such inherent tribal authority. See 59 FR 43958, n. 5; see also 56 FR 64876 at 64877–64879 (Dec. 12, 1991).

On January 24, 1983, the President issued a Federal Indian Policy stressing two related themes: (1) That the Federal government will pursue the principle of Indian "self-government" and (2) that it will work directly with tribal governments on a "government-to-government" basis. An April 29, 1994 Presidential Memorandum reiterated that the rights of sovereign tribal governments must be fully respected. 59 FR 22,951 (May 4, 1994).

The EPA's tribal policies commit to certain principles, including the following:

EPA recognizes tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with tribal Governments as the independent authority for reservation affairs, and not as the political subdivisions of States or other governmental units.

* * * * *

In keeping with the principal of Indian self-government, the Agency will view tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved interests and/or participation of State Governments, EPA will look directly to tribal Governments to play this lead role for matters affecting reservation environments.

November 8, 1984 "EPA Policy for the Administration of Environmental Programs on Indian Reservations"; Policy Reaffirmed by Administrator Carol M. Browner in a Memorandum issued on March 14, 1994; see also Washington Department of Ecology, 752 F.2d at 1471–72 & n. 5.

The United States also has a unique fiduciary relationship with Tribes, and EPA must consider tribal interests in its actions. *Nance* v. *EPA*, 645 F.2d 701, 710 (9th Cir.), *cert. denied, Crow Tribe of Indians* v. *EPA*, 454 U.S. 1081 (1981).

The EPA provides federal financial assistance and technical assistance to Tribes to support assessment and protection of reservation environments including air quality. Section 301(d)(4) of the Act expressly provides for EPA administration of Act programs where it is inappropriate or infeasible for Tribes. EPA has described its efforts and plans to protect reservation air quality. The EPA will fill gaps in air quality protection in the interim period before tribal Act programs are approved, as necessary to ensure that reservation air quality is adequately protected. See 59 FR 43960-61. The EPA will issue

proposed rules within the next few months that will provide for EPA implementation of title V permit programs where Tribes lack approved programs.

Even where an environmental statute did not directly address management on reservations and Tribes themselves had not assumed authority for program management, the reviewing court upheld EPA's decision declining to approve a State program's application to Indian country and concluded:

[T]he tribal interest in managing the reservation environment and the federal policy of encouraging tribes to assume or at least share in management responsibility are controlling.

* * * * *

It is enough that EPA remains free to carry out its policy of encouraging tribal self-government by consulting with the tribes over matters of hazardous waste management policy, such as the siting of waste disposal.

* * The 'backdrop' of tribal sovereignty, in light of federal policies encouraging Indian self-government, consequently supports EPA's interpretation of RCRA.

Washington Dept. of Ecology, 752 F.2d at 1427 (citation omitted).

Further, the State has failed to identify any compelling State interest that would justify broad assertion of State authority throughout Indian country. At this time, EPA is not aware of any facility within the exterior boundaries of an American Indian reservation in the State of Wisconsin that requires a title V operating permit. It is possible but entirely speculative that some future title V reservation sources may be located near State boundaries. As indicated, EPA has issued proposed rules that would authorize Tribes to administer EPAapproved title V programs and, in the interim, EPA is developing regulations that would authorize EPA to issue title V permits for affected sources where Tribes lack approved programs. In addition, the Act provides several mechanisms to address the potential transport of pollution off-reservation. See, e.g., 59 FR 43964; sections 110(a)(2)(D) and 126 of the Act; section 164(e) of the Act; section 505 of the Act.

Based on the Clean Air Act and Federal Indian law and policies, EPA concludes that WDNR has not adequately supported the application of its title V program to reservations generally or to fee lands within reservation boundaries. See also 53 FR 43080 (Oct. 25, 1988) (EPA's decision declining to approve Washington's request to administer the Safe Drinking Water Act's Underground Injection Control Program to Indian lands).

Finally, EPA's decision to decline to approve application of the State's program to lands within the exterior boundaries of reservations of federally recognized Indian Tribes based on the limited information submitted by the State and the special issues and considerations associated with tribal lands is within the Agency's discretion. See Act section 502(d)(1) (EPA "may" approve a [state title V] program) & Act section 502(g) (EPA "may" by rule grant the [state title V] program interim approval); compare Alabama Power Co. v. EPA, No. 94-1170, slip op. at 11 (D.C. Cir. Nov. 29, 1994) ("the AEL provision's mandatory language * * * '[t]he permitting authority shall * * authorize an emission limitation less stringent than the applicable limitation * * *.' (emphasis added) * * *''); see also 59 FR 43982 ("[a] State Clean Air Act program submittal shall not be disapproved because of failure to address air resources within the exterior boundaries of an Indian Reservation or other areas within the jurisdiction of an Indian Tribe") (proposed 40 CFR 49.10).

Comment: "[T]he proposed interim approval discusses both Indian reservations and tribal lands, with no clear distinction between the two. On page 4 of its proposed interim approval, EPA states: '* * * the proposed interim approval of Wisconsin's operating permits program will not extend to lands within the exterior boundaries of any Indian reservation in the State of Wisconsin.' However, it is our understanding that Indians may own lands outside of a reservation which may still be considered 'tribal lands'. Certain lands may be simply owned by tribal members, while other lands may be considered 'trust lands' (i.e. after approval by the U.S. Department of the Interior). We are uncertain what EPA's position is as to whether State jurisdiction extends to various lands owned by Indians, but located outside of reservation boundaries. Again, this determination should likely be made on a case-by-case basis, as the State of Wisconsin may have regulatory jurisdiction on these lands. We are concerned that if the state does not have jurisdiction over these lands, a 'checkerboard' pattern of regulation will develop, with no clear delineation of who has jurisdiction over air pollution sources. This can result in a nonuniform, confusing and ineffective air pollution regulatory system. We believe that this issue should be clarified in EPA's final interim approval. Our position is that the State of Wisconsin should be allowed to exercise its jurisdiction on these lands, which are