



Southern Ute Indian Tribe's

Reservation Air Program

**Transition Plan from Federal Part 71 to Southern Ute Indian Tribe Part 70
Operating Permit Program**

Updated May 2013

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I. Introduction.

On March 2, 2012, the United States Environmental Protection Agency approved the Tribe's Part 70 Operating Permit Program (Part 70 Program) application (77 Fed. Reg. 15267 (2012)). Effective March 2, 2012, the Southern Ute Indian Tribe (Tribe) has full authority to implement and administer its Part 70 Program consistent with the requirements of Title V of the Clean Air Act (42 U.S.C. 7661-7661f *et. seq.*), its implementing regulations at 40 C.F.R. Part 70, and regulations applicable to treatment of Indian tribes in the same manner as states for the purposes of Tribal administration of Clean Air Act programs (40 C.F.R. Part 49). The Part 70 Program will encompass both new and existing sources on the Southern Ute Indian Reservation (Reservation). The Tribe anticipates that it will continue to develop the necessary resources and expertise during the transition period from the current Federal Part 71 Operating Permit Program (Part 71 Program) to the Tribe's Part 70 Program. The Southern Ute Indian Tribe/State of Colorado Environmental Commission (Commission) has adopted the rules and regulations for the Part 70 Program that will be administered by the Tribe.

This transition plan identifies how the Tribe's Environmental Programs Division Air Quality Program intends to transition all current Part 71 Program permits to Tribe-issued Part 70 Program permits. Per 40 C.F.R. 70.4(b)(11), the Tribe is required to provide a schedule for submission and final action on initial permit applications for all Part 70 sources located within the exterior boundaries of the Reservation. Specifically, the objective of this transition plan is to (1) outline requirements for receipt of all Part 70 Program permit applications within one year after the effective date of the Part 70 Program, and (2) provide a schedule that ensures that final action is taken on at least one-third of the permit applications annually within three years after the effective date of the Part 70 Program (40 C.F.R. 70.4(b)(11)(i) and (ii)).

II. Elements of the Tribe's Part 70 Operating Permit Program Transition.

The transition of all Part 71 Program permits to Part 70 Program permits will take place over a three year period. Final action shall be taken on at least one-third of the Part 70 Program permit applications each year over a three year period after the effective date of approval of the Tribe's Part 70 Program (40 CFR 70.4(b)(11)(ii)) and § 2-107(4)(a) of the Reservation Air Code (RAC). As of October 18, 2012, the United States Environmental Protection Agency Region 8 (EPA) has issued Part 71 Program permits to 42 Title V sources located within the exterior boundaries of the Reservation. These 42 existing Title V sources will have their Part 71 Program permits transitioned to Part 70 Program permits according to the schedule provided in Table 1. Any additional Title V sources that are constructed within the exterior boundaries of the Reservation before the Tribe receives approval to implement its Part 70 Program will be transitioned in the last group of sources to be transitioned unless otherwise assigned by the Tribe.

Upon the effective date of the Part 70 Program, all new Part 70 sources and each source transitioning its Part 71 Program permit to a Part 70 Program permit may continue to

operate without a Part 70 Program permit, provided a timely and complete application has been submitted to the Tribe (RAC § 2-106(3)(b)). For existing sources, RAC § 2-104(2)(b) states that no Part 70 source may operate after the effective date of the Reservation Air Code without a valid permit issued under this Code unless:

- The Part 70 source is in compliance with an unexpired operating permit issued by the Administrator under 40 CFR Part 71; and
- The Part 70 source has submitted a timely and complete application for permit issuance or renewal consistent with § 2-106 of the Code; or
- The Tribe fails to issue or disapprove a renewal application before the end of the prior permit term, in which case, that permit shall not expire and all of its terms and conditions shall remain in effect until the renewal application has been issued or disapproved.

A. Permit Transition.

1. Notice of Part 70 Program Approval.

Notification of Part 70 Program approval by EPA was announced in a public notice published in the newspapers in the affected area (e.g., the Southern Ute Drum, the Durango Herald, the Pine River Times, the Pagosa Sun, the Farmington Daily Times, or the Cortez Journal). Furthermore, the Tribe and EPA issued a joint press release, announcing the program's approval. In addition to public notice and press release, notice of program approval was sent to persons on a mailing list developed by the Tribe, including those who requested in writing to be on the list, and other means of notification may be utilized, if necessary, to assure adequate notice to the affected population.

