



December 4, 2015

Via Federal eRulemaking Portal: <http://www.regulations.gov>

Ms. Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
EPA Docket Center  
Mail Code 2821T  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

Re: *Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country* – Docket ID number: EPA-HQ-OAR-2014-0606

Dear Administrator McCarthy:

Western Energy Alliance submits the following comments on the U.S. EPA *Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country* (referred to herein as the proposed FIP or National FIP).

The Alliance represents over 450 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. Alliance members are independents, the majority of which are small businesses with an average of fifteen employees. The following oil and natural gas trade associations also sign in support of these comments:

American Exploration and Production Council  
Idaho Petroleum Council  
Independent Petroleum Association of America  
Independent Petroleum Association of New Mexico  
La Plata County Energy Council  
Montana Petroleum Association  
New Mexico Oil and Gas Association  
North Dakota Petroleum Council  
Oklahoma Independent Petroleum Association  
Utah Petroleum Association

Many of our members operate in Indian country and require a streamlined permitting approach that is self-implementing and supports the responsible development of mineral resources on Indian Lands.

December 4, 2015

Page 2 of 13

Western Energy Alliance supports a number of components proposed in the National FIP. First, we support EPA's decision to use a FIP as the regulatory mechanism for this program. We agree with EPA's stated sentiment that "[t]he FIP would reduce burden for sources and the Reviewing Authority and prevent delays in new construction due to the minor NSR permitting obligation." 80 Federal Register 56557 (Sept. 18, 2015). Second, we support EPA's decision to focus on new sources, rather than existing sources, under the FIP. We agree that existing sources are best addressed in the context of area-specific rule-makings, at a time when the individual need arises. Third, we support EPA's strategy to align the FIP with existing Federal standards. As EPA stated in the proposal, there is value in relying on regulations that have been vetted through the public comment process and that operators have already committed to complying with. See 80 Fed. Reg. at 56569. Fourth, we thank EPA for its decision to extend the National FIP registration deadline from March 2, 2016 to October 3, 2016. This deadline extension will give operators much needed time to fully comprehend the new rule and prepare for future development in Indian country.

However, in order to establish a truly streamlined permitting mechanism that conserves the agency's resources and facilitates development in Indian country, EPA must make a number of revisions to the National FIP, as outlined below.

#### **EPA Must Allow Other Federal Standards and Tribal Standards to Limit PTE**

The National FIP states at 40 CFR § 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 subpart A, and subpart OOOOa of 40 CFR part 60, in the Prevention of Significant Deterioration regulations at 40 CFR 52.21, or in the Federal Minor NSR Program in Indian Country at 40 CFR 49.152." The Alliance understands this incorporation to mean that EPA proposes to include the definitions of "Potential to emit" and "Enforceable as a Practical Matter" in 40 CFR 49.152 into the National FIP.

40 CFR Section 49.152 defines "Potential to emit" as:

the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable as a practical matter. Secondary emissions, as defined at § 52.21(b)(18) of this chapter, do not count in determining the potential to emit of a source.

The definition above refers to limitations that are "enforceable as a practical matter." Section 49.152 separately defines "Enforceable as a Practical Matter" to mean enforceable by the "Reviewing Authority" or, in other words, EPA or a tribe delegated to implement the FIP.

December 4, 2015

Page 3 of 13

EPA's definition of "Enforceable as a Practical Matter" in Section 49.152 conflicts with the D.C. Court ruling in *National Mining Ass'n v. EPA*, 59 F.3d 1351(D.C. Cir. 1995). It is important to be able to account for other enforceable limits because (1) EPA source-specific permitting for new sources and modifications can be burdensome and time-consuming; (2) NSPS and NESHAPs may not limit PTE in some instances (as discussed below) and (3) EPA has not created synthetic minor limits in this FIP nor created a mechanism in this FIP to obtain limits in a streamlined manner. Other limits include limits imposed by the BLM or a Tribal authority. EPA's definition of "Enforceable as a Practical Matter" would not allow consideration of those limits. The D.C. court ruled that EPA must consider those other enforceable limits.

