



THE HARVARD PROJECT ON
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Air Quality Program
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In recent years, tribal governments in the United States have passed sophisticated laws and regulations to manage social and economic development in their communities. Although air quality is an important aspect of both economic growth and human health, very few Native nations have successfully extended their sovereignty into the air. Gila River Indian Community (GRIC) is the first tribe in the country to develop a comprehensive plan that regulates air pollution within the boundaries of its reservation. The plan is recognized by other governments and gives the tribe control over all of the emission-causing activities that occur within its territory. By designing its own air quality program, the community can manage the activities that are important to tribal citizens while preserving a healthy atmosphere.

A Growing Air Pollution Problem

Gila River Indian Community is a 374,000-acre rural reservation located on the outskirts of the rapidly growing Phoenix metropolitan area in south-central Arizona. It is home to almost 20,000 tribal citizens, making it one of the most populous reservations in the country. The Akimel O'odham and Pee Posh peoples traditionally farmed large tracts of land along the Gila and Salt Rivers in central Arizona. Agriculture remains an important activity, with 40,000 acres currently under cultivation and ambitious plans for another 10,000 acres that will be irrigated under a recent settlement of long-standing water rights claims. In addition to farming, Gila River also evaluates proposals for manufacturing and other companies to locate onto in one of its three industrial parks.

Sustainable development and agricultural growth at GRIC is endangered by a growing pollution problem in the surrounding area. As the city of Phoenix has expanded to the reservation's northern border, residents on and near the reservation have expressed concerns about air pollution from vehicle traffic and manufacturing. During high wind events, large amounts of wind-blown dust from unpaved roads, construction sites, and other sources in neighboring jurisdictions cause a "brown cloud" to gather on the reservation. Community members fear that airborne contaminants are linked to health problems such as asthma and cancer.

In fact, pollution around the Phoenix metropolitan area has become so bad that the area fails to meet the national air quality standards under the federal Clean Air Act. The northern third

of the Gila River reservation lies in Maricopa County, one of the federally designated “non-attainment” areas for several contaminants. Since this designation requires the county to take stringent measures to meet national air standards, activities within county borders are subject to increasingly strict emissions controls. These restrictions threaten not only industrial and agricultural operations at GRIC, but also traditional practices such as cremation.

Tribal Air Quality Management

In the late 1990s, the Gila River Indian Community decided to gain control over the area’s growing levels of pollution by creating an air quality policy for the reservation. Using federal grant funding, the environmental staff spent almost 10 years developing a comprehensive plan for managing air resources. The resulting Tribal Air Quality Management Plan not only meets Gila River’s standards but also adopts strict national standards laid out in the federal Clean Air Act. The Plan details every aspect of air quality management within the boundaries of the reservation, including administrative procedures, permitting requirements, an appeals process, and civil and criminal enforcement authority. Additionally, the Plan addresses the “Tribal Gap” which sets tribal standards, operating requirements, and work practices in areas where there are no federal rules.

The Air Quality Management Plan was developed using a broad consultation process involving everyone who had a stake in the outcome, including industry, regulatory programs in neighboring jurisdictions, state and federal officials, environmental organizations, and tribal citizens. Program staff made over 200 presentations on the objectives and content of the Plan. This open approach resulted in a program that is accepted by all stakeholders. Practices such as cremations, cooking traditional foods outdoors, and traditional celebrations using open burning are specifically exempt from the regulations to accommodate Gila River’s agricultural and cultural heritage.

Highly trained staff regularly analyze the reservation’s outdoor air quality. GRIC’s monitoring system includes fixed stations and a mobile unit that samples air and meteorological data from various locations. The detailed technical information generated by the system guides the community’s rule-making and enforcement actions. The data are subject to rigorous quality assurance and control measures that meet federal standards so that all interested parties trust their accuracy. Gila River coordinates closely with federal, state, and county air monitoring programs in order to have a clear picture of air resources in the entire region.

As part of its air quality program, the Gila River Indian Community was the first tribal government to seek and receive full authority to implement the federal Clean Air Act in the same manner as a state (also known as Treatment in the Same Manner as a State or TAS). Under the Act, states and tribes with an approved implementation plan can be delegated full Clean Air Act authority for management of air resources. GRIC also requested formal federal approval for its Tribal Air Quality Management Plan, which makes all of its provisions federally enforceable and is therefore less susceptible to legal challenges.

Sovereignty Over the Air

At first glance, exerting sovereignty over the air may not seem feasible. The Gila River Indian Community realized, however, that the regulation of air pollutants has very specific consequences for activities that take place on its reservation lands. The proper balance between economic growth and environmental protection is a difficult issue that is best dealt with inside the community, not by other governments. Administering its own air quality program allows GRIC to decide how to prioritize and regulate activities that impact air resources according to its citizens’ goals and values. For example, public meetings on air quality found that tribal elders were very concerned about preserving the views of the area’s

sacred mountains. Since dust from travel on unpaved roads was a big factor in reducing visibility, the community decided to close one road and restrict another to local traffic only.

Creating and managing a comprehensive air quality program enables Gila River to work on an equal footing with other governments to combat airborne pollutants. By obtaining TAS under the Clean Air Act, the tribal government has formalized authority to manage its air program based on specific reservation conditions. This has already had concrete results for GRIC in the case of Maricopa County's non-attainment of federal standards. Because the community has its own regulations and data to measure ozone, staff were able to successfully remove the reservation from Maricopa County for Clean Air Act purposes. The United States EPA has recognized GRIC lands as a separate air quality control region that is now in compliance with the national ozone health standards. This is important because it eliminates the cross jurisdictional and legal problems that previously existed and allows the GRIC tribal government to exercise its sovereign authority over its air quality.

Significantly, the tribal Air Quality Management Plan gives Gila River authority over all business operations on the reservation, whether they are owned by tribal citizens or non-Natives. Under the provisions of the Plan, approximately 40 industrial facilities on the reservation require air quality operating permits. The community has in fact already pursued several enforcement actions for non-compliance with its air regulations. These have included both private enterprises such as a medical waste incinerator and tribal operations such as the Wild Horse Pass Development Authority. In one case, GRIC levied a \$15,000 fine for emission violations against Cemex, a publicly-listed building materials company which operates an asphalt plant on the reservation. Although formal federal enforceability was still pending at the time of these sanctions, there were no legal challenges to the community's air quality enforcement authority. This acceptance is a tribute to the tribal government's openness to working with stakeholders, as well as its willingness to cooperate with other governments, and to develop regulations consistent with the federal Clean Air Act. Gila River's air quality program is seen by all stakeholders as legitimate and effective.

Bringing the Lessons Home

As Native nations pursue economic development opportunities on their lands, the impact of population and industrial growth on air quality cannot be ignored. If tribal governments do not take steps to manage their air resources, then other governments will do it for them under the provisions of the national Clean Air Act. Some Native nations may even find their economic plans and cultural activities constrained by federal or state regulations. To help manage growth, the Gila River Indian Community has built a comprehensive air quality program that has gained the respect of tribal and non-tribal citizens, industry, and other governments. The community's air policies reflect its culturally-rooted desire for industrial and agricultural development that is balanced with the need to protect traditional activities, human health, and the environment.

Lessons

1 Tribal air quality management strengthens tribal sovereignty against intrusions by state and county governments. Protection of the environment is protection of one's people.

2 Tribal air quality policies can promote cultural values and help secure economic development opportunities.

3 When a tribal nation protects the environment, it also protects its people and its sovereignty

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