2. Request for Part 70 Program Permit Applications.

On March 14, 2012, the Tribe issued a notice of final approval of, and changeover of Title V permitting authority to the Part 70 Program. This notice requested for the submission of a Part 70 Program permit application from each Title V source and indicated the appropriate deadline for submission of the permit application for each source as described in Table 1. Any Title V source that fails to submit a timely and complete application will be out of compliance with the Part 70 Program. EPA will continue to administer each existing Part 71 Program permit until such time as the Tribe issues a final Part 70 Program permit to the source. In accordance with 40 C.F.R. § 71.4(l), the EPA will also retain jurisdiction over any existing Part 71 Program permit for which an administrative or judicial review process is not complete.

3. Transition Schedule.

To ensure that the transition of all Part 71 Program permits to Part 70 Program permits will occur within a three year time frame, the Tribe has placed each source with a

Part 71 Program permit into one of three groups for permit application submission and permit issuance. Several factors were taken into account when developing the composition of the three groups. These factors included the current source requirements, the burden on the source owners given the total number of required permit applications to be submitted to the Tribe, training of the Tribe's staff, expiration dates for existing Part 71 Program permits, and the technical complexity of the Part 70 Program applications. The larger and more complex Title V sources were placed in Group 3, which also includes the sources that have synthetic minor limits in their current Part 71 Program permit. Any Title V source that chooses to include synthetic minor limits in its Part 70 Program permit must first apply for, and receive, a new source review construction permit to ensure such limitations are federally enforceable.

The first group includes sources that are owned or operated by BP, Red Cedar, Xcel Energy, and Samson Resources. The second group includes sources that are owned or operated by Transwestern Pipeline, El Paso, Northwest Pipeline, Red Cedar, BP, and the Bondad Landfill. The third group includes sources that are owned or operated by BP, Williams, Samson Resources, Conoco Phillips, and Red Cedar (see Table 1).

Table 1: Part 70 Sources Located on the Reservation as of May 2, 2013.

Source	Part 71 Permit No.	Part 71 Permit Expiration Date	Part 70 Program Permit Application Due Date (based on program approval date of March 2, 2012)	Part 70 Program Permit Issuance Date (based on program approval date of March 2, 2012)
Transition Group 1				
BP Four Queens CDP	V-SU-0008-05.02	1/10/2012	4 mo.	24 mos.
RC Capote CS	V-SU-0016-05.02	1/10/2012	4 mo.	24 mos.
SR Worford Ridge CS	V-SU-0046-07.01	7/6/2012	4 mo.	24 mos.
RC Elk Point CS	V-SU-0044-06.02	8/8/2012	4 mo.	24 mos.
BP TS #1 CDP	V-SU-0001-05.01	10/28/2012	4 mo.	24 mos.
BP TS #2 CDP	V-SU-00002-2005.02	10/28/2012	4 mo.	24 mos.
BP TS #4 CDP	V-SU-0003-05.01	12/16/2012	4 mo.	24 mos.
RC Animas CS	V-SU-0035-08.01	1/14/2014	4 mo.	24 mos.
RC Diamondback CS	V-SU-00018-2005.01	4/4/2014	4 mo.	24 mos.
SR Howard Salt Water Disposal	V-SU-0051-10.00	11/8/2015	4 mo.	24 mos.
Xcel Energy Tiffany CS	V-SU-00023-2010.00	5/18/2016	4 mo.	24 mos.
Transition Group 2				
RC Coyote Gulch TP	V-SU-000012-2011.00	6/25/2017	8 mo.	24 mos.
El Paso Bondad CS	V-SU-0028-06.02	11/26/2012	8 mo.	24 mos.
Bondad Landfill	V-SU-0047-07.00	12/1/2013	8 mo.	24 mos.
TW La Plata A CS	V-SU-0013-08.01	7/15/2014	8 mo.	24 mos.
NW La Plata B CS	V-SU-0029-08.01	7/15/2014	8 mo.	24 mos.
RC Homestead CS	V-SU-0037-08.01	10/1/2014	8 mo.	24 mos.
RC Trail Canyon CS	V-SU-00048-2008.03	10/2/2014	8 mo.	24 mos.
RC Pump Canyon CS	V-SU-00036-2008.01	10/26/2014	8 mo.	24 mos.
BP Dry Creek CDP	V-SU-0038-08.00	11/15/2014	8 mo.	24 mos.
BP Iron Horse CDP	V-SU-00050-2009.01	12/2/2014	8 mo.	24 mos.
RC La Posta CS	V-SU-00040-2009.01	12/28/2014	8 mo.	24 mos.
Transition Group 3				
Williams PLA-9 CDP	V-SU-0014-00.00	4/7/2008 (extended)	12 mo.	36 mos.
CP Sunnyside CS	V-SU-0032-02.02	4/7/2008 (extended)	12 mo.	36 mos.
Williams Ignacio Plant	V-SU-0027-00.00	11/29/2008 (extended)	12 mo.	36 mos.
CP Argenta CS	V-SU-0030-01.04	1/9/2009 (extended)	12 mo.	36 mos.
RC Bondad CS	V-SU-000011-2011.00	6/25/2017	12 mo.	36 mos.
SR Jaques CS	V-SU-0043-06.02	4/27/2012	12 mo.	36 mos.
BP Salvador I/II CDP	V-SU-00009-2004.06	5/17/2012	12 mo.	36 mos.
RC Arkansas Loop and Simpson Treating Plants	V-SU-00010-2005.05	5/17/2012	12 mos.	36 mos.
BP TS #6B CDP	V-SU-00024-2005.03	5/17/2012	12 mo.	36 mos.