Accordingly, EPA should revise 40 CFR 49.152 "Enforceable as a practical matter" to read: Enforceable as a practical matter means that an emission limitation or other standard is both legally and practicably enforceable as follows:

- (1) An emission limitation or other standard is legally enforceable if a government authority, federal or tribal, has the right to enforce it.

#### **The National FIP Should Fill Existing Gaps in the Permitting Program for True Minor and Synthetic Minor Sources in Indian Country**

The FIP as proposed does not provide any means for owners and operators to voluntarily obtain enforceable emission limitations on potential to emit (PTE). Owners and operators of stationary sources located within Indian country will be forced to seek such limitations via the existing synthetic minor permitting process. Furthermore, a number of emission sources common in the oil and natural gas production sector are not subject to the six Federal standards adopted in the National FIP and therefore, there is no mechanism to obtain federally enforceable emission limits for such sources outside of site-specific permitting or the synthetic minor permitting process. Please note the following examples:

- Storage vessels not subject to NSPS
- Flares burning separator/treater gas (no NSPS/NESHAP applies to separators) that, without enforceable controls, may exceed major source thresholds in and of itself
- Heaters not located at major sources of HAP and not subject to NESHAP DDDDD
- Engines grandfathered from NSPS and not subject to control requirements under NESHAP ZZZZ
- Area source glycol dehydration units not subject to controls under NESHAP HH
- Pneumatic pumps grandfathered from the forthcoming NSPS OOOOa

EPA has set precedent with policies to develop general permits, permits by rule and FIPs for common types of emissions units and minor sources to streamline the permitting

December 4, 2015

Page 4 of 13

process. Take, for example, the Fort Berthold Indian Reservation (FBIR) FIP. 78 Fed. Reg. 17836 (Mar. 22, 2013). EPA promulgated a reservation-specific FIP “to establish enforceable control requirements for reducing VOC emissions from oil and natural gas production activities on the FBIR in North Dakota.” Id. at 17838.

The FBIR FIP interim final rule provides a helpful explanation for the FBIR FIP’s utility and value:

“[O]wners and operators of oil and natural gas operations producing from the Bakken Pool on the FBIR are potentially subject to the Federal preconstruction permitting requirements found in the Federal rules at 40 CFR 52.21 (Prevention of Significant Deterioration of Air Quality), and 40 CFR 49.151 through 49.161 (Federal Tribal NSR Rule). However, on the FBIR only NSPS OOOO and NESHAP HH provide legally and practicably enforceable VOC control requirements outside of the Federal pre-construction permitting requirements. Further, NSPS OOOO only applies to new and modified facilities and only to the oil storage tanks being utilized in the Bakken Pool operations. Thus, most owners and operators of oil and natural gas activities producing in the Bakken Pool must obtain preconstruction permits before production can begin, or if they are not obligated to obtain a permit face no control obligations whatsoever.”

77 Fed. Reg. 48878, 48882 (Aug. 15, 2012).

Owners and operators of production facilities within areas of Indian country outside of the FBIR face a similar regulatory gap. Only NSPS OOOO and NESHAP HH provide legally and practicably enforceable VOC control requirements outside of the Federal pre-construction permitting requirements. Similarly, only certain NSPS and NESHAP standards provide legally and practicably enforceable control requirements for regulated NSR pollutants other than VOC that are or may be emitted from stationary internal combustion engines and other sources commonly used within the industry.

As explained in the preamble of the National FIP, “The FBIR FIP does provide legal and practical enforceability for the use of VOC emission controls...” 80 Fed. Reg. at 56567. These FBIR FIP control mechanisms provide operators with a predictable and reasonable timeline to permit new development. We request the option for these same types of legal and practically enforceable emission controls in the National FIP. Accordingly, we propose that EPA consider the following provisions:

Insert new section 49.106 to the National FIP providing:

- (a) Sources not subject to NSPS or NESHAPs may elect to comply with a NSPS or NESHAP under this FIP as a mechanism to establish enforceable conditions on the source’s potential to emit. Once the source elects to be subject to the NSPS or NESHAP, the NSPS or NESHAP are enforceable against the source under this FIP.

