

**NOTICE OF PROPOSED REVISIONS TO THE SOUTHERN UTE INDIAN  
TRIBE/STATE OF COLORADO ENVIRONMENTAL COMMISSION'S  
RESERVATION AIR CODE AND REQUEST FOR COMMENTS**

The Southern Ute Indian Tribe/State of Colorado Environmental Commission is seeking comments from interested persons on certain proposed changes to the Commission's Reservation Air Code (RAC).

**I. Statement of time, place and nature of rulemaking proceeding.**

In addition to receiving written comments, the Environmental Commission will hold a public hearing at Southern Ute Indian Tribe – Justice & Regulatory building-Large Conference Room at 71 Mike Frost Way, Ignacio, CO 81137 on Wednesday, May 24<sup>th</sup>, 2023 beginning at 1:00pm to receive public comment on the proposed changes to the RAC. The meeting will also be hosted virtually. For more information about attending the meeting virtually, please visit: <https://www.southernute-nsn.gov/justice-and-regulatory/epd/air-quality/env-commission/>.

**II. Authority under which the changes are proposed.**

Authority is vested in the Southern Ute Indian Tribe/State of Colorado Environmental Commission by 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”), tribal law (Resolution of the Council of the Southern Ute Indian Tribe # 00-09), State law (C.R.S. § 24-62-101), and federal law (Act of October 18, 2004, Pub. L. No. 108-336, 118 Stat.1354) to adopt rules and regulations for air quality programs applicable to all lands within the exterior boundaries of the Southern Ute Indian Reservation. The Commission's rulemaking procedures can be found in section IV of the Commission's Procedural Rules.

**III. Submission of comments.**

Please provide any comments no later than 5:00 p.m. on **June 4, 2023**. Please submit your comments to Danny Powers, Air Quality Program Manager for the Southern Ute Indian Tribe, by one of the following methods:

- E-mail: [dpowers@southernute-nsn.gov](mailto:dpowers@southernute-nsn.gov)
- Mail: Southern Ute Indian Tribe/State of Colorado Environmental Commission, c/o Danny Powers, Air Quality Program Manager, Southern Ute Environmental Programs Division, P.O. Box 737 MS# 84, Ignacio, Colorado, 81137

**IV. Supplementary information and summary description of RAC changes.**

The Commission previously proposed these revisions as a direct final rule making and posted public notice of the proposed revisions. The Commission has further revised the RAC, taking into consideration of the comments received. A summary of both the original proposed revisions and the comments received at listed below. The Commission is proposing to revise RAC Article I and Article II Part 1, as described below.

First, the Commission is updating the “major source” definition in RAC § 1-103 (38) to align the definition with EPA’s updated “major source” definition in 40 CFR 70.2 of the federal Part 70 operating permit program. The updated definition at 40 CFR 70.2 better aligns the definition with the June 3, 2016, oil and gas source aggregation rule published at 81 Fed. Reg. 35622.

Second, the Commission is removing language relating to the three-year permit transition plan for the transition of federally issued Part 71 permits to tribally issued Part 70 permits. These revisions remove obsolete RAC provisions. All EPA-issued Part 71 permits were transitioned to Tribe-issued Part 70 permits pursuant to a three-year permit transition plan approved concurrently by EPA at the time of EPA’s approval of the Tribe’s Part 70 operating permit program on March 2, 2012. Since that time, all initial Part 70 operating permits have undergone five-year permit renewal issuances. Therefore, the transition plan-related permit provisions are no longer needed in the RAC.

Third, the Commission is revising language in RAC §§ 2-106 and 2-110 to require permittees submitting forms to the Tribe for permitting or compliance purposes to use the most current forms provided by the Tribe. The Tribe’s permitting and compliance forms have been developed to encompass the requirements of the RAC and applicable regulations, and to be compatible with the Tribe’s compliance database.

Fourth, the Commission is updating the permit application completeness determination and permit issuance timeline language in RAC § 2-107. These revisions have been made to clarify the Tribe’s permit application completeness deadline of 60 days for initial applications, renewal applications, and significant permit revisions. The revisions also clarify the 30-day completeness deadline for minor permit revisions.

Fifth, the Commission is revising the timelines for the Tribe to take final action on complete permit applications for clarity and consistency with the analogous language in 40 CFR Part 70. The Commission is making no changes to the timelines for the Tribe to take action on final permit issuances.

Sixth, the Commission is adding a requirement to RAC § 2-106(d) for Part 70 sources operators to submit a notice of a new or revised New Source Review (NSR) permit to the Tribe within 30 calendar days of the NSR permit becoming effective. The Commission also included additional language to this provision to provide clarification that permit revision applications for the incorporation of an initial or revised NSR permit and any associated permit revisions necessary as a result of operations authorized by the NSR permit, are to be submitted according to the timelines established in RAC § 2-106(2). *The Commission received a comment on its previous proposed revisions to this RAC section. The revisions were included in the Commission’s direct final rulemaking that was approved at the Commission’s meeting on November 9, 2022. To address the comment received, the Commission has further revised this RAC section and is proposing the new revised language .*

Seventh, the Commission is clarifying in RAC § 2-111 that a permittee's filing of a minor permit revision application is not authorization to construct or modify a source. The permittee is responsible for determining and receiving the appropriate New Source Review preconstruction permitting authorizations for construction or modification of a source. *In response to the direct final rulemaking that was approved at the Commission's November 9, 2022, meeting, the Commission received comment of this proposed revision. In response to the comment, the Commission has added additional clarification. The proposed revision above takes into account the comment received.*

Finally, the Commission is correcting numerous typos and making certain revisions to promote administrative clarity. Additionally, the Commission is correcting several incorrect incorporations by reference citations to correctly align the RAC with the federal standards at 40 CFR Part 70 or to correctly cross reference other RAC citations. The Commission considers these revisions to be administrative in nature.

**V. Response to Comments on Previous Direct Final Rulemaking.**

Previously, the Commission published a notice of direct final rulemaking on the same substantive RAC provisions as this rulemaking. The Commission received two adverse comments. A copy of the Commission's responses to comments document can be found at the following website:

<https://www.southernute-nsn.gov/justice-and-regulatory/epd/public-comments/>

**VI. Where a complete copy of the RAC and RAC changes can be obtained.**

A copy of the RAC and a redlined version showing the changes is available upon request from the Tribe's Air Quality Program Manager who can be contacted by e-mail, mail, or in person at the addresses noted above. The RAC and the exhibit showing the changes also is available at the following website:

[www.southernute-nsn.gov/justice-and-regulatory/epd/air-quality/env-commission/](http://www.southernute-nsn.gov/justice-and-regulatory/epd/air-quality/env-commission/)

**For further information contact:** Danny Powers, Program Manager, Air Quality Program, Southern Ute Indian Tribe, P.O. Box 737 MS#84, Ignacio, Colorado, 81137; telephone number (970) 563- 2265; e-mail [dpowers@southernute-nsn.gov](mailto:dpowers@southernute-nsn.gov)