Source	Part 71 Permit No.	Part 71 Permit Expiration Date	Part 70 Program Permit Application Due Date (based on program approval date of March 2, 2012)	Part 70 Program Permit Issuance Date (based on program approval date of March 2, 2012)
Transition Group 3 (Continued)				
BP TS #8 CDP	V-SU-00026-2005.04	5/17/2012	12 mo.	36 mos.
RC Spring Creek CS	V-SU-000045-2011.00	6/4/2017	12 mo.	36 mos.
BP TS #7B CDP	V-SU-00025-2005.02	10/28/2012	12 mo.	36 mos.
RC Outlaw CS	V-SU-00033-2007.02	1/14/2014	12 mo.	36 mos.
SR South Ignacio	V-SU-0031-08.00	8/20/2014	12 mo.	36 mos.
RC Sambrito	V-SU-00049-2008.03	9/21/2014	12 mo.	36 mos.
BP Miera CDP	V-SU-00039-2009.04	11/8/2014	12 mo.	36 mos.
BP Florida River CDP	V-SU-000022-2005.01	11/27/2015	12 mo.	36 mos.
BP Wolf Point CDP	V-SU-00034-2007.02	12/18/2015	12 mo.	36 mos.
BP TS #6 CDP	V-SU-0005-05.01	10/28/2012	12 mo.	36 mo.
BP TS #7 CDP	V-SU-0006-05.01	12/16/2012	12 mo.	36 mo.

Any existing Title V facility that has yet to receive a Part 71 permit from EPA prior to implementation of the Part 70 Program must follow the procedures described in RAC § 2-106 and Table 2 below.

Table 2: Existing Part 70 Source without an EPA-Issued Part 71 Permit.

Source	Part 70 Program Permit Application Due Date (based on program approval date of March 2, 2012)	Part 70 Program Permit Issuance Date (based on program approval date of March 2, 2012)
Existing Part 70 sources without an EPA-issued Part 71 permit.	Within 1 year from program approval date per RAC § 2-106(2)(d).	Within 18 months after permit application is deemed to be complete.

4. Timing of Final Permit Actions for Transitioning Sources.

As stated above and shown in Table 1, within three years of the effective date of the Part 70 Program final action will have been taken on all Part 70 Program permit applications that were received by the deadline. The Tribe intends to issue a final permitting action on all Group 1 permit applications within the first year of the effective date of the Part 70 Program, on all Group 2 permit applications within the second year, and on all Group 3 permit applications within the third year.

5. Early Reduction Demonstration.

Permit applications for sources demonstrating early reductions under Section 112(i)(5) of the Clean Air Act shall be acted upon within 9 months of receipt of the complete permit application (RAC § 2-107 (4)(b)). Table 3 shows the current Reservation Part 71 sources that are major sources of HAP emissions. Section 112(i)(5) requirements do not apply to any current Reservation Part 71 sources.

Table 3: Reservation Part 71 Sources that are Major Sources of HAP Emissions.

