



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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SEP 06 2013

Ref: 8P-AR

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Tom Johnson, Division Head  
Environmental Programs Division  
Southern Ute Indian Tribe  
P.O. Box 737  
Ignacio, Colorado 84026

RE: Automatic Delegation for Clean Air Act Section 111 and  
Section 112 Requirements on the Southern Ute Indian Reservation

Dear Mr. Johnson:

This letter notifies you of the Environmental Protection Agency's (EPA) automatic delegation to the Southern Ute Indian Tribe (Tribe) of the Clean Air Act (CAA) section 111 (Standards of Performance for New Stationary Sources, 40 C.F.R. part 60) and section 112 (Hazardous Air Pollutants, 40 C.F.R. part 61 and part 63) standards and requirements. These standards and requirements either already have been, or will in the future be, incorporated by reference unchanged into the Southern Ute Indian Tribe/State of Colorado Environmental Commission's Reservation Air Code (RAC). This automatic delegation is effective immediately. This letter also provides information about the statutory basis for delegation of section 111 and 112 standards and requirements and EPA's approval of the Tribe's "delegation mechanism." Finally, this letter outlines a communication protocol that should be followed regarding the adoption of section 111 and 112 standards and requirements by the Environmental Commission and notes that some section 111 and 112 standards and requirements are not delegable.

Enclosed is a list of the section 111 and section 112 requirements that we understand have already been adopted by reference unchanged, as of today's date, into the RAC. If there are any discrepancies between the enclosed list and the standards and requirements that have already been adopted unchanged into the RAC, please notify us upon receipt of this letter.

Section 111(c) and 112(l) provide states and tribes with the option of receiving delegation of section 111 and section 112 as long as the federal standards and requirements are incorporated unchanged. This is achieved through the Tribe's approved 112(l) delegation mechanism and can be done automatically. The same approach applies to section 111 requirements through section 111(c). In this case, EPA approved the Tribe's 112(l) delegation mechanism for Part 70 and non-part 70 sources in a direct final rulemaking that was published on July 8, 2013 (78 FR 40635) and which became effective on September 6, 2013. The public notice requirements of 112(l)(5) and 40 C.F.R. §63.91(a)(2) were also satisfied by that rulemaking.

In order for section 111 and 112 requirements that are incorporated into the RAC in the future to be automatically delegated to the Tribe, the standards and requirements must be incorporated unchanged into the RAC by the Environmental Commission. If the section 111 or section 112 standards and requirements are incorporated unchanged into the RAC, then the Tribe automatically has delegation to implement and enforce those standards and requirements for both major and area sources. The date of delegation is the date the standards and requirements are effective in the RAC. Until then, EPA remains the implementing and enforcing authority. If the Environmental Commission changes a section 111 or section 112 standard or requirement in any way, then the standard or requirement will not be automatically delegated to the Tribe. Formal case-by-case approval and delegation must occur for each changed standard or requirement.

To avoid confusion, it is essential for EPA and the Tribe to keep an accurate record of the primary enforcement authority for each section 111 and section 112 standard and requirement. Toward that end, we request that the Tribe notify EPA within 60 days of the Environmental Commission incorporating an unchanged section 111 or section 112 standard or requirement into the RAC. The notification should include an official copy of the standard or requirement that is stamped, dated and signed by the appropriate official. The official copy should also include the date of adoption and the effective date. If there is a change in the schedule for the section 111 or section 112 standard or requirement becoming effective, then we would ask that the Tribe notify EPA as soon as possible. If the delay extends beyond the requirement compliance date, EPA will implement and enforce the requirement until the Tribe has an effective requirement.

Please note that there are section 111 and 112 standards and requirements that may not be automatically delegated to a state or tribe. The section 111 requirements found in 40 C.F.R. Part 60 subparts Cb, Cc, Cd, Ce, BBBB, DDDD and FFFF are emission guidelines that require state plans and are approved under a separate process pursuant to section 111(d) of the CAA. The section 112 requirements that may not be automatically delegated are the radionuclides standards found in 40 C.F.R. Part 61 and the 112(r) accidental release prevention program found at 40 C.F.R. Part 68.

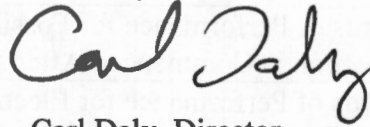
In addition, some portions of the section 111 and 112 standards and their associated general provisions, by their own terms, may not be delegated to a state or tribe. The EPA Administrator retains authority to implement those sections that require: 1) approving equivalency determinations and alternate test methods, 2) decision-making to ensure national consistency and 3) EPA rulemaking in order to implement. Enclosed with this letter is a list of example sections in 40 C.F.R. Part 60 that may not be delegated. The sections of the part 63 standards and their associated general provisions that may not be delegated can be found in 40 C.F.R. §63.91(g). Accordingly, EPA is retaining authority over those portions of the part 60 and part 63 standards that may not be delegated.

