



Office of the Governor

State of Utah

GARY R. HERBERT
Governor

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July 18, 2017

E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Mail Code 1101A
Washington, D.C. 20460

Dear Administrator Pruitt,

Please accept this letter as a formal request for your Agency to revise the *Federal Implementation Plan for True Minor Sources in Indian Country for the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector* (National Tribal NSR FIP) by removing the regulatory language that discriminates against responsible oil and natural gas development in the tribal airshed of Utah's Uintah Basin. Attached are the specific revisions I suggest.

The Uintah Basin is a prolific oil and natural gas producing region located in northeast Utah. The Basin includes state, federal and tribal land – or state and tribal “airsheds” for the purpose of this matter. The tribal airshed is associated with the Uintah and Ouray Reservation and includes a majority of the Basin's active oil and natural gas wells (approximately 70 percent).

In recent years, concentrations of ozone in the Uintah Basin have reached or exceeded the national ozone standards during the winter months. Wintertime ozone is a relatively new discovery, limited to a small number of isolated basins in the Intermountain West. Wintertime ozone formation is not fully understood and much of this phenomenon appears to be driven by atmospheric conditions outside of our control. It is also important to note that oil and natural gas production in the Basin has declined in recent years. Much of this decrease in development is attributed to low energy prices and the regulatory burdens imposed by the previous administration which has discouraged federal land development. As production declined, emissions from oil and natural gas development followed suit.

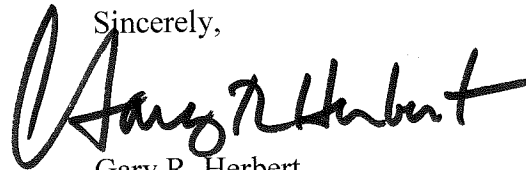
Under the previous administration, EPA finalized the National Tribal NSR FIP in June of 2016. Industry operators register new development in the tribal airshed of the Basin under this

streamlined permitting (or registration) program. Importantly, the National Tribal NSR FIP does not apply to nonattainment areas. Public comment, urging application of the National Tribal NSR FIP to nonattainment areas until a local FIP is finalized, was ignored by the previous administration's EPA. To no avail, these concerns were reiterated to EPA in petitions to revise/reconsider the National Tribal NSR FIP back in August of 2016.

The Uintah Basin is expected to be designated nonattainment under the 2015 ozone standard next year. At that time, discrimination against oil and natural gas development in the tribal airshed of the Basin will ensue because a streamlined permitting program will not exist. Further, EPA Region 8 communicated to operators that site-specific permitting under the *Minor NSR Program for Indian Country* will also not be available due to inadequate staff/Agency resources and the Region's inability to demonstrate that minor sources of emissions will not "cause or contribute" to a violation of the national ozone standard (taking us back to the challenge of understanding wintertime ozone formation/causation).

A simple solution exists to this serious problem. I ask EPA to revise the National Tribal NSR FIP so that it applies to areas designated nonattainment and acts as a "bridge" until a local FIP is finalized. In doing so, your Agency may rely on the emission reductions realized from the recent decline in production and industry's commitment to work with your Agency to identify the appropriate emission control program necessary for the Basin to achieve and maintain attainment of the ozone standard.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary R. Herbert". The signature is fluid and cursive, with a large initial "G" and "H".

Gary R. Herbert
Governor

Electronic Code of Federal Regulations

e-CFR data is current as of June 22, 2017

Title 40: Protection of Environment

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

Subpart C—General Federal Implementation Plan Provisions

Federal Implementation Plan for Managing Air Emissions From True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector

Source: 81 FR 35977, June 3, 2016, unless otherwise noted.

§49.101 Introduction.

(a) *What is the purpose of §§49.101 through 49.105?* Sections 49.101 through 49.105 adopt legally and practicably enforceable requirements to control and reduce emissions of volatile organic compounds, nitrogen oxides, sulfur dioxide, particulate matter (PM, PM₁₀, PM_{2.5}), hydrogen sulfide, carbon monoxide and various sulfur compounds from new and modified true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector.