Source	Part 71 Permit No.
BP Four Queens CDP	V-SU-0008-05.02
RC Arkansas Loop and Simpson Treating Plants	V-SU-0010-05.04
RC Bondad CS	V-SU-000011-2011.00
RC Coyote Gulch TP	V-SU-000012-2011.00
RC Capote CS	V-SU-0016-05.02
RC Diamondback CS	V-SU-00018-2005.01
Williams Ignacio Plant	V-SU-0027-00.00
RC Outlaw CS	V-SU-00033-2007.02
RC Animas CS	V-SU-0035-08.01
RC Pump Canyon CS	V-SU-00036-2008.01
RC Homestead CS	V-SU-0037-08.01
BP Dry Creek CDP	V-SU-0038-08.00
RC La Posta CS	V-SU-00040-2009.01
RC Elk Point CS	V-SU-0044-06.02
RC Spring Creek CS	V-SU-000045-2011.00
RC Trail Canyon CS	V-SU-00048-2008.03
RC Sambrito CS	V-SU-00049-2008.03
BP Iron Horse CDP	V-SU-00050-2009.01

6. Title IV Requirements.

Submission of permit applications and the permitting of affected facilities shall occur in accordance with the deadlines in Title IV of the Clean Air Act and the regulations promulgated thereunder. Currently there are no existing Part 71 sources operating on the Reservation with Title IV requirements.

B. Part 70 Program Implementation.

1. Permit Fees for Existing Part 71 Sources.

Once a Part 71 Program permit has been transitioned to a Part 70 Program permit, the source shall pay annual emission fees to the Tribe as set forth in the RAC. Until the Tribe issues a final Part 70 Program permit to a source each source shall continue to pay annual emission fees to the EPA according to its Part 71 permit. The first annual emissions fee due for a source transitioned to a Part 70 Program permit will be pro-rated with any fees for emissions released under the Part 71 Program permit paid to EPA and any fees for emissions released under the Part 70 Program permit paid to the Tribe in accordance with RAC § 2-118 and the Part 70 Program permit.

2. Permit Fees for New Part 70 Sources.

Sources that become subject to Part 70 permitting after implementation of the Part 70 Program shall submit a Part 70 Program permit application along with an initial emissions

fee within the first year of operation as a Title V source in accordance with RAC §§ 2-106 and 2-118(1) and thereafter an annual emissions fee in accordance with RAC § 2-118(2).

3. Fees and Fee Demonstration.

Fees will be collected from all sources subject to the Part 70 Program and will sustain the Part 70 Program. A demonstration showing that the fees collected will be sufficient to cover the costs of the Part 70 Program can be found in the *Tribe's Reservation Air Program Title V Part 70 Operating Permit Program Fee Demonstration January 19, 2012* (Fee Demonstration). The Fee Demonstration shows that the fees will cover both the direct and indirect costs of the Part 70 Program, which include but are not limited to regulation and guidance development, permit processing, administrative costs, enforcement, emissions and ambient monitoring, modeling, analyses or demonstrations, and emissions inventory and tracking. The fees will be used solely for the Part 70 Program costs and associated activities. Since the Tribe has demonstrated that the fees collected will be sufficient to fund the Part 70 Program after the end of the sixth year of program approval, the Tribe is authorized to collect appropriate fees consistent with 40 C.F.R. § 70.9. For the first year of implementation of the Part 70 Program emission fees will be \$50.00 per ton of fee pollutants emitted. Following the first year of implementation the emission fees will be adjusted annually based on the Consumer Price Index. Annual emission fees will be due on the date specified in the Part 70 Program permit.

4. Enforcement.

All terms and conditions in a permit, including but not limited to provisions designed to limit a source's potential to emit, are enforceable by the Tribe and the Administrator. The EPA Administrator retains full federal enforcement authority under the CAA. Violations of any applicable requirement, any permit term or condition, any fee or filing requirement, any duty to allow or carry out inspection, entry, or monitoring activities, or any regulations or order issued by the Tribe pursuant to its Part 70 Program approval agreement will be violations of the Clean Air Act.

Pursuant to the enforcement authority described in RAC § 2-121, P.L. 108-336, and applicable provisions of the Clean Air Act, the Tribe has the following authority to prevent and address violations of the Reservation Air Code by Part 70 sources:

i. Civil Action.

To bring a civil action for declaratory or injunctive relief immediately and effectively against any person who fails to comply with terms of a permit or any program requirement, including permit conditions, or is presenting an imminent and substantial endangerment to the public health or welfare, or the environment; without the necessity of a prior revocation of the permit.

ii. Civil Penalties and Damages.

To assess or sue to recover in court civil penalties or recover civil damages according to the following:

- Civil penalties or damages assessed, sought, or agreed upon by the Tribe under this section shall be appropriate to the violation;
- These penalties or damages shall be separately recoverable in amounts of up to \$10,000 per day per violation;
- Civil penalties or damages shall be recoverable for the violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or orders issued by the Tribe. Mental state shall not be included as an element of proof for civil violations.

iii. Criminal Enforcement.

