U.S. Environmental Protection Agency

Tribal New Source Review Implementation Manual

May 2012

[This page intentionally left blank.]

CONTENTS

TABLES

LIST OF ACRONYMS

AIAQTP	American Indian Air Quality Training Program
AIEO	American Indian Environmental Office
APTI	Air Pollution Training Institute
AQAD	Air Quality Assessment Division
AQIA	Air Quality Impact Analysis
AQPD	Air Quality Policy Division
AQRV	Air Quality Related Value
BACT	Best Available Control Technology
BTU	British Thermal Unit
C_6H_6	Benzene
CAA	Clean Air Act
Cd	Cadmium
CEMS	Continuing Emissions Monitoring System
CFR	Code of Federal Regulations
CH_4	Methane
CO	Carbon Monoxide
CO_2	Carbon Dioxide
CPMS	Continuous Parameter Monitoring Systems
DITCA	Direct Implementation Tribal Cooperative Agreement
EPA	United States Environmental Protection Agency
EAB	Environmental Appeals Board
FARR	Federal Air Rule for Reservations
FIP	Federal Implementation Plan
FR	Federal Register
GAP	General Assistance Program
GHG	Greenhouse Gas
GP	General Permit
H_2S	Hydrogen Sulfide
H_2SO_4	Sulfuric Acid Mist
HAP	Hazardous Air Pollutant
HEID	Health & Environmental Impacts Division
HFC	Hydro fluorocarbon
Hg	Mercury
ITEP	Institute for Tribal Environmental Professionals
LAER	Lowest Achievable Emission Rate
MACT	Maximum Achievable Control Technology
MOU	Memorandum of Understanding
N_2O	Nitrous Oxide
NACAA	National Association of Clean Air Agencies
NAAQS	National Ambient Air Quality Standards
NAU	Northern Arizona University
NEI	National Emission Inventory
NESHAP	National Emission Standard for Hazardous Air Pollutants
NO_2	Nitrogen Dioxide

NO_x	Oxides of Nitrogen
NA NSR	Nonattainment New Source Review
NSR	New Source Review
NSPS	New Source Performance Standard
NTAA	National Tribal Air Association
NTEC	National Tribal Environmental Council
O_3	Ozone
OAQPS	Office of Air Quality Planning and Standards
OAR	Office of Air and Radiation
OECA	Office of Enforcement and Compliance Assurance
OID	Outreach and Information Division
OMB	Office of Management and Budget
Pb	Lead
PEMS	Predictive Emission Monitoring System
PFC	Per fluorocarbon
PM	Particulate Matter
ppm	Parts Per Million
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
QEPS	Quantifiable, Enforceable, Permanent and Surplus
RACM	Reasonably Available Control Measures
RACT	Reasonably Available Control Technology
SER	Significant Emission Rate
SF_6	Sulfur Hexafluoride
SIP	State Implementation Plan
SO_2	Sulfur Dioxide
SPPD	Sector Policies and Programs Division
TAC	Tribal Air Coordinator
TAMS	Tribal Air Monitoring Support Center
TAR	Tribal Authority Rule
TAS	Treatment in the Same Manner as a State
TEISS	Tribal Emission Inventory Software Solution
TIP	Tribal Implementation Plan
tpy	Tons Per Year
TSD	Technical Support Document
VOC	Volatile Organic Compound

PURPOSE OF DOCUMENT

This training manual is to serve as a resource tool to support understanding and implementation of the federal Tribal Minor New Source Review (NSR) rule. This is a comprehensive, informational and instructional document developed to guide you and the EPA regions in working collaboratively and facilitating a transparent process. In an attempt to promote a common understanding of the NSR process, we have included some general information on air quality, explanations of specific rules, process materials and template materials. These materials are intended to assist you and the EPA regions in implementing the tribal NSR rule.

In addition to information specific to the tribal NSR rule, this training manual provides basic information on air quality issues. It also provides information concerning tribal air quality authority under federal law. This information is intended to ensure we all have a common understanding of key information as we discuss the specifics of the tribal NSR rule, its applications, and implementation options and tools. The tabs that follow will correlate with the Roman numeral sections and provide more in-depth information and/or sample products that can be used as guides for implementation of your program. There are many differing levels of capacity in Indian country and we are striving to leverage resources and information to assist in the development and implementation of the tribal NSR rule specifically, and NSR programs generally, to accommodate the differences.

Throughout this document "You" means a federally-recognized Indian tribe; "We" means the United States Environmental Protection Agency (EPA). The discussion in this document is intended solely as an information source. The statutory provisions and EPA regulations described in this document contain legally binding requirements. This document is not a regulation itself, nor does it change or substitute for those provisions and regulations. Thus, it does not impose legally binding requirements on the EPA, tribes, or the regulated community. This document does not confer legal rights or impose legal obligations upon any member of the public.

While the EPA has made every effort to ensure the accuracy of the discussion in this document, the obligations of tribes and the regulated community are determined by statues, regulations, or other legally binding requirements. In the event of a conflict between the discussion in this document and any statute or regulations, this document would not be controlling.

The general description provided here may not apply to a particular situation based upon the circumstances. Interested parties are free to raise questions and objections about the substance of this guidance and the appropriateness of the application of this document to a particular situation. The EPA and other decisions makers retain the discretion to adopt approaches on a case-by-case basis that differ from those described in this document where appropriate.

This is a living document and may be revised periodically without public notice. The EPA welcomes public input on this document at any time.

I. GENERAL AIR HISTORY AND BACKGROUND

This section provides information on policies, rules and criteria that are the basis for developing an air quality program and supports you with direction for taking on the role, if any, you choose in implementing NSR in Indian country.

A. CLEAN AIR ACT (CAA OR THE ACT)

This section provides an overview of the basics of the CAA.

1. History

In October 1948, a thick cloud of air pollution formed above the industrial town of Donora, Pennsylvania. The cloud which lingered for 5 days killed 20 people and caused sickness in 6,000 of the town's 14,000 people. In 1952, over 3,000 people died in what became known as London's "Killer Fog." The smog was so thick that buses could not run without guides walking ahead of them carrying lanterns.

Events like these alerted us to the dangers that air pollution poses to public health. Several federal and state laws were passed, including the original CAA of 1963, which established funding for the study and the cleanup of air pollution. But there was no comprehensive federal response to address air pollution until Congress passed a much stronger CAA in 1970. That same year, Congress created the EPA (or the Agency) and gave it the primary role in carrying out the law. Since 1970, we have been responsible for a variety of programs to reduce air pollution nationwide.

In 1990, Congress dramatically revised and expanded the CAA providing us with even broader authority to implement and enforce regulations reducing air pollutant emissions. The 1990 Amendments also placed an increased emphasis on more cost-effective approaches to reduce air pollution.

2. Role of the EPA

Our mission is to protect human health and the environment. We are responsible for setting limits on certain air pollutants to help ensure basic health and environmental protection from pollution. We also limit emissions of air pollutants coming from stationary sources. We approve state, tribal, and local agency plans for reducing air pollution. We can provide research, expert studies, engineering designs, and funding to you, the states, or local agencies to support the progress of air quality plans.

3. Role of the Tribes

The 1990 revision of the CAA recognized that you can implement air pollution control programs in your areas. Our Tribal Authority Rule (TAR) gives you the ability to apply for eligibility to develop air quality management programs, write rules to reduce air pollution, and implement and enforce your rules in Indian country. You may (but are not required to) develop and implement most of the CAA programs that are appropriate for your lands, unlike state and local agencies that are required to implement many CAA requirements. EPA deemed limited sections of the act as

inappropriate for tribes, generally including provisions that would impose obligations on, rather than provide opportunities to, tribes such as deadlines and sanctions for failing to meet such deadlines, as well as requirements relating to criminal enforcement authority.

4. Key Elements

To achieve our mission, we implement a variety of programs under the CAA that focus on:

- Reducing outdoor or ambient concentrations of air pollutants that cause smog, haze, acid rain, and other problems;
- Reducing emissions of toxic air pollutants that are known to, or are suspected of, causing cancer or other serious health effects; and
- Phasing out production and use of chemicals that destroy stratospheric ozone.
- These pollutants come from stationary sources (like chemical plants, gas stations, and power plants) and mobile sources (like cars, trucks, and planes).

B. EPA'S 1984 INDIAN POLICY [1]

The 1983 Federal Indian Policy stressed two related themes: 1) the federal government will pursue the principle of Indian "self-government;" and 2) the federal government will work directly with the tribal government on a "government-to-government" basis. On November 8, 1984, EPA issued our Policy for the Administration of Environmental Program on Indian Reservations. As part of the EPA Indian Policy, it became our policy to "give special consideration to tribal interests in making Agency policy, and to ensure the close involvement of tribal governments in making decisions and managing environmental programs affecting reservation lands." The following are some of the principles EPA committed to in order to meet these objectives:

- We stand ready to work directly with Indian tribal governments on a one-to-one basis (the "government-to-government" relationship), rather than as subdivisions of other governments.
- We will recognize tribal governments as the primary parties for setting standards, making environmental policy decisions and managing programs for reservations, consistent with our standards and regulations.
- Until tribal governments are willing and able to assume full responsibility for delegable programs, we will retain responsibility for managing programs for reservations (unless the state has an expressed grant of jurisdiction from Congress sufficient to support delegation to the state government).

C. GENERAL PRINCIPLES OF STATE, TRIBAL AND FEDERAL AUTHORITY TO IMPLEMENT THE CAA IN INDIAN COUNTRY

The CAA authorized EPA to protect air quality. Section 301(d) allows EPA to work with tribes to protect air quality in Indian country. We intend to use this authority to remedy and prevent gaps in CAA protection for tribal air resources. As stated in section 101(b)(1) of the

[1] http://www.epa.gov/tp/basicinfo/presidential-docs.html

Act, Congress intended to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its populations."

Certain general principles are relevant**:**

- We generally provide oversight and funding for state and tribal programs authorized under the CAA.
- For regulatory programs under the CAA to apply in Indian country (or elsewhere), EPA must explicitly approve such programs.
- In Indian country, regulatory authority generally rests with the federal government and relevant tribe, and not with the states; and EPA interprets section 301(d) as a delegation by Congress of authority to eligible tribes to administer CAA programs over their entire reservations.
- Unless a state has explicitly applied for approval of a CAA program in Indian country and demonstrated its authority in such areas, and we have explicitly approved a state program as applying in Indian country, EPA-approved state programs are not effective under the CAA within the boundaries of that Indian country.
- The tribal NSR rule is in effect throughout Indian country where there is no EPA-approved program under the CAA.
- We will fill regulatory gaps through:
    - Coordination with tribal programs established under tribal law.
    - Approval of tribal programs under the CAA.
    - Support for tribal implementation of tribal programs.
    - Development of rules to fill regulatory gaps.
    - Building capacity of tribes to assist EPA.
    - Development of cooperative approaches with tribes, states, and local governments.

D. TRIBAL AUTHORITY RULE

On February 12, 1998, we issued the TAR. This rule implemented section 301(d) of the CAA. The TAR identifies those provisions of the CAA for which it is appropriate to treat eligible federally-recognized tribes in the same manner as a state (TAS) and defines the process by which we will approve tribal CAA programs. The TAR also defines the eligibility requirements for you to apply to participate in many CAA programs. In addition, the TAR describes the kinds of financial assistance available to you if you are interested in pursuing an air quality program.[2]

The TAR outlines the eligibility criteria you must meet in order to be treated in the same manner as a state and defines the process by which EPA will approve tribal CAA programs. You can obtain TAS for many elements of the CAA ranging from receiving programmatic grants under section 105 of the Act, to monitoring, to developing and implementing a Tribal Implementation Plan (TIP). You can apply for TAS in stages as your program grows. This will allow you to obtain TAS for only those parts of the programs you need, but you can also bundle your TAS applications for multiple elements of the program you intend to develop in

[2] http://www.epa.gov/oar/tribal/backgrnd.html

the future. The TAR envisions this modular approach for the tribes and you can take on the program elements separately as long as those elements are "Reasonably Severable."

1. Reasonably Severable Program Elements

The TAR allows you to seek approval of partial elements of CAA programs as long as those portions are determined to be reasonably severable elements, 40 CFR 49.7(c).[3] For example, the TAR authorizes eligible Indian tribes to establish a Prevention of Significant Deterioration (PSD), nonattainment major NSR, minor NSR and other programs under CAA. This is accomplished after a tribe is approved for TAS and then develops a TIP for approval. When you administer an approved TIP to implement a CAA program, your tribal law will replace the federal program as the requirement for that area of Indian country and you will be responsible for enforcing that particular program under your tribal law.

We recognized in the TAR that you may decide to develop only certain CAA programs, and perhaps even only parts of those programs, and not others. First, you may have concerns with regard to some types of pollution in your Indian country and not others. In addition, you may not have the resources to develop more than a few CAA programs, and are not in any event required under the CAA to develop your own programs at all. The TAR allows you to engage in a "modular" approach to implement the CAA; that is, you may request approval of "reasonably severable" elements of programs instead of the entire act or even entire programs. We also suggested that you conduct emission inventories and project potential future emissions based on projections of future growth to determine priorities for developing your air programs. In addition, we indicated that you may be permitted to submit partial permit programs, consistent with our modular approach. The TAR codifies this approach, providing that "a program approval request may be comprised of only partial elements of a CAA program, provided that any such elements are reasonably severable, that is, not integrally related to program elements that are not included in the plan submittal."

2. Criminal Enforcement Memorandum of Understanding

The TAR provides for a federal role in criminal enforcement of CAA programs in Indian country when the CAA or its implementing regulations mandate criminal enforcement authority and the applicant tribe is precluded from exercising such authority (40 CFR 49.7[4](a)(6) and 49.8). In these circumstances, the TAR allows us to approve your application if you enter into a Memorandum of Understanding (MOU) with us that provides for the federal government to exercise primary criminal enforcement responsibility. These provisions of the TAR recognize that federal law places certain limitations on tribal criminal jurisdiction and sanctions.

[3] http://www.federalregister.gov/select-citation/2011/03/09/40-CFR-49.7
[4] http://www.federalregister.gov/select-citation/2011/03/09/40-CFR-49.7

E. TREATMENT IN THE SAME MANNER AS A STATE (TAS)

The TAR authorizes us to treat an eligible federally-recognized Indian tribe in the same manner as a state for implementing and managing certain environmental programs. TAS, or program eligibility, is granted to a tribe when it can demonstrate that it meets the criteria at 40 CFR §49.6. These include that the applicant tribe is federally recognized, has a governing body carrying out substantial duties and functions, that the functions to be exercised pertain to air resources of the tribe's reservation or other areas under tribal jurisdiction, and that the tribe be reasonably expected to be capable of carrying out the program consistent with the CAA and EPA's regulations.

CAA §49.9(f) allows for jurisdictional determinations made as part of a TAS approval to apply to all future CAA TAS applications from the tribe unless a subsequent application raises different jurisdictional issues or significant new factual or legal information.

1. TAS Eligibility Allows You to Seek Approval of CAA Programs for Many Purposes, Including:

- Develop solutions for pollution problems that require special understanding of local industries, geography, housing, and travel patterns, as well as other factors.
- Monitor air quality, inspect facilities under your jurisdictions, and enforce tribal law approved by EPA.
- Allow tribes to develop TIPs that outline how a tribe will control air pollution under the CAA.
- Involve the public and industries through hearings and opportunities to comment on the development of each plan.
- Enforce tribal law that, as approved by EPA, serves as CAA regulations.
- Develop air quality management programs.
- Write rules to reduce air pollution.
- Implement and enforce your rules in Indian country.
- Develop and implement only those parts of the CAA that are appropriate for your lands.
- Qualify for an EPA air program grant (called a section 105 grant) that has a reduced "matching" requirement. For states, the match requirement is 40 percent. However, the TAR provides eligible tribes a 5 percent match in the first two years; the match may increase to 10 percent in subsequent years. In rare instances, EPA may waive the match requirement based on demonstrated financial hardship.
- Qualify to administer a CAA program that applies throughout the reservation, even to lands that are owned by non-Indians. A tribal regulatory program approved under the CAA would also be enforceable (against pollution sources) by EPA and citizens, as well as by the tribe.
- Qualify to be treated as an "affected state "under the operating permits program (i.e., receives notice and an opportunity to comment when neighboring states issue permits to facilities having the potential to impact your Indian country). You can

learn more about requesting "affected state" status in the Fact Sheet, "Requesting Treatment as an "Affected State" Under Title V of the CAA."[5]

2. Criteria for TAS Eligibility

To be eligible to be treated in the same manner as a state for CAA programs, including financial assistance, you must meet certain criteria. The four requirements for TAS eligibility are as follows:

- **The tribe must be a federally recognized tribe**. You must demonstrate that you are a federally recognized tribe. If you have been approved by EPA for TAS for other programs, you may reference those prior applications and EPA determinations. You may also reference the list of federally recognized tribes maintained by the U.S. Department of the Interior and published periodically in the Federal Register.
- **The tribe must have a government carrying out substantial governmental duties and powers**. You must be able to make the required demonstration that you are currently performing governmental functions: e.g., to promote the public health, safety, and welfare of your population within a defined area. Such examples should be included in a narrative statement supporting the certification, which describes the form of government, types of functions currently performed, and the legal authorities for performing those functions (e.g., tribal constitutions or codes). If you have been approved by EPA for TAS for other programs, you may reference those prior applications and EPA determinations.
- **For applications covering reservations, the tribe must identify, with clarity and precision, the exterior boundaries of the reservation**. Your submission will need to contain information adequate to demonstrate to us the location and limits of the reservation, which may include a map and/or legal description of the area. Reservations include both formal and informal (i.e., tribal trust lands) reservations. To be eligible for TAS for regulatory purposes in areas outside of a reservation, you must demonstrate your inherent authority.
- **The tribe must be reasonably capable of carrying out the necessary functions in a manner consistent with the terms and purposes of the CAA and all applicable regulations**. In evaluating a tribe's capability, we may consider your tribe's:
  - Previous management experience;
  - Existing environmental or public health programs administered by the tribe;
  - The mechanisms in place for carrying out the executive, legislative, and judicial functions of the tribal government;
  - The relationship between regulated entities and the administrative agency of the tribal government that will be the regulator; and
  - The technical and administrative capabilities of the staff to administer and manage the program.

[5] http://www.epa.gov/air/tribal/tas_treatment.html

EPA encourages tribes to participate in implementing the CAA through the TAS process. EPA has made efforts to streamline its TAS process and to work closely with interested tribes as they consider applying for TAS and develop their applications. To help streamline applications, you can submit documentation of a prior TAS approval under the CAA or another EPA statute to meet some of the CAA TAS requirements.