(b) *Am I subject to §§49.101 through 49.105?* You are subject to the requirements if you:

(1) Own or operate a new true minor oil and natural gas source or an existing true minor oil and natural gas source undergoing modification as determined pursuant to §49.153(a) that meets the criteria specified in paragraphs (b)(1)(i) through (iv) ~~(v)~~ of this section. Then you shall comply with the requirements of §§49.104 and 49.105, unless you obtain a source-specific permit as specified in paragraph (b)(2) or (3) of this section.

(i) The source is an oil and natural gas source as defined in §49.102;

(ii) The oil and natural gas source as defined in §49.102 is located in Indian country as defined in §49.152(d), within the geographic scope of the Federal Minor New Source Review Program in Indian Country, as specified in §49.102;

(iii) The oil and natural gas source as defined in §49.102 is a new true minor source or a minor modification of an existing true minor source, as determined under §49.153;

(iv) The oil and natural gas source as defined in §49.102 begins construction or modification on or after October 3, 2016; and

~~(v) The oil and natural gas source as defined in §49.102 is not located in a designated nonattainment area.~~

(2) Owners/operators of sources that meet the criteria specified in paragraph (b)(1) of this section that choose to obtain a source-specific permit as specified in §49.155 before beginning construction are not required to comply with the requirements of §§49.101 through 49.105.

(3) Owners/operators of sources that meet the criteria specified in paragraph (b)(1) of this section that the Reviewing Authority requires to obtain a source-specific permit to ensure protection of the National Ambient Air Quality Standards as specified in §49.155 before beginning construction are not required to comply with §§49.101 through 49.105.

(c) *When must I comply with §§49.101 through 49.105?* You must comply with §§49.101 through 49.101 on or after October 3, 2016.

(d) This Federal Implementation Plan (FIP) does not apply to minor modifications at major sources.

§49.102 Definitions.

As used in §§49.101 through 49.105, all terms not defined herein shall have the meaning given them in the Clean Air Act, in subparts A and OOOOa of 40 CFR part 60, in the Prevention of Significant Deterioration regulations at 40 CFR 52.21, or in the Federal Minor New Source Review Program in Indian Country at §49.152. The following terms shall have the specific meanings given them:

Oil and natural gas source means a stationary source engaged in the extraction and production of oil and natural gas and/or the processing of natural gas, including the wells and all related processes used in the extraction, production, recovery, lifting, stabilization, and separation or treatment of oil, water, and/or natural gas (including condensate). Oil and natural gas production and processing components may include, but are not limited to: Wells and related casing head; tubing head and "Christmas tree" piping; pumps; compressors; heater treaters; separators; storage vessels; pneumatic devices; stationary engines; natural gas sweetening; truck loading; dewpoint suppression skids; natural gas dehydrators; completion and workover processes; gathering pipelines and related components that collect and transport the oil, natural gas and other materials and wastes from the wells or well pads; and natural gas processing plants.

Oil and natural gas well means a single well that extracts subsurface reservoir fluids containing a mixture of oil and/or natural gas, and water.

Owner/operator means any person who owns, leases, operates, controls, or supervises an oil and natural gas source.

Regional Administrator means the Regional Administrator of an EPA Region or an authorized representative of the Regional Administrator.

§49.103 Delegation of authority of administration to Indian tribes.

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which a Regional Administrator may delegate to a federally-recognized tribe the authority to assist the EPA with

administration of this FIP (§§49.101 through 49.105). This section provides for administrative delegation and does not affect the eligibility criteria under §49.6 for treatment in the same manner as a state or a tribe's ability to obtain approval of a tribal implementation plan under §49.7.

(b) *How does a tribe request delegation?* In order to be delegated authority to assist us with administration of this FIP, the authorized representative of a federally-recognized tribe must submit a request to a Regional Administrator that:

- (1) Identifies the specific provisions for which delegation is requested;
- (2) Identifies the Indian Reservation or other affected areas of Indian country for which delegation is requested;
- (3) Includes a statement by the applicant's legal counsel (or equivalent official) that includes the following:
 - (i) A statement that the applicant is a tribe recognized by the Secretary of the Interior;
 - (ii) A descriptive statement that is consistent with the type of information described in §49.7(a)(2) demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area;
 - (iii) A description of the laws of the tribe that provide adequate authority to administer the Federal rules and provisions for which delegation is requested; and
 - (iv) A demonstration that the tribal agency that will be responsible for administration has the technical capability and adequate resources to administer the FIP provisions for which delegation is requested.