December 4, 2015

Page 5 of 13

(b) (i) Sources may elect to be subject to one or more facility-wide emission limits listed below.

- a. 249 tons per year of any NSR regulated pollutant in an attainment area;
- b. 99 tons per year of any NSR regulated pollutant in any nonattainment area;
- c. 24 tons per year of total hazardous air pollutants;
- d. 9 tons per year of any single hazardous air pollutant;
- e. 99 tons per year of any regulated pollutant;

(ii) The facility-wide emission limits are 12-month rolling limits. Once a source elects coverage under this paragraph, the source must demonstrate compliance every month based on emissions of the prior 12 months.

(iii) Sources subject to this paragraph shall demonstrate compliance and determine emissions based on the monitoring and recordkeeping dictated in any NSPS or NESHAP for the types of equipment covered under the facility-wide emissions limit.

(iv) Sources subject to this paragraph shall monitor emissions and emissions-related data and keep records consistent with NSPS or NESHAP monitoring and recordkeeping for the types of equipment covered by the emissions limit for the purposes of compliance with this paragraph, even if such equipment is not subject to the NSPS or NESHAP.

The facility-wide emission limit proposed here is the preference for many operators. Additionally, the Alliance encourages EPA to offer flexibility to operators so they can select an approach best suited to their individual needs to fill the gaps identified in this section. Thus, the Alliance strongly encourages EPA to offer a menu of options to operators in order to ensure that the FIP contains robust yet flexible control measures, rather than a prescriptive, one-size-fits-all approach.

For some operators, limitations based on throughput, production, or hours of operations may be a useful approach. The Alliance suggests that in addition to the facility-wide emission limits proposed above, EPA also allow operators the opportunity to request synthetic minor status during registration of facilities in the form of requesting federal enforceability for limitations on production, throughput, or hours of operation for designated emission units. Operators would request synthetic minor status, identify the emission unit, identify the means of limitation (e.g. production limitation), and provide the numerical limitation. Operators would then have an obligation to maintain records of the chosen limitation on a monthly basis and provide those records to EPA upon request.

By example, an operator could designate a well site facility in its registration to EPA as requesting synthetic minor status with a limitation on annual oil production. The operator

December 4, 2015

Page 6 of 13

would be required to designate the numeric annual oil production limitation and track oil production on a monthly basis. The oil production limitation would then become federally enforceable.

Without emission limits or limits on production, throughput and/or hours of operation within the National FIP to serve to limit the PTE for synthetic minor sources and synthetic minor modifications, an overwhelming number of operators in Indian country will have to obtain site-specific permits for future development. As a result, EPA will receive an overwhelming number of individual permit applications that will create an undue burden on the Agency and its resources. Furthermore, development efforts in Indian country will experience lengthy permitting delays and interruption in new construction, thereby disadvantaging production from Indian country compared to state and fee lands.

### **Minor Modifications at Major Sources Need the FIP Streamlined Process**

The FIP should be available also for minor modifications at major sources and modifications at synthetic minor sources. EPA does not explain why the FIP is limited only to new and modified true minor sources. Minor modifications at major sources can be of the same size and type as modifications at minor sources. Similarly, modifications at synthetic minor sources can be the same as a modification at a true minor source. EPA unreasonably limits the FIP to modifications at true minor sources. Major sources and synthetic minors that might have already undergone the burden of source-specific permitting should not continue to be disadvantaged with source-specific permitting for minor modifications. EPA must revise language throughout the rule that refers modifications to true minor sources by removing “true” and allow the FIP to be used for modifications at any existing minor source and allowing the FIP to be used for minor modifications at any existing major source.

EPA must also revise paragraph A under the applicability section; 40 CFR §49.153(a)(1)(ii)(A) should state:

For the pollutant being evaluated, determine whether your proposed modification is subject to review under the applicable major NSR program. If the modification at your existing major source does not qualify as a major modification under that program based on the actual-to-projected-actual test, it is considered a minor modification and is subject to the minor NSR program requirements, if the net emissions increase from the actual-to-projected-actual test is equal to or exceeds the minor NSR threshold listed in Table 1 of this section, except that modifications at oil and natural gas production sources shall instead comply with the requirements of the Federal Implementation Plan at §§ 49.101 to 49.105, unless you opt-out of the Federal Implementation Plan pursuant to § 49.101(b)(2) in which case you are subject to the preconstruction requirements of this program for that pollutant or are required by the EPA to obtain a minor source permit

December 4, 2015

Page 7 of 13

pursuant to § 49.101(b)(3). For a modification at your existing minor source, go to Step 2 (paragraph (a)(1)(ii)(B) of this section).