Not having current technical capabilities to administer an air quality program is not necessarily a disqualifying factor in TAS eligibility. In such cases, you may submit a plan on how you will gain the technical expertise necessary when applying for TAS if you are inexperienced at the time of application.

3. TAS Review Process for CAA Programs (as defined in 40 CFR 49.7)[6]

- Tribe submits a TAS application to the EPA Regional Office (pre-submittal discussion with the Region is suggested) for each section of the CAA for which you are seeking eligibility;
- After the Regional Office determines the initial application is complete, EPA offers appropriate governmental entities (typically neighboring states and tribes) an opportunity to comment on the reservation boundaries only and, if the application seeks eligibility over non-reservation areas, on the tribe's assertion of authority for such areas; the Regional Office then publishes an announcement (generally in local newspapers) notifying the public of the opportunity to comment; if comments are received, EPA offers the applicant tribe a chance to respond. The Regional Office reviews comments, with EPA Headquarters review by the EPA TAS Team (only for regulatory program applications); and
- If the Regional Administrator determines that a tribe meets the requirements of 40 CFR 49.6 for purposes of a Clean Air Act provision, the Indian tribe is eligible to be treated in the same manner as a state with respect to that provision (40 CFR 49.9(g)).

Step 1 – Tribe Submits Application

- Pre-application discussions are held between you and the EPA region.
- You submit a TAS application to the region.
- The region evaluates completeness of the application.
- The region holds a conference call with you to identify any gaps in the application or issues.
- You may submit supplemental information or resubmit the TAS application.
- The region notifies you if you have submitted a complete application.
- The region notifies EPA Headquarters to form a TAS Team.

Step 2 – Comment Period

- The region notifies appropriate governmental entities of the TAS application, starting a 30-day period for comment on the tribe's reservation boundary and/or assertion of authority over non-reservation areas.
- Public Notice of the comment opportunity is published in local newspapers (comments to be submitted through appropriate governmental entities, or

[6] See EPA's TAS Strategy, 1/23/08, Attachment F http://www.epa.gov/tp/laws/tas.html

directly to EPA); copies of the TAS application are placed in local and regional libraries.
- The region provides copies of all comments to you and EPA's TAS Team.
- EPA's TAS Team reviews the application and the comments, and gives you an opportunity to respond to the comments.
- The region may request more information from you.

Step 3 – EPA Review
- EPA's TAS Team reviews the application, any comments, and your responses, and determines if the application meets the eligibility requirements.

Step 4 – Final Decision
- EPA's TAS Team reviews the application, all comments submitted, and any responses to the comments provided by you.
- The region prepares the draft Decision Document and Response to Comments for EPA's TAS Team review.
- The regional administrator makes final decision, notifies you in writing, and transmits appropriate supporting materials.

4. TAS Consideration

- EPA will offer the state an opportunity to comment on reservation boundaries and will publish newspaper notices of the comment opportunity.
- For applications covering reservation areas, a determination of the reservation boundary is made by EPA under our regulations. Such TAS applications thus open up the tribal reservation boundaries for comment by the state or other entities and a decision by EPA.
- Working with surrounding state and local governments may help avoid surprises during the comment period.

II. TRIBAL NEW SOURCE REVIEW

This section provides a brief background on the New Source Review Program and the tribal NSR rule, including the purpose of the rule, what the rule covers, and how a tribe may assist EPA with implementation of the rule. For more detailed information on the NSR permitting program, please see Section VII.

A. WHAT IS THE NEW SOURCE REVIEW PROGRAM?[7]

New Source Review (NSR) is a Clean Air Act (CAA) program commonly known as the "preconstruction air permitting program," that requires industrial facilities to install modern pollution control equipment when they are built or when making a change that increases emissions significantly. The program requires that owners or operators obtain permits before they begin construction.

Permits are legal documents that specify what type of construction is allowed, what air emission limits must be met, and what air pollution control equipment should be installed to improve or preserve air quality. To assure sources are complying with their emission limits, a permit must contain monitoring, recordkeeping, and reporting requirements.

Source owners or operators must get a NSR permit before construction of a new source or a modification to an existing source. In other words, facilities are required to obtain NSR permits for the construction of entirely new facilities, and for construction projects at existing facilities such as expansions, additions, process and equipment changes that result in a modification. By requiring permits, the NSR program ensures that air quality does not worsen where the air is currently unhealthy to breathe (i.e., nonattainment areas) and is not significantly degraded where the air is currently clean (i.e., attainment areas).

There are three types of NSR permitting programs, each with a different set of requirements. A facility may have to meet one or more of these sets of permitting requirements.

- The Prevention of Significant Deterioration (PSD) program applies to a new major source or a source making a major modification in an attainment area.
- The Nonattainment NSR program applies to a new major source or a source making a major modification in a nonattainment area.
- The Minor NSR program applies to a new minor source and/or a minor modification at both major and minor sources, in both attainment and nonattainment areas.

Major sources are facilities that have the potential to emit (PTE) pollutants in amounts equal to or greater than the corresponding major source threshold levels. These threshold levels vary by pollutant and/or source category. Major sources must comply with specific emission limits; which are generally more stringent in nonattainment areas.

Minor sources are facilities that have the PTE pollutants in amounts less than the corresponding major source thresholds. Synthetic minor sources are facilities that have the PTE pollutants at or above the major source threshold level, but voluntarily accept

[7] For more information on the NSR program, please visit: http://www.epa.gov/NSR/info.html.

enforceable limits to keep their emissions below the major source thresholds and avoid the major NSR requirements**.**

NSR permits and their requirements for each source are based on various criteria, including the size of the source, the source emissions and the air quality of the source's area.

B. WHAT IS THE TRIBAL NSR RULE?

The Tribal NSR rule is a Federal Implementation Plan (FIP)[8] that fills an existing regulatory gap by establishing the nonattainment NSR and minor NSR permitting programs in Indian country where no EPA-approved program exists. The FIP is made up of two rules that protect air quality, the minor NSR rule and the nonattainment major NSR rule. Under the rules, a source owner or operator will need to apply for a permit before building a new facility or expanding an existing one if the facility's proposed emissions are at or above any of the thresholds included in these rules. The permitting authority, either EPA or a tribe acting pursuant to an administrative delegation from EPA, will review the application and grant or deny the air permit. Permits will be open for public notice and comment as part of the review process.

Since states generally do not have jurisdiction in Indian country, and therefore generally cannot implement CAA programs in Indian country by means of a State Implementation Plan (SIP), EPA will initially implement these rules until a tribe chooses to implement these rules or portions of these rules through delegation or obtains approval of a tribal program through the TAS and program approval process. EPA's Policy is to work with tribes on a government-to-government basis and to recognize that tribes are sovereign nations with primary roles in implementing environmental programs in Indian country.

Tribes who decide to implement these rules can accept delegation of this federal program or they can develop and seek approval of a TIP to administer their own rules. For delegation purposes, EPA retains all enforcement authority under federal law. However, if a tribe chooses to develop a TIP, it can write the enforcement provisions of the program into their TIP to address civil enforcement but will need an MOU with EPA to address criminal enforcement.

C. GENERAL BACKGROUND ON THE TRIBAL NSR RULE

Initiated in the 1990's, proposed in 2006 and finalized in 2011, the tribal NSR rule was developed in response to tribal concerns about unregulated air pollution sources in Indian country. Prior to finalization of the rule, there was no federal permitting program for minor sources in Indian country and for major sources in areas of Indian country that are not attaining the National Ambient Air Quality Standards (NAAQS). Some sources were locating in Indian country without following the NSR requirements, while other sources were reluctant to locate in Indian country due to the regulatory uncertainty; this placed tribes at an economic disadvantage as compared to states that did have these permitting regulations and caused confusion about which permitting requirements applied in Indian country.

[8] A FIP is a plan developed by EPA to federally implement CAA requirements.

Throughout this rulemaking process, EPA sought to receive feedback from all stakeholders, and strived to keep tribes included and updated on our progress during the planning stages and the development of this rule; for example: pre- and post proposal trainings, government-to-government consultations, webinars, websites, emails, conference calls, and newsletters. We participated in national and regional forums including those sponsored by the Institute of Tribal Environmental Professionals (ITEP), the National Tribal Air Association (NTAA) and met with tribal consortia, such as the United Southern and Eastern Tribes. Also during this outreach period, we interacted with state and local air pollution agencies and had meetings with the National Association of Clean Air Agencies (NACAA).

We will continue to work with tribes on the implementation of this rule by providing training, technical, and resource information to tribal staff. Our goal is to assist tribes in exploring implementation decisions and strategies for implementing the tribal NSR rule. For instance, tribes will need to know what impacts this rule will have on businesses that are tribally owned and operated, in addition to other businesses operating in Indian country. As part of our ongoing outreach and training process, we will continue to hold webinars and on-site trainings in the upcoming year, in addition to conducting ongoing monthly tribal NSR calls which are focused around general NSR discussions and tribal issues.

D. IMPORTANCE AND THE PURPOSE OF THE TRIBAL NSR RULE

The purpose of the tribal NSR program is to protect public health and the environment as new industrial facilities are built and existing facilities expand without unduly burdening such economic development. Specifically, its purpose is to:

- Allow for economic growth without compromising air quality;
- Support tribal sovereignty as tribes request and receive delegation of the program or develop their own TIPs. Provide a clear understanding of permitting responsibilities and requirements in Indian country; and
- Level the economic playing field.

E. THE POLLUTANTS AND SOURCES REGULATED UNDER TRIBAL NSR RULE

The NSR program applies to regulated NSR pollutants. In the PSD program, the regulated NSR pollutants include the NAAQS pollutants and some other pollutants including sulfuric acid mist, hydrogen sulfide, etc. In nonattainment NSR, the regulated NSR pollutants are only the NAAQS pollutants. EPA has established NAAQS for seven pollutants, which are commonly called "criteria" pollutants and include: ozone (O_3), carbon monoxide (CO), particulate matter ($PM^{2.5}$ and PM^{10}), sulfur dioxide (SO_2), lead (Pb), and oxides of nitrogen (NO_x). The NAAQS are set at levels that protect public health and the environment. For each criteria pollutant, every area of the United States has been designated as one of the following categories:

- **Attainment**: air quality is equal to or better than the level of the NAAQS; these areas must maintain clean air;
- **Unclassifiable**: there are no data on air quality for the area; the area is treated as attainment; and
- **Nonattainment**: air quality is worse than the level of the NAAQS; these areas, must take action to improve air quality and attain the NAAQS within a certain period of time.

For the minor NSR program, the regulated NSR pollutants include the NAAQS pollutants and some other pollutants which include sulfuric acid mist and hydrogen sulfide.

The NSR permitting program applies to both major and minor stationary sources.

- **Major sources** are facilities that have the potential to emit (PTE) any regulated air pollutants in amounts equal to or greater than the corresponding major source threshold levels. These threshold levels vary by source category. Major sources must comply with specific requirements; which are generally more stringent in nonattainment areas.
- **Minor sources** are facilities that have the regulated pollutants in amounts less than the applicable major source thresholds. Synthetic minor sources are facilities that have the potential to emit pollutants at or above the major source threshold level, but accept enforceable limits to keep their emissions below the major source thresholds and avoid the major NSR requirements**.**

F. PERMIT FEES UNDER THE TRIBAL NSR RULE

The CAA does not give us explicit authority to charge permit fees for pre-construction permitting. However, under a delegation agreement, EPA and the delegated tribe could establish mechanisms to fund tribal staff's work. That may include federal funding assistance through cooperative agreements and grants and/or user fees and charges established by the tribe under tribal law. In addition, tribes that develop TIPs can charge for permits under their authority.

[For further information on permitting see Section VII of this document.]

III. IMPLEMENTATION OF A TRIBAL NSR PROGRAM

This section highlights various approaches and roles you may take to implement an NSR program.

A. ROLES AND RESPONSIBILITIES IN THE TRIBAL NSR PROGRAM

The tribal NSR rule is a FIP, which means it must be implemented by EPA; unless, you are willing to administer the program, delegated by us, or develop a TIP which, once approved by EPA, will then take the place of all or parts of the FIP. However, you are not required to take on any portions of the FIP. You may take on any portions which are appropriate considering your time, resources, and capacity. You can completely take over the FIP either by delegation or with a TIP. We, however, retain enforcement when the tribe takes on delegation and may retain all or parts of the TIP enforcement with the exception of some elements of criminal enforcement.

B. DECISION MATRIX

Although, the tribal NSR rule is a FIP, you can play a role in implementing the program. Generally there are three major areas where you can participate in the NSR rule implementation process. The decision matrix below was designed to assist you in determining which program, or strategy, you may wish to explore in taking on the NSR rule. In making a decision on which approach you may want to undertake, there are a few steps up front that will help inform your decision. The first is to learn about the rule and conduct outreach to your tribal leadership, sources and others in your community to ensure they understand the rule and what it might mean for the tribe. The next step is to conduct an assessment to see what the potential scope of the NSR program may be for your community. The final step will be to determine the priorities and needs of your communities. All of this information will be important in making a decision on the approach you take in implementing tribal NSR.

C. TRIBAL NSR DECISION MATRIX - ASSESSMENT

In order to determine the best approach to take in implementing the tribal NSR program, you will need to gather some basic information. At a minimum, you should determine:

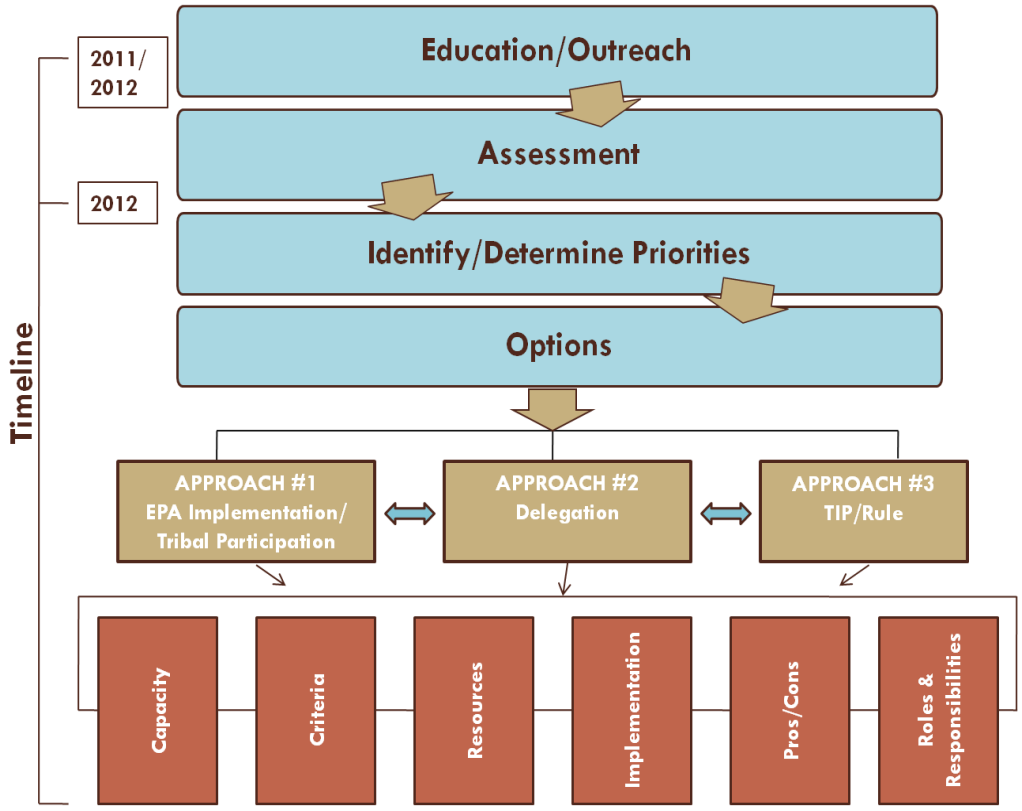
- What sources are currently in your area?
    - This will give you an idea of how many existing sources to register, who may make modifications, and what are common source categories. You may want to develop an emissions inventory at some point; but at this stage, initiating a source inventory will help in the decision making process. Examples of a source inventory include a windshield survey or checking the local phone directories.

- What are the economic and programmatic goals of the tribe?
    - You should check in with your tribal leadership and economic development offices to determine if there are specific activities the tribe is focusing on in the near future. For example, has the tribal leadership determined they want to focus on oil and gas production? Build a casino? Recruit alternative energy or biomass energy production? Are there current plans in the works for these? Is there enough potential growth in the area that would demonstrate a demand large enough to be worth investing in developing or implementing the tribal NSR program?
- What resources are required to develop the program and where are they available?
    - Determine what technical resources are required to implement the program. For instance, it will take a lot less capacity to participate in the EPA implementation approach then it would to write a TIP. Do you have the training, the right number of people, the access to contractors you would need for any of the approaches you might choose?
- What other resources may be helpful in implementing the program?
    - For example, are there active environmental groups, universities or contractor resources?

D. TRIBAL NSR DECISION MATRIX – DETERMINING PRIORITIES

With the information gathered the most important step is to determine the priorities of your tribe. For instance, determine if there is a tribal strategy or policy in place that provides you with direction for the tribe's role in implementing the program. For example:

- Does your tribe place a high priority on asserting tribal authority?
- Is your tribe putting a priority on economic development so the potential growth may warrant the need for a more active role?
- What resources are available within or to the tribe to support the program?



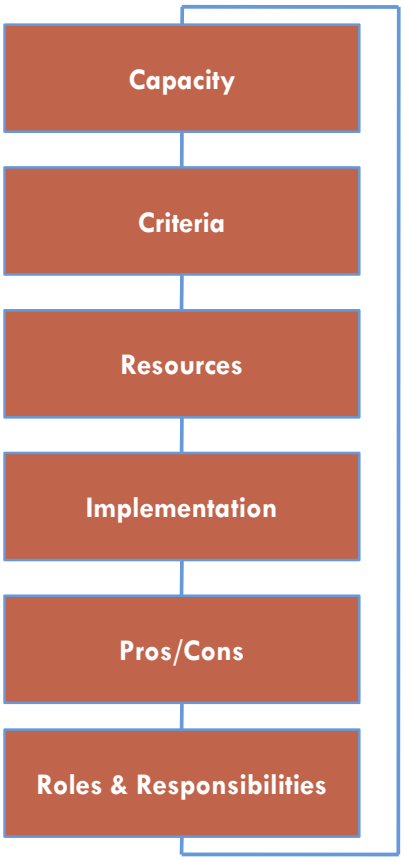
[The Tribal NSR implementation presentation is found in Section 2 of the Attachments to this document.]

