

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Marc Himmelstein
Sent: Mon 8/28/2017 8:13:24 PM
Subject: Tribal letter
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Just saw this and wanted to make sure it was in the system



UTE INDIAN TRIBE

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August 15, 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 consider this letter the Ute Indian Tribe's formal request to ensure EPA's continued participation in the work of the Ute Indian Tribe Air Quality Working Group in formulating a Uintah and Ouray Reservation Specific Federal Implementation Plan and to revise and correct the Federal Implementation Plan for True Minor Sources in Indian Country for the Oil and Natural Gas Production and Natural Gas Processing Segments.

The Ute Indian Tribal Business Committee is charged with ensuring the responsible development of Tribal oil and gas minerals and the tens of millions of dollars in economic activity such development generates to fund services for the approximately 3,000 tribal members.

In fulfilling our responsibilities to our Tribal membership it is critical that the Business Committee once again remind the Administration that the EPA Federal Implementation Plan for True Minor Sources in Indian Country for the Oil and Natural Gas Production and Natural Gas Processing Segments (National Tribal NSR FIP) discriminates against the responsible development of tribal mineral resources and places the development of Indian minerals at a distinct disadvantage to private and state minerals. Furthermore, we must remind the Administration that it has had sufficient advanced notice of this prejudicial treatment and that a failure to implement a streamlined minor source permitting process following a nonattainment designation is arbitrary and capricious. In support of our formal request for rule revision, we offer the following:

- The Uintah Basin is a prolific oil and natural gas region which includes the Uintah and Ouray Reservation (U & O Reservation) encompassing more than 4.5 million acres. Mineral production on the U & O Reservation has been ongoing for 70 years and at its height included nearly 7,000 wells producing 45,000 barrels of oil and 900 million cubic feet of natural gas per day.

- Each year energy development on the U & O Reservation generates tens of millions of dollars in economic activity. Energy development is the economic engine that funds tribal government and the services provided to approximately 3,000 tribal members.
- Indian lands are not federal lands. All regulatory programs must respect tribal sovereignty and their people's right to self-determination. The Tribe best understands what is beneficial for its members. Federal agencies should acknowledge tribal self-determination and be supportive of tribal authority.
- The Tribe's ability to fully benefit from its resources is currently threatened by the regulation of oil and gas development at the federal level. EPA must ensure that the regulation of minor air emission sources in Indian Country does not discriminate against the development of Tribal minerals.
- In 2016 EPA finalized the *Federal Implementation Plan for True Minor Sources in Indian Country for the Oil and Natural Gas Production and Natural Gas Processing Segments* (National Tribal NSR FIP). The Ute Tribe was not properly consulted by EPA during this rulemaking process, which resulted in a rule that improperly impacts the U & O Reservation. Final rule language discriminates against the responsible development of tribal mineral resources. Specifically, the rule terminates the use of the FIP, a streamlined air permit approval process, following a designation of nonattainment. Such language places the development of Indian minerals at a distinct disadvantage when compared to neighboring state of Utah and private lands. The Uintah Basin is expected to be designated in nonattainment for ozone in the coming months; immediate action is required by EPA to prevent any discriminatory impacts to the Ute Tribe.
- EPA has had sufficient advanced notice that a failure to streamline minor source permitting following a nonattainment designation would prejudice the Ute Tribe of the U & O Reservation and its mineral development partners. EPA's failure to provide for this eventuality is arbitrary and capricious. Numerous commenters on the 2016 rule addressed the issue of the streamlined FIP option terminating upon a nonattainment designation. As one commenter stated: "The looming nonattainment designation could have a chilling effect on oil and gas development in such an area because the sources would lack certainty about applicable permit conditions and how they may change over time if the area's attainment status changes."
- A simple solution to this serious problem exists. The Ute Tribe recognizes that EPA and the Tribe must work together to address the regulation of existing minor sources on the Reservation in order to achieve meaningful reductions in Ozone emissions in the Uinta Basin. To this end, the Tribe has established a Tribal Air Quality Working Group, consisting of the majority of the Tribe's industry partners, to examine air quality issues on the Tribe's lands and develop recommendations to address this issue so that EPA can develop and implement a Reservation specific FIP. However, to ensure future development of Tribal lands, the Ute Indian Tribe formally requests that EPA revise the National Tribal NSR FIP so that it applies to newly designated nonattainment areas and

acts as a “bridge” until a Reservation specific FIP is implemented. Attached are suggested rule revisions to address this critical need.

- The Ute Tribe remains hopeful that EPA will timely institute the necessary appropriate actions to correct this matter and eliminate this obstacle to energy mineral development on Indian lands thereby promoting the welfare of current and future generations.

The Ute Indian Tribal Business Committee appreciates your personal and prompt attention to this matter and we look forward to working with you as EPA crafts a solution to address this issue which is of critical importance to the continued economic vitality of the Ute Indian Tribe.

If you have any questions, please contact our Washington, D.C. counsel, Rollie Wilson, at 202-340-8232. The Tribal Business Committee plans to be in Washington, D.C. on September 12-14th and requests a meeting with your or your appropriate delegate to further discuss these issues.

Sincerely,



Luke Duncan
Chairman, Ute Tribal Business Committee

Attachment

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

§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 (vi) ~~(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.