**The National FIP Must be Revised to Remove the Jurisdictional Overreach Regarding the Endangered Species Act and National Historic Preservation Act**

We are concerned that EPA's requirements for additional analysis under the Endangered Species Act (ESA) and National Historic Preservation Act (NHPA) in the National FIP will lead to additional lengthy permitting delays. It is counterproductive to develop a nationwide FIP for permitting that includes site-specific individual determinations for each permitted location. Operators must already contemplate impacts to threatened and endangered species as well as cultural resources in development plans. This added, secondary layer of approval proposed by EPA will add delay and expense while duplicating existing protections for species and cultural resources.

As EPA states in the proposal preamble, "[a] FIP...has the advantage of not requiring a source to initiate advance review and obtain approval of coverage from the Reviewing Authority before beginning construction...and it would reduce the resource burden on reviewing authorities associated with processing the potentially large volume of requests...". 80 Fed. Reg. at 56568. Through the requirement to assess threatened and endangered species and historic properties under the FIP, EPA is compromising the very benefits of a FIP.

The Alliance is also concerned with the jurisdictional overreach of EPA regarding requirements related to threatened and endangered species and historic properties in the proposed regulations. As recognized in the proposed rule, an operator is required to obtain an Application to Drill (APD) on federal lands or lands held in trust by the federal government in order to conduct any oil and natural gas production activities. In order to obtain an APD, the operator must work with both the Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM) to conduct the necessary consultations required under the Endangered Species Act (ESA) and National Historic Preservation Act (NHPA) through the National Environmental Policy Act (NEPA) process. However, where there is no federal nexus, the EPA has no jurisdiction to require ESA or NHPA consultations. Therefore, Western Energy Alliance has concerns with the section in the proposed rule requiring operators to conduct a screening process for ESA and NHPA review before beginning construction under the proposed FIP on lands with no federal nexus. EPA is not a surface management agency and does not have jurisdiction under the ESA and NHPA on state and private lands.

**Pre-Construction Registration is Unworkable**

The inherently unpredictable nature of oil and natural gas production makes the pre-construction requirement proposed by EPA a burdensome requirement that will be of limited use to EPA and confusing to the public.

December 4, 2015

Page 8 of 13

First, it is important to note that operators are unable to accurately determine their PTE prior to construction. A number of variables, some known and some unknown, will dictate how a well comes online and the level of emissions associated with production. For example, operators are constantly evaluating completion activities with an eye toward innovation. Within even a short amount of time, an operator may develop a more efficient completion process that may increase initial production and thereby potentially increase emissions. However, efficiencies may not be discovered until after the new process is attempted (i.e. post-construction). Accordingly, pre-construction registrations are essentially educated guesses.

Pre-construction emission estimates are of limited use to EPA. Such estimates are not accurate enough to be used in emission inventories and certainly cannot be relied on for the purposes of air quality modeling.

Finally, the inaccurate information and confusion created by a pre-construction registration will only be compounded when this information is made publicly available on EPA's website. Alliance members have observed instances where third parties have analyzed overstated PTE estimates, treating those numbers as actuals, which has led to overstated evaluations of oil and natural gas development's impact on airsheds.

In order to provide EPA and others with more accurate actual data, the pre-construction registration will need to be amended after construction once actual emissions have been determined. This revision will require duplicative work by operators, which is inefficient, costly, and offers no environmental benefit. Furthermore, EPA will be tasked with processing and reviewing duplicative submittals.