Three different approaches for your involvement are described below. If you decide not to be involved, we will implement the program. It is important to recognize that you may want to start with one approach and move to others over time as your capacity grows or the interest of your tribe changes. The following are examples of possible scenarios:

- **Approach #1: EPA Implementation with Tribal Participation –** Because this is a FIP, EPA has the responsibility to implement the program. However, you can get involved by assisting us with outreach activities, reviewing permits and registering sources within Indian country including tribally owned sources. Under this approach, you bear minimal duties and have a chance to build your knowledge base and capacity of the NSR rules and permit process. You will gain knowledge of what is expected of you if you decide to take on delegation or develop a TIP.
- **Approach #2: Delegation -** You can take delegation and assist EPA with implementation of the EPA Tribal NSR program. By taking delegation, you agree to assist EPA with administration of the federal tribal NSR program within Indian country. The program is implemented under our federal authority and as agreed upon between the two parties. Elements of a delegated program may be reasonably severable, meaning you may decide to administer permits or registration only, while EPA remains responsible for all other elements of the program, specifically enforcement.

- **Approach #3: TIP** - You may develop a TIP that fully implements the program or, for reasonably severable elements, just implements parts of the program under tribal law. Once approved by EPA, the TIP takes the place of our corresponding tribal NSR rules.

NOTE: *A combination of these approaches is possible. Make sure to work with us to accomplish your desired goals in the protection of air quality for your tribe.*



Decision Matrix (Basic Options)

33

Areas/Questions to consider when taking initial action or moving between these basic options in the decision matrix

Example Questions

- What type of capacity is necessary to take on delegation?
- What are the criteria for delegation?
- What resources are needed?
- How to implement a delegated program?
- What are the pros/cons to the tribe?
- What are the specific roles and responsibilities of the tribe and/or EPA in a delegated program?

[See Section 2 in the Attachments for entire matrix and discussion]

IV. EPA IMPLEMENTATION WITH TRIBAL PARTICIPATION (APPROACH #1)

The purpose of this section is to describe in more detail the role and options you may undertake to implement the tribal NSR rule. EPA will implement the program and will be developing general permits, and source specific permits as needed to address new and modified sources in Indian country. We will also conduct inspections and enforce the permits as necessary. If your tribe does not want to participate in any of these activities, you are not required to. However, there are a number of activities you may choose to help EPA with and in the process potentially build your program's capacity to take on more of an implementation role. For example, a tribe may decide to:

- Do nothing;
- Participate only on consultation on the permits;
- Actively review and comment on permits;
- Help EPA reach out to community members to help them participate in the permit process;
- Perform outreach to sources; and
- Accompany EPA on inspections.

A. BENEFITS TO PARTICIPATING IN EPA IMPLEMENTED PROGRAM

- Minimizes the resources needed by the tribe;
- Allows tribes to build capacity over time;
- Involves the tribes in permitting in Indian country without requiring a formal role; and
- Of the three approaches this is the least likely to cause challenges to tribal jurisdiction.

B. CHALLENGES TO PARTICIPATE IN EPA IMPLEMENTED PROGRAM

- Of the three options, this is the lowest assertion of tribal authority, and
- EPA resources may be limited and thus may be less aggressively implemented.

V. DELEGATION (APPROACH #2)

This section is designed to explain what delegation means, show examples of the pros/cons related to delegation and discuss how a tribe may apply for delegation.

A. DELEGATION

Delegation is an established agreement between EPA and a tribe through which the tribe assists EPA by administering one or more of the federal rules, or some portion thereof, on EPA's behalf. With a delegation, a tribe assists in whole or partial administration of a rule yet EPA retains authority for implementing the rule, including sole enforcement responsibility.

B. REQUIREMENTS OF DELEGATION ARE SIMILAR TO THAT OF TAS

- Identification of the specific provisions for which delegation is requested.
- A statement that the applicant tribe is federally recognized by the Secretary of the Interior.
- A descriptive statement that is consistent with the type of information described in 40 CFR §49.7(a)(2) demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area.
- A description of the tribe's laws that provide adequate authority to carry out the aspects of the provisions for which delegation is requested.
- Identification of reservation or other Indian country area for which delegation is requested.
- A demonstration that the tribe has, or will have, the technical capability and adequate resources to carry out the aspects of the provisions for which delegation is requested.

C. BENEFITS OF DELEGATION

- Delegation allows you to gain experience and build capacity by assisting with implementation of federal rules while deciding whether to establish a tribal air program under the CAA or tribal law.
- Delegation may be a less complicated way to administer an air quality program compared to establishing a TAS/TIP or a program under tribal law.
- Delegation may be an alternative for tribes to assist EPA with administering a CAA program that meets your needs while being operated under federal authority and having us retain enforcement authority.
- The federal program may be better accepted by the Indian country community if the tribe is assisting with administration through delegation.
- The federal program may be more efficient and effective at protecting air quality and human health when administered locally with the tribe's assistance through delegation.

D. CHALLENGES TO DELEGATION

- Challenges to tribal role on a reservation: some parties may challenge the tribe's participation.
- Non-tribal constituents on the reservation may have concerns. Listen to their concerns in the planning stages. Early outreach and education will help the tribe in working with these communities.

- Ensuring the tribal air quality program has adequate resources and is developed enough to create and maintain credibility as it assists EPA with administration of the federal program through delegation.
- A delegated program is operated and enforced under federal authority and is also likely to have a significant public interaction/regulated community component. Your program should be responsive and available to the public. This may call for a greater level of program planning and staff effort than without delegation (and no TIP or program under tribal law).
- Establishing with us the details of the program to be administered under delegation may be challenging. PA and the tribe need to communicate clearly so that we understand your needs and you understand whether delegation is the right mechanism for meeting those needs.

E. DELEGABLE ELEMENTS OF TRIBAL NSR

All elements of the tribal NSR program can be delegated with the exception of the enforcement of the program. Specifics of the delegation of this rule have yet to be determined.

F. SUGGESTED STRATEGY AND RESOURCES FOR DEVELOPING CAPACITY TO REQUEST DELEGATION

- Your tribal air quality programs should have enough capacity to support implementation of the delegation agreement. Staff experience and skills should be mapped out, or in place to take on, or prepare to take on the administration of the program.
- A big part of taking delegation is outreach to your Indian country community. This is a major part in delegation planning and an ongoing part of program operations once delegation is in place.
- Have internal tribal discussions with your tribal lawyers and governing officials. It helps to have an advocate on board who is fully educated on the process, since Boards or Councils have many other duties.
- Maintain open lines of communication with your EPA regional or headquarters contacts.
- Use other tribes as resources. (See Section 8 in the Attachments)
- Useful templates are in this training manual; adjust them to apply to your needs as appropriate.
- Ask questions as they arise or plan meetings to make sure all parties are on the same page.

G. GENERAL PROCESS FOR DELEGATION

- You express interest to us about receiving delegation for certain provisions of the federal NSR rule.
- A tribe-staff-to-EPA-staff phone call is an appropriate first step. The tribe and EPA discuss what may be the appropriate provisions to include in the delegation agreement that the tribe is considering. We provide guidance on what you should include in a request for delegation.
- The tribe and EPA continue ongoing discussions during the development of the delegation request. We review the draft request as appropriate.

- The tribe formally requests delegation by way of a letter to the regional administrator from the tribal leadership. The letter should include all of the information required by the delegation provision for the minor source rule at 40 CFR §46.161 and for the major nonattainment rule at 40 CFR §49.173. (See Section 7 in the Attachments)
- We can provide the tribe with a draft delegation agreement modeled after existing delegation agreements. (See Section 7 in the Attachments)
- The tribe and EPA review comments by the tribe on the draft delegation agreement and agree on language for the delegation agreement. This may take a couple of rounds to address both parties' concerns and comments.
- The tribe and EPA consult on a government-to-government basis. (Consultation may occur at any time during the process: prior to a delegation request, while delegation agreement language is being discussed, or after staff have agreed on language.)
- After the delegation agreement is signed, we publish a notice of the delegation in the Federal Register.
- When the notice of the delegation agreement is to be published in the Federal Register, we publish an announcement of the delegation agreement in local newspapers.

(See Section 7 in the Attachments)

H. IMPLEMENTATION OF DELEGATION AGREEMENT

1. Operations Plan for Handling Delegation

An Operations Plan describes how the program will be operated much like standard operating procedures. The Plan should identify expectations and roles, and make the process transparent for all parties involved. Having an Operations Plan in place when addressing the tribal community at large and community programs can help educate them about any related implications.

2. Permit Applications

We are working to develop proposed permit applications per input from tribal groups and other stakeholders. However, there may be some permits which you will need to develop or alter to fit specifically into your needs. In this manual, we have supplied draft permits for review and a few that are currently being used in a FIP program. (See Section 6 in the Attachments)

3. Enforcement Cooperation Plan with EPA

An Enforcement Cooperation Plan is a strategy for how enforcement and communication with the EPA regional office will be handled. The Enforcement Cooperation Plan may be revised annually. Under an Inspector Credentials Agreement, tribes may also have an annual inspection plan that gets revised every fiscal year and specifically identifies the enforcement activities the tribe will undertake in the coming year. This plan allows for clear communication and defines what the process will be between the tribe, who may be knowledgeable about the source and regional office staff who may need to respond to inspection reports or complaints. Tribes may wish to obtain EPA credentials to support EPA in conducting inspections.

I. ROLES AND RESPONSIBILITIES

1. EPA

The program will continue to be operated under EPA's federal authority. We will implement the rule initially and will retain enforcement and oversight authority if a tribe agrees to take on delegation to assist us with administration of the federal program. This means that we will, specifically in the first stages of the delegation agreement, provide oversight or technical assistance in developing and implementing the designated program.

A contact person for this role is determined by the EPA regional office along with technical resources as appropriate.

You determine through collaboration with us how much or how little to take on per the delegation agreement.

2. Tribe

You agree via a delegation agreement to assist us with administration of the federal program. This includes determining and building capacity as necessary, strategizing and planning for implementation of the program as outlined in the delegation agreement, and meeting collaborative and communication needs as agreed upon between the parties.

VI. TRIBAL IMPLEMENTATION PLAN (APPROACH #3)

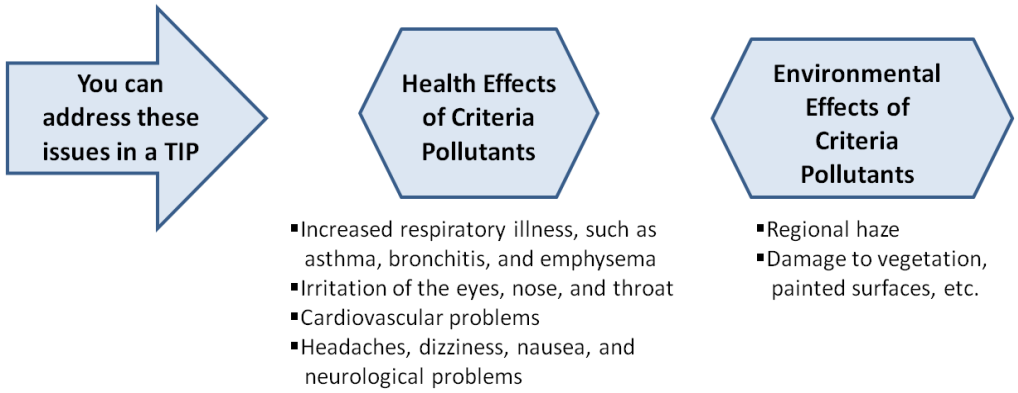
This section provides an overview of how to plan for and develop a TIP as part of your tribal air quality management program. It includes a discussion and comparison to other EPA policies and rules that impact the decision to apply for a TIP, application procedures, and implementation plan development.

A. WHAT IS A TIP?

A TIP is a tribe's regulatory plan for either improving its ambient air quality (if it is in violation of the NAAQS), for maintaining or improving its air quality (if it is already cleaner than the NAAQS) and/or for meeting regional haze program goals. TIPs (1) are optional; (2) may be modular; (3) have flexible submission schedules; and (4) allow for joint tribal and EPA management.

B. PURPOSE OF A TIP

The primary purpose of an implementation plan, whether it is developed by a tribe, a state, or EPA, is to ensure that the NAAQS are attained, maintained, and not exceeded. The NAAQS include: O_3; CO; PM^{10} and $PM^{2.5}$; SO_2; Pb and NO_x. The EPA calls these pollutants "criteria pollutants" because health-based criteria form the foundation for setting the standards. Implementation plans are also used to ensure that concentrations of criteria pollutants do not increase significantly, even if the NAAQS are met, and to achieve compliance with CAA provisions requiring improvements in visual air quality in national parks and wilderness areas (Federal Class I areas).



C. HOW IS THE TRIBAL NSR RULE RELATED TO TIPS?

The Tribal NSR rule establishes a federal program for permitting new sources in Indian country and may provide a useful example to assist you in developing a TIP so you can implement the program through your own set of codes and ordinances. You should be able to use the rule as a guide in developing your own program, if that is the tribe's choice.

D. BENEFITS OF THE TIP APPROACH

- A TIP that is approved by EPA is administered under tribal authority.
- Allows the tribe to develop rules and requirements that may better reflect your tribe's laws and priorities.

- Provides a mechanism to charge permit fees under tribal law and may help support the program.
- A tribal program administered under tribal law may be more acceptable to the tribal populations.
- Allows you to adopt your own regulations rather than having EPA administer the federal programs in Indian country.
- EPA can provide support in enforcing the rules as appropriate.

E. CHALLENGES OF THE TIP APPROACH

- Require a large investment of resources.
- May draw challenges to tribal authority or reservation boundaries in the TAS process.
- Non-tribal constituents in Indian country may have concerns.
- Ensuring the tribal air quality program has sufficient capacity and is developed enough to create and maintain credibility.
- Establishing the details of the program to be administered under a TIP may be challenging. EPA and the tribe need to communicate clearly so that we understand your needs and you understand whether a TIP is the right mechanism for meeting those needs.

F. WHAT IS REQUIRED IN DEVELOPING A TIP?

1. Requires "Eligibility Determination"

Under the CAA, as under other certain environmental statutes, you are required to apply to EPA and be determined to be eligible to be treated in the same manner as a state before you may receive authorization from us to run a CAA program. This means that, when a TIP is submitted and before it may be approved, we must determine that you are eligible to run the particular CAA program described in the TIP application. The requirements for eligibility are described in detail in the TAR, Title 40 of the Code of Federal Regulations (CFR) Part 49. You can apply for eligibility determinations before or at the same time you submit a CAA program or TIP for approval (referenced in Section I.E.2).

2. Request for Determination of Eligibility

The TAR requires EPA to determine that a tribe is eligible to implement CAA programs (known as "TAS") before approving such programs. You can apply for eligibility determinations at the same time that you submit your TIP for approval or as a separate action. The eligibility requirements and process are set forth in the TAR and include:

- Demonstrate federal recognition (this can be done by demonstrating that your tribe is on the list of federally recognized tribes published by the Secretary of the Interior, available in the Federal Register.[9]
- Demonstrate that the tribe has a governing body carrying out substantial governmental duties and powers, such as promoting public health and safety (this can be done by submitting a narrative). The narrative should include:
    - A description of the form of the tribal government;

[9] http://www.bia.gov/idc/groups/xofa/documents/document/idc012038.pdf

- A description of the types of government functions currently performed by the tribal governing body, such as the exercise of police powers affecting or relating to the health, safety, and welfare of the affected populations, taxation, and exercise of the power of eminent domain;
- Identification of the source of the tribal government's authority to carry out the governmental functions currently being performed;
- Demonstrate that the functions you will exercise pertain to the management and protection of air resources within the exterior boundaries of your reservation or other areas within your jurisdiction (this can be done with a statement identifying the reservation boundaries with clarity and precision (e.g., with a map or legal description of the area) and a statement by the tribe's legal counsel or equivalent official describing the tribe's authority over non-reservation areas); and
- Demonstrate your capability to administer effectively the programs for which you are seeking approval (this can be done with a narrative statement describing your tribe's capability, or plan to obtain capability, to administer the programs).

3. Administrative Elements

- Provide a letter of submission from the tribal leader requesting EPA approval of the TIP elements.
- Provide documentation showing that the tribe has: 1) adopted the plan into law; 2) sufficient authority in tribal law to adopt and enforce a TIP; 3) the adoption date; and 4) the effective date of the plan.
- Provide evidence that your tribal environmental agency has sufficient personnel and resources to develop, implement and enforce the proposed TIP elements.
- Provide evidence that the public was notified in accordance to EPA requirements; certification that public hearings were held; a compilation of public comments and the tribe's response:
  - The public needs at least 30 days to review the TIP and submit comments to the tribe; and
  - Public hearing should be advertised at least 30 days in advance (preferably 60 days).
- Provide the technical information used to prepare the TIP.

4. Demonstration of Enforcement Authority

- Your enforcement program should include:
  - Resolutions and laws passed by the tribal government to establish authority to do inspections and enforce laws;
  - Requirements for emission sources to monitor their emissions and periodically report to the tribe emissions data and other information needed to determine compliance; and
  - Procedures for inspecting sources to verify that emissions limits are met, issuing notice of violations, and assessing fines.

- Limitations on a your tribe's criminal enforcement authority will not prevent TIP approval:
    - To the extent the tribe is precluded from exercising criminal enforcement authority, such authority is exercised by EPA as described in a MOU between the tribe and EPA.

5. TIP Considerations

- **Flexibility for Tribes**
    - Modular approach in the CAA: Congress authorized EPA to promulgate regulations implementing the TAS provision of the CAA. In the TAR, EPA has recognized that all the highly-structured SIP requirements are not necessarily appropriate for each tribe. Your governmental structures vary and you may not have the resources necessary to implement certain programs, or you may have a limited number of air quality problems that do not warrant a full-blown TIP. For example, if no sulfur dioxide pollution problem exists, you would not need to develop requirements to address that pollutant. Consequently, the TAR offers flexibility for you to identify and implement—on a tribe-by-tribe, case-by-case basis—only those CAA provisions or programs that will address your specific air quality problems. In the TAR, we described this flexible implementation approach as the "modular approach." (See 59 FR at 43968 and 40 CFR §49.7(c)).

    - In contrast to CAA requirements that are applicable to SIPs, we established the modular approach towards developing TIPs in the TAR. Under those regulations, a TIP may include all of the elements of a SIP, but is not required to include all of them. (The required elements of a SIP are set forth in Title I of the CAA and Title 40, CFR part 51). You may evaluate the particular activities, including potential sources of air pollution, within the exterior boundaries of your reservation (or on off-reservation areas for which you have demonstrated jurisdiction), which cause or contribute to its air pollution problem. You may then adopt measures for controlling only those sources.

