UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

June 13, 2011

Dear Tribal Leader:

I write today to announce that on June 10, 2011, the U.S. Environmental Protection Agency (EPA) finalized the rule titled, "Review of New Sources and Modifications in Indian Country." We crafted this Clean Air Act (CAA) rule after tribes identified a significant regulatory gap in permitting programs for Indian country – a gap that created uncertainty for both industries looking to locate in Indian country and for public health. This new rule, a part of the New Source Review (NSR) program, will establish a preconstruction air pollution permitting program for minor stationary sources throughout Indian country and major stationary sources located in areas in Indian country not meeting national clean air standards for outdoor air.

The purpose of the NSR program is to protect public health and the environment as new industrial facilities are built and existing facilities expand. NSR is a CAA program that requires industrial facilities to install modern pollution control equipment when they are being constructed and when they are making modifications to their process or facility that increase air pollution emissions significantly. Owners or operators obtain NSR permits from EPA limiting air emissions before they begin construction or modification.

EPA has sought every opportunity to include tribes during the planning stages and the development of this rule; for example, pre- and post proposal trainings and consultations were offered around the country to gather input from tribes. We established an ongoing workgroup with the tribes to keep them up-to-date on the rule status and to begin discussions on implementation. We will continue to work with tribes as the rule is implemented. As a tribe, for instance, you will need to know what impacts the rule will have on businesses that are tribally owned and operated, in addition to other businesses operating on your reservation. EPA will work with tribes to provide training, technical, and resource information to your staff to assist in implementation decisions and determine processes regarding the NSR rule.

For more information on this rule, training, or technical assistance, please contact your EPA Regional Office or Laura McKelvey at 919-541-5497 or mckelvey.laura@epa.gov. You can also visit: https://www.epa.gov/nsr for more information.

Sincerely,

Director
Office of Air Quality Planning
and Standards

Enclosures:
1) Fact Sheet
2) Regional Contact Sheet

FACT SHEET
REVIEW OF NEW SOURCES AND MODIFICATIONS IN INDIAN COUNTRY

Action

- On June 10, 2011, EPA finalized a Federal Implementation Plan (FIP) to ensure that Clean Air Act permitting requirements are applied consistently to facilities in Indian country. This action will help newly built or expanding industries protect people's health and the environment.

- These permits limit air pollutants such as particle pollution and sulfur dioxide that are associated with numerous health effects including aggravated asthma, increased respiratory symptoms, missed work and school days, hospitalization for heart or lung diseases and even premature death.

- This action will fill a regulatory gap by clarifying the permit process for large and small sources and ensuring that any increases in emissions from these facilities will not significantly impact air quality in these areas. This will help provide important environmental protection in Indian Country while supporting economic development.

- The FIP puts in place the two remaining pieces of the preconstruction air permitting program, known as New Source Review (NSR), in Indian country. It lays out requirements for EPA to issue air permits to sources in Indian country, or allows tribes to take responsibility for issuing air permits according to EPA's requirements.

- Together with existing rules for permitting major sources in areas of Indian country that currently meet clean air health standards, the FIP establishes the federal program for issuing all pre-construction air permits in Indian country. These permit programs are similar to what is currently done by states and will provide industries the same permitting opportunities as they have in states.

- The FIP is made up of two rules to protect air quality:
  - The minor NSR rule applies to new and modified small facilities or to minor modifications at large facilities in all of Indian country.
  - The nonattainment major NSR rule applies to new major sources or major sources that make significant modifications in areas of Indian country that do not meet national clean air health standards.

- Under the rules, a source owner or operator will need to apply for a permit before building a new facility or expanding an existing one if the facility increases emissions above any of the thresholds included in these rules. The permitting authority, either EPA or a tribe, will review the application and grant or deny the air permit. Permits will be open for public notice and comment as part of the review process.

- Tribes that choose to implement the rules can accept delegation of the federal program or they can develop and seek approval of a Tribal Implementation Plan (TIP) to administer these rules or portions of them, which would include some enforcement authority. EPA will maintain the sole authority to enforce these rules under federal law.

- The rules will provide a 36-month phase-in for small sources. Large sources will need permits upon construction (the same is true everywhere else). Sources interested in synthetic minor permits will be able to get them right away.

- EPA is collaborating with tribes to develop training and other resources to implement these permit programs. More information on the training sessions will be available soon on EPA's Tribal Air Web site: http://www.epa.gov/air/tribal/.

Minor NSR Rule

- The minor NSR rule applies to all of Indian country. New or modified industrial facilities with a potential to emit equal to or more than the minor NSR thresholds but less the major NSR thresholds, generally 100 to 250 tons per year (tpy), are "minor sources" of emissions and subject to the rule requirements.

- The minor NSR program provides three options for obtaining permits. These options are:
  - *Site-specific permits.* A site-specific permit includes case-by-case determinations of the source emissions limits as well as any control technology requirements;
  - *General permits.* A "general permit" is a permit that has been developed for a number of similar equipment types or facilities to simplify the permit issuance process for facilities. ; or
  - *Synthetic minor permits.* A synthetic minor permit applies to a source that has the potential to emit pollutants in amounts that are at or above the thresholds for major sources, but has voluntarily accepted emissions limitations so that its potential to emit is less than these thresholds. Under this rule, synthetic minor permits can be issued for both regulated NSR pollutants and toxic air pollutants.