EPA will exercise criminal enforcement jurisdiction over any persons on all lands within the Reservation boundaries for violations of the Part 70 Program. The Tribe, however, will provide potential investigative leads to EPA, as agreed to in the *Memorandum of Agreement Between the Southern Ute Indian Tribe and the U.S. Environmental Protection Agency Region 8 Regarding Criminal Enforcement of the Clean Air Act within the Exterior Boundaries of the Southern Ute Indian Reservation*.

iv. Burden of Proof.

The burden of proof and degree of knowledge or intent required for establishing violations under RAC § 2-121 shall be no greater than the burden of proof or degree of knowledge or intent required under the Clean Air Act.

v. Permit Inspection Authority Transition.

Authority to conduct inspection will immediately transition to the Tribe following permit issuance by the Tribe. Following Part 70 Program approval and issuance of a tribal Part 70 Program permit, the source will be inspected by tribal staff as frequently as deemed necessary by the Tribe. The inspections will include a site visit and site inspection, as well as a comprehensive records review.

The Tribe will inspect and conduct comprehensive compliance investigations in conjunction with EPA for Part 71 sources before approval of the Tribe's Part 70 Program and during the transition period. The inspections and investigations will be performed consistent with EPA's Part 71 inspection protocol while the source is operating under the Part 71 permit.

5. Program Development.

According to the Fee Demonstration, the work load for the Part 70 Program will be divided among six employees, three of which are full-time employees to the Tribe's Part 70 Program (Air Quality Scientist and two Air Quality Compliance Specialists). The Tribe's Air Quality Program (AQP) Manager will oversee and supervise the program and program staff. A senior-level Air Quality Technical Manager will assist the AQP Manager and provide technical assistance to the Air Quality Scientist and two Air Quality Compliance Specialists. Permit drafting and permit issuance will be led by the Air Quality Scientist. Compliance and enforcement activities will be led by the Air Quality Technical Manager. The two Air Quality Compliance Specialists will conduct air compliance and enforcement activities, primarily on-site inspections. The Part 70 Program staff will all contribute to air regulation development and Commission related activities. During the first few years of program implementation, the two Air Quality Compliance Specialists will assist the Air Quality Scientist and the Air Quality Technical Manager with other Part 70 Program activities. Secretarial and clerical duties will be the responsibility of the AQP Administrative Assistant. The AQP Administrative Assistant will also be responsible for assisting all staff with their designated projects.

In preparation of program approval, the staff of the Tribe's Air Quality Program will attend air permitting/compliance trainings and develop model and template documents for use in administration of the Tribe's Part 70 Program. The Tribe and EPA will establish a protocol for the transfer of any necessary information relevant to all current Title V Part 71 and future Part 70 sources on the Reservation, including a transfer of tools from EPA to the Tribe (e.g., Standard Operating Procedures ("SOP"), checklists, electronic files, etc.). The Tribe and EPA will work together and designate EPA staff to provide support to the Tribe's Part 70 Program staff during the transition period. The Tribe will also acquire a permitting database for data sharing and data transfer with EPA. The permitting database will assist the Part 70 Program staff with tracking draft/final permits, compliance schedules, monitoring reports, inspection schedules, fees, etc. Cost and expenditures accounting codes will remain consistent with the Tribe's accounting practices. Development of the Part 70 Program will continue to occur throughout the life of the Part 70 Program.

i. Permit Writing Trainings/Development.

During the transition period, the Air Quality Scientist and the two Air Quality Compliance Specialists will attend a lengthy training session with EPA Region 8 Part 71 Title V Permit Engineers. The training will cover the topics surrounding the transition from the Part 71 Program to the Part 70 Program as well as training on the review of permit applications and the permit drafting process. As needed, tribal staff will also attend pertinent permit writing trainings offered by the State of Colorado, EPA, NETI, ITEP, and any other organization offering courses relevant to the permit drafting process, including online training courses.

ii. Permit Inspection Trainings/Development.

The Tribe's Air Quality Technical Manager and the two Air Quality Compliance Specialists will complete the NETI Basic and Advanced Inspector courses and the recommended trainings listed in *EPA Order 3500.1 for Clean Air Act Stationary Sources* as course are available and travel budget allows for. They will also obtain annual HAZWOPER certifications, and maintain CPR and standard first aid certifications. As needed, tribal staff will also attend pertinent compliance and enforcement trainings offered by the State of Colorado, EPA, NETI, ITEP, and any other organization that offers courses relevant to the air pollution source inspections, including online training courses.