    - The modular approach allows you the choice to develop only the elements of the TIP most relevant to your air quality needs so long as those elements are consistent with, and "reasonably severable" from, other applicable CAA and regulatory requirements. "Reasonably severable" generally means that the elements in a TIP that have been submitted to us for approval are not integrally related to elements that are not included in the TIP. The modular approach adopted in the TAR also provides that we may regulate emission sources not covered by the TIP if we determine that doing so is necessary or appropriate to adequately protect air quality. This allows you to concentrate on a specific area of interest or expertise. You can revise a TIP based on air quality considerations and/or your need and capacity. We expect that you will modify your TIP over time as these variables change.

- **Joint Management**
  - There are benefits to EPA and tribes working together to build a program that is fully responsive to your air quality needs. The "modular approach" allows you to gain implementation experience over time. In cases where we have been managing programs within Indian country, we may authorize you to take over management of such federal programs or portions of programs without requiring you to take on all aspects of particular federal programs; you may have delegation for some elements of the program and have a TIP for others.

  - We believe that the "modular approach" provides maximum flexibility for EPA and tribes to work in partnership to ensure that the goals and objectives of the CAA and the TAR are met in Indian country. It allows EPA and tribes to manage air quality in Indian country through a combination of TIP and FIP elements. It allows you to adopt and submit severable elements of TIPs which can replace elements of FIPs, while leaving in place FIP provisions that you are not yet willing or able to implement.

  - We understand that your air programs may need to be built incrementally over time, piece by piece. If you elect to submit a TIP initially, we will evaluate, in consultation with you, any gaps in the TIP. EPA may also implement FIPs as necessary or appropriate: for example, a source-specific, reservation-specific, region-wide, or national FIP rule. The TAR's "modular approach" also allows us to initially adopt federal programs and later replace the entire or applicable portion of that federal program with a tribal rule covering a particular emission source or activity. We could then revoke the applicable federal regulations for sources covered by the TIP, while leaving in place the federal regulations applicable for other sources and/or activities. For example, you could include in a TIP rules for limiting fugitive PM emissions and rules for forestry burning permits. In such a case, we might take responsibility for regulations needed to limit adverse air quality impacts from industrial source emissions of PM.

- **Enforceability**
  - Just as for EPA-approved state programs in areas outside of Indian country, your approved TIP—even if limited in scope—must be fully enforceable either by you or us. You must demonstrate that the TIP will adequately implement and ensure compliance with the portions of the tribal NSR program.
  - To the extent you are precluded from asserting criminal enforcement authority, the federal government will exercise primary criminal enforcement responsibility, as described in §49.8 of the TAR. This is accomplished by the tribe entering into an agreement with us for referral of criminal enforcement matters. Limitations on your criminal enforcement authority will not prevent TIP approval. See also §49.7(a)(6).

- **Schedules**
  - Neither the CAA nor the TAR requires you to submit a TIP. You are not required to meet the implementation plan submittal deadlines specified in the CAA for states, and if we are unable to approve a TIP or find it complete, you will not have to face the mandatory sanctions of FIP consequences specified in Title I for incomplete or deficient SIPs. Instead, we will work closely with you to assist you in developing a TIP that is both complete and approvable. We will also provide timely review of all TIP provisions submitted. Once a TIP is approved, we expect you to meet the provisions of the CAA that require approved TIPs to be diligently implemented.

G. GENERAL PLANNING FOR A TIP APPLICATION

An important step in the beginning or deciding on whether to apply for a TIP is to inventory the sources of air pollutants (i.e., windshield survey, emissions inventory) in your Indian country.

Monitoring data is helpful in determining the background concentrations, the peak short-term concentrations and annual concentrations of pollutants that are of concern, in order to determine if those concentrations are above or below the NAAQS.

Alternatively, if you decide not to, or are unable to develop an air monitoring network, you may be able to rely on air quality data from other nearby monitors.

H. STEPS IN APPLYING FOR A TIP

As a good first step you should meet with your EPA regional office to discuss applying for a TIP, including goals of TIP development. In addition, we encourage your environmental air quality staff to participate in ITEP provided trainings as appropriate. Please see the TIP Completeness Checklist with suggested steps in TIP development (See Section 4 in the Attachments). It may also be prudent to begin education of your tribal leadership and keep them in the loop as discussions progress.

I. CONCURRENT APPLICATIONS OF A TIP AND TAS

Under the TAR, you may apply for a determination of TAS eligibility at the same time that you request approval of a submitted TIP. In that event, some of the administrative elements listed above may be relevant to both applications. If the same information is required to be submitted for both the eligibility determination petition and the TIP application, a single copy of the relevant information is sufficient. Also, if you have already been determined by us to be eligible to administer any other environmental program, not just a CAA program (e.g., Clean Water Act), it may not be necessary to resubmit all of the administrative elements listed above. Instead, in your CAA TIP application, you need only identify the previous EPA authorization and then provide to us only those required elements that were not submitted with the previous application.

J. REGULATIONS

Your TIP must include regulations designed to solve specific air quality problems on your lands which you want us to approve. Regulations for which you do not seek our approval should not be submitted in a TIP.

K. ENFORCEMENT PROGRAM

You must demonstrate that you can enforce the laws that you adopt in your implementation plan. The implementation plan should include an enforcement program for every regulation you adopt. For example, you need to have the authority to enforce any regulation included in the attainment or maintenance strategy or preconstruction permit elements to assure compliance with emission limits and other provisions adopted in your program. An enforcement program includes:

- Resolutions and laws passed by your tribal government to establish authority to conduct inspections and enforce laws;
- Requirements for emission sources to monitor and periodically report to you information about activities that affect emissions, emissions data, and visible emissions data; and
- Procedures for making source inspections to verify emission limits are met, issuing notices of violations, and assessing fines.

Once we approve a TIP, the provisions of the TIP are enforceable by us.

L. SEVERABLE ELEMENTS OF A TIP

The CAA and the TAR give us broad discretion in working with you to develop a TIP that addresses specific air quality problems and meets your unique circumstances. As mentioned earlier, one of the means under the TAR for accomplishing this is by supplementing your programs with FIPs and other federal programs. As described above, a TIP may comprise only selected elements of a complete NAAQS implementation plan provided those elements are reasonably severable from other elements not included in a TIP. The elements approved will become part of a larger, evolving NAAQS implementation plan for a reservation. In other words, we anticipate that TIPs will be modified over time as your air quality needs and capacities change.

Note: *The TAR does not provide a list of severable program elements. The following are some options for severable TIP elements but there may be others.*

The headings below describe elements of a TIP that we believe can stand on their own and be fully approvable by EPA. In other words, each heading identifies a CAA element that would be considered to be reasonably severable. Also included is information that we would generally expect to find in those elements. You may elect to develop TIPs that include some or all of the following elements:

1. A Maintenance Strategy for Areas Designated Attainment or Unclassifiable

The goal of a TIP in an attainment or unclassifiable area is to maintain air quality that is cleaner than the NAAQS. This TIP element will generally contain:

- Enforceable emission limits for existing emission sources;

- A program to limit the impacts of emissions from new major sources and major modifications (PSD). (See "3. Source Preconstruction Permits" below); and
- Provisions to prevent significant contribution by entities in Indian country to violations of NAAQS or PSD increments in other areas.

2. An Attainment Strategy for a Nonattainment Area

The goal of a TIP in a nonattainment area is to reduce the concentrations of specific pollutants to levels that are below the NAAQS levels. An attainment strategy will generally contain:

- An emissions inventory to identify the sources of air pollution, locations, and types of pollutants emitted;
- Enforceable emission limits that will require application of at least Reasonably Available Control Measures (RACM) or, in some cases, Reasonably Available Control Technology (RACT);
- Evidence that the emission limits (control strategy) will reduce emissions enough to prevent NAAQS violations in Indian country and in other areas (usually done through an attainment demonstration);
- Schedules by which emission limits will be implemented (compliance schedules);
- Evidence that the compliance schedules will produce annual incremental reductions in emissions until the NAAQS are met;
- Additional regulations to achieve emission reductions beyond those necessary to meet the NAAQS, to be held in reserve and used only if the primary regulations fail to attain the NAAQS (contingency measures);
- A program to limit the impacts of emissions from new major sources and major modifications (nonattainment NSR). (See "3. Source Preconstruction Permits.")

3. Source Preconstruction Permits

The CAA provides for programs to review and permit new sources and modifications to existing sources as part of an overall strategy to attain or maintain the NAAQS. Some of the programs you may choose to manage are:

- In attainment areas, you may adopt a PSD program of your own for new major sources and major modifications or you can accept delegation to manage the federal PSD program.
- In nonattainment areas, you may adopt the statutory requirements for nonattainment NSR to regulate emissions from new major sources and major modifications to existing sources.
- You can develop a program to prevent violations of the NAAQS from new minor sources and create enforceable limits on sources' potential to emit.
- You can impose technology-based emission limits on new and modified sources.

M. MODEL CODES AND RULES

If you determine it is appropriate to develop a TIP to implement the NSR program, listed below are links to examples of TIPs already approved that you can use as a starting point. (See Section 5 in the Attachments for examples of model rules.)

- **Gila River Indian Community**
  http://www.epa.gov/region9/air/actions/gila-river.html

- **St. Regis Mohawk Tribe**
  http://www.srmtenv.org/pdf_files/airtip.pdf

- **Mohegan Tribe of Indians of Connecticut**
  http://www.epa.gov/region1/topics/air/tips/mohegan-regs.html

VII. PERMITTING AND PERMITS

This section discusses the permitting process, including an introduction to permits, and a list of sources that might be permitted under the NSR program. The EPA regions will issue permits and implement the NSR permitting program in each area of Indian country. A tribe can take over the administration of the program, or parts of the program, when it receives delegation of the federal program or when it develops an implementation plan for their area and EPA approves the plan.

A. PERMITS

Air permits are the result of federal, state and tribal legislation designed to protect air quality. Businesses and industries that are capable of reaching or exceeding certain established thresholds of pollutant release are required to have a permit. The purpose of the permit is to legally and effectively limit the amount of air pollutants released into the atmosphere. It is important to understand that the permit programs are designed to control and limit the total amount of pollutants released over both wide geographic areas and near sources themselves by controlling and limiting releases at the individual stationary sources. A stationary source is any building, structure, facility or installation which emits or may emit a regulated air pollutant.

A source may have many processes with different equipment being used for each process, and each piece of equipment within the process may emit one or more different air pollutants. Any part of a stationary source that is capable of emitting one or more regulated air pollutants is identified as an emission unit.

The focus of this manual is on the NSR permitting program, but please be aware that there are other permitting programs including the Operating Permits program. NSR applies to the construction of the source; while operating permits combine into one document all the operational and procedural requirements the source is subject to in order to comply with the applicable air pollution laws.

The type of program or permit required, and subsequently the content or composition of a permit for a given source will depend primarily upon three basic factors:

- The amount of emissions a source is capable of emitting or the source's PTE, not necessarily the amount it is or will actually emit;
- The type of pollutant(s) the source can emit; and
- The attainment status of the area in which the source is located.

An air permit should contain a description of the source and specify all the standards and limits that apply to the source for a specific permitting program. Permits must contain specific monitoring, recordkeeping and reporting requirements to ensure the enforceability of each standard or requirement that applies.

A violation of a permit condition can result in enforcement action by the appropriate authority.[10]

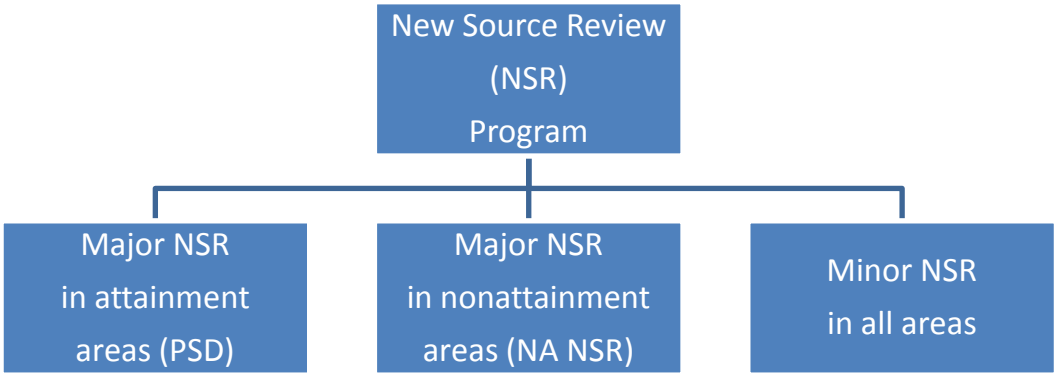
[10] EPA Air Pollution Training Institute (APTI) http://www.epa.gov/apti/index.html

B. NEW SOURCE REVIEW PERMITS

As we mentioned in Section II, the NSR program requires stationary source owners or operators to obtain a permit before they begin construction of a new source or a modification to an existing source. In other words, facilities are required to obtain NSR permits for the construction of entirely new facilities and for construction projects at existing facilities such as expansions, additions, process changes, and equipment modifications. By requiring sources to meet pre-construction requirements, the NSR program provides a mechanism to improve the air quality in nonattainment areas and to maintain the air quality in attainment areas.

C. THE TYPES OF NSR PERMITTING PROGRAMS

There are three types of NSR permitting programs (see diagram below), each with a different set of requirements. A facility may have to meet one or more of these sets of permitting requirements.

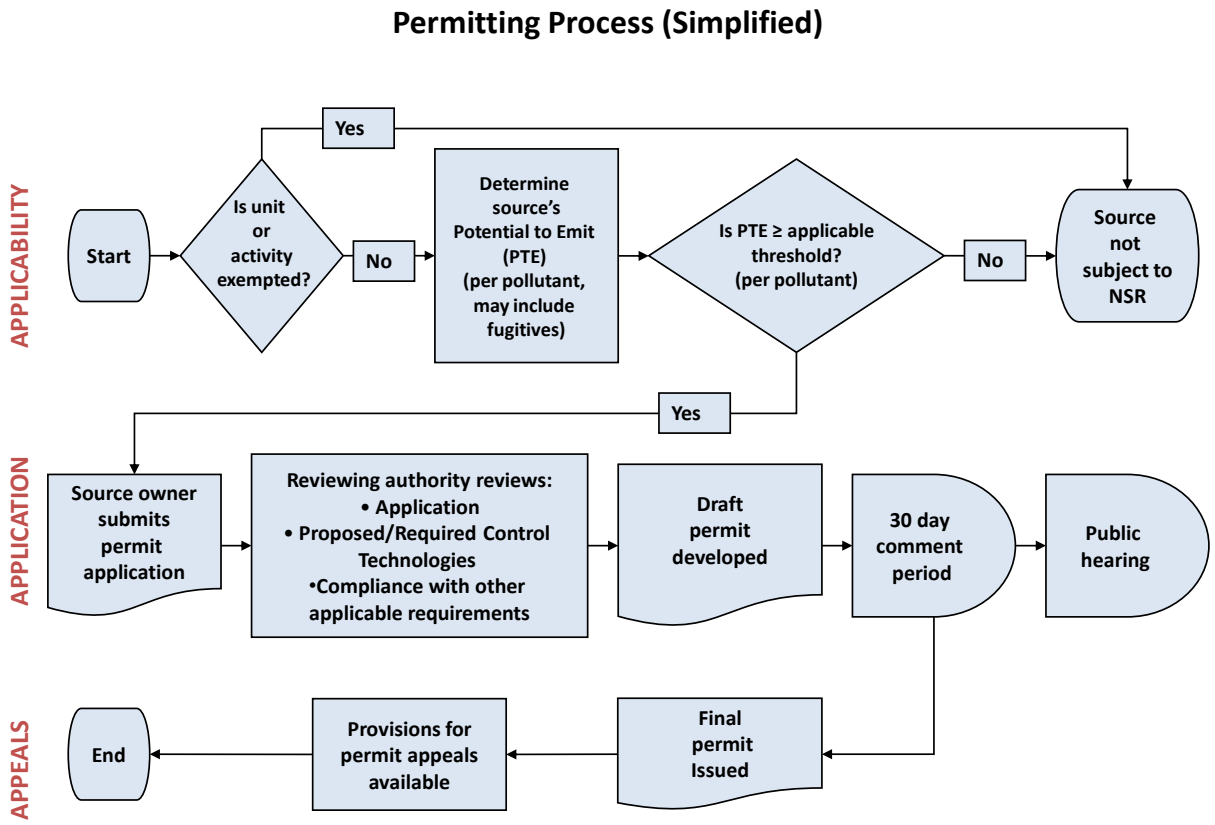


- The Prevention of Significant Deterioration (PSD) program applies to a new major source or a source making a major modification that is located in an attainment area. The PSD program generally applies to facilities that have the potential to emit 250 tons per year (tpy) or 100 tpy or more of any regulated NSR pollutant. The thresholds depend on the type of source and there is a list of 28 source categories for which the 100 tpy threshold applies (Table 2). Please note that for greenhouse gases (GHG), the applicability thresholds are higher than 100 or 250 tpy.[11]
- The Nonattainment NSR (NA NSR) program applies to a new major source or a source making a major modification that is located in a nonattainment area. Generally, the NA NSR program applies to facilities that have the potential to emit 100 tpy or more of a NAAQS pollutant. However, this threshold can be lower depending on the nonattainment severity of the area where the source is or will locate.
- The Minor NSR program applies to a new minor source and/or a minor modification at both major and minor sources, in both attainment and nonattainment areas. Under the tribal NSR rule, these sources will be the ones that

[11] Greenhouse gases are regulated NSR pollutants and their applicability thresholds are higher than 100 or 250 tpy. Please see the rule titled, "Greenhouse Gas Tailoring Rule" for more information on these applicability thresholds (75 FR 31514) found at: http://www.gpo.gov/fdsys/pkg/FR-2010-06-03/pdf/2010-11974.pdf

emit regulated NSR pollutants at or above the minor NSR thresholds included in the rule, but below the major source thresholds.

D. THE NSR PERMITTING PROCESS



The NSR permitting process can be divided into three main parts (see diagram above): (1) Applicability, (2) Application, and (3) Appeals. Specific details of each section, as it applies to the NSR program, follow.

1. Applicability[12]

Applicability, the first step in the permitting process, is actually comprised of two intertwined pieces: (1) determining if a permit is actually required, and if one is required, (2) determining what type of permit is required. The responsibility for determining if and what type of permit is required rests with the source itself. However, a source may incorrectly determine what type of permit is required. Therefore, EPA personnel may be requested to assist an applicant in determining whether and what kind of permit is required. Once a tribe has delegation of the program or develops a TIP for all or parts of the NSR program, the tribal personnel for that area will be responsible for assisting the applicant.

[12] EPA Air Pollution Training Institute (APTI) http://www.epa.gov/apti/index.html

The applicability of the different NSR permit programs will be straightforward in some cases, and in other cases there may be complicated issues to be resolved in determining the applicable permit program(s). EPA personnel in each EPA region are available to assist in these determinations. We will discuss the applicability under each program in later sections.

