



AIR QUALITY PROGRAM
Environmental Programs Division
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November 14, 2018

Response to Comments – Minor Source Program Stakeholder Comments

Introduction:

On May 16, 2018, the Southern Ute Indian Tribe Air Quality Program (Tribe or AQP) sent a letter to representatives of companies operating within the Southern Ute Indian Reservation, inviting them to attend a stakeholder meeting to discuss the current status and future of minor source programs for the Reservation. A meeting was held on June 13, 2018 and the AQP provided an overview of three potential options for minor source programs including: (1) EPA’s continued implementation of the federal Tribal Minor New Source Review (TMNSR) Program and Federal Implementation Plan for Oil and Natural Gas True Minor Sources in Indian Country (FIP) by the EPA (collectively the “federal minor source programs”), (2) the Tribe (at the Southern Ute Indian Tribe/State of Colorado Environmental Commission’s request) applying to the EPA for an administrative delegation of the federal minor source programs, or (3) the Environmental Commission and the Tribe developing a Reservation-specific minor source program.

Representatives from six oil and gas companies and two environmental consulting companies attended the stakeholder meeting. The AQP solicited input during the meeting based on a set of prepared questions regarding each option and requested written comments through June 29, 2018. The AQP received verbal comments during the meeting and written comments from four stakeholders. The Tribe has reviewed the comments received, categorized the comments and, below, summarizes and responds to the comments:

Summary of Comments and Responses:

Question #1: The AQP requested comment from industry regarding any issues or concerns with EPA continuing to administer the federal minor source programs.

Comment Summary: Four commenters stated that the current federal minor source programs, as administered by EPA, are adequately meeting industry’s needs. Two commenters stated they had no concerns regarding continued EPA implementation of the federal minor source programs. One commenter stated the timelines for site registration under the FIP were of concern because they cause unnecessary project delays, but that the program was currently meeting their needs. Another commenter stated that the FIP registration process was lengthy, but manageable.

AQP's Response: The AQP appreciates the industry representatives' comments. The AQP agrees with commenters that, despite slow timelines associated with obtaining a site-specific permit under the TMNSR program or obtaining coverage under the FIP, the current federal minor source programs appear to be functioning well. However, the AQP is concerned the EPA's minor source compliance inspections are too infrequent. Currently, the EPA only inspects synthetic minor sources once every five-years and EPA never inspects true minor sources.

Questions #2 and #3: The AQP requested comments from industry on whether the current federal minor source programs would be adequate (e.g., would not unduly delay permit issuance) if there were increased natural gas development on the Reservation. More specifically, the AQP asked stakeholders to consider if industry needs an expedited mechanism for obtaining synthetic minor permit limits to avoid major source permitting.

Comment Summary: One commenter stated that, if there is increased natural gas development on the Reservation, the current federal minor source programs should be adequate. One commenter stated that the commenter believes the current programs would be adequate if there were increased natural gas development on the Reservation and that EPA has been timely with processing permit applications. Two commenters stated that, if the Tribe decides to develop a Reservation-specific program, they would like to see a mechanism, such as a general permit, for obtaining synthetic minor permit limits in an expedited manner.

AQP's Response: The AQP acknowledges that the TMNSR program appears to be adequately meeting the current needs of the oil and gas industry on the Reservation in terms of timely processing permit application, due to the current pace and type of oil and gas development (coal-bed methane) occurring on the Reservation. However, the AQP has concerns that, if the pace of development increases, including the development of oil or natural gas with a higher volatile organic compound content than coal-bed methane, then the mechanisms for obtaining permit coverage under the TMNSR program could delay economic development on the Reservation. Specifically, the AQP has concerns that the timeline for obtaining a site-specific permit (up to eighteen months) could inhibit efficient oil and gas development on the Reservation, due to the lack of a mechanism under the FIP for obtaining synthetic minor permit limits to reduce emissions below major source permitting program thresholds.

Question #4: The AQP requested comments from industry on any aspects of the current federal minor source programs that could be improved.

Comment Summary: Two commenters stated that the timeline for FIP registration could be improved to reduce delays in obtaining permit coverage. One commenter stated that the process for obtaining FIP coverage could be improved by combining the two-part registration process into a single registration submittal to reduce the timeline for obtaining coverage. Currently, the FIP requires certain sources to submit a site-specific screening registration to satisfy the Endangered Species Act and National Historic Preservation Act requirements of the FIP. Approval of this registration takes up to 30-days. Following the site-specific screening, a second registration is required to provide air quality specific information. The combined length of time for this process can delay construction for 60-days or more. Another stakeholder echoed this concern by stating that the FIP process is relatively lengthy (approximately 60 days).

AQP's Response: When considering the current level of oil and gas development on the Reservation, the AQP believes the federal program processes and timelines do not unreasonably delay permitting. The AQP acknowledges that, if the Reservation sees another upturn in oil and

gas development, the timelines for obtaining coverage under the FIP or obtaining a synthetic minor permit could inhibit efficient economic development, due to the FIP's two-part registration system and the absence of an expedited mechanism for obtaining a synthetic minor permit.

