.3, declared that "[T]ribes meeting the eligibility criteria of Sec. 49.6 shall be treated in the same manner as states with respect to all provisions of the Clean Air Act (CAA) and implementing regulations,...". EPA explicitly recognized the authority of an "eligible" tribe to make the same recommendations regarding the attainment status over lands which it has jurisdiction in its August 14, 1998 "Proposed Implementation Guidance for the Revised Ozone and Particulate Matter NAAQS."

The Ak-Chin Indian Reservation does not have sources for pointsource air emissions, and all construction activities are required to suppress dust. Phoenix, Arizona (35-45

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miles northeast of the Ak-Chin Indian Reservation) is the nearest area that has been designated "non-attainment" for NAAQS 1-hour and 8-hour emissions. Transport of pollutants has been identified to move in a northeasterly direction, away from the Reservation and its exterior boundaries with Pinal County. Therefore, no outside pollutants would be passing through the Ak-Chin Reservation, since to the south and southeast of the Reservations exterior boundaries with Pinal County, no significant sources for pointsource air emissions exist.

The position of the Ak-Chin Indian Community is that emissions of ozone and/or PM<sub>10</sub> are not significant enough where the Reservation is located to trigger a classification of either "non-attainment" or "unclassifiable". Furthermore, the Ak-Chin Indian Community totally supports the language in a letter dated June 19, 2000, from Stanley Griffis, County Manager for Pinal County to Jaqueline Schafer, Director of the Arizona Department of Environmental Quality.

Excerpts from the letter are shown in the Table below:

**There is no factual or rational justification  
for designating Pinal County as "nonattainment"**

EPA guidance indicates that attainment/nonattainment designations should reflect actual ozone concentrations in the time frame of 1997 through 1999. To my understanding, none of the relevant data for Pinal County indicates a prior exceedance of the 8-hour ozone standard.

Pinal County remains unaware of any showing, or even a documented suggestion, that the County has contributed to any of the historic or anticipated ozone exceedances in other areas.

Simply put, none of historical monitoring data, forward looking rational analysis, or other available information justifies allowing a nonattainment designation to be fall Pinal County.

**Physically and geographically,  
Pinal County has little in common with the Phoenix urban areas.**

Pinal County was included within the Phoenix-Mesa Metropolitan Statistical Area ("MSA") by fiat of the United States Department of Commerce, without providing Pinal County with either notice or an opportunity to comment.

While the Department of Commerce may have lumped Pinal County into the Phoenix - Mesa MSA, that designation was not based on air quality considerations.

Clearly, the vast expanse of the 5,386 square miles in Pinal County shares little if anything with the urban character of the Phoenix metropolitan area.

The EPA has acknowledged that "[t]he concept of a single MSA/CMSA nonattainment area may be inconsistent with the spatial and temporal scales for ozone... problems." See 61 Fed. Reg. 65763, 65767 (12/13/96).

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While EPA guidance might also suggest that in the case of an existing ozone nonattainment area under the 1-hour standard, an entire MSA should be designated nonattainment under the 8-hour standard, that guidance does not apply to the situation at hand because the Phoenix metropolitan area has been redesignated to attainment under the 1-hour ozone standard.

In the context of considering the appropriate geographic bounds for a possible nonattainment designation under the new 8-hour ozone standard, knowingly allowing Pinal County to fall subject a nonattainment designation simply because it falls within an arbitrarily drawn MSA would constitute nothing short of an arbitrary and capricious action.

For the above reasons, the Ak-Chin Indian Community respectfully requests that the Ak-Chin Indian Reservation receive a designation of "attainment". The Ak-Chin Community would be reluctant to consider a designation of either "unclassifiable" or "nonattainment". Any designation other than "attainment" could impact present and future development and have a significant financial impact on the Community.

As with other federal agencies, the U.S. Environmental Protection Agency has a federal trust responsibility to federally-recognized tribes, which requires that the Agency consult with and consider the interests of tribes when taking actions that may affect tribal rights or trust resources. This trust responsibility is separate and apart from the requirements of the Clean Air Act (CCA) § 107(d) designation process and has been consistently reaffirmed by the courts, executive orders and agency issued statements of policy that recognized the importance of tribal governments in regulatory activities that impact reservation environments. The keynote of this policy for the Ak-Chin Indian Community is the belief that EPA will "...give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands."

If a Tribal Implementation Plan (TIP) is the subsequent result of a designation other than "attainment", additional economic stressors would be unfairly placed on the Ak-Chin Indian Community. As you know, monitoring would have to be put in place to document levels of emissions, and other pollutants. The Ak-Chin Indian Community is currently investigating development of an Air Quality Program, however due to funding and office space constraints, the Community has not moved forward at this time.

Furthermore, the Community feels that the Phoenix - Mesa Metropolitan Statistical Area (MSA) should not be used as criteria to determine designation for the Ak-Chin Indian Reservation. The burden of proof should be with the drafters of the Phoenix - Mesa MSA, not the Ak-Chin Indian Community.

The Community is exercising it's sovereignty and protecting human health and the environment within the external boundaries of the Ak-Chin Indian Reservation. This is being done voluntarily, without regulations imposed by outside agencies, or by the use

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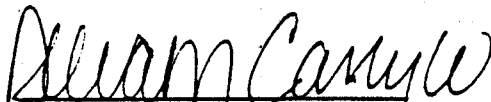


of the Phoenix - Mesa MSA. The Ak-Chin Community also believes that MSAs are based on economic structures that tribes are not part of, and therefore a ruling to designate the Ak-Chin Reservation anything but "attainment" would be arbitrary and capricious.

Consider that the Phoenix - Mesa Metropolitan Statistical Area (MSA) designations (mapped) for the 8-hr designation were done without consulting the Ak-Chin Indian Community, or Pinal County for input while the MSA was drafted. Direct economic harm could result from a designation of either "unclassifiable" or "nonattainment", impacting the Ak-Chin Indian Community for years to come.

Therefore, a recommendation to be designated as "attainment" is supported by the Ak-Chin Indian Community for the revised NAAQS. The Community however, would more willingly support MSA reassessment and/or reduction of area encompassed by the Phoenix - Mesa MSA. If you have questions please call Patrick Trusty, the Director of the ACIC Department of Environmental Protection, at (520) 568-4769, Ext 40.

Respectively Submitted,

  
Delia M. Carlyle, Chairman

9-25-00  
Date