2. Application[13]

One of the most important aspects of the permit application process is the evaluation of emissions. Correct assessment of the source's PTE is essential for determining the type of permit required and its applicable requirements. A source's PTE determines whether the source needs a PSD, NA NSR, or minor NSR permit.

Once it has been determined what type of permit application is required, the source must prepare the application using the proper application form(s). EPA has standard application forms for their permits. Ideally, the application form will lead the permit applicant in providing all required information, but we can provide assistance to applicants during the preparation stage. This assistance may vary from informally responding to individual questions of a technical nature, to formal meetings with several members of the source's staff or management. Larger businesses will often employ outside consultants to evaluate emissions and to prepare permit applications.

After receiving and entering a permit application into the Agency's tracking system, an administrative completeness review is initiated. In this step, the reviewing authority examines the application to determine whether all required information and data has been supplied. The fact that an application is deemed administratively complete does not limit the permitting agency from requesting additional information during the application technical review and permit processing. In practice, the completeness review is often conducted in parallel with the early part of the technical review. If there is a time limit the reviewing authority must meet to issue the permit, as there is for the NSR program, the "permit clock" usually does not start until the application is determined to be complete.

One of the more complex aspects of the application review is evaluating the applicable requirements. The applicable requirements will vary according to the permit program being applied and the emission units at the source (e.g., is this a PSD permit, NA NSR, or minor source permit?). With some application forms, there is a section in which the applicant should identify the applicable requirements, along with their regulatory and statutory citations.

Once the necessary information has been obtained and the review of the application is completed, the draft permit is developed. The draft permit is usually the initial version for which public notice and affected state and tribe review is invited. It should be noted again, that processes often overlap with one another; for example, developing the draft permit may be going on at the same time as the technical review is being accomplished.

[13] EPA Air Pollution Training Institute (APTI) http://www.epa.gov/apti/index.html

The tribal NSR program permits for the same source category might vary from region to region, depending on the particular characteristics of that region. Preparing the draft permit is the critical step in accomplishing the objectives of a permit writer. The finished permit is the vehicle that transposes requirements that must be met into enforceable conditions.

Public participation is invited when the public is notified of the intent to issue a permit. The notification process is fairly uniform for major sources and minor sources under the NSR program. If comments are received, the reviewing authority must consider them and the permit writer must incorporate them into the final permit or explain in a response to comments document why they were not incorporated into the final permit. Please note that the response to comments document will also include responses to the comments that were incorporated into the permit as well.

As the result of the notification, a request for a public hearing may be made. The reviewing authority must decide if the hearing is merited and, if one is held, it must accept comments and consider the comments before issuing the final permit. Public notification for minor sources is often handled on the basis of how much public interest is known to exist with respect to a specific industry or even a specific plant.

Once the public participation stage is completed, the permit writer must make any needed revisions to the draft permit, and prepare the proposed or final permit. At this time or within the first few months after final permit issuance, an inspector from the reviewing authority may make an initial or follow-up visit to the source to assure that the source understands and has implemented all the required permit conditions. This initial site inspection is very important to a successful compliance effort, and the permit writer may be requested to provide clarification or documentation of certain permit conditions. (See Table 1). Permit Application and Issuance Timeline below for details on dates and timing)

3. Appeals

Final permits can be appealed by the permit applicant or the public. Only members of the public that commented on the draft permit can appeal a final permit unless the issues being appealed were not part of the draft permit. State issued permits are appealed in each state court, but permits issued by EPA, as in the case of the tribal NSR rule, will be appealed through the EPA's Environmental Appeals Board (EAB). If all remedies for permit appeal through the EAB are exhausted, a person may appeal to Federal Court. Once a tribe develops a TIP that is approved by EPA to implement the NSR program or parts of the NSR program, the permits issued under the TIP will be appealed in the applicable court for that tribal area.

Table 1. Permit Application and Issuance Timeline

	Modifications to Existing Sources				Existing Sources		New Sources			
	Major Modification of Existing Major Source	Minor Modification of Existing Major Source	Minor Modification of Existing Synthetic Minor Source	Minor Modification of Existing True Minor Source	Existing True Minor Source	Existing Synthetic Minor Source	New Major Source in an Attainment Area	New Major Source in a Nonattainment Area	New True Minor Source	New Synthetic Minor Source
Applicable Permit Program	PSD or Nonattainment NSR	Minor NSR	Minor NSR	Minor NSR	Minor NSR	Minor NSR	PSD	Nonattainment NSR	Minor NSR	Minor NSR
After August 30, 2011	Apply for permit before construction of modification	Apply for permit before construction of modification	Apply for permit before construction of modification			Source may need to apply for permit depending on how existing synthetic minor status was obtained	Apply for permit before construction	Apply for permit before construction		Apply for permit before construction
18 months after Effective Date (March 1, 2013)				Register source within first 18 months after effective date or 90 days after source begins operation	Register source within first 18 months after effective date or 90 days after source begins operation					
36 months after Effective Date (Sept. 2, 2014)				Apply for permit 36 months after effective date or 6 months after general permit is published in the Federal Register	No permit needed unless modification is proposed				Apply for permit 36 months after effective date or 6 months after general permit is published in the Federal Register	

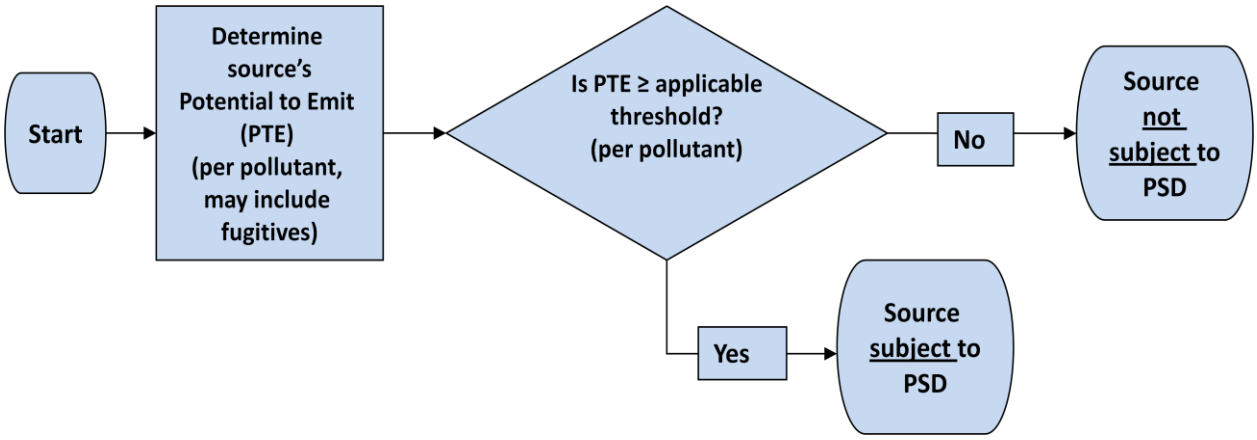
VIII. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) PROGRAM REQUIREMENTS

A. APPLICABILITY: NEW AND MODIFIED MAJOR STATIONARY SOURCES

PSD applies only in attainment areas and only to the construction of new major sources or major modifications to existing major sources locating in an attainment area. A source is major if it emits any regulated air pollutant with air emissions in an amount equal to or higher than 100 or 250 tpy, depending on the type of source.[14] Table 2 lists the sources that are subject to the 100 tpy major source threshold. All other sources are subject to the 250 tpy major source threshold. The regulated pollutants are the pollutants for which there is a NAAQS, also known as "criteria" pollutants; greenhouse gases, also known as GHGs; and other pollutants regulated under the CAA, except for Hazardous Air Pollutants (HAPs). Regulated air pollutants are listed below, with the Significant Emission Rate (SER) for each pollutant listed beside it in italics.

- NAAQS: Carbon Monoxide (CO) *(100 tpy)*, Lead (Pb) *(0.6 tpy)*, Nitrogen Dioxide (NO_2) *(40 tpy)*, Ozone (O_3), Particulate Matter (PM) *(25 tpy)*, and Sulfur Dioxide (SO_2) *(40 tpy)*.
- Greenhouse Gases *(no SER)*: Carbon dioxide (CO_2), Methane (CH_4), Nitrous Oxide (N_2O), Hydrofluorocarbons (HFCs), Perfluorocarbons (PFCs) and Sulfur Hexafluoride (SF_6).
- Other Pollutants Include: Sulfuric Acid Mist (H_2SO_4) *(7 tpy)*, Hydrogen Sulfide (H_2S) *(10 tpy)*.
- Excludes Air Toxics: Mercury (Hg), Cadmium (Cd), Benzene (C_6H_6), etc. *(The air toxics list can be found in section 112(b) of the CAA.)*

The following diagram shows how to determine whether PSD permitting requirements apply to a new stationary source.



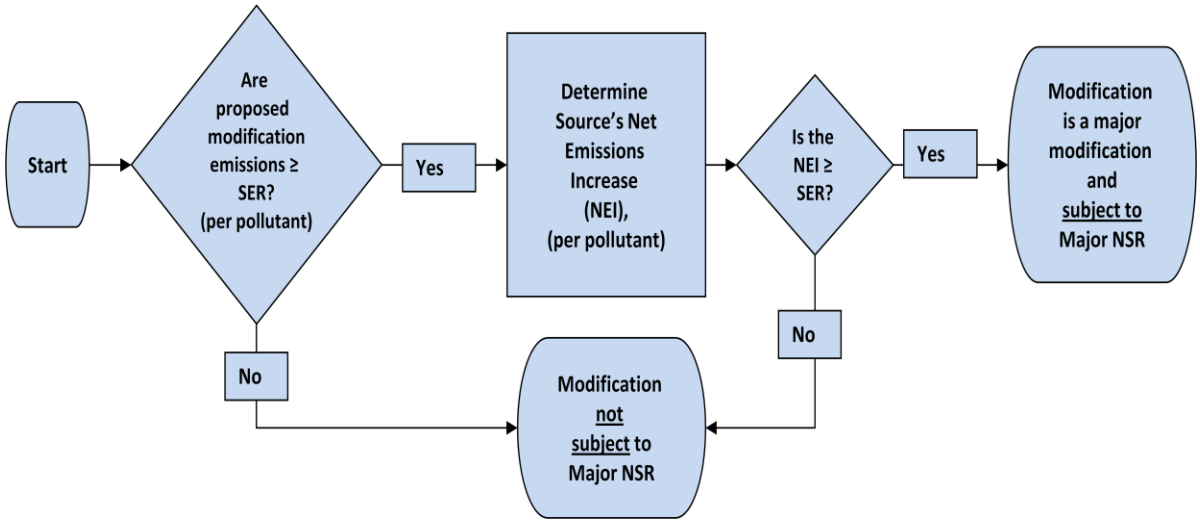
[14] Greenhouse gases are regulated NSR pollutants and their applicability thresholds are higher than 100 or 250 tpy. Please see the rule titled, "Greenhouse Gas Tailoring Rule" for more information on these applicability thresholds (75 FR 31514) found at http://www.gpo.gov/fdsys/pkg/FR-2010-06-03/pdf/2010-11974.pdf

Table 2. Major Source Thresholds for Attainment Areas

250 tpy - Otherwise 100 tpy if your source belongs to one of the source categories listed below	
1. Coal cleaning plants (with thermal dryers)	15. Coke oven batteries
2. Kraft pulp mills	16. Sulfur recovery plants
3. Portland cement plants	17. Carbon black plants (furnace process)
4. Primary zinc smelters	18. Primary lead smelters
5. Iron and steel mills	19. Fuel conversion plants
6. Primary aluminum ore reduction plants	20. Sintering plants
7. Primary copper smelters	21. Secondary metal production plants
8. Municipal incinerators capable of discharging more than 250 tons of refuse per day	22. Chemical process plants
9. Hydrofluoric acid plants	23. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels
10. Sulfuric acid plants	24. Taconite ore processing plants
11. Nitric acid plants	25. Glass fiber processing plants
12. Petroleum refineries	26. Charcoal production plants
13. Lime plants	27. Fossil fuel-fired steam electric plants of more than 250 million British thermal units (BTU) per hour heat input
14. Phosphate rock processing plants	28. Fossil-fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input

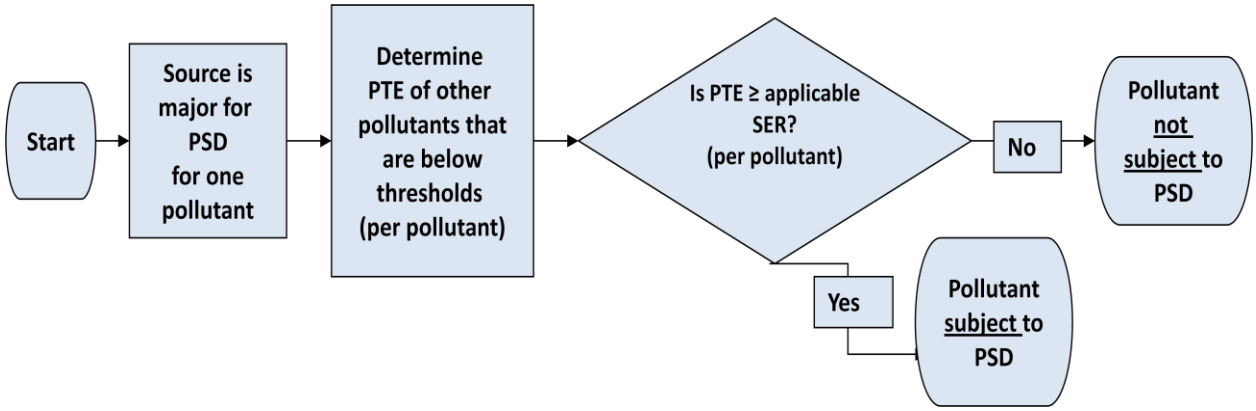
The PTE of the source is the maximum capacity of the source to emit a pollutant under its physical and operational design. The thresholds for PSD are 250 tpy for most source categories, but are 100 tpy for 28 listed source categories (see Table 2).

For an existing major source, PSD applies if there is a major modification at the source. A major modification exists if: (1) the activity is not exempt, and (2) there is not only a significant emissions increase of a regulated pollutant that results from the change, but also a significant net emissions increase of that pollutant from the source, as shown in the diagram below.



The SER is the emissions rate limit in tpy. It varies by pollutant, as listed above. The Net Emissions Increase (NEI) is the emissions increase from the project itself AND the sum of all contemporaneous and creditable emissions increases and decreases that occurred at the source.

Under certain other circumstances, a new source or modified source might be subject to PSD, as shown in the diagram below.

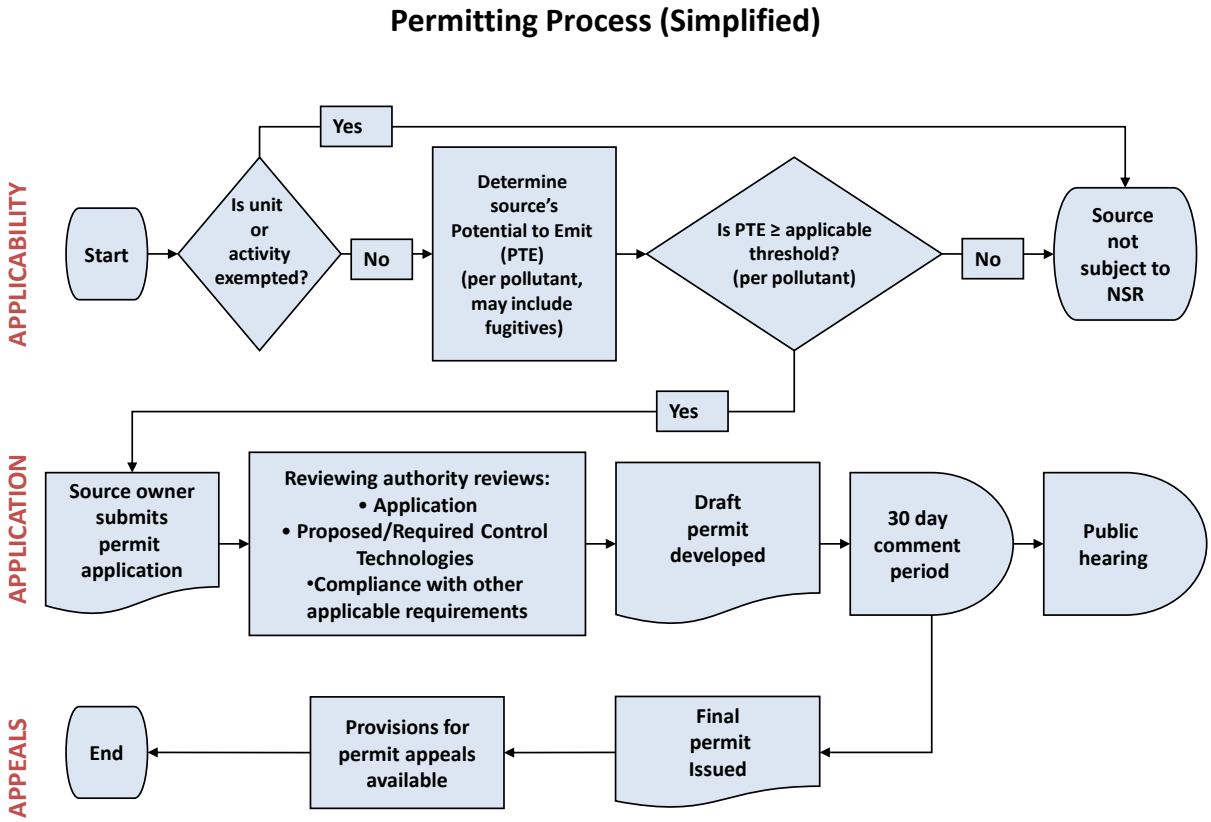


This concept is known as "Major for One Major for All." In other words, once a source, usually a new source is major for one pollutant, the other NSR regulated pollutants must also be considered in the PSD determination.

There are new or modified sources to which PSD does not apply. These sources may have a PTE less than the thresholds. Or, the source may have been constructed before the PSD program was in effect, and has not been modified since. These sources are referred to as "grandfathered." Finally, a source may get a "synthetic minor" permit. Under this type of permit, the source takes enforceable limits on its PTE, so that PSD does not apply.

B. THE PERMIT APPLICATION: PSD PROGRAM REQUIREMENTS

As shown in the diagram below, once a source owner/operator determines that PSD applies to the source a permit application must be submitted.



In summary, the main requirements of the permit application are to:

- Determine the Best Available Control Technology (BACT) for the regulated NSR pollutant;
- Perform air quality analysis to assess impacts on air quality;
- Perform Class I area analysis to assess impacts on national parks and wilderness areas;
- Perform additional impacts analysis; and
- Allow for opportunities for public involvement.