Question #5: The AQP requested comment from industry about any potential benefit(s) of the AQP seeking an administrative delegation for administering the current federal minor source programs.

Comment Summary: One commenter stated that the AQP receiving delegation of the current federal minor source programs would be beneficial to both the Tribe and industry.

AQP's Response: The AQP believes that acquiring an administrative delegation of the current federal minor source programs would be beneficial for both industry and the Tribe. Industry can continue to operate without any added costs, and the AQP will gain technical experience and skills in regulating minor source emissions.

Question #6: The AQP sought input from industry on the preferred option for regulating minor sources on the Reservation.

Comment Summary: The consensus from comments received was that, of the three options presented, the second option of the Tribe seeking administrative delegation of the existing federal minor source programs would provide the most benefit to the AQP and industry. All commenters preferred this option for the following reasons: (1) this option would allow the AQP to ease into and gain experience with new source review permitting; (2) this option benefits industry because it requires no additional costs or resources which could put unnecessary burden on industry during a time when the market price of natural gas is low; (3) this option would provide the AQP with additional time to assess the resources needed to develop and implement a Reservation-specific minor source program; (4) this option would provide the AQP with better emissions data for development of emissions inventories; (5) this option requires less time and resources from AQP and industry than development of a Reservation-specific minor source program.

One commenter stated that this option would allow the AQP to gain a clear understanding of the sources, emissions, and issues with the EPA's minor source programs before the Commission and Tribe attempt to develop a Reservation-specific minor source program. Another commenter stated that this option would be an important step toward the AQP's objective to create greater autonomy and ownership of air programs, potentially leading to improved policy oversight in the future. This commenter was also concerned about duplicative efforts for industry and increased inspection frequency if the AQP were to receive delegation of the current federal programs.

AQP's Response: The AQP notes and appreciates the commenters' concerns about potential duplication of efforts, potential increased inspection frequency, and potential additional costs. The AQP has carefully considered these comments and has analyzed and weighed the pros and cons of each option. Based on its analysis, the AQP favors option #2 for the following reasons: (1) the Environmental Commission and Tribe can assume a greater role in regulating minor sources on the Reservation without incurring the costs and delay associated with developing a Reservation-specific program; (2) there is no cost to regulated industry on the Reservation; (3) there is little to no cost to the AQP as funding for administration of this program is likely available through EPA grants; (4) the existing federal minor source programs are meeting the current air quality needs of the Reservation (e.g., the Reservation is in attainment for all of the

National Ambient Air Quality Standards and the permitting processes and timelines under the federal minor source programs are not unreasonably delaying development); (5) option #2 allows the AQP to build technical permitting skills and capacity; and (6) the AQP can inspect minor sources on the Reservation with a greater frequency than the EPA. As to this last point (increased inspection frequency), the AQP understands that operators devote additional time and incur additional expenses in connection with increased inspection frequency. However, EPA's lack of resources has resulted in what the AQP regards as an inadequate frequency of minor source inspections. The AQP's administration of the federal minor source programs and the AQP's increased frequency of inspections, compared to the frequency of EPA inspections, will be intended to enhance environmental compliance on the Reservation without unduly burdening industry. Environmental compliance is a major tribal goal.

Question #7: The AQP requested comments from industry about any potential benefits of the Tribe seeking delegation of only the FIP rather than the entire TMNSR program.

Comment Summary: One commenter stated that it would be beneficial for the Tribe to only seek delegation of the FIP because the Tribe would only need to work with oil and gas true minor sources and not the full scope of sources covered by the TMNSR program.

AQP's Response: If the AQP were to apply for and receive an administrative delegation of the FIP only, larger minor oil and gas sources and certain other sources would still be required to obtain individual source-specific minor source permits from EPA. Under this scenario, (1) oil and gas sources with site-specific permits and others source categories would work with the EPA for permitting and compliance, (2) true minor sources would work with the Tribe for permitting and compliance, and (3) all TMNSR sources would be under EPA jurisdiction for enforcement. This could create a confusing regulatory structure on the Reservation.

Question #8: The AQP requested comments from industry regarding how they would feel about working with two separate agencies for compliance and enforcement.

Comment Summary: One commenter stated that industry has no issue working with both the Tribe and EPA for compliance and enforcement issues. One commenter stated that operators already have to work with multiple agencies for enforcement for certain issues that are under state jurisdiction, so this would not be much different. This commenter also mentioned that, if the AQP received an administrative delegation of the existing federal minor source programs, to avoid confusion, the AQP could develop a memorandum of understanding with EPA on how enforcement would be carried out. One commenter stated that having to work with both the AQP and EPA seems to be the only negative to the AQP seeking an administrative delegation of the current federal programs. This commenter stated that working with the EPA on enforcement cases could prove to be challenging for the Tribe.

AQP's Response: The AQP has developed a good working relationship with EPA, and already consults with them frequently for various issues. AQP agrees it would probably be advisable for the Tribe to establish an enforcement procedures agreement with EPA. If the Tribe were to receive administrative delegation of the federal minor source programs, the AQP does not anticipate any issues with working with EPA on enforcement cases.

Question #9: The AQP requested comments from industry on the Environmental Commission and Tribe's possible development of a Reservation-specific minor source program.

Comment Summary: The common concerns identified by all commenters were: (1) fees, (2) possible retroactive regulation of existing sources, and (3), unreasonable permitting thresholds. One commenter also mentioned concerns regarding an increased level of effort required to accommodate a potential increase in inspection frequency. Another commenter stated concern regarding the amount of time and resources that would be required for the AQP to develop a Reservation-specific minor source program.

AQP response: The AQP understands and appreciates the commenters' concerns about possible development of a Reservation-specific minor source program. If the Environmental Commission and Tribe were to develop a Reservation-specific minor source program, the Commission and Tribe would need to carefully consider the appropriate scope of the program, in consultation with stakeholders. The regulation of existing sources was a component of a past tribal draft minor source program. The AQP ceased work on a draft minor source program in 2012 to assess the effectiveness of the recently promulgated federal TMNSR program. If the Reservation were to be designated non-attainment for ozone in 2020, which the EPA believes is unlikely, the Environmental Commission and Tribe would have 36 months to develop and implement a Reservation-specific minor source program. The AQP believes 36 months would be an adequate amount of time for the Environmental Commission to develop a non-attainment minor source program. The AQP does not currently have the resources necessary to develop a Reservation-specific minor source program, propose the program to the Environmental Commission, and implement the program. EPA is unlikely to fund such a program and, based on the AQP's internal fee assessments, AQP believes a reasonable fee structure probably would not fully fund the program.

Question #10: The AQP requested comment regarding any potential benefits of the Environmental Commission and Tribe developing and implementing a Reservation-specific minor source program.

Comment Summary: Two commenters stated that the Environmental Commission and Tribe's development of a Reservation-specific minor source program could put the AQP in a better position to quickly develop and implement regulations to address ozone non-attainment. One commenter mentioned that the AQP could eliminate unnecessary construction delays during the registration/permitting process by creating forms specifically for oil and gas and allowing sources to submit these forms after construction and the start of production. According to one commenter, the development of a general permit that could be used to obtain synthetic minor emission limits would be another potential benefit.

AQP's Response: If the Reservation were designated non-attainment, the Environmental Commission and Tribe would have 36 months to develop and implement a Reservation-specific minor source program. The AQP believes this is enough time for the Commission to develop a non-attainment Reservation-specific program. Additionally, the EPA believes it is highly unlikely that the Reservation would receive a non-attainment designation in the near future. While having a Reservation-specific minor source program in place could potentially be beneficial, in the AQP's view, this is an unnecessary step at this time.

Question #11: If the Environmental Commission chooses to develop a Reservation-specific minor source program, would industry be willing to work cooperatively with the Commission and Tribe in developing the program?

Comment Summary: Two commenters stated that, if the Commission chooses to develop a Reservation-specific minor source program, they would like to work with the Environmental

Commission and the AQP. One commenter recommended an industry stakeholder process to ensure any Reservation-specific minor source program is not overly burdensome, is not overly costly, incentivizes early action and emission reduction, supports flexibility for reducing emissions, facilitates proper enforcement with a level playing field, avoids overlapping requirements, and addresses local air quality issues.

AQP's Response: The AQP notes and appreciates industry representatives' willingness to work cooperatively with the Environmental Commission and Tribe, if the Commission and Tribe develop a Reservation-specific minor source program. If the Environmental Commission and Tribe develop a Reservation-specific minor source program, the AQP believes a stakeholder would be advisable to ensure that all of industry's concerns are heard and addressed.

Question #12: If EPA designated the Reservation as non-attainment for ozone, would Reservation operators favor a federal non-attainment implementation plan (developed and administered by EPA) or an Environmental Commission-adopted and tribal-administered Reservation-specific minor source program?

Comment Summary: Two commenters stated that, if EPA designated the Reservation in non-attainment for ozone, industry would prefer a Reservation-specific minor source program rather than an EPA-adopted and administered federal implementation plan. One commenter stated that the commenter would prefer to work with the Environmental Commission and Tribe rather than EPA to develop a non-attainment implementation plan.

AQP's Response: The AQP notes and appreciates the commenters' support for local regulatory program development and control if EPA designates the Reservation in non-attainment for ozone. A non-attainment FIP could be more stringent and less accommodating to the air quality needs of the Reservation than a Reservation-specific non-attainment minor source program. A FIP may also be less tailored to the preferences of the Environmental Commission, industry, and the AQP.