(c) *How is the delegation of administrative authority accomplished?* (1) A Delegation of Authority Agreement will set forth the terms and conditions of the administrative delegation, will specify the rule and provisions that the tribe shall be authorized to implement on behalf of the EPA, and shall be entered into by the Regional Administrator and the tribe. The Agreement will become effective upon the date that both the Regional Administrator and the authorized representative of the tribe have signed the Agreement. Once the delegation becomes effective, the tribe will be responsible, to the extent specified in the Agreement, for assisting us with administration of this FIP and shall act as the Regional Administrator as that term is used in these regulations. Any Delegation of Authority Agreement will clarify the circumstances in which the term "Regional Administrator" found throughout this FIP is to refer only to the EPA Regional Administrator and when it is intended instead to refer to the EPA Regional Administrator or a federally-recognized tribe.

(2) A Delegation of Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with a tribe.

(d) *How will any Delegation of Authority Agreement be publicized?* The Regional Administrator shall publish a notice in the Federal Register informing the public of any Delegation of Authority Agreement

with a tribe to assist us with administration of all or a portion of this FIP and will identify such delegation in the Code of Federal Regulations. The Regional Administrator shall also publish an announcement of the Delegation of Authority Agreement in local newspapers.

§49.104 Requirements regarding threatened or endangered species and historic properties.

(a) *What are sources required to do to address threatened or endangered species and historic properties?* An owner/operator subject to the requirements contained in §§49.101 through 49.105 to satisfy its obligation under §49.151(c)(1)(iii)(B) to obtain a minor NSR permit shall meet either paragraph (c)(1) or (2) of this section, as appropriate.

(1) *Prior completion of assessment by another federal agency.* The owner/operator shall submit to the EPA Regional Office (and to the relevant tribe for the area where the source is located/locating) valid documentation demonstrating that prior Endangered Species Act (ESA) and/or National Historic Preservation Act (NHPA) compliance has been completed by another federal agency in connection with the specific oil and natural gas activity operated under this FIP (we would consider a document no longer valid if the issuing agency has reopened consultation for the prior approval). The appropriate documents shall clearly show that the other federal agency had met its obligations under both the ESA and NHPA. A simple reference to a Record of Decision or other final decision document will not be acceptable. For listed species, acceptable documentation can include a copy of a letter or biological opinion from the U.S. Fish and Wildlife Service addressing the effects of the project on listed species and critical habitat and demonstrating compliance by the federal action agency with ESA requirements. Where the federal action agency prepares a biological assessment of the action as part of its ESA compliance, that document shall also be provided to the EPA Regional Office. For historic properties, acceptable documentation can include: a letter from the appropriate historic preservation office, or a memorandum of agreement with that office, addressing the effects of the project on historic properties and demonstrating compliance by the federal action agency with NHPA requirements. All documentation shall be attached to the Part 1 Registration Form submitted in accordance with §49.160(c)(1)(iv).

(2) *Screening procedures completed by the owner/operator.* The owner/operator shall submit to the EPA Regional Office (and to the relevant tribe for the area where the source is located/locating) documentation demonstrating that it has completed the screening procedures specified for consideration of threatened and endangered species and/or historic properties and receive written confirmation from the EPA stating that it has satisfactorily completed these procedures. This process of source documentation submittal and the EPA's confirmation that it has satisfactorily completed the procedures must occur prior to the source's submittal of its Part 1 Registration Form pursuant to §49.160(c)(1)(iv). (The procedures are contained in the following document: "Procedures to Address Threatened and Endangered Species and Historic Properties for the Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector," <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>). Review of your submittal will be

conducted by the Reviewing Authority in accordance with the procedure in paragraphs (a)(2)(i) and (ii) of this section:

(i) Within 30 days of receipt of your documentation, by letter to you, the Reviewing Authority must provide one of the following determinations:

(A) The documentation satisfactorily demonstrates completion of the screening procedures; or

(B) The documentation is not adequate, and additional information is needed. If the initial submittal is deficient, the Reviewing Authority will note any such deficiencies and may offer further direction on completing the screening procedures. Once you have addressed the noted deficiencies you must resubmit your revised screening procedure documentation for review. An additional 15-day review notification period will be used for the Reviewing Authority to determine whether the listed species and/or historic property screening procedures have been satisfied. If the Reviewing Authority makes such a determination, they will send you a letter stating that conclusion.