As a solution to this problem, instead of preconstruction registration, we urge EPA allow operators to register under the FIP by providing actual emissions data (based on the first thirty days of production) due within ninety days of the first date of production. A similar practice is already allowed by EPA under the existing NSPS OOOO rules. Several states also acknowledge the value in post-construction registration and/or permitting of oil and natural gas production facilities.

In Wyoming, oil and natural gas operators may commence operation and modification of a facility prior to obtaining an Air Quality Permit under Wyoming Air Quality Standards and Regulations, Chapter 6, Section 2, so long as the operator satisfies certain emission control requirements outlined in Wyoming Department of Environmental Quality's Oil and Gas Production Facilities, Chapter 6, Section 2 Permitting Guidance (last revised September 2013).

In Colorado, emission information related to new/modified oil and natural gas exploration and production operations (well site and associated equipment) is not required to be submitted to Colorado's Air Pollution Control Division until "after exploration and/or



December 4, 2015

Page 9 of 13

production drilling, workovers, completions and testing are finished.” See Air Quality Control Commission Regulation No. 3, Part A, Section II.D.1.III. In allowing the submission of emission data post-construction, Colorado’s Air Quality Control Commission noted:

Oil and gas exploration activities are activities for which it is difficult for the owner or operator to estimate what emission equipment will be required, and therefore what emissions will occur, until the exploration activities are already underway, and near completion. For this reason, the Air Pollution Control Division (Division) has extended a temporary exemption from APEN and permit requirements for such activities. Before commencing exploration activities, the source must notify the Colorado Oil and Gas Conservation Commission (COGCC). In this way, the Division is aware of the activities and will be able to address any concerns that are raised by the public.

Air Quality Control Commission Regulation No. 3, Part G, Statement of Basis, Section I.K (adopted June 22, 1993).

The North Dakota Department of Health provides a similar, post-construction registration process for operators in North Dakota. A completed oil and natural gas well registration form and gas analysis must be submitted to the Department of Health within ninety days of the completion or recompletion of a well. North Dakota Century Code Chapter 33, Section 15-20-02. The Department of Health recognizes that:

...emissions associated with the exploration and production of O&G resources cannot be predicted with any degree of precision or accuracy until after it is determined the oil or gas well will actually produce and site specific production data are collected and known. Therefore, unlike other stationary sources for which projected emissions upon startup can be estimated in advance for purposes of pre-construction air permitting, emissions from O&G exploration and production facilities are only known post-construction and completion.

North Dakota Department of Health, Bakken Pool Oil and Gas Production Facilities Air Pollution Control Permitting & Compliance Guidance (May 2, 2011).

Allowing oil and natural gas operators to provide emission information within ninety days of the first date of production under the FIP will conserve EPA resources and provide the agency with more accurate information.

**EPA’s Site-Specific Permitting Authority under the Proposed National FIP Is Overly Broad and Potentially Exceeds Agency Authority**

Western Energy Alliance is concerned with EPA’s proposal to require minor site-specific permits on a case-by-case basis, in lieu of the streamlined registration process provided in the National FIP. The proposal grants EPA with overly broad and unrestricted discretion to

December 4, 2015

Page 10 of 13

require site-specific permits. Proposed 40 CFR Section 49.101(b)(3) provides that EPA may require owners and operators of oil and natural gas production facilities to obtain a site-specific permit “to ensure protection of the NAAQS.” 80 Federal Register 56564, 56573 (Sept. 18, 2015). EPA further expands on its discretion in the preamble stating, “the Reviewing Authority may determine that the source is not sufficiently controlled under the proposed FIP to protect the NAAQS in the area of the proposed project (e.g., if the measured design value for the area is close to or above the level of the NAAQS). In that circumstance, the Reviewing Authority can require the minor source to obtain a site-specific permit.” 80 Fed. Reg. at 56564. The authority laid out in this proposal to require site-specific permitting is too broad.

We question EPA’s authority to impose site-specific permitting requirements in areas that have not yet been officially designated out of attainment of the National Ambient Air Quality Standards (NAAQS) for any criteria pollutant standards. Further, in light of the recently lowered NAAQS for ozone of 70 ppb, a substantial number of areas in Indian Country may now be deemed “close to” the standard, triggering EPA’s discretion to require site-specific permits. Site-specific permitting in areas “close to” the standard will disadvantage development in Indian country as it relates to development in state airsheds. While Indian country development will be stifled by site-specific permitting timelines, development in the state airshed will be supported through existing, state-created general permitting schemes for minor sources.

