

when the Agency decides not to use available and applicable VCS.

This action does not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

This proposed rule does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), because it does not change any regulatory requirements. This action merely corrects and clarifies existing requirements.

**List of Subjects in 40 CFR Part 63**

Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 1, 2011.

**Lisa P. Jackson,**  
Administrator.

[FR Doc. 2011-5195 Filed 3-8-11; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 70**

[EPA-R08-OAR-2011-0015; FRL-9277-9]

**Clean Air Act Proposed Interim Approval of Title V Operating Permits Program; Southern Ute Indian Tribe**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes interim approval of the Title V Operating Permits Program submitted by the Southern Ute Indian Tribe (Tribe). The Tribe's Title V Operating Permit Program (Title V Program) was submitted for the purpose of administering a tribal program for issuing operating permits to all major stationary sources, and certain other sources on the Southern Ute Indian Reservation (Reservation).

**DATES:** Comments on this proposed action must be received on or before April 8, 2011. Comments should be addressed to the contact indicated below.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2011-0015, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-mail:* [lebow-aal.deborah@epa.gov](mailto:lebow-aal.deborah@epa.gov) and [north.alexis@epa.gov](mailto:north.alexis@epa.gov).
- *Mail:* Deborah Lebow Aal, Acting Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- *Hand Delivery:* Deborah Lebow Aal, Acting Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-OAR-2011-0015. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment

that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Alexis North, Air Program, Mailcode 8P-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-7005, or [north.alexis@epa.gov](mailto:north.alexis@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The word *Act* or initials *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The word *Commission* means the joint Southern Ute Indian Tribe/State of Colorado Environmental Commission.

(iii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iv) The word *Title V Program* means the Tribe's *Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated

January 14, 2009 and the subsequent *Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010.

(v) The word *Tribe* means the Southern Ute Indian Tribe, unless the context indicates otherwise.

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## I. General Information

*A. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the

public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

## II. What is being addressed in this document?

Under Title V of the Clean Air Act (the Act or CAA) as amended (1990), EPA has promulgated rules that define the minimum elements of an interim approval of a Title V operating permits program for state and tribal permitting authorities. The corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state and tribal Title V operating permits programs can be found at 57 FR 32250 (July 21, 1992) and 63 FR 1322 (January 10, 2000) and codified at 40 CFR part 70.

In addition, as part of the 1990 Amendments to the CAA, Congress enacted Section 301(d) authorizing EPA to “treat Indian tribes as states” under the Act so that tribes may develop and implement CAA programs in a similar manner as states within tribal reservations or in other areas subject to tribal jurisdiction. Section 301(d)(2) of the Act authorizes EPA to promulgate regulations specifying those provisions of the CAA “for which it is appropriate to treat Indian tribes as States.” 42 U.S.C. 7601(d)(2).

On February 12, 1998, EPA issued a final rule specifying those provisions of the CAA for which it is appropriate to

treat eligible Indian tribes in a similar manner as states, known as the Tribal Authority Rule (TAR). 63 FR 7254, codified at 40 CFR part 49. As a general matter, EPA determined in the TAR that it is not appropriate to treat Indian tribes in a similar manner as states for purposes of specific CAA program submittal and implementation deadlines. This is because, among other reasons (discussed at 59 FR at 43,964–65), although the CAA contains many provisions mandating the submittal of state plans, programs, or other requirements by certain dates, the Act does not similarly require Indian tribes to develop and seek approval of CAA programs.

Thus, Indian tribes are generally not subject to CAA provisions that specify a deadline by which something must be accomplished, e.g., provisions mandating the submission of state Title V operating permits programs under sections 502(d)(1), 502(d)(2)(B), and 502(d)(3) of the Act. 40 CFR 49.4.

A tribe that meets the eligibility criteria for treatment in a similar manner as a state (TAS) may, however, choose to implement a CAA program. A tribe may also submit reasonably severable portions of a CAA program, if it can demonstrate that its proposed air program is not integrally related to program elements not included in the plan submittal and is consistent with applicable statutory and regulatory requirements. 40 CFR 49.7(c); see also CAA section 110(o). This modular approach is intended to give Indian tribes the flexibility to address their most pressing air quality issues and acknowledges that Indian tribes often have limited resources with which to address their environmental concerns. Consistent with the exceptions listed in 40 CFR 49.4, once submitted, an Indian tribe's proposed air program will be evaluated in accordance with applicable statutory and regulatory criteria in a manner similar to the way EPA would review a similar state submittal. 40 CFR 49.9(h).

EPA expects Indian tribes to fully implement and enforce their approved CAA programs and, as with states, EPA retains its authority to impose sanctions for failure to implement an approved air program. See 59 FR 43,956 at 43,965 (Aug. 25, 1994) (explaining EPA's rationale for treating Indian tribes in a similar fashion as states for purposes of mandatory sanctions for failure to adequately implement an approved part D program (CAA 179(a)(4)) and with respect to EPA's discretionary authority to impose sanctions (CAA 110(m)); 40 CFR 49.3.

