

**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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## Table of Contents

I.	INTRODUCTION.....	1
II.	AIR POLLUTION PROGRAMS.....	2
A.	TITLE V OPERATING PERMIT PROGRAM.....	2
B.	NSPS AND NESHAP.....	3
C.	MINOR SOURCE PROGRAM.....	3
III.	POSSIBLE FUTURE CONSIDERATIONS.....	4
IV.	RESERVATION AIR PROGRAM DEVELOPMENT.....	5
V.	REGIONAL AIR QUALITY PLANNING.....	5
A.	LOCAL CONSULTATION AND COORDINATION.....	5
B.	EMISSION INVENTORY DEVELOPMENT.....	5
VI.	CONCLUSION.....	6
	HISTORY.....	7

## 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 stationary air quality monitoring stations and one mobile air quality monitoring station. These stations measure ambient concentrations of certain criteria air pollutants, track metrological parameters, record visibility degradation, identify any exceedances of National Ambient Air Quality Standards (NAAQS), and provide data and information for use in performing air quality studies and establishing long-term air quality management goals. Additionally, all ambient air quality data is submitted to the EPA Air Quality Systems database for use by federal and state air quality planners. During the last five years, the Tribe has identified instances of elevated particulate matter from local and regional forest fires, prescribed burns and dust storms as being the most frequently occurring cause of unhealthy air on the Reservation. To increase the ability of the Tribe to inform residents of the Reservation and surrounding region of unhealthy air quality from these events, the Tribe has added two continuous

particulate matter samplers to the monitoring network. One sampler is located at the Ute 1 station in the town of Ignacio and the second at the Ute 3 station near Bondad, Colorado. Real-time air quality measurements and corresponding EPA Air Now Air Quality Index health alerts can be viewed on the Tribe's Ambient Air Quality Monitoring website at the following webpage: [Ambient Monitoring – Southern Ute Indian Tribe \(southernute.nsn.gov\)](http://southernute.nsn.gov).

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. It is the Tribe's foremost goal to receive EPA delegation of the core CAA programs or develop analogous rules which better meet the needs of the Reservation through the Tribal Implementation Plan process. The core programs include (1) the New Source Review preconstruction permitting programs, (2) the Title V operating permit program, (3) the New Source Performance Standards, (4) the National Emission Standards for Hazardous Air Pollutants, and (5) the Maximum Achievable Control Technology Standards. To date, the Tribe has already obtained, or is in the process of receiving, delegation of these CAA programs, as described in more detail in this section of the long-term plan. Once the core CAA programs are obtained and being successfully administered, it's the Tribe's intent to consider the development or adoption of other non-CAA programs, as described in section III of the long-term plan.

### **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 initial Compliance Monitoring Strategy for inspection of Title V sources and the Tribe began conducting compliance inspections in 2015. On January 29, 2015, the Tribe finalized its Enforcement Procedures and Penalty Policy Manual outlining the Tribe's civil enforcement procedures, civil enforcement penalty policy, and formal and informal enforcement template letters. The Tribe will continue to complete all required duties for administration of the Title V program, including permitting, compliance and civil enforcement

## **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 it's unnecessary for the Tribe to have delegation of the NSPS and NESHAP standards for the purposes of implementing and enforcing these standards as applicable requirements of Title V permits, the delegation of these rules provides the Tribe with the authority to enforce the standards independently of a Title V permit. 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.**

Prior to July 1, 2011, when EPA published its final rule called *Review of New Sources and Modifications in Indian Country*, there had been a permitting gap in Indian Country that allowed sources of air pollution to be constructed and operate without first receiving a preconstruction permit, as is required on any state lands. This rule, referred to hereafter as the Tribal Minor New Source Review (TMNSR) program, created 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 deadline. On June 3, 2016, EPA expanded its regulation of minor sources through implementation of a federal implementation plan (FIP) for true minor sources in the oil and natural gas sector. The FIP, titled the *Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and*

*Natural Gas Processing Segments of the Oil and Natural Gas Sector*, will remain in effect unless 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 postponed 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. In 2017, the Tribe began re-evaluating the regulation of minor sources on the Reservation through a stakeholder outreach process and identified the three following options: (1) continued EPA administration of the federal TMNSR program and FIP, (2) the Tribe seeks administrative delegation of all or part of the federal TMNSR program and FIP, or (3) The Tribe develops and submits a TIP to EPA for approval of a Reservation specific program. Considerations for each option included evaluation of the level of environmental protection for maintaining compliance with the ozone NAAQS, feasibility of program development and implementation, and potential costs to the Tribe and regulated community.

After consideration of stakeholder feedback, on April 24, 2019, the Commission approved a resolution requesting the Tribe pursue the option to seek administrative delegation of EPA's federal TMNSR program and FIP. On April 28, 2020, Tribal Council approved a resolution authorizing the Tribe's submission of a conditional request, pursuant to 40 C.F.R. §49.161 and 40 C.F.R. § 49.103 for administrative delegation of the TMNSR program and FIP. The Tribe submitted its delegation request application to EPA Region 8 on April 30, 2020. The Tribe's application was conditioned upon receiving assurance from EPA Region 8 of a continued funding mechanism to ensure the Tribe's long-term success in administering the programs. The Tribe expects to obtain administrative delegation and begin implementation of the TMNSR program and FIP during the next five years.

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

In addition to the above described programs, during the next five years the Tribe's and Commission's may consider other actions and development of other programs, as needed, 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) consideration of adopting certain State of Colorado air quality initiatives for the oil and gas industry or other industries, (such as VOC and methane leak detection and repair programs), 3) a Prevention of Significant Deterioration program, 4) the designation of the Reservation as its own air quality control region, or 5) any program or rule deemed beneficial for the health of the Reservation's residents or its environment (such as a visible emissions rule or greenhouse gas initiatives).

#### **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 emissions inventories for the Southern Ute Indian Reservation to aid in future air quality planning and program development for maintaining compliance with the NAAQS. Comprehensive emission inventories will be completed no less than every three years and emission inventories of Title V sources will be completed annually. At the request of EPA, the Tribe is developing a Quality Assurance Project Plan (QAPP) for emission inventories which outlines the procedures followed by the Tribe during development of emission inventories. The procedures outlined in the QAPP will describe how the Tribe's emission inventory development adheres to the guidelines set forth in EPA's Emission Inventory Improvement Program.

## **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, such as the Four Corners Air Quality Group and Western Regional Air Partnership. 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.
- Amended by the Southern Ute Indian Tribe/State of Colorado Environmental Commission and approved on November 9, 2022.