Note that states have set parameters around the state discretion to impose source-specific obligations, including air quality impact analysis for minor sources. For example, Arizona limits discretion as follows “The Director shall make such a request [for an air quality impact assessment], if there is reason to believe that a source or minor NSR modification could interfere with attainment or maintenance of a standard. In making that determination, the Director shall take into consideration: 1. The source’s emission rates. 2. The location of emission units within the facility and their proximity to the ambient air. 3. The terrain in which the source is or will be located. 4. The source type. 5. The location and emissions of nearby sources. 6. Background concentrations of regulated minor NSR pollutants.” Arizona Administrative Code Title 18, Chapter 2, Section R18-2- 334(E)(1)-(6). EPA has proposed no limits on EPA discretion nor described any objective parameters or the factual basis for exercising such discretion.

EPA’s proposal preamble further provides, “[t]he agency recommends at the time of registration, the owner/operator of all new sources or all sources scheduled for modification contact the Reviewing Authority for a review of the air quality status of that area, and the possibility of a requirement for a site specific permit.” 80 Fed. Reg. at 56564. Such a recommended practice slows down the permitting process, calls on additional agency resources, and runs counter to the principles of a streamlined registration process. We implore EPA to honor one of the core benefits of the National FIP – a streamlined registration scheme for minor emission sources – and not eclipse such a benefit by declaring the right to require site-specific permitting in a broad and unrestricted manner.

December 4, 2015

Page 11 of 13

Accordingly, we urge EPA to remove the language cited above in the preamble and National FIP, granting the Agency unlawful authority to require site-specific permitting simply to “ensure attainment of the NAAQS,” in areas where the measured design value is “close to” the relevant NAAQS and based on a case-by-case “review of the air quality in that area.”

### **The National FIP Must Provide for Streamlined Permitting for Nonattainment Areas**

As proposed, the National FIP does not cover nonattainment areas. “It [the FIP] would not apply to new and modified true minor sources that are located or expanding in referenced areas of Indian country designated nonattainment.” 80 Fed. Reg. at 56557. Further, EPA fails to provide a transition for when an area goes from an attainment or unclassified designation to a nonattainment designation. Given the recently lowered ozone standard, this scenario is likely to play out in several areas of Indian country, most notably the Uinta Basin. Once a nonattainment designation is made, the only apparent registration/permitting mechanism is site-specific permitting for all minor sources of emissions.

Moreover, the Clean Air Act does not mandate any attainment planning for areas designated marginal nonattainment. Even for areas designated moderate nonattainment, attainment plans are not due until three years after the official designation. During this delay associated with any area-specific minor NSR nonattainment program, the source-specific permitting burden will increase for both major sources and minor sources. The major source threshold reduces from 250 tpy to 100 tpy and the minor source threshold decreases for VOCs from 5 tpy to 2 tpy. The number of source-specific permits will increase under any scenario for EPA simply based on the lower major source threshold.

As stated by EPA itself, it is not viable for EPA to deny coverage of this FIP for nonattainment areas “due to our inability to process hundreds of true minor source permits in an acceptable timeframe.” 80 Fed. Reg. at 56568. For example, note EPA Region 8’s receipt of over 6,000 oil and natural gas minor source registrations to date. In the other minor NSR streamlined permitting rules for Bundle 1, EPA included provisions that would allow continued use of streamlined permitting in nonattainment areas. See, 80 Fed. Reg. 25068 (May 1, 2015). EPA has provided no nonattainment options for oil and natural gas sources. Streamlined minor NSR in many states are available in nonattainment areas. By denying a FIP option for minor sources in nonattainment areas, EPA disadvantages oil and natural gas sources in Indian country.