C. BEST AVAILABLE CONTROL TECHNOLOGY (BACT)

BACT is a pollutant specific emissions limit, set for each source, case-by-case. The determination of BACT must take into account, energy, environmental, or economic impacts. The limit must be at least as stringent as other applicable standards such as New Source Performance Standards (NSPS) and/or National Emission Standard for Hazardous Air Pollutants (NESHAP). BACT is selected by "Top Down" BACT analysis in which the source identifies all available control technologies, and then eliminates technically infeasible control options. The remaining control technologies are ranked by their effectiveness (considers economic, energy and environmental impacts); then, the source must evaluate the most effective controls and document the results. This process results in the selection of

BACT, which is submitted in the application, and must be approved by the permitting authority.

D. AIR QUALITY IMPACT ANALYSIS (AQIA)

The application must include an Air Quality Impact Analysis (AQIA). This is a pollutant specific analysis that involves an assessment of existing air quality and a modeling estimate of ambient concentrations from the proposed project and future growth associated with the project. The purpose of the analysis is to determine if new plus existing emissions will cause or contribute to a violation of a NAAQS and/or the PSD increment for a pollutant. The increment is the amount of an increase in a pollutant in an area. The increment prevents the air quality in clean areas from deteriorating up to the level set by the NAAQS. Increments currently exist for three pollutants: NO_2, PM, and SO_2.

Another step in the permit application is the Class I Area Impact Analysis. This is an evaluation of the impact a major source's emissions may have on a Class I area NAAQS, PSD increments, and Air Quality Related Values (AQRVs). Class I Areas are areas reserved for special air quality protection, usually national parks and wilderness areas. AQRVs are the feature or property of a Class I Area that may be affected by a change in air quality. These are different for each Class I area. An example of an AQRV is visibility. So, for example, the ability to see the Grand Canyon, is an AQRV that may be affected by the fine particles, or their pre-cursors that would be emitted from a new coal-fired power plant. The assessment of AQRVs is generally performed for sources locating within 100 km of a Class I area, but this also varies.

E. ADDITIONAL IMPACT ANALYSIS

An assessment of potential effects of increased air, ground and water pollution from the proposed source and associated growth on soils and vegetation and visibility must be performed. This assessment is pollutant specific and must be performed within the impact area of the proposed source.

F. PUBLIC INVOLVEMENT

The permit reviewing authority is required to provide:

- Public notice to the affected community and the general public on the draft permit;
- At least a 30-day public comment period on the draft permit; and
- Opportunity for a public hearing on the draft permit, if requested by the public.

All public comments must be considered before a final permit is developed. A Technical Support Document (TSD), generally including responses to comments, may also be available with the final permit.

G. PSD PERMIT APPEALS

The PSD program includes provisions for permit appeals. For permits issued by EPA, appeals are conducted through the EPA's EAB. If all remedies for permit appeal through the EAB are exhausted, a person may appeal to Federal Court.

H. DELEGATION OF AUTHORITY

EPA's rules allow delegation of authority to administer the federal CAA programs, including permitting. States may accept delegation to run the federal PSD program for their areas, or they may get a federally-approved SIP, just as tribes may seek approval of a TIP, giving them authority to run a PSD program that is equivalent to the federal program. The requirements for delegating the PSD program can be found at 40CFR 52.21(u).

I. KEY POINTS TO REMEMBER: PSD

- Program for major sources located in attainment areas (generally for emissions at or higher than 100 or 250 tpy);
- Pollutants regulated: NAAQS, GHGs, other pollutants;
- Main requirement: BACT; and
- Permits are usually issued no later than 1 year after the date the permit application is deemed complete.

J. MAJOR NEW SOURCE REVIEW IN NONATTAINMENT AREAS (NA)

1. Nonattainment New Source Review Applicability

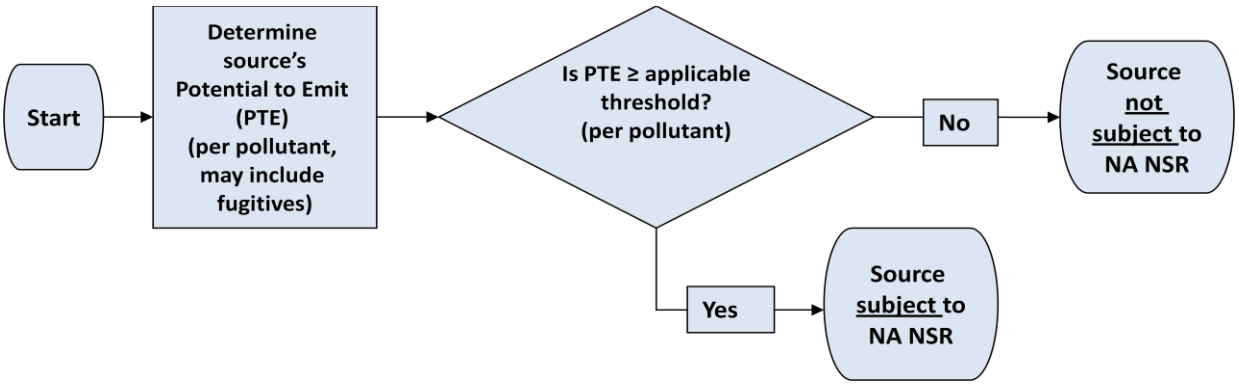
Nonattainment NSR (NA NSR) only applies in areas designated as nonattainment and only to major sources. A source is major under the nonattainment NSR program if it has the potential to emit 100 tpy or greater of a regulated air pollutant. Lower thresholds may apply depending on the nonattainment severity of an area (i.e., how bad is the air quality in an area). These areas are classified from "marginal" to "extreme" depending on the level of pollution. The major source thresholds that apply to these areas are shown in Table 3.

Table 3. Major Source Thresholds for Nonattainment Areas

Major Source Thresholds for Nonattainment Area			
Pollutant	**Nonattainment Classification**	**Threshold**	**Offset Ratio**
Ozone	Marginal (≥ 0.085 < 0.092 ppm)	100 tpy of VOC or NOx	1.1 to 1
	Moderate (≥ 0.092 < 0.107 ppm)	100 tpy of VOC or NOx	1.15 to 1
	Serious (≥ 0.107 < 0.120 ppm)	50 tpy of VOC or NOx	1.2 to 1
	Severe (≥ 0.120 < 0.187 ppm)	25 tpy of VOC or NOx	1.3 to 1
	Extreme (= 0.187 ppm and up)	10 tpy of VOC or NOx	1.5 to 1
Particulate Matter (10µm)	Moderate	100 tpy	-
	Serious	70 tpy	-
Carbon Monoxide	Moderate (9.1 – 16.4 ppm)	100 tpy	-
	Serious (16.5 and up ppm)	50 tpy	-
Sulfur Dioxide, Nitrogen Oxides, and Lead	No nonattainment classifications exist	100 tpy	-

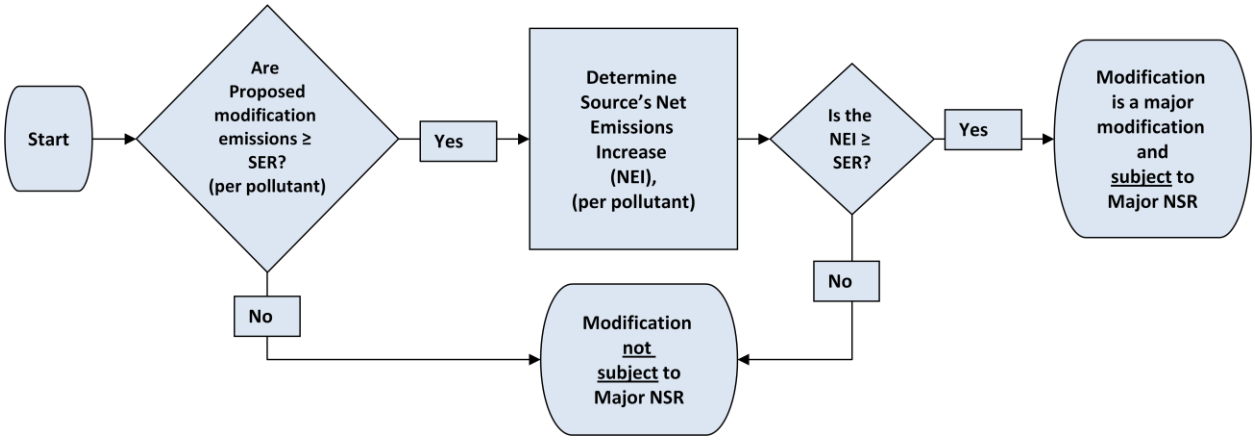
NA NSR applies to construction of new major sources in nonattainment areas. NA NSR also applies to modifications of major existing sources located in nonattainment areas with a net emissions increase higher than the significant emissions rate. NA NSR

only applies to the pollutants for which a NAAQS has been established. Unlike PSD, if a source is major for one pollutant under the NA NSR program, it does not mean that it is major for all pollutants under the NA NSR program. Sources may be subject to NA NSR for some pollutants and PSD for other pollutants, depending on the pollutant-specific attainment status of an area.



K. APPLICABILITY FOR MODIFIED SOURCES

A modification is major if the change itself results in emissions that equal or exceed the SER for that pollutant and the source will have a net emission increase that equals or exceeds the SER for that pollutant as shown in the diagram below.



SER – Emissions rate limit in tpy, varies by pollutant.
NEI – The emissions increase from the project itself AND the sum of the emissions increases and decreases of all projects implemented usually over the last five years that were not otherwise considered in a NA NSR permit action**.**

L. NONATTAINMENT NSR PERMITTING PROCESS

The main requirements of the NA NSR permitting process are:

- Install Lowest Achievable Emission Rate (LAER) technologies;
- Obtain emission offsets;

- Perform alternative sites analysis;
- Show statewide facility compliance with air regulations; and
- Allow for opportunities for public involvement.

For Indian country, EPA has implemented the same requirements as current NA Major NSR rules for areas lacking an implementation plan which can be found at 40 CFR Part 51, Appendix S.

1. Installation of the Lowest Achievable Emission Rate (LAER)

The permit application must contain a recommended LAER. This level of emissions reduction is usually more stringent than what would be required under the PSD program. LAER is the rate of emissions that reflects: (1) the most stringent emission limitation included in the implementation plan of any state for a similar source unless the facility owner or operator demonstrates such limitations are not achievable; or (2) the most stringent emissions limitation achieved in practice, whichever is more stringent. A determination of LAER may not include consideration of economic, energy, environmental or other factors.

2. Emission Offsets

To avoid increases in emissions, proposed emissions increases from new or modified facilities are balanced by equivalent or greater reductions from existing sources. The offsets must be at least one-to-one, that is, one ton of a pollutant obtained as an offset for each ton that will be emitted by the new or modified source. The amount that must be obtained as offsets is higher in more polluted areas. The emissions offsets must be reductions that are Quantifiable, Enforceable, Permanent and Surplus (QEPS). These reductions must also be real reductions of actual emissions, not "paper" reductions. The offsets must come from reductions that are federally enforceable at the time the permit is issued and must be in effect before a new or modified source can commence operation.

In nonattainment areas, the CAA requires emissions reductions (offsets) from existing sources in the area of the proposed source (whether or not under the same ownership) to obtain reasonable progress towards attainment of the applicable NAAQS. States have created "offset banks" to assist sources in identifying needed offsets. We can assist tribes interested in developing offset banks. Tribes may also wish to enter into MOUs with neighboring states to allow tribal access to offsets in the state offset bank and vice-versa, if and when, tribes develop their own offset banks.

3. Alternative Sites Analysis

The permit application must include an analysis by the source owner of alternatives to the selected project. The alternative analysis must address alternative sites, sizes, production processes, and environmental control techniques. This analysis must show that the benefits of the proposed source significantly outweigh the environmental impacts and the social costs imposed as a result of source location, construction or modification.

4. Statewide Facility Compliance with Air Regulations

The permit application must include a certification by the proposed source owner that all sources owned or operated by this source owner in the same state as the proposed source are in compliance or are on an approved schedule for compliance with all applicable requirements.

5. Public Involvement

The permitting process must include opportunities for public involvement. The reviewing authority is required to provide public notice to the affected community and the general public on the draft permit for at least 30 days. There must also be an opportunity for a public hearing on the draft permit, if requested by public. All public comments must be considered before a final permit is developed. A TSD, generally including responses to comments, may also be available with the final permit.

6. Nonattainment NSR Appeals Process

Appeals on permits issued by EPA under the NA NSR program are conducted through the EPA's EAB. If all remedies for permit appeal through the EAB are exhausted, person may appeal to Federal Court.

7. Nonattainment NSR Key Points to Remember

- The NA NSR program is for major sources located in nonattainment areas (generally for emissions at or higher than 100 tpy);
- Only NAAQS pollutants are regulated;
- Main requirement: LAER; and
- Permits are usually issued no later than 1 year after the date the permit application is deemed complete.

IX. TRIBAL MINOR NSR PROGRAM

A. APPLICABILITY OF THE TRIBAL MINOR NSR PROGRAM

1. The Tribal Minor NSR program applies to:

- True Minor Sources – which are those sources that emit or have the potential to emit regulated NSR pollutants below major source thresholds and, in the case of this rule, above minor NSR thresholds;
- Synthetic Minor Sources – which are those major sources who restrict their emissions to become minor sources; and
- Minor Modifications at Major Sources – which are small modifications (low emissions) at major sources.

The tribal NSR program covers sources of regulated pollutants, criteria (NAAQS) and other pollutants, including greenhouse gases.

2. Exemptions

Certain units and activities types of sources are exempted units under the tribal NSR program. These include:

- Mobile sources;
- Ventilating units for comfort that do not exhaust air pollutants into the ambient air from any manufacturing of other industrial processes;
- Non-commercial food preparation;
- Consumer use of office equipment and products;
- Janitorial services and consumer use of janitorial products;
- Internal combustion engines used for landscaping purposes; and
- Bench scale laboratory activities, except for laboratory fume hoods and vents.

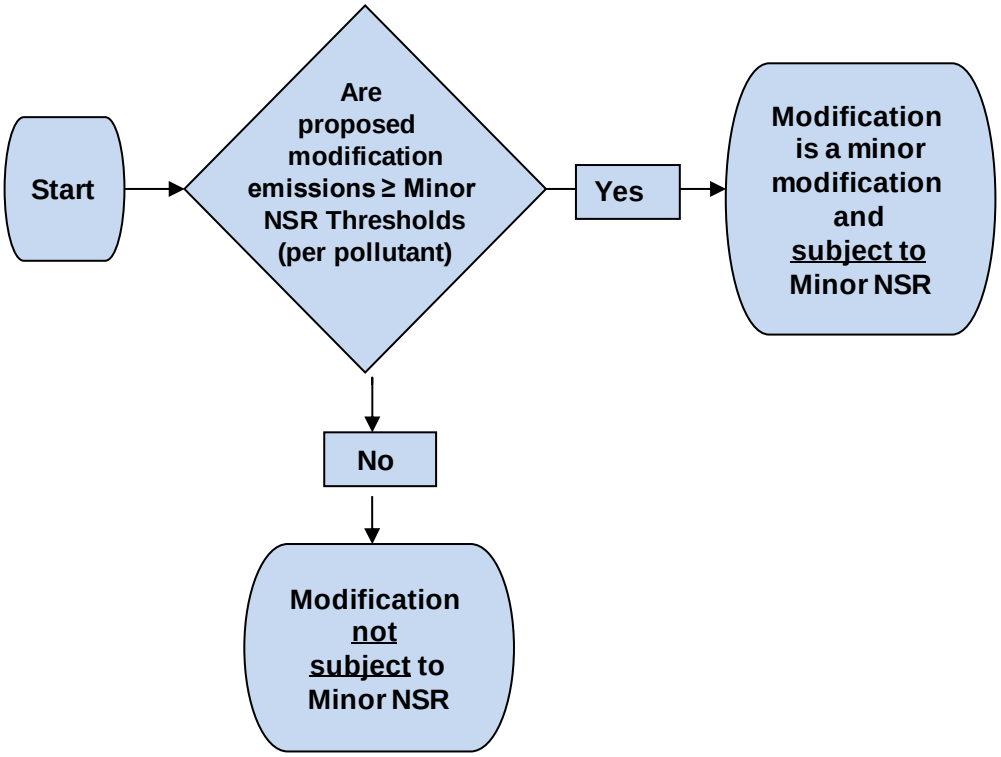
Based on comments received during the tribal NSR rulemaking process, EPA committed to looking at whether additional units should be exempted. EPA will propose, and take comment on these additional units in a separate rulemaking.

B. APPLICABILITY FOR NEW MINOR SOURCES – POTENTIAL TO EMIT (PTE)

New sources wishing to locate in Indian country must first calculate the PTE of the new source. The PTE of a source is the highest amounts of pollutants that the source could release into the air based on the equipment design (calculated per pollutant). The PTE can consider limitations on source operation as well as emission controls, if these limitations are enforceable. The PTE includes fugitive emissions if the source is part of the 28 source category list shown in Table 2. Fugitive emissions are those emissions that enter the atmosphere from a source without first passing through a stack or duct designed to direct or control their flow. If the PTE of the proposed new source is greater than or equal to the minor source thresholds shown in Table 4, but less than the major source thresholds (generally 100 or 250 tpy for PSD or 100 tpy or less for NA NSR), then the source is a

minor source under this program. Sources with emissions lower than the thresholds would typically be exempt from the minor NSR program. The thresholds vary by pollutant and are more stringent for nonattainment areas than attainment areas. There is currently no threshold for GHGs.

C. APPLICABILITY FOR MODIFICATIONS - ALLOWABLE-TO-ALLOWABLE TEST



For modifications at existing minor sources, the increase in emissions is calculated based on allowable emissions. Allowable emissions are calculated considering any enforceable emission limitations on the source's maximum capacity to emit a pollutant. If the unit was unpermitted or a new unit is added, the emission increase is based on PTE. As for new sources, the allowable emissions include fugitive emissions if the source is part of the 28 source category list. If the emissions increase is greater than or equal to the minor source thresholds shown in Table 4 the modification is subject to the Tribal Minor NSR rule.

Various methods exist to quantify emissions. For example: on-site measurement, vendor design capacity or rated capacity information, material balance calculations, emission factors. EPA provides tools such as emissions factors to help source owners/operators calculate these emissions. EPA regional offices will also provide assistance with the calculations and use of emission factors. Emissions factors specific to a business can be used, but they have to be approved by the reviewing authority.