Enforcement of the delegated section 111 and 112 standards and requirements within the Southern Ute Indian Reservation will be the primary responsibility of the Tribe. If the Tribe determines that such enforcement is not feasible and so notifies EPA, or where the Tribe acts in a manner inconsistent with the terms of this delegation, EPA may exercise its concurrent enforcement authority pursuant to section 113 of the Act, as amended, with respect to sources within the Southern Ute Indian Reservation subject to section 111 and 112 standards and requirements. Finally, please be advised that delegations to states and tribes of section 111 and 112 implementation and enforcement authorities and review and withdrawal of those delegations are subject to the provisions of 40 C.F.R. part 63, subpart E and in particular 40 C.F.R. §63.91(c) and 40 C.F.R. §63.96.



If you have questions about this letter or the delegation process, please contact me directly at (303) 312-6416 or your staff can contact Victoria Parker-Christensen, Air Program, at (303) 312-6441 or [parker-christensen.victoria@epa.gov](mailto:parker-christensen.victoria@epa.gov).

Sincerely,



Carl Daly, Director  
Air Program

Enclosure

cc: Brenda Jarrell, Southern Ute Indian Tribe, Air Quality Program Manager



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Section 111, federal emission standards, revised and published as of October 15, 2012, in 40 C.F.R Part 60, that have been incorporated by reference into the Southern Ute Indian Tribe, Reservation Air Code.

40 C.F.R Part 60	Title
Subpart A	General Provisions
Subpart D	Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971.
Subpart Da	Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
Subpart Db	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units
Subpart Dc	Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units
Subpart I	Standards of Performance for Hot Mix Asphalt Facilities
Subpart K	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978
Subpart Ka	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984
Subpart Kb	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984
Subpart GG	Standards of Performance for Stationary Gas Turbines
Subpart VV	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006
Subpart KKK	Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011
Subpart LLL	Standards of Performance for SO <sub>2</sub> Emissions From Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011
Subpart OOO	Standards of Performance for Nonmetallic Mineral Processing Plants
Subpart WWW	Standards of Performance for Municipal Solid Waste Landfills
Subpart CCCC	Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001.
Subpart EEEE	Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006
Subpart IIII	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines
Subpart JJJJ	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
Subpart KKKK	Standards of Performance for Stationary Combustion Turbines
Subpart OOOO	Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution



40 C.F.R Part 60	Title
Appendix A	Test Methods
Appendix B	Performance Specifications
Appendix C	Determination of Emission Rate Change
Appendix D	Required Emission Inventory Information
Appendix F	Quality Assurance Procedures
Appendix I	Removable Label and Owner's Manual

Section 112 federal emission standards, revised and published as of October 15, 2012, 40 C.F.R Part 61, that have been incorporated by reference into the Southern Ute Indian Tribe Reservation Air Code.

40 C.F.R Part 61	Title
Subpart A	General Provisions
Subpart M	National Emission Standard for Asbestos
Subpart V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)
Appendix A	Compliance Status Information
Appendix B	Test Methods
Appendix C	Quality Assurance Procedures

Section 112 federal emission standards, revised and published as of October 15, 2012, 40 C.F.R Part 63, that have been incorporated by reference into the Southern Ute Indian Tribe, Reservation Air Code.

40 C.F.R Part 63	Title
Subpart A	General Provisions
Subpart B	Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Action Sections, Sections 112(g) and 112(j)
Subpart C	List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List
Subpart N	National Emission Standards for Chromium Emissions for Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
Subpart Q	National Emission Standards for Hazardous Air Pollutants for Industrial Cooling Towers
Subpart HH	National Emission Standards for Hazardous Air Pollutants from Oil and Gas Production Facilities
Subpart OO	National Emission Standards for Tanks – Level 1
Subpart HHH	National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities
Subpart AAAA	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills
Subpart YYYY	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines
Subpart ZZZZ	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines
Subpart GGGGG	National Emission Standards for Hazardous Air Pollutants: Site Remediation



40 C.F.R Part 63	Title
Appendix A	Test Methods
Appendix C	Determination of the Fraction Biodegraded ( $F_{bio}$ ) in a Biological Treatment Unit
Appendix D	Alternate Validation Procedure for EPA Waste and Wastewater Methods

Examples of Authorities in 40 C.F.R. Part 60 which cannot be delegated to a state or tribe.

40 C.F.R Part 60	Section
Subpart A	§§60.8(b)(2) and (b)(3) and those sections throughout the standards that reference §§60.8(b)(2) and (b)(3); §§60.11(b) and (e); and §60.13(i).
Subpart Da	§60.47Da.
Subpart Db	§§60.44b(f), 60.44b(g) and 60.49b(a)(4).
Subpart Dc	§60.48c(a)(4).
Subpart Ka	§60.114a.
Subpart Kb	§§60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).
Subpart GG	§§60.332(a)(4) and 60.335(b)(10)(ii).
Subpart VV	§§60.482-1(c)(2) and 60.484.
Subpart KKK	§60.634.
Subpart WWW	§60.754(a)(5).
Subpart CCCC	§§60.2030(c)(1) through (4) and (c)(6) through (10).
Subpart EEEE	§§60.2889(b)(1) through (6).

Examples of Authorities in 40 C.F.R. Part 63 which cannot be delegated to a state or tribe.

40 C.F.R Part 63	Section
Subpart A	§§63.6(g), 63.6(h)(9), 63.7(e)(2)(ii) and (f), 63.8(f) and 63.10(f)