

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND
THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY
RELATING TO IMPLEMENTING TITLE V OF THE CLEAN AIR ACT**

WHEREAS, Title V of the Clean Air Act as amended in 1990 (42 U.S.C. § 7661 *et seq.*) requires that the U.S. Environmental Protection Agency (EPA) develop regulations setting minimum standards for state, local and tribal operating permit programs, and that EPA promulgate, administer, and enforce a federal operating permits program where a state, local and tribal program is not approved;

WHEREAS, EPA has granted interim approval to the State of Idaho Department of Environmental Quality (DEQ) to administer a state operating permit program under 40 C.F.R. Part 70 everywhere in Idaho except “Indian country,” as defined by 18 U.S. C. § 1151;

WHEREAS, the U.S. Environmental Protection Agency (EPA) has regulations in effect under 40 C.F.R. Part 71 setting forth EPA’s approach for issuing federal operating permits to covered stationary sources located in Indian country (EPA treats the areas for which EPA believes the Indian country status is in question as Indian country);

WHEREAS, EPA’s regulations under 40 C.F.R. Part 71 went into effect for covered stationary sources located within the boundaries of the Nez Perce Reservation on March 22, 1999 (64 Fed. Reg. 8247, Feb. 19, 1999);

WHEREAS, the State of Idaho’s position, both in judicial proceedings and in administrative, civil and criminal contexts **is** that the present boundaries of the Nez Perce Reservation are limited to the lands presently retained in trust status pursuant to the terms of the Agreement of May 1, 1893, 28 Stat. 326, and that it may use state law to regulate those stationary sources under its jurisdiction;

WHEREAS, the United States’ position, both in judicial proceedings and in administrative, civil and criminal contexts **is** that the present boundaries of the Nez Perce Reservation are as described in the 1863 Nez Perce Treaty;

WHEREAS, the courts have not ruled consistently regarding the Indian country status of lands within the Nez Perce Reservation;

WHEREAS, EPA is preparing a proposed Federal Implementation Plan that will establish air quality management requirements for all sources on the Nez Perce Reservation which are generally consistent with DEQ standards, and is using its best efforts to expedite final promulgation;