EPA’s Indian Country Minor NSR rule has lower minor NSR thresholds for nonattainment areas; for VOCs the threshold is 2 tpy rather than the 5 tpy for attainment areas. Thus, in nonattainment areas, the Indian Country minor NSR program applies to sources that would be exempt if they were in attainment areas. With the lower threshold, EPA’s Indian Country minor NSR program covers more sources than it covers in attainment areas and more than other western states’ minor NSR programs for attainment and nonattainment

December 4, 2015

Page 12 of 13

areas. Arizona exempts sources from minor NSR that have emissions below 20 tpy of VOCs, New Mexico and South Dakota exempt sources below 25 tpy, Utah and Oklahoma exempt sources below 5 tpy. The proposed Indian Country oil and natural gas minor NSR FIP would not exempt from minor NSR any sources with emissions above the minor NSR thresholds and the Alliance is not asking EPA to revise the exemption threshold. However, the oil and natural gas minor NSR FIP should extend its streamlined authorization for new and modified minor sources and minor modifications at major sources to similarly sized sources in nonattainment areas.

Other western states apply the streamlined minor NSR program for oil and natural gas sources in nonattainment areas. Oklahoma's oil and gas PBR covers sources below 40 tpy of any regulated pollutant (except HAPs) and 10/25 tpy of HAPs. See Oklahoma Administrative Code, Title 252, Chapter 100, Subchapter 7-60.5(a)(1). Wyoming allows all sources with potential emissions below 100 tpy of criteria pollutants and 10/25 tpy of HAPs to begin construction or undertake a modification before obtaining a permit under Wyoming's Oil and Gas Presumptive BACT Permitting Guidance. Wyoming Department of Environmental Quality's Oil and Gas Production Facilities, Chapter 6, Section 2 Permitting Guidance (last revised September 2013). Colorado also has streamlined minor NSR programs that can be used in areas of nonattainment. By way of example see the following General Construction Permit examples in Colorado. They contain additional requirements for applications in nonattainment areas, so one can infer that they are accepted for use in the Denver-Julesburg Basin in Colorado's Front Range nonattainment area.<sup>12</sup>

To remedy these gaps, Western Energy Alliance urges EPA to provide for an expedited permitting mechanism for minor sources in nonattainment areas in the National FIP. EPA should allow owners/operators use of the National FIP for nonattainment permitting until a basin specific new minor source permitting program becomes effective under the implementation planning process to achieve attainment. An expedited permitting scheme for nonattainment areas in the National FIP would provide regulatory certainty for oil and natural gas operators, limit emissions, as necessary, during the transitional phase of designation and implementation planning and eliminate any disadvantage to the further, responsible development of oil and natural gas resources in Indian Country.

By denying coverage under the FIP for all sizes of minor sources and modifications, EPA imposes source-specific permitting for all emission increases without regard for their potential contribution or any reasonably available emission controls; for VOCs, this source specific permitting would apply to increases between 2 tpy and 99 tpy. As described above, states and EPA have acknowledged that even in nonattainment areas, there are levels of emissions that can be deemed insignificant even for nonattainment areas. The Alliance does not ask that EPA exempt all small sources from minor NSR but asks EPA to ensure some streamlined permitting approach in nonattainment areas. The Alliance is

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<sup>1</sup> [General Construction Permit GP01 Version 3](#), State of Colorado. May 15, 2013.

<sup>2</sup> [General Construction Permit, GP07 Version 1](#), State of Colorado. April 17, 2014.

December 4, 2015

Page 13 of 13

confident there is a mechanism to allow for development in nonattainment areas under the National FIP that will simultaneously ensure that new emissions do not cause or contribute to a NAAQS violation.

In conclusion, the Alliance reiterates the need for a streamlined, self-implementing National FIP for oil and natural gas development in Indian Country that covers both new minor sources and minor modifications at existing sources, allows for a mechanism to limit PTE, the inclusion of enforceable controls for synthetic minor sources, limited exceptions to FIP applicability, post-construction registration requirements, and a streamlined permitting mechanism for nonattainment areas. We thank EPA for the opportunity to comment on the proposed National FIP and would like to continue to work with EPA as it further develops this program. Please feel free to contact me regarding any questions with our comments.

Sincerely,



Kathleen M. Sgamma  
Vice President of Government and Public Affairs