Table 4. Minor Tribal NSR Rule Thresholds

Regulated NSR Pollutant	For Nonattainment Areas (tpy)	For Attainment Areas (tpy)
Carbon monoxide (CO)	5	10
Oxides of nitrogen (NO_x)	5	10
Sulfur dioxide (SO2)	5	10
Volatile organic compounds (VOC)	2	5
PM	5	10
PM-10	1	5
PM-2.5	0.6	3
Lead	0.1	0.1
Fluorides	NA	1
Sulfuric acid mist	NA	2
Hydrogen sulfide (H_2S)	NA	2
Total reduced sulfur (including H_2S)	NA	2
Reduced sulfur compounds (including H_2S)	NA	2
Municipal waste combustor emissions	NA	2
Municipal solid waste landfills emissions	NA	10

D. THE PERMITTING PROCESS: TYPES OF PERMIT APPLICATIONS UNDER THE TRIBAL MINOR NSR RULE

1. Site-Specific Permit

A site-specific permit requires a case-by-case determination of source emissions limits and control technology requirements, if any are required. This type of permit is required for true minor sources and minor modifications at major sources, unless the source decides to apply for coverage under a general permit, as discussed below.

Case-by-case Maximum Achievable Control Technology (MACT) determinations will be allowed under site-specific permits if no MACT standard for a source category has been established.

2. General Permit (GP)

EPA will develop general permits (GPs) for common types of sources allowing opportunity for public notice and comment. The control or emission requirements are determined in advance for a number of similar equipment types or facilities to simplify permit issuance process. The GPs will usually be national unless there is a specific need to develop a region specific or tribal specific permit. They will be updated as

needed, but an existing source can continue to operate under its existing permit until the source modifies. General permits are not allowed for synthetic minor sources.

We plan to develop GPs for various source categories including dry cleaners, hot-mix asphalt plants, rock-crushing facilities, and industrial boilers.

3. Synthetic Minor Permits

Synthetic Minor Permits limit PTE for sources that have the capacity to emit pollutants at or above the major source thresholds, but voluntarily accept emissions limitations to operate as minor sources. These permits will be available for regulated NSR pollutants and toxic air pollutants. Case-by-case MACT determinations will be allowed under site-specific permits if no MACT standard for a source category has been established.

4. Permit Application

The permit application for a minor source must include certain key elements. We will provide forms that applicants may use to submit this information. The applicant must provide identifying information such as the name and address of the facility and a name and phone number of a contact person at the facility. A description of the source's processes and products as well as a list of all affected emissions units and emissions must also be provided. For new units this includes the expected PTE, including any restrictions on PTE. For modified units the emissions calculations must include the allowable emissions both before and after the modification, including any restrictions on emissions. A description of any existing air pollution control equipment must also be provided as well as any existing limitations on source operation affecting emissions or any work practice standards, where applicable, for all NSR regulated pollutants at the source.

5. Control Technology Review

After it determines that a permit application is complete, the permitting authority will conduct a review to determine the appropriate control technology for the facility. Except for general permits, this will be done on a case-by-case basis. By control technology we mean:

- Pollution prevention techniques;
- Add-on pollution control equipment;
- Design and equipment specifications; and
- Work practices and operational standards.

To determine the appropriate level of control, if any, necessary to assure that the NAAQS are achieved, as well as the corresponding emission limitations for the affected emissions units at the source, the control technology will be based on a consideration of:

- Local air quality needs;
- Typical control technology used by similar sources in surrounding areas;

- Anticipated economic growth in the area; and
- Cost-effective control alternatives.

The control technology identified by the permitting authority will be incorporated into the site-specific permit or into the general permit, if applicable.

The control technology for sources seeking coverage under general permits will be determined during the development of the GP and after the opportunity for public notice and comment.

6. Air Quality Impact Analysis (AQIA)

If the reviewing authority is concerned that a minor source will cause or contribute to a NAAQS or increment violation, it will require an AQIA. If required, the source will have to conduct an AQIA in accordance with 40 CFR Part 51, Appendix W. We will develop guidance on the scope of the AQIA for minor sources.

7. Monitoring, Recordkeeping and Reporting Requirements

The permitting authority will determine what monitoring, recordkeeping and reporting requirements need to be included in the site-specific permit. The general permits will also include monitoring, recordkeeping and reporting. These conditions will be sufficient to assure compliance with control technology requirements. Monitoring may include the use of continuous emissions monitoring systems (CEMS), predictive emissions monitoring systems (PEMS), continuous parameter monitoring systems (CPMS), equipment inspections, mass balances, periodic performance tests and/or the use of emissions factors.

Recordkeeping must be established in the permit and will be sufficient to assure compliance with emission limitations. All required records must be retained for five years.

The permit will also specify reporting requirements. Annual monitoring reports are required to show compliance with emission limitations. Prompt reports of deviations from permit requirements are also required.

E. PERMIT ISSUANCE PROCESS

1. True Minor Sources Seeking Site-Specific Permits

The permitting authority will review the permit application for completeness within 45 days of its receipt. Additional information will be requested if application is not complete. This request will occur within 45 days of receipt of the permit application. The application is deemed complete if the source does not receive a request for additional information or a notice of complete application within 45 days. A 30-day public comment period will be provided on the draft permit developed by the permitting authority. If requested, a public hearing will be held on the draft permit. The final permit will be granted or denied no later than 135 days after the application is deemed complete and all additional information necessary to make an informed decision has been provided.

2. True Minor Sources Seeking Coverage Under General Permits

The process for general permits will be somewhat different than for site-specific permits. The control, monitoring, recordkeeping and reporting requirements will be developed as part of the general permit for certain source categories. An opportunity for public comment will be provided on the general permit. If a source wants to be covered under the general permit, instead of seeking a site-specific permit, the source will request coverage under the general permit. The permitting authority will have a total of 45 days to determine if the permit application is complete. The permitting authority must request any additional information it needs to determine the completeness of the request within the first 30 days, and the source owner or operator must provide the additional information within 15 days of the request. The application is deemed complete if a source does not receive a request for additional information or a notice of complete application within 45 days.

The public may comment on the appropriateness of a source's coverage under the general permit. The permitting authority must make a final decision to grant or deny the application for coverage within 90 days of its receipt of the coverage request.

3. Synthetic Minor Permits and Minor Modifications at Major Sources under Site-Specific Permits

For synthetic minor permits and minor modifications at major sources, the permitting authority will determine whether an application is complete within 60 days of its receipt. Additional information will be requested if the application is not complete. This request for additional information must be postmarked within 60 days of receipt of the permit application. The application will be deemed complete if the source does not receive a request for additional information or a notice of complete application within 60 days. A 30-day public comment period will be provided on the draft permit. The permit will be issued no later than 1 year after the application is deemed complete.

4. Public Participation Requirements

For site-specific permits, synthetic minor permits and the initial development of general permits, the reviewing authority:

- Must provide 30-day public comment period on the draft permit;
- Must mail a notice of the draft permit to the applicant, the Indian Governing Body, and surrounding tribal, state and local air pollution authorities; and
- May use additional approaches to public noticing such as websites, newspapers, and mailing lists.

In addition, the permitting authority should consider any seasonal activities that may conflict with the public participation of the local community (e.g., subsistence hunting and fishing or other seasonal activities).

For sources requesting coverage under a general permit, the public may comment on the appropriateness of requesting coverage, but the source must submit a copy of the coverage request to the tribe in the area where the source is locating. EPA will post

information of coverage requests on its website. The public can notify us of any concerns about a source's eligibility to construct under a general permit.

5. Final Permit

After a decision to issue or deny the permit, the reviewing authority must notify the applicant in writing. If a final permit is issued, the permitting authority must provide adequate public notice of the decision and if the permit is denied provide the reasons for the denial. For synthetic minor permits and site-specific permits for minor modifications at major sources, a copy of the decision will be made available at all locations where the draft permit was made available. For site-specific permits for true minor sources, the decision will be announced using one or more of the additional approaches to public noticing such as websites, newspapers and mailing lists. For general permits for true minor sources, a copy of the letter granting request for coverage under the general permit will be posted at the site.

Once issued, the permit remains valid as long as the source:

- Commences construction within 18 months after effective date of permit;
- Does not discontinue construction for a period of 18 months or more; and
- Completes construction in a reasonable time.

The reviewing authority may extend the 18-month period where justified and that 18-month limit does not apply to the time period between construction of approved phases of a phased construction program. In those cases, the source must commence construction of each such phase within 18 months of the approved commencement date for that phase.

6. Permit Re-openings

A permit may be re-opened if the permit contains a material mistake or fails to assure compliance with applicable requirements. Only the reviewing authority can reopen a permit. Any permit reopening that increases the emission limits will include public notice using one or more of the additional approaches to public noticing such as websites, newspapers, and mailing lists. A permit reopening that corrects typographical errors will not go through public notice.

7. Permit Appeals

Permits issued by EPA in Indian country may be appealed to the EPA's EAB. An appeal of a permit must be filed within 30 days after a final permit decision has been issued. Upon filing of a petition for review, the permit will be stayed until the EAB decides whether to review any condition of the permit and the reviewing authority takes any action required by the EAB. A motion to reconsider the final EAB order must be filed within 10 days. Once all administrative remedies are exhausted, the permit may be appealed to Federal Court.

8. Treatment of Existing Minor Sources

Existing true minor sources have 18 months (March 1, 2013) after the effective date of the rule or 90 days after they begin operation, whichever is later to complete a one-time registration. This registration requirement only applies to true minor sources. After the implementation date for true minor sources, the source's permit application will be used to fulfill the registration requirements. This registration data will be used to gather data on sources in Indian country. The registration must include information similar to the permit application and include estimates of the source's potential to emit in tons per year of each regulated NSR pollutant.

In addition, a source must submit additional reports to the permitting authority if the source relocates, changes ownership, or closes.

9. Treatment of Existing Synthetic Minor Sources

Existing synthetic minor sources under Region 10's Federal Air Rule for Reservations (FARR) or an EPA-approved rule or program limiting PTE do not have to do anything additional under this rule unless the source proposes a modification after the rule's effective date (August 30, 2011). For existing synthetic minor sources established under a permit pursuant to the part 71 program, the reviewing authority will make the decision about whether the source will be required to submit a new permit application within 1 year of this rule's effective date or at renewal of the part 71 permit, or to allow the source to continue to maintain synthetic minor status through part 71.

F. KEY POINTS TO REMEMBER: MINOR NSR

- Program for minor sources in both attainment and nonattainment areas (generally for emissions lower than 100 or 250 tpy and higher than minor NSR thresholds);
- Pollutants regulated: NAAQS and other pollutants;
- Main requirement: Control Technology Review and Public Participation; and
- Three types of permit options: site-specific permits, general permits, and synthetic minor permits.

G. BENEFITS OF THE TRIBAL NSR RULES FOR TRIBES

- Fills the regulatory gap in Indian country;
- Levels the economic playing field;
- Provides a cost-effective and timely permitting mechanism;
- Protects tribal sovereignty from state incursion by clarifying jurisdiction;
- Ensures resources are protected through controlled growth;
- Builds tribal capacity;
- Supplies potential model for TIP development; and
- Allows administration of the program by tribes through delegation.

X. ENFORCEMENT AND COMPLIANCE

Enforcement and compliance assurance of federal environmental laws are essential to protecting human health and the environment in Indian country. We use a variety of tools to ensure environmental compliance, including compliance assistance, compliance monitoring and civil and criminal enforcement. We target the most serious air pollution problems in Indian country and undertake our compliance assurance and enforcement work with appropriate consultation with you.

A. COMPLIANCE ASSISTANCE

Compliance assistance involves activities, tools or technical assistance that provides clear and consistent information for helping: (1) the regulated community to understand and meet its obligations under environmental regulations; or (2) compliance assistance providers to aid the regulated community in complying with environmental regulations. Compliance assistance may also help the regulated community find cost-effective ways to comply with regulations or go "beyond compliance" through the use of pollution prevention, environmental management practices and innovative technologies, thus improving environmental performance.

We develop and provide compliance assistance and training to you and facilities in Indian country to improve understanding and compliance with the tribal NSR rule. Compliance assistance efforts for the rule include training documents such as this one, as well as on-site visits, pamphlets, checklists, fact sheets and websites such as the EPA Tribal Portal. In addition, we offer classroom and on-line training to you if you are interested in developing air enforcement and compliance programs. This training is also designed to enable you to assist us to directly implement the CAA in Indian country.

B. COMPLIANCE MONITORING

A key factor to providing environmental protection in Indian country is assuring compliance with environmental laws through effective monitoring and assessment of available data and information. Compliance monitoring determines compliance status and detects violations of regulatory requirements and other legal obligations. Our compliance monitoring policies apply to facilities in Indian country, and we use a combination of methods to evaluate a facility's CAA compliance status, including air monitoring, on-site evaluations and reviewing the required information submissions.

We work closely with tribes in carrying out CAA compliance monitoring activities in Indian country. For example, we can enter into agreements, such as Direct Implementation Tribal Cooperative Agreements (DITCA), to facilitate compliance monitoring in Indian country by serving as the written agreement authorizing your inspectors to conduct CAA inspections on our behalf.

C. EPA-AUTHORIZATION OF TRIBAL INSPECTORS TO CONDUCT COMPLIANCE MONITORING UNDER FEDERAL AUTHORITY

Section 114 of the CAA (42 U.S.C. §7414) enables the Administrator or his/her authorized representative, upon presentation of EPA credentials, to conduct compliance evaluations at facilities covered by the tribal NSR rule. Our Office of Enforcement and Compliance Assurance (OECA) issued "Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA" (Credential Guidance), which establishes a process for issuing EPA inspector credentials to tribal inspectors.

The Credential Guidance gives EPA regions the discretion to authorize highly trained tribal government employees to conduct inspections, including CAA compliance evaluations, on our behalf under an authorization agreement. We may also authorize tribal inspectors employed by tribes with delegated programs to allow them to: (1) inspect for CAA violations not covered by tribal law; (2) conduct inspections at our request; (3) inspect across tribal/state boundaries at our request or upon the mutual, written agreement of tribes and states. EPA regions decide whether authorization of a tribal inspector is appropriate based on multiple factors including need, resources, etc.

As an authorized representative of EPA, the conduct and procedures used by a tribal inspector during a compliance evaluation must be consistent with the CAA, the tribal NSR rule, and applicable EPA regulations and policies. To ensure this is the case, the tribal inspector uses our inspection forms and procedures or uses forms and procedures that we approved as part of the EPA/tribal authorization agreement. Each authorized tribal inspector conducting CAA compliance evaluations on our behalf submits an inspection report for each evaluation conducted to the regional office within the time frame agreed upon in the EPA/tribal authorization agreement. EPA regions review each compliance evaluation report to determine whether there is a violation under the CAA. After reviewing each compliance evaluation, EPA regions decide what, if any, federal enforcement action is appropriate.

D. ENFORCEMENT

Once a federally-regulated facility is identified as being out of compliance with a federally enforceable requirement, we determine the appropriate level of response to address environmental and human health concerns. We may use our authority to resolve the violation through an administrative enforcement proceeding or a civil judicial enforcement proceeding. We may also conduct a criminal investigation and refer the matter for prosecution.

Our air enforcement activities in Indian country are guided by relevant enforcement policies, including the *EPA Policy for the Administration of Environmental Programs on Indian Reservations*, the *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* for civil violations, and the *Exercise of Investigative Discretion Policy* (Criminal Investigative Policy) for criminal investigations and referrals for prosecution. EPA regions are also guided by relevant region-specific Indian country policies. We may, in appropriate circumstances, delegate administration of elements of the program. Our criminal enforcement program

enforces the nation's laws by investigating cases, collecting evidence, conducting forensic analyses and providing legal guidance to assist in the prosecution of criminal conduct that threatens people's health and the environment. EPA and tribes can enter into a memorandum of agreement regarding criminal enforcement to promote communication and cooperation between tribal and federal law enforcement.

XI. RECORDKEEPING

A. GENERAL RECORDS MANAGEMENT

This section outlines the importance of, and the rules associated with, recordkeeping in regards to tribal NSR rule. We suggest you track all communications and outreach activities to better report on collaborative work including:

- Meetings held with tribal programs, EPA, community members and other governmental agencies;
- Numbers or participants and locations where meetings were held;
- Responses, comments or requests from the community, knowing what information is needed, desired, or unknown by the commenter's will assist in building knowledge and capacity for the new rules being implemented in Indian country;
- We will have an internal database to track permits; however, it may be important for you to track the permit as well; and
- Developing a strategy for what information to share with the EPA regions and tracking this information internally will be a step in developing operational agreements.

B. RULE REQUIREMENTS FOR RECORDKEEPING

Recordkeeping for permit content will require the following (page 38762 of the tribal NSR rule).[15] If you decide not to engage in the permitting process, EPA or the implementing authority is required to develop and track the records as defined in the tribal NSR rule.

1. Monitoring Requirements Under 40 CFR 49.155(a)(3)

The permit must include monitoring requirements sufficient to assure compliance with any emissions limitations contained in the permit.

2. Final Recordkeeping Requirements Under 49.155(a)(4)

The permit must include recordkeeping requirements sufficient to assure compliance at all times with the enforceable emission limitations or conditions in the permit. Records of required monitoring information must include all calculations using emissions factors, all stack tests or sampling information including date and time of test or sampling, the name of the company or entity that performed the analyses, the analytical techniques or methods used, the results of such analyses and the operating conditions exiting at the time of sampling or measurement. All such records including support information must be retained for 5 years from the date of the record.

3. Final Reporting Requirements Under 40 CFR 49.155(a)(5) (pg 38762)

You must provide annual monitoring reports showing compliance with permit limitations, or promptly report deviations from the permit, and possible reason for the deviation, and any corrective actions or preventative measures taken to correct it.

[15] http://www.gpo.gov/fdsys/pkg/FR-2011-07-01/pdf/2011-14981.pdf

XII. FUNDING OPTIONS AND RESOURCES AVAILABLE TO TRIBES

This section provides an overview of the four main funding options available to you for implementing air programs, and presents tools for developing plans, strategies to use grants to achieve environmental results and resources to help locate funding. It should be noted, that the funding authorities discussed below are not solely available for NSR implementation, but are available for a broader range of tribal activities.

A. DIRECT IMPLEMENTATION TRIBAL COOPERATIVE AGREEMENTS (DITCAS)[16]

DITCAs are an avenue for you and EPA to partner in implementing meaningful environmental protection in Indian country under federal authority. They provide you with the flexibility and opportunity to develop staff capacity to manage environmental programs, to address specific tribal environmental needs and priorities that are within EPA's authority for direct implementation, and to determine the scope and pace of tribal involvement, all though a DITCA work plan.

1. Requirements

DITCA documentation should specifically indicate that the activities you or the intertribal consortium will carry out are consistent with the environmental program regulations governing the implementation of federal environmental programs. The DITCA should indicate that the activities that will be carried out under the DITCA work plan are consistent with the regulations governing those federal programs.

