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Mr. Peter Tsirigotis, Director
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Mail Code: D205-01
109 T. W. Alexander Drive
Durham, NC 27709

**Re: Federal Implementation Plan for 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**

Dear Mr. Peter Tsirigotis:

On August 2, 2015, The American Petroleum Institute ("API") filed a petition with the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Agency") seeking changes to the Federal Implementation Plan for 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 ("FIP"). 81 Fed. Reg. 35944 (June 3, 2016). Through subsequent discussions with the agency, we have concluded the FIP can be improved to provide greater clarity through minor modifications of the FIP and clarifying interpretations of key provisions. By this letter, we seek your consideration of the issues described below and how EPA may incorporate these changes through additional guidance or FIP amendments.

API is the only national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million U.S. jobs and nearly 8 percent of the U.S. economy. API's more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. They provide most of the nation's energy and are backed by a growing grassroots movement of more than 40 million Americans. Many of our members are directly impacted by the FIP.

Endangered Species Act and National Historic Preservation Act Screening

We continue to believe the EPA should revise the FIP to eliminate the requirement for case-by-case consideration of the ESA and NHPA. The FIP is no different than myriad other EPA CAA regulations that allow for implementation by affected sources yet do not require ESA or NHPA review. For example, when a new source is constructed that is covered by a maximum achievable control technology (“MACT”) standard (under CAA section 112), there is no obligation for ESA or NHPA review. Similarly, when the construction or modification of an affected facility triggers the applicability of a New Source Performance Standard (“NSPS” under CAA section 111), no ESA or NHPA review is required. Like the FIP, these are EPA-issued regulations that apply directly to affected sources or facilities.

In the spirit of compromise and to resolve the ESA/NHPA review issue, API proposes the following modification to the current FIP to streamline the approval process.

Recommendation: EPA should revise existing Section 49.104(a)(2) and (a)(2)(ii) to streamline the ESA/NHPA process. The regulatory language states that the Part 1 Registration Form for a project cannot be submitted until EPA confirms by letter that the ESA/NHSM screening procedure has been satisfactorily completed. The purpose for this limitation seems to be to ensure that construction does not commence until the screening process is complete.

EPA can meet its underlying goal while avoiding unnecessary delays by amending the language of 49.104 to allow sources to submit the Part 1 form at the same time as or shortly after submitting the screening assessment so that the 30 days for the registration and screening assessment occur simultaneously. EPA should clarify that construction cannot begin until the 30 days for review of the screening assessment has lapsed, unless EPA requests additional information. If EPA does request additional information to the screening assessment, the time period between the EPA request and the submittal by the operator of additional information will be added to the 30 days before construction can occur or until EPA provides a letter stating that the screening procedures have been satisfied.

There are instances where equipment (e.g., engine) may be replaced that should not trigger an initial ESA/NHPA screening assessment or warrant revision of an existing ESA/NHPA screening assessment. API requests clarification that these scenarios would not trigger new or additional screening.

Recommendation: EPA should provide a written response to clarify that the following circumstances will not trigger ESA/NHPA screening:

1. The replacement of equipment (e.g., engine) that doesn't result in an increase of emissions would not trigger a new ESA/NHPA screening requirement.
2. The replacement of equipment (e.g., engine) where there is an increase in emissions but where an ESA/NHPA screening assessment has been previously conducted that has sufficiently considered the new engine configuration.

Streamlined Synthetic Minor Permitting in Indian Country

API continues to believe the EPA should allow for the creation of synthetic minor sources. We believe that the FIP provides adequate permitting authority review because permitting authorities may request case-by-case review if they determine that the FIP is not adequate for a given project where the source seeks to establish itself as a synthetic minor. In any event, EPA's concerns about the need for greater permitting authority involvement can easily be resolved by issuing a parallel general permit for oil and gas sources. With a synthetic minor general permit, sources could begin construction as long as they meet the General Permit terms, and then obtain an operating permit under Title V, if needed. This allows industry to have predictable permitting timetables while also ensuring EPA oversight of facilities that trigger Title V operating permit conditions. Provisions for synthetic minor sources provide a level playing field between tribal lands and surrounding state lands and give operators flexibility to use more efficient operational configurations (such as shared equipment) and to lessen their environmental footprint by building fewer well pads.

Recommendation: API encourages EPA to pursue the development of a permitting mechanism for synthetic minor sources.

We appreciate your review and consideration of the issues that have been raised above. Please contact me at toddm@api.org or 202-682-8319 with any additional questions regarding the content of this submittal.

Sincerely,
/s/
Matthew Todd

cc: Mandy Gunasekara, USEPA
David Cozzie, USEPA
Chris Stoneman, USEPA
Greg Nizich, USEPA