The CAA allows Indian tribes to develop and submit Title V operating permit programs to EPA at their own discretion. The EPA's Title V operating permit program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for interim approval, full approval or disapproval. The Tribe has requested such approval and this action is in response to that request.

### III. Evaluation of the Tribe's Authorities

The EPA completed a review of the Tribe's current and pending authority to regulate air pollution sources located within the exterior boundaries of the Reservation. Under section 301(d) of the CAA and the TAR, EPA may treat a tribe in a similar manner as a state for purposes of administering certain CAA programs or grants if the tribe demonstrates that: (1) It is a federally-recognized tribe; (2) it has a governing body carrying out substantial governmental duties and powers; (3) the functions to be exercised by the tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation (or in other areas under the tribe's jurisdiction); and (4) it can reasonably be expected to be capable, in EPA's judgment, of carrying out the functions for which it seeks approval, consistent with the CAA and applicable regulations. The sections below outline the details of EPA's review of the Tribe's authorities.

#### A. Current Tribal Authority

In July 1998 the Southern Ute Indian Tribe applied for TAS seeking approval to administer a CAA Title V air quality operating permit program throughout the Reservation. The State of Colorado challenged the Tribe's CAA TAS application, asserting that the Act of May 21, 1984, Public Law 98-290, 25 U.S.C. 668, which defined the boundaries of the Reservation, established the State's jurisdiction to regulate non-Indian-owned air pollution sources located on fee lands within the Reservation. The Tribe and the State, while continuing to disagree over who has jurisdiction over these sources, formed the Southern Ute Indian Tribe/State of Colorado Environmental Commission (Commission), and executed an intergovernmental agreement (IGA) on December 13, 1999, to establish a single air quality program applicable to all lands within the exterior boundaries of the Reservation.

In general, the IGA allows for the Tribe to implement and administer CAA programs, on a Reservation-wide basis,

through the joint Commission. It also provides that the State will support the Tribe's CAA TAS application as long as it is consistent with the IGA. Congress then passed the Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2004, Pub. L. No. 108-336 on October 18, 2004, which codifies the basic framework of the IGA, and authorizes EPA to grant TAS authority to the Tribe for air programs submitted under CAA section 301(d). The Tribe has previously received TAS approval on April 26, 2000, for the purposes of grant funding under CAA Section 105.

On January 20, 2009, the Tribe submitted its CAA program TAS Application together with the Tribe's initial Title V Program. On July 14, 2009, EPA found the Tribe's CAA program TAS application to be administratively complete. This finding means the Tribe's CAA program TAS application satisfied the four necessary elements outlined above that the Tribe must demonstrate as part of the TAR. EPA will continue to review the Tribe's TAS application per 40 CFR 49.9(b). At the conclusion of this comment period, the Region will make a determination on the Tribe's CAA program TAS application prior to the final rulemaking for the Tribe's Title V Program.

#### B. Reasonably Severable Title V Program Elements

As previously discussed in Section II above, the TAR allows for Indian tribes to seek approval of partial elements of CAA programs as long as those portions are determined to be reasonably severable elements. 40 CFR 49.7(c). For the purposes of the Tribe's Title V Program it has been determined that the Acid Rain Program at Title IV of the CAA is severable. At this time, there are no Acid Rain emission sources located within the exterior boundaries of the Reservation, nor are there any pending applications for sources. In addition, it has been determined that underlying federal regulations at CAA sections 111 (Standards of Performance for New Stationary Sources) and 112 (National Emissions Standards for Hazardous Air Pollutants) are also reasonably severable. However, the Tribe has committed in a letter to EPA to incorporate by reference these standards and requirements into the Reservations Air Code and pursue authorization from EPA for those CAA programs. These delegations are not part of this action and will occur at a later date.

#### C. Criminal Enforcement Memorandum of Understanding

The TAR provides for a federal role in criminal enforcement of a tribal program when the CAA or its implementing regulations mandate criminal enforcement authority and the applicant tribe is precluded from exercising such authority. 40 CFR 49.7(a)(6) and 49.8. In these circumstances, the TAR allows EPA to approve a tribal application if the tribe enters into a Memorandum of Agreement with EPA that provides for the Federal government to exercise primary criminal enforcement responsibility. *Id.* These provisions of the TAR recognize that federal law places certain limitations on tribal criminal jurisdiction and sanctions. The IGA reached between the Tribe and the State of Colorado contemplates that EPA will exercise criminal enforcement within the Reservation boundary for air pollution violations.