2. Eligible Recipients

DITCAs may be awarded to: (1) federally recognized Indian tribes and (2) intertribal consortia consistent with applicable provisions. In order for an intertribal consortium to be eligible to receive cooperative agreements under this authority, an intertribal consortium should be consistent with the provisions in 40 CFR Part 35.504(a).

3. Eligible Activities

We may award cooperative agreements to assist EPA "in implementing federal environmental programs for Indian tribes required or authorized by law in the absence of an acceptable state or tribal program . . ." We may award DITCAs to fund activities for environmental programs that meet either one of the following criteria:

- Federal programs under environmental laws that we are clearly required to directly implement in the tribal context; or
- Federal programs under environmental laws that we are required to directly implement in the absence of an acceptable state program.

[16] Direct Implementation Tribal Cooperative Agreements (DITCAs) http://www.epa.gov/indian/grantsandfunding/ditcas.htm

4. Limitations

There are several limitations on DITCA awards. Among them are the following:

- DITCA funded personnel may not perform inherently federal functions.
- EPA Project Officers can provide guidance to DITCA Project Managers based only on the written DITCA work plan. We cannot treat DITCA Project Managers as EPA employees by participating in hiring, disciplining, or firing decisions.
- DITCA funded personnel cannot operate vehicles which are either owned or leased by the federal government.

B. CAA §103 – PROJECTS: ASSESSING

CAA §103(a) establishes EPA's authority to "conduct , and promote the coordination and acceleration of, research, investigations, experiments, demonstrations, surveys and studies relating to the causes, effects (including health and welfare effects), extent, prevention and control of air pollution." CAA §103(b)(3) authorizes EPA to "make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions and organizations, and to individuals, for [these] purposes." This broad authority has been used by many tribes to begin air quality related activities.

1. Requirements

Approvable work plans need to have: (1) one or more objectives; (2) activities that support the achievement of the objectives; and (3) outcomes or deliverables that will produce environmental results within the objective.

2. Eligible Recipients

CAA §103 grants may be awarded to: (1) federally recognized Indian tribes; and (2) intertribal consortia consistent with applicable provisions. In order for an intertribal consortium to be eligible to receive cooperative agreements under this authority, an intertribal consortium should be consistent with the provisions in 40 CFR Part 35.

3. Eligible Activities

We use CAA §103 to award grants to you for conducting activities regarded as investigations and assessments, such as: air emissions inventories, air quality monitoring, and further developing your understanding of air pollution control. You use the CAA §103 authority to develop emissions inventories and establish air quality monitoring networks to collect data on ambient air quality.

4. Limitations

CAA §103 grants are project grants, and this funding is generally not used for program implementation. These grants typically have a one year project period. Regional offices with inadequate funding to award grants to all applicants make those awards through a selection process using criteria that are applied to all applicants in a manner that is neither arbitrary nor capricious. However, once the award process has been

carried out, regional offices are not obligated to provide funding to a tribe if applicants that scored higher in the rating system are awarded all the available funding.

C. CAA §105 – PROGRAMS: MANAGING AIR QUALITY

Section §105 of the CAA provides grants for you to continue implementing programs for the prevention and control of air pollution or implementation of air quality standards. To be eligible for a reduced 5 percent match for the CAA §105 grant, you must have a TAS eligibility determination for CAA §105. If you do not have TAS, you are still technically eligible for CAA 105 grants, but you must provide a 40 percent tribal match and comply with the maintenance of effort requirements.

1. Requirements

CAA §105 authority limits the federal government's funding to providing 60 percent of the total program costs. This authority provides for "implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards." (CAA §105(a) (1) (A)). The CAA further defines implementation as "any activity related to the planning, developing, establishing, carrying-out, improving, or maintaining of such programs." (CAA §105(a) (1) (A)). The authority is further restricted to state and regional air pollution control agencies as well as agencies of an Indian tribe, which have been eligible to receive funding under this authority in the same manner as states since the CAA Amendments of 1990.

Eligible tribes have authority, if they choose to take it on, to develop and implement federally enforceable CAA programs. In addition, tribes who seek eligibility to receive a CAA §105 grant under the 40 CFR 35.573(a) are also eligible for a reduced matching requirement (5 percent to 10 percent, depending on the situation). It is important to note that without the eligibility determination under 40 CFR 49.6, you are required to provide a 40 percent match and you must expend the same amount of tribal funds for recurrent CAA §105 activities as you expended in the previous year (maintenance of effort requirement CAA §105(c)), with no formal waiver provisions, in order to continue receiving CAA §105 funds each ensuing year. You are generally eligible to receive CAA §105 funding for operating ongoing air quality programs subject to certain limitations. Proposed programs must satisfy the requirements in 40 CFR 35.511 including:

- Be consistent with 40 CFR 31 (requirements involving grants);
- Be consistent with all applicable federal statutes; regulations; circulars; executive orders; and EPA delegations, approvals, or authorizations;
- Be feasible, considering the applicant's existing circumstances, past performance, program authority, organization, resources, and procedures (40 CFR 35.511(a) (4)).

An intertribal consortium consisting of tribes that have demonstrated eligibility to be treated as states under 40 CFR 49.6 is also eligible for financial assistance. An intertribal consortia consisting of tribes that have not demonstrated eligibility to be treated as states under 40 CFR 49.6 are eligible for financial assistance under §105 and §302(b)(5) of the CAA (40 CFR 35.573 (a) and (b)).

A tribe seeking funding under CAA §105 will need to work with their EPA regional office to ensure that these requirements are fulfilled. These requirements are not intended to act as obstacles, but provide assurance that funding is being used as intended.

2. Eligible Recipients

If you are seeking eligibility to receive CAA §105 program grants with reduced match, you must apply for TAS eligibility under 40 CFR 49.6 - similar to when you want to implement any part of the CAA. We must determine if you meet the following criteria:

- Your tribe is recognized by the Secretary of the Interior;
- Your governing body carries out substantial governmental duties and functions;
- The functions to be exercised by you pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within your jurisdiction; and
- You are reasonably expected to be capable, in the EPA regional administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the CAA and all applicable regulations.

The regulatory provisions at 40 CFR 49.7 specify the information you should submit to us to show that you meet the above criteria. If you have already been determined "eligible" under another CAA program or under any other EPA-administered program, you need only identify the prior authorization and provide the required information which has not been submitted in the previous application (40 CFR 49.7(a)(8)).

3. Eligible Activities

Examples of possible activities include but are not limited to:

- Updating an emissions inventory;
- Continuing air quality monitoring;
- Addressing local or unique air quality issues;
- Implementing air toxics risk reduction activities;
- Participation in policy development groups;
- Participating in air quality management; and
- Participating in air rulemaking and enforcement.

4. Limitations

Even with the reduced match, we recognize that the economic circumstances of some tribes may preclude you from providing this match. Our regulation at 40 CFR 35.575(a) provides discretion to the regional administrator to "increase the maximum federal share if the tribe or intertribal consortium can demonstrate in writing that the fiscal circumstances within the tribe or within the member tribes of the intertribal consortium are constrained to such an extent that fulfilling the match requirement

would impose undue hardship." This applies only if you are found eligible under 40 CFR 49.6.

Unlike the CAA §103 authority, which is project oriented and time limited, the CAA §105 authority provides for ongoing programs and will not be terminated without notice and an opportunity for public hearing, nor will an existing obligation or commitment be reduced without similar requirements.

It is important to note that while the processes laid out in the statutes and regulations are relatively rigid, there is flexibility in determining the recipients of limited funding through the grant award process. Regional offices with inadequate funding to award grants to all applicants make those awards through a selection process using criteria that are applied to all applicants in a manner that is neither arbitrary nor capricious. However, once the award process has been carried out, regional offices are not obligated to provide funding to a tribe that is eligible for CAA §105 if applicants that scored higher in the rating system are awarded all the available funding.

D. GENERAL ASSISTANCE PROGRAM (GAP) – CAPACITY BUILDING[17]

You may use the Indian Environmental GAP Grants to fund program capacity building activities in various environmental media, including air, and are considered to be an important means of establishing overall tribal environmental program capability. In our administration of GAP, we also provide technical assistance to tribal governments and intertribal consortia to develop multimedia programs that address environmental issues in Indian Country. Under the program, you can tailor capacity-building to address your environmental priorities. GAP provides the opportunity for you to plan, develop and establish an integrated environmental management program including the capability to manage specific regulatory programs. GAP provides financial resources in the form of direct funding to federally recognized tribes and intertribal consortia. The award of this grant does not in any way prevent the recipient from receiving CAA §103 or §105 grants.

1. Requirements

Given the purposes of the GAP program to build individual tribal capacity, we may evaluate proposals based on, among other things, capacity of the applicant, past grant performance, work plan progress and expected human health and environmental results. The regional office may require that all grant proposals be submitted within a certain time frame so that the work plans can be reviewed simultaneously.

2. Eligible Recipients

This funding might be of particular interest to you if you are concerned about committing to an air pollution program infrastructure before you have a complete understanding of the air quality conditions. Including a baseline multi-media assessment of Indian country in a GAP grant provides an avenue for you to collect the data needed to make media-specific decisions without taking on the burden of managing a number of media program grants. For example, you may have concerns

[17] US EPA, AIEO, Indian Environmental General Assistance Program (GAP) http://www.epa.gov/indian/grantsandfunding/gap.htm

about aquatic resources and suspect air deposition as a pollution pathway. You may also be reluctant to take on multiple grants and a large staff just to find out if there is a problem. In this case, it might be appropriate for you to work with EPA to develop a GAP work plan that would enable you to build an environmental protection program that addresses both air and water pollution. A baseline assessment of both water quality and air quality could be conducted if it is in support of planning, developing, or establishing such a program.

3. Eligible Activities

EPA's GAP funding provides resources to eligible tribes to plan, develop and establish an environmental protection program. This includes building the administrative, technical, legal, enforcement, communications and environmental education and outreach infrastructure.

Planning and development of an environmental protection program may include conducting a baseline assessment of environmental degradation for specific media (e.g., air, water, etc.). For instance, in developing an air pollution control program, you could use GAP funds for a baseline assessment of air quality. You could also use GAP funds for other activities in support of building its air quality program such as completing an air pollution emissions inventory or setting up an ambient air quality monitoring network to characterize the air quality of an Indian country area as part of building the capacity to operate and manage an environmental program.

The GAP grant may include the funds necessary to complete the tasks (staffing, travel, training, etc.) including the purchase of equipment consistent with EPA's regulations at 40 CFR 31 and 35, and Office of Management and Budget (OMB) Circular A-87.

4. Limitations

You should be aware that this authority is not appropriate for solving particular problems at particular places, because such activities are generally not in support of planning, developing or establishing an environmental protection program. For instance, if you have a concern about the transport of air pollution from a specific off-reservation source and want to gather data on the impact of that source on its ambient air quality, it may be more appropriate to use one of the other available CAA grant authorities to complete the assessment.

While decisions are made on a case-by-case basis, ongoing activities such as implementation of programs and permitting are not authorized under the GAP program.

E. THE TRIBE AIR GRANTS FRAMEWORK MENU OF OPTIONS

This menu of options will help you develop tribal air grant work plans and grants management strategies to achieve environmental results:

- Basic air quality issues assessment;
- Emissions inventory;
- Air quality monitoring;

- Local or unique air quality issues;
- Air toxics risk reduction;
- Indoor air quality assessment and training;
- Radon risk reduction;
- Policy development groups;
- Participation in air quality management;
- Energy efficiency and GHGs;
- Rulemaking and enforcement;
- Administration and infrastructure development; and
- NSR.

F. RESOURCES FOR AIR QUALITY FUNDING

1. Websites

- United States Environmental Protection Agency: Office of Air and Radiation (OAR) Review of Authorities Available for Tribal Program Financial Assistance Awards http://www.epa.gov/oar/tribal/pdfs/final%20review%20of%20tribal%20authorities%2011_20_06.pdf
- The Tribal Air Grants Framework: A Menu of Options for Developing Tribal Air Grant Work Plans and Managing Grants for Environmental Results http://www.epa.gov/oar/tribal/pdfs/menuofoptions.pdf
- Region 8 Tribal Assistance Program: EPA Tribal Grants http://www.epa.gov/region8/tribes/gap.html
- American Indian Environmental Office Portal: Grants & Funding http://www.epa.gov/indian/grantsandfunding/index.htm
- Online Grant Application Kit for Federal Assistance http://www.epa.gov/ogd/AppKit/contents.htm

2. Tips for Locating Funding

- Contact your regional EPA office to discuss your specific interests.
- Explore the types of funding listed in Parts A-D of this Section to see how the options match your air program needs.
- Visit the websites provided in Part F.1 of this Section to see if any other sources of funding are currently available.

Table 5 below provides an overview and comparison of the four main funding options available to you.

Table 5. Funding Authorities

Considerations for Funding Options	GAP	CAA103	CAA 105	DITCA
Degree of EPA Involvement	Medium	Medium	Less	High
Capacity Building Focus	High	High	Medium	Medium
Implementation of regulatory program allowed?	Not allowed	Not allowed	Yes [TIP]	Yes [TIP]
Finite duration or potentially ongoing?	Ongoing	Limited	Ongoing	Ongoing
Match required?	No	No	Yes	No
TAS reduces match?	N/A	N/A	Yes	N/A

XIII. EDUCATION, TRAINING, AND RESOURCES

This section provides general information, example materials, and presentations intended to help you with TAS/TIP development, outreach and education of your community.

A. TRAININGS

- Webinars[18]
- Training - November 1 – 4, 2011, Pechanga Reservation, Temecula, California
- Training - February 14 – 17, 2012, The Institute for Tribal Environmental Professionals (ITEP), Minneapolis, MN
- Monthly NSR conference calls (every 3rd Wednesday of each month)

B. NSR PRESENTATIONS

See Attachments – Section 2.

C. FACT SHEETS

See Attachments – Section 7.

D. EXAMPLE MATERIALS

See Attachments – Section 7.

[18] Recordings of the webinars can be found at http://www.epa.gov/air/tribal/tribalnsr.html

XIV. CONTACT INFORMATION

This section contains a list of resources including contacts, tools, etc., to help tribes develop their air quality programs.

A. CONTACTS

	Name	Organization / Affiliation	Phone Number	Email / Web Site
EPA – Office of Air Quality Planning & Standards (OAQPS) **Tribal Contacts**	Laura McKelvey	EPA – OID	919-541-5497	mckelvey.laura@epa.gov
	Toni Colón		919-541-0069	colon.toni@epa.gov
	Tami Laplante		919-541-1915	laplante.tami@epa.gov
	Regina Chappell		919-541-3650	chappell.regina@epa.gov
	Mark Sendzik		919-541-5534	sendzik.mark@epa.gov
	Lynn Dail	EPA – AQPD	919-541-2363	dail.lynn@epa.gov
	Mike Papp	EPA – AQAD	919-541-2408	papp.michael@epa.gov
	Vicki Sandiford	EPA – HEID	919-541-2629	sandiford.vicki@epa.gov
	Charlene Spells	EPA – SPPD	919-541-5255	spells.charlene@epa.gov
EPA – Office of Air and Radiation (OAR)	Darrel Harmon	EPA – OAR	202-564-7416	harmon.darrel@epa.gov
	Jeff Besougloff	AIEO	202-564-0292	http://www.epa.gov/indian/ besougloff.jeff@epa.gov
EPA – Office of Enforcement and Compliance Assurance (OECA)	Fran Jonesi, Office of Compliance	EPA-OECA	202-564-7043	jonesi.fran@epa.gov
	Teresa Dykes, Office of Civil Enforcement	EPA-OECA	202-564-9883	dykes.teresa@epa.gov
EPA – Regional Tribal Air Coordinators (TAC)	Eugene Benoit	EPA – Region 1	617-918-1639	benoit.eugene@epa.gov
	Gavin Lau	EPA – Region 2	212-637-3717	lau.gavin@epa.gov
	Ana Oquendo	EPA – Region 4	404-562-9781	oquendo.ana@epa.gov
	Benjamin Giwojna (Lead MN)	EPA – Region 5	312-886-0247	giwojna.benjamin@epa.gov
	Monika Lacka (WI)		312-353-6556	lacka.monika@epa.gov
	Aunjanee Gautreaux	EPA – Region 6	214-665-7127	gautreaux.aunjanee@epa.gov
	Kim Olson	EPA – Region 7	913-551-7458	olson.kim@epa.gov
	Katie Romero (Actg)	EPA – Region 8	303-312-6698	romero.katie@epa.gov
	Sara Bartholomew	EPA – Region 9	415-947-4100	bartholomew.sara@epa.gov
	Maeve Foley		415-947-4105	foley.maeve@epa.gov
	Nancy Helm	EPA – Region 10	206-553-6908	helm.nancy@epa.gov
	Justin Spenillo		206-553-6125	spenillo.justin@epa.gov
TAMS	Christopher Lee	TAMS / ITEP	702-784-8278	Christopher.Lee@nau.edu
	Farshid Farsi	EPA / TAMS	702-784-8263	farsi.farshid@epa.gov
	Henry Gerard	EPA / TAMS	702-784-8268	gerard.henry@epa.gov
ITEP	Ann Marie Chischilly	ITEP Director	928-523-9555	Ann-Marie.Chischilly@nau.edu
	Mehrdad Khatibi	NAU – ITEP	928-523-0946	Mehrdad.Khatibi@nau.edu
	Pat Ellsworth	ITEP – AIAQTP	928-523-6721	Patricia.Ellsworth@nau.edu
	Lydia Scheer	ITEP – Training	928-523-6887	Lydia.Scheer@nau.edu
	Mansel Nelson	ITEP – Outreach	928-523-1275	Mansel.Nelson@nau.edu
	Melinda Ronca-Battista	TAMS / ITEP	480-759-1544	Melinda.Ronca-Battista@nau.edu
NTEC	Jerry Pardilla	NTEC	505-242-2175 x116	jpardilla@ntec.org

	Name	Organization / Affiliation	Phone Number	Email / Web Site
NTAA	Ken Cronin	NTAA	505-242-2175	KCronin@ntec.org
	Jennifer Youngblood	NTAA	262-560-9755	anuqa.northstar@gmail.com
	Ondrea Barber	NTAA	505-242-2175	ondrea.barber@ntec.org

B. AVAILABLE TOOLS

Resource	Contact
Emissions Inventory / TEISS	http://www4.nau.edu/itep/air/aq_aqtteiss.asp Angelique Luedeker Angelique.Luedeker@nau.edu 928-523-5037 **Introduction to Emission Inventories for Tribes** http://www.epa.gov/air/tribal/pdfs/EIfortