

**LONG-TERM PLAN FOR THE RESERVATION AIR PROGRAM**

**Prepared by the Southern Ute Indian Tribe and Approved by the  
Southern Ute Indian Tribe/State of Colorado  
Environmental Commission**

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## **LONG-TERM PLAN FOR THE RESERVATION AIR PROGRAM**

### **I. INTRODUCTION.**

This long-term plan for the Reservation Air Program was prepared in accordance with *the Intergovernmental Agreement Between the Southern Ute Indian Tribe and the State of Colorado Concerning Air Quality Control on the Southern Ute Indian Reservation* dated December 13, 1999 (IGA). In particular, section VIII. A. (g) of the IGA provides that it is the responsibility of the Southern Ute Indian Tribe to develop a long-term plan, for approval by the Southern Ute Indian Tribe/State of Colorado Environmental Commission (Commission), for improving and maintaining air quality within the exterior boundaries of the Southern Ute Indian Reservation, which also takes into account regional planning in the La Plata and Archuleta County region. Section VII.(d) of the IGA provides that it is the Commission's duty to review and approve the long-term plan that is initially prepared by the Tribe. The "Reservation Air Program" refers to the single air quality program applicable to all lands within the exterior boundaries of the Southern Ute Indian Reservation, the establishment of which program is the purpose of the IGA. The exterior boundaries of the Southern Ute Indian Reservation (Reservation) were confirmed by Congress in the Act of May 21, 1984, Pub. L. No. 98-290, 98 Stat. 201, 202 (found at "Other Provisions" note to 25 U.S.C.S. § 668).

The Reservation is situated in the northern end of the San Juan Basin which is a geologic structural basin that is one of the largest sources of natural gas in the world. The majority of the gas produced on the Reservation is coalbed methane from the Fruitland Formation, but natural gas is also produced from the conventional sandstone reservoirs of the Pictured Cliffs Formation, the Mesa Verde Group, and the Dakota Sandstone. The oil and gas industry's production and processing facilities constitute the majority of the Reservation's stationary air pollution sources and range from small gas well pads to large natural gas treating and processing plants.

Since the early 1980's the Tribe has maintained an active air quality monitoring program which, while not under the Commission's authority, serves important purposes related to the Tribe's and Commission's air quality objectives such as comparing the Reservation's ambient air quality to the National Ambient Air Quality Standards (NAAQS) and revealing air quality trends. The Tribe maintains two air quality monitoring stations. These stations measure ambient concentrations of certain criteria air pollutants, track metrological parameters, record visibility degradation, identify exceedances of National Ambient Air Quality Standards (NAAQS), and provide data and information for use in establishing long-term air quality management goals. The Tribe continues to explore options for expanding its monitoring program including fielding a mobile monitoring station to assess background concentrations of criteria pollutants and methane.

This long-term plan describes the rules and regulations the Commission has either adopted or plans to adopt so that the Reservation Air Program will serve its intended purpose as the single air quality program applicable to all lands within the exterior boundaries of the Reservation. To that end, this long-term plan focuses first on those rules

and regulations EPA administers on reservations and second on any additional rules and regulations determined necessary to improve and maintain the Reservation's air quality.

## **II. AIR POLLUTION PROGRAMS.**

This section discusses the Commission's plans for development and implementation of Clean Air Act (CAA) and non-CAA air programs. Standards, rules, and regulations for any new program will be developed and promulgated through rulemaking in accordance with the Commission's Procedural Rules.

### **A. TITLE V OPERATING PERMIT PROGRAM.**

The 1990 CAA amendments authorized tribal governments to participate in CAA implementation in the "same manner as a state." Title V of the CAA (42 U.S.C. §7661), created by the same amendments, requires states to implement a national operating permit program. The operating permit program requires that large industrial sources, as well as certain other sources, of air pollution obtain a permit that consolidates all applicable air quality regulatory requirements for a facility into one document. The purpose of Title V permits, sometimes called Part 70 permits because the implementing regulations for the program are published at 40 CFR Part 70, is to make applicable air quality regulatory requirements more transparent for industry thereby reducing violations of air pollution laws and improving enforcement of those laws.

On November 12, 2008, the Commission adopted the Reservation Air Code (RAC), which includes regulations for a Part 70 Program on the Reservation. On March 15, 2012, EPA promulgated its approval, effective March 2, 2012, of the Tribe's Part 70 Operating Permit Program application, as well as the Tribe's Treatment in the Same Manner as a State application, authorizing the Tribe to administer the Commission's Part 70 Program within the exterior boundaries of the Reservation. In accordance with the *Southern Ute Indian Tribe's Reservation Air Program Transition Plan from Federal Part 71 to Southern Ute Indian Tribe Part 70 Operating Permit Program*, all existing EPA-issued Part 71 permits were successfully transitioned to Tribally-issued Part 70 permits by the March 2, 2015 deadline. . On September 17, 2014 the EPA approved the Tribe's Compliance Monitoring Strategy for inspection of Title V sources and on January 29, 2015 the Tribe finalized its Enforcement Procedures and Penalty Policy Manual. Compliance inspections began in October 2015.

### **B. NSPS AND NESHAP.**

New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) are established by EPA under Sections 111 and 112 of the CAA, respectively. NSPS and NESHAP set the minimum standards for certain new, modified, and existing sources of air pollution. On September 6, 2013, EPA delegated full upfront approval to the Tribe to implement and enforce any NESHAP that the Commission chooses to include by reference at Article II, Part 3 of the RAC. Additionally, on September 6, 2013, EPA delegated authority for the Tribe to implement and enforce certain

NSPS that were incorporated by reference into Article II, Part 2 of the RAC by the Commission. Though the Tribe may enforce compliance of all requirements included in the Title V permits it issues, the incorporation by reference of the applicable NSPS and NESHAP into the RAC enable the Tribe and Commission to exercise authority with respect to the incorporated standards and requirements without the risk of dual-enforcement of the same by EPA and will reduce administrative burdens on owners and operators. The Tribe and Commission plan to consider the incorporation of any new NSPS and NESHAP that apply to Reservation sources into the Reservation Air Code.

### **C. MINOR SOURCE PROGRAM.**

There had been a permitting gap that had allowed sources of air pollution in Indian country to operate without first receiving a preconstruction permit as is required on any state lands until July 1, 2011, when EPA published its final rule called *Review of New Sources and Modifications in Indian Country*. This rule created Tribal Minor New Source Review (TMNSR) regulations for the protection of air resources in Indian country. The TMNSR rules require that a preconstruction permit be obtained prior to the construction of any new source of air pollution, and for any modification at an existing source, where the air pollutant emissions meet certain permitting thresholds. The EPA has extended the permitting deadline for oil and natural gas sector sources under the TMNSR Program twice since June 16, 2014. First, the deadline was moved from September 2, 2014 to March 2, 2016 and extended again to October 3, 2016 to allow additional time for the EPA to implement the regulations for true minor sources in the oil and natural gas sector under a proposed federal implementation plan (FIP). The FIP would be effective until replaced by an EPA-approved tribal implementation program.

The Tribe and Commission had been developing a preconstruction air permitting program, called the *Minor Source Program for the Southern Ute Indian Reservation* (MSP), whose scope also covered existing sources, thus accounting for those sources built during the permitting gap. Development of the MSP was delayed to monitor the development of the federal TMNSR regulations for true minor sources in the oil and natural gas sector and to allow the Tribe to allocate resources to implement the Title V operating permit program. The Tribe and Commission will re-evaluate minor source program development following EPA issuance of the final rule for true minor sources in the oil and natural gas sector. Thereafter, the Tribe and Commission may (1) suspend further MSP development, or (2) re-start MSP development (e.g., explore the possibility of the Tribe seeking EPA delegation for portions of the federal TMNSR program or developing a Reservation-specific, tribal and Commission-only program).

### **III. POSSIBLE FUTURE CONSIDERATIONS.**

In addition to the above described programs, it is the Tribe's and Commission's intention to consider other actions and development of other programs including: 1) a pollutant specific voluntary program such as the EPA's Ozone Advance or Methane Challenge or a Tribal Implementation Plan (programs to reduce Volatile Organic Compounds (VOC) and methane emissions), 2) harmonizing regulatory requirements and

programs for the oil and gas industry operating within the Reservation boundaries that are being implemented by other governmental agencies such as the Bureau of Land Management, the EPA, and the State of Colorado (such as VOC and methane leak detection and repair programs), 3) a Prevention of Significant Deterioration program, 4) partial delegation of TMNSR compliance monitoring for synthetic minor Title V sources from EPA, 5) the designation of the Reservation as its own air quality control region, or 6) any program or rule deemed beneficial for the health of the Reservation's residents or its environment (such as a visible emissions rule).

#### **IV. RESERVATION AIR PROGRAM DEVELOPMENT.**

Development and implementation of the Reservation Air Program is unique in that each component program must be reviewed and approved by several governmental entities. It is the Tribe's responsibility under the IGA to prepare initial program proposals and drafts of program standards, rules, and regulations. Before recommendation to the Commission, those programs must be reviewed by the State. Finally, after review and approval by the Commission, the Tribe must apply to EPA and receive a delegation of authority to administer certain CAA components of the Reservation Air Program. After the delegation or approval of CAA programs, an implementation/transition phase may be necessary for each approved program.

#### **V. REGIONAL AIR QUALITY PLANNING.**

##### **A. LOCAL CONSULTATION AND COORDINATION**

It is the Tribe's and Commission's desire to continue development of the Reservation Air Program in consultation and coordination with the area's local governments including La Plata and Archuleta counties and other air quality planning groups, including the Four Corners Air Quality Group. In that regard, the Tribe and the Commission will continue to consider these governmental and cooperative agencies' plans and initiatives and tribal staff will continue to monitor and participate in regional air quality protection initiatives.

##### **B. EMISSION INVENTORY DEVELOPMENT**

The Tribe plans to continue development of comprehensive emissions inventories for the Southern Ute Indian Reservation to aid in future air quality planning and program development for maintaining compliance with the National Ambient Air Quality Standards. In particular, the Tribe intends on improving upon previous program emission estimations for un-permitted oil and natural gas sources, which may have overestimated VOC and NOx emissions. Comprehensive emission inventories will be completed no less than every three years and emission inventories of Title V sources will be completed annually.

## **VI. CONCLUSION.**

This Long-Term Plan for the Reservation Air Program sets forth the Tribe and Commission's plan for the development of the Reservation Air Program and their intention for the Program to be developed in a manner that takes into account regional air quality planning by local area governments and other groups. It is the intention of the Tribe and Commission to review and update this plan once every five years.

## **HISTORY**

- Long-Term Plan originally approved by Southern Ute Indian Tribe/State of Colorado Environmental Commission on June 30, 2006.
- Amended by the Southern Ute Indian Tribe/State of Colorado Environmental Commission on June 5, 2013.
- Amended by the Southern Ute Indian Tribe/State of Colorado Environmental Commission and approved on June 8, 2016 and ratified on April 12, 2017.