On February 10, 2009, the Tribe and EPA entered into a Memorandum of Agreement (MOA) which provides a procedure by which the Tribe will supply potential investigative leads to the federal government in an appropriate and timely manner when the Tribe is precluded from asserting criminal enforcement authority.

### IV. Evaluation of the Tribe's Title V Program Elements

EPA conducted a thorough review of the Tribe's Title V Program according to 40 CFR 70.4(b) *Elements of the initial program submission*. It was critical that the Tribe's Title V Program address each of the 16 elements outlined in 40 CFR 70.4(b). Upon review, EPA concluded that the 16 elements found at 40 CFR 70.4(b) were addressed by the Tribe's Title V Program.

#### A. Analysis of the Tribe's Title V Program Submission per 40 CFR 70.4(b)

##### 1. Complete Title V Program Description

The Southern Ute Indian Tribe submitted an initial and a supplemental Title V Program to EPA on January 20, 2009 and September 28, 2010 respectively. The Title V Program submittals include a legal opinion from the Tribe's legal counsel stating that the laws of the Tribe and Southern Ute Indian Tribe/State of Colorado Environmental Commission provide adequate legal authority to carry out all aspects of the Title V Program, and a description of how the Tribe intends to implement the Title V Program.

EPA comments noting deficiencies in the Tribe's initial January 20, 2009 Title V Program submittal were sent to the Tribe in a letter dated December 23,

2009. The deficiencies were segregated into those that require corrective action prior to Title V Program approval, and those that, if addressed, would serve to strengthen the Title V Program, but were not necessary for approval.

In the September 28, 2010 supplemental Title V Program application, the Tribe addressed the deficiencies that required corrective action prior to Title V Program approval as well as those that served to strengthen the Title V Program. EPA has reviewed these changes and has determined that they are adequate to allow for Title V Program interim approval pursuant to 40 CFR 70.4(a). Upon review of the *Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, a few minor errors were discovered that do not impact the Tribe's ability to implement the Title V Program but must be addressed. The Title V Program meets the minimum requirements of 40 CFR 70.4(d).

## 2. Regulations Comprising the Title V Program

The Tribe's Title V Program, including the operating permit regulations (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code, Articles I and II), meets the requirements of 40 CFR 70.4(b)(2) including evidence of procedurally correct adoption of the Tribe's Reservation Air Code as well as public notice and comments on its adoption. Additionally, the Tribe's Title V Program satisfies the requirements outlined in 40 CFR 70.2 and 70.3 with respect to applicability; 40 CFR 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; 40 CFR 70.5 with respect to complete application forms and criteria which define insignificant activities; 40 CFR 70.7 with respect to public participation and minor permit modifications; 40 CFR 70.8 with respect to permit review by EPA and affected states; 40 CFR 70.9 with respect to demonstrating adequate fees will be collected to cover the Title V Program costs; 40 CFR 70.10 with respect to federal oversight and sanctions; and 40 CFR 70.11 with respect to requirements for enforcement authority.

## 3. Legal Opinion

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(3). The Tribe's Independent Legal Counsel, Maynes, Bradford, Shipp & Sheftel, LLP Attorneys at Law, submitted an

initial and a supplemental legal opinion in both the initial and supplemental Title V Program applications (*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009 and *Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010). The signature of the Tribe's legal counsel, Sam Maynes of Maynes, Bradford, Shipp & Sheftel, LLP Attorneys at Law, has full authority to independently represent the Tribe in court on all matters pertaining to the Tribe's Title V Program. The legal opinion includes a demonstration of adequate legal authority to carry out the requirements of this part, including authority to carry out those activities listed at 40 CFR 70.4(b)(3)(i) through (xiii).

## 4. Relevant Title V Program Documentation

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(4). The Tribe submitted extensive application forms (*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009, Tab 4, Program Forms) for review as well as comprehensive instructions for each form.

## 5. Compliance Tracking

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(5). The Tribe submitted multiple compliance assurance procedures and guidelines (*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009, Tab 5, Compliance Tracking).

## 6. Application Completeness Determination

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(6). The Tribe's Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) Article II, Sections 2-106(3) and 2-107(1)(a) demonstrates adequate authority and procedures to determine within 60 days of receipt whether applications (including renewal applications) are complete, to request such other information as needed to process the application, and to take final action on complete applications within 18 months of the date of its submittal, except for initial permit applications, for which the part 70 permitting authority may

take up to 3 years from the effective date of the Title V Program to take final action on the application, as provided for in 40 CFR 70.4(b)(11)(ii).

## 7. Fee Demonstration

The Tribe's Title V Program included a fee accounting including projected fee collection and programmatic costs (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 11, Revised Fee Demonstration, Figure 1 page 8 and Table 2 page 9) that set fees above the presumptive minimum set forth in 40 CFR 70.9. Specific fee provisions included \$50.00 + CPI (Consumer Price Index) for all fee pollutants released in a calendar year pursuant to the Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code), Article II, Section 2-119. The Tribe's Title V Program clearly demonstrates a fee schedule that results in the collection and retention of revenues sufficient to cover the Title V Program costs. In addition, the fee schedule contains an initial accounting of how required fee revenues are sufficient to cover Title V Program costs.