- EPA will work on developing general permits, as a streamlined permitting option, for a number of source types in Indian country (e.g., dry cleaners, rock crushing facilities) and continue to explore other options for improving and streamlining the permit process for sources in Indian country such as permits-by-rule.

- The rule requirements include:
  - Case-by-case review of control technology for source-specific permits by the reviewing authority,
  - Air quality impact analysis upon request by the reviewing authority,
  - Monitoring, recordkeeping and reporting by the source owner or operator,
  - Public participation through public notices and comment requirements and administrative and judicial review upon a permit appeal and
  - Source registration with the reviewing authority

- Under the rule, sources have different responsibilities depending on their status:
  - Existing "true" minor sources, also called "natural" minor sources, will only need to register within the first 36 months of the program. After the first 36 months of the program or 6 months after a general permit for a source category is published, existing sources will need a permit only if the proposed modification emissions exceed the minor source thresholds.
  - New "true" minor sources will not need a permit and will only need to register within the first 36 months of the program. After the first 36 months of the program or 6 months after a general

permit for a source category is published, new sources will need a permit if the source' emissions exceed the minor source thresholds.
  - Existing "synthetic" minor sources may need permits depending on the mechanism they used to obtain their status as a "synthetic" minor.
  - New "synthetic" minor sources will be able to apply for permits starting on the rule's effective date.
  - Minor modifications at major sources will need to apply for permits starting on the rule's effective date

Nonattainment Major NSR Rule

- The nonattainment major NSR rule only applies to areas of Indian country that do not meet national clean air standards. New or modified industrial facilities with a potential to emit equal to or more than the major NSR thresholds, generally 100 tpy, are "major sources" of emissions and subject to the rule requirements.

- The requirements include:
  - *Installing emissions controls that meet the requirements of Lowest Achievable Emission Rate control technology,*
  - *Obtaining emissions offsets.* New or modified major sources contributing to increased emissions would have to obtain emissions reductions from other sources to offset that increase. These emissions offsets would provide a net air quality benefit in the affected area and
  - *Certifying compliance.* Each permit applicant must certify that all other facilities owned or operated by the applicant in the same state as the new or modified source are in compliance with all applicable air quality regulations.

- These requirements are the same as the requirements that apply in states for areas that do not have a State Implementation Plan (SIP) for implementing certain NSR provisions, the transitional NSR program commonly known as "Appendix S."

- The permit process will include public notice and comment requirements and administrative and judicial review provisions, similar to those in the minor NSR rule.

- Under the rule, major sources will need to apply for and receive a permit before they can construct or modify. The rule simply establishes a clear mechanism for them to do so.

Implementation

- Initial implementation, training and technical assistance will be guided by EPA in close collaboration with tribes.

- EPA Regions will primarily be responsible for implementing this rule until a tribe requests delegation of the federal program or until a tribe develops and gets approval of a Tribal Implementation Plan to run these programs.

- The implementation of the minor NSR rule will be phased in over 36 months, giving sources and EPA Regional Offices time to prepare:

- New and modified synthetic minor sources and minor modifications at major sources will be subject to the rule requirements on the rules' effective date, which will be 60 days after publication in the Federal Register; and
- True minor sources will be subject to the rule requirements 36 months after the rules' effective date or 6 months after a general permit for a source category is published, whichever is earlier.

- The phased implementation will allow EPA headquarters, regions and tribes to focus on capacity building, outreach and education about the permitting requirements. EPA headquarters and regions will work closely together to identify adequate resources to meet any increase in permitting needs.

Background

- EPA already has a federal plan in place for major sources in attainment areas in Indian country and has been issuing permits. Today's action puts a plan in place for the nonattainment major NSR program and the minor NSR program in Indian country. Only a few tribes have been administering EPA-approved minor NSR programs and no tribes have been administering EPA-approved nonattainment major NSR programs.

- NSR is a Clean Air Act program commonly known as the "preconstruction air permitting program" that requires industrial facilities to install modern pollution control equipment when they are built or when making a change that increases emissions significantly. The program accomplishes this when owners or operators obtain permits limiting air emissions increases before they begin construction.

- The purpose of the NSR program is to protect public health and the environment, even as new industrial facilities are built and existing facilities expand. Specifically, its purpose is to ensure that air quality:
  - does not worsen where the air is currently unhealthy to breathe (i.e. nonattainment areas)
  - is not significantly degraded where the air is currently clean (i.e. attainment areas)

- There are three types of NSR permitting programs, each with a different set of requirements. A facility may have to meet one or more of these sets of permitting requirements.
  - Prevention of Significant Deterioration (PSD) program applies to a new major source or a source making a major modification in an attainment area.
  - Nonattainment NSR program applies to a new major source or a source making a major modification in a nonattainment area.
  - Minor NSR program applies to a new minor source and/or a minor modification at both major and minor sources, in both attainment and nonattainment areas.

- An essential element of the three NSR programs, as with any federal air permitting program, is the opportunity for public notice and comment on all permits.

FOR ADDITIONAL INFORMATION

- Interested parties can download information on the final action from EPA's Web site at: www.epa.gov/nsr.

- Today's final action and other background information are also available either electronically in www.regulations.gov, EPA's electronic public docket and comment system, or in hard copy at EPA's Air and Radiation Docket and Information Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW, Washington, DC (Docket ID No. EPA-HQ-OAR-2003-0076). The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566-1742.

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http://www.epa.gov/oar/tribal/coordinators.html