(ii) You must obtain a letter from the Reviewing Authority indicating that the source has adequately completed the screening procedures before you can submit the Part 1 Registration Form under §49.160(c)(1)(iv) and begin construction under this FIP.

(b) [Reserved]

§49.105 Requirements.

(a) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 63, subpart DDDDD (National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source.

(b) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 63, subpart ZZZZ (NESHAP for Stationary Reciprocating Internal Combustion Engines), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source.

(c) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 60, subpart IIII (Standards of Performance for Stationary Compression Ignition Internal Combustion Engines), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (c)(1) through (7) of this section:

(1) Section 60.4200(a)(1)—Am I subject to this subpart? (applies to manufacturers);

(2) Section 60.4200(b)—Not applicable to a stationary spark ignition internal combustion engine being tested at an engine test cell/stand;

(3) Section 60.4201—What emission standards must I meet for non-emergency engines if I am a stationary compression ignition internal combustion engine manufacturer?;

(4) Section 60.4202—What emission standards must I meet for emergency engines if I am a stationary compression ignition internal combustion engine manufacturer?;

(5) Section 60.4203—How long must my engines meet the emission standards if I am a manufacturer of stationary compression ignition internal combustion engines?;

(6) Section 60.4210—What are my compliance requirements if I am a stationary compression ignition internal combustion engine manufacturer?; and

(7) Section 60.4215—What requirements must I meet for engines used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands?

(d) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 60, subpart JJJJ (Standards of Performance for Stationary Spark Ignition Internal Combustion Engines), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (d)(1) through (5) of this section:

(1) Section 60.4230(b)—Not applicable to stationary spark ignition internal combustion engines being tested at an engine test cell/stand;

(2) Section 60.4230(c)—Exemption for obtaining a Title V permit if owner or operator of an area source subject to this part;

(3) Sections 60.4231 and 60.4232—Emission standards for manufacturers;

(4) Sections 60.4238 through 60.4242—Compliance Requirements for Manufacturers; and

(5) Section 60.4247—Mobile source provisions that apply to manufacturers of stationary spark ignition internal combustion engines or equipment containing such engines.

(e) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 60, subpart Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (e)(1) and (2) of this section:

(1) Section 60.112b(c)—Source-specific standard for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia; and

(2) Section 60.117b(a) and (b)—Delegation of authority.

(f) For true minor sources (and minor modifications at true minor sources) that are subject to subpart OOOOa (Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (f)(1) through (5) of this section:

(1) Section 60.5365a(h)(4)—Existing sources constructed after August 23, 2011;

(2) Section 60.5370a(c)—Permit exemption;

(3) Section 60.5413a(a)(5)—Exemptions from performance testing—hazardous waste incinerator;

(4) Section 60.5420a(a)(2)(i)—Advance notification requirements for well completions; and

(5) Section 60.5420a(a)(2)(ii)—Advance notification requirements of well completions when subject to state regulation that requires advance notification.

(g) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 63, subpart HH (National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (g)(1) through (6) of this section:

(1) Section 63.760(a)(2)—Facilities that process, upgrade or store hydrocarbon liquids;

(2) Section 63.760(b)(1)(ii)—Each storage vessel with the potential for flash emissions;

(3) Section 63.760(g)—Recordkeeping for major sources that overlap with other regulations for equipment leaks;

(4) Section 63.764(c)(2)—Requirements for compliance with standards for storage vessels;

(5) Section 63.766—Storage vessel standards; and

(6) Section 63.769—Equipment leak standards.

(h) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 60, subpart KKKK (Standards of Performance for Stationary Combustion Turbines), for purposes of this FIP, the owner/operator must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source.

§§49.106-49.120 [Reserved]