

# Tribal New Source Review/Minor Source Programs

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# Overview

- Tribal New Source Review (“TNSR”) Rule, 40 C.F.R. §§ 49.151-49.173
- Tribal Roles in Implementing TNSR Rule
- Expanding TNSR Rule into a full Minor Source Program

## TNSR Rule - Purposes

- Satisfy CAA § 110(a)(2)(C) - regulation of the construction and modification of stationary sources in order to ensure the NAAQS are achieved
- NSR requirements for minor sources in both attainment and nonattainment areas of Indian country and for major sources in nonattainment areas
- Provides for synthetic minor sources

## TNSR Rule Framework

- Pre-Construction Review Program for Indian country
- Minor source program, 40 CFR §§ 49.151-49.165
- Major source program for nonattainment areas, 40 CFR §§ 49.166-49.173

## Minor Source Program - Requirements

- Permits required for construction or modification if projected emissions are above the minor NSR threshold, specified in 40 CFR § 49.153, Table 1, and below the major source threshold
  - Permit sets emission limits to ensure maintenance of the NAAQS
- Registration required for all true minor sources
  - Satisfied by permit application
- Exemptions for insignificant emissions

## Minor Source Program – Requirements, Cont'd

- General permits
  - Hot mix asphalt plants; stone quarrying, crushing & screening; concrete batch plants; boilers and emergency engines; stationary spark ignition engines; stationary compression ignition engines; graphic arts & printing operations; sawmills
- Permits by rule
  - auto body repair; gas stations; dry cleaners
- Synthetic minor source permits

## FIP for Oil & Gas Minor Sources

- 40 CFR §§ 49.101-49.105, FIP for oil and natural gas production and natural gas processing segments of the oil and natural gas sector
- Covers NSR for true minor O&G sources and minor modifications to O&G *minor* sources in *attainment* areas in Indian country
  - NSPS and NESHAPs
- Pending reconsideration and likely revision by EPA

## Summary of TNSR Rule Minor Source Program

- Pre-construction review program, requiring permits
- Also requires registration for all true minor sources above the minor NSR threshold
- Site-specific permit, general permit, or “permit by rule”



## Tribal Role in Program Implementation

- EPA implements the program, 40 CFR § 49.161(a)(3)
  - No action needed by tribe
- Tribe implements a delegated program, 40 CFR § 49.161(a)(2)
  - TAS and delegation agreement
- Tribe gets primacy and implements its own program, 40 CFR § 49.161(a)(1)
  - TAS and program approval

# Jurisdiction

- Automatic over tribe's "reservation"
  - The term "reservation" includes formal reservation and tribal trust land outside formal reservation boundaries
- EPA or Tribe must demonstrate jurisdiction over other areas of Indian country
  - Allotted lands and "dependent Indian communities"
  - Montana test if non-Indian owners or operators

## Practical Differences Stemming from Different Tribal Roles

- Program requirements
- Program enforcement
- Permit approvals
- Appeal process

## Reasons for Developing a Tribal Minor Source Program

- Minor sources tend to be the primary sources of emissions in Indian country
- Developing a complete minor source program, for operating permits as well as NSR, would address these sources
- Also, a minor source operating permit program would complement the CAA Title V operating permit program for major sources and fill in a gap in air quality regulation

## Typical Minor Sources in Indian Country



## Typical Minor Sources



## Using TNSR Rule as Basis for Tribal Minor Source Program

- Tribe gets primacy for TNSR Program
- Tribe adds minor source operating permit component to NSR requirements
  - Unitary permit
- Avoids dual regulation by EPA and tribe
- Tribe decides how to adjust the TNSR Program requirements to incorporate a minor source operating permit program

## Tribal Minor Source Program – First Steps

- Review air emissions inventory and registration and permit information from TNSR Rule
- Determine which sources to address and which should be exempt
- Whether to require registration or permit
- Which pollutants to regulate
- What emission threshold should be



## Tribal Minor Source Program - Details

- Information required in registration form and permit application
- Control technologies and emission limitations
- Emissions calculations and estimates
- Permit term
- Administrative procedures and timeframes

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## Ways of Funding a Minor Source Program

- Registration and permit fees
- Fee justification document, to evaluate amounts to charge
  - Consider inventory of sources, staffing needs
- Fee schedule
  - When fees will be charged
  - How they will be assessed
    - Flat charges
    - Hourly review fees
    - Emissions-based

## Summary

- Tribe can use the TNSR Rule as a framework for developing a minor source program
- Tribe can alter various components of the TNSR Rule, as long as the tribe's requirements are at least as stringent as and don't interfere with the federal program
- Tribe creates a unified program for addressing minor sources on the reservation, in the way the tribe wants them to be addressed