## 8. Statement of Adequate Personnel

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(8). The Tribe submitted a statement that adequate personnel and funding have been made available to develop, administer, and enforce the Title V Program (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 10, 40 CFR 70.4(b)(8)). In addition, the Tribe has provided a supplemental staffing plan (January 4, 2011 email from Brenda Jarrell) that outlines a staff of six individuals including a senior level engineering position.

## 9. Submission Commitment

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(9). The Tribe submitted a commitment (*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009, Tab 9, 40 CFR 70.4(b)(9)) to submit, at least annually to the Administrator, information regarding the Tribe's enforcement activities including, but not limited to, the number of civil, judicial and administrative enforcement actions either commenced or concluded; the

penalties, fines, and sentences obtained in those actions; and the number of administrative orders issued.

#### 10. Failure To Issue Permit in a Timely Manner

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(10). The Tribe's Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) Article II, Sections 2-106 and 2-107 are consistent with requirements outlined in 40 CFR 70.5(a)(2) and 70.6(f).

#### 11. Transition Plan

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(11). The Tribe submitted a comprehensive Revised Transition Plan (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 12, Revised Transition Plan) which outlines a plan and schedule for submittal and final action on initial permit applications for all part 70 sources within the exterior boundaries of the Reservation.

#### 12. Off Permit Changes

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(12). The Tribe's Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) Article II, Sections 2-110, 2-111 and 2-116 are provisions allowing for changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the Part 70 permit, provided the facility provides written notification as required in 40 CFR 70.4(b)(12).

#### 13. Expedited Permit Revisions and/or Modifications Review

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(13). The Tribe's Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) Article II, Section 2-111 provides for adequate, streamlined and reasonable procedures for expedited review of permit revisions or modifications.

#### 14. Tribe Only Revisions

The Tribe's Title V Program does not allow changes that are not addressed or prohibited as described in 40 CFR 70.4(b)(14). Thus, this section does not apply to the Tribe's Title V Program.

#### 15. Permit Changes Subject to Title I and IV of the Act

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(15). The Tribe's Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) Article II, Section 2-116(2) prohibits sources from making, without a permit revision, changes that are not addressed or prohibited by the part 70 permit, if such changes are subject to any requirements under title IV of the Act or are modifications under any provision of title I of the Act.

#### 16. Permit Content and Permit Issuance, Renewal, Re-Openings and Revisions

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(16). The Tribe's Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) Article II, Sections 2-107, 2-110 and 2-112 requires the Tribe's Title V Program to implement the requirements of 40 CFR 70.6 and 70.7.

#### B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the Tribe's Title V Program. The Tribe must make the following changes to the Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) in order to receive full Title V Program approval.

- (1) Modify the "Emission unit" definition to include pollutants listed under 112(b) of the Act; and
  - (2) Modify the "Major source" definition to include the updated definition for purposes of regulating greenhouse gasses as part of the Prevention of Significant Deterioration/Title V Greenhouse Gas Tailoring Rule (GHG Tailoring Rule). See 75 FR 106 at 31514-31608 (June 3, 2010); and
- The correction to the "Emission unit" definition is intended to clarify and make the Tribe's program consistent. The Tribe has the authority to regulate pollutants listed under 112(b) of the Act

through their "Major source" and "Regulated air pollutant" definitions. Accordingly, the "Emission Unit" definition should include 112(b) pollutants to have consistent definitions in the Title V Program.

The correction to the "Major source" definition is intended to narrow the sources that will require Title V review for greenhouse gasses (GHGs) after July 1, 2011. With this modification, the Tribe is afforded flexibility to issue Title V operating permits to sources with GHG emissions in a manner consistent with the Federal regulations as set out in the GHG Tailoring Rule.

This proposed interim approval, which may not be renewed, would extend for a period of up to two years. Permits issued under a Title V operating permits program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The Tribe shall submit to EPA changes to the Title V Program addressing the deficiencies specified in the interim approval no later than 8 months prior to the expiration of the interim approval. 40 CFR 70.4(f)(2). The EPA can disapprove the Tribe's Title V Program if the specified changes are not made within the specified timeframe.

#### V. What action is EPA taking?

EPA is providing an opportunity for public comment on our intent to grant interim approval to the Southern Ute Indian Tribe's Title V Program.

#### VI. Statutory and Executive Order Reviews

Today's action merely proposes EPA's intent to grant interim approval to the Tribe's Title V Program and does not impose additional requirements beyond those imposed by tribal law. For that reason, this action:

- Does ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications" as required in Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000).
- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Dated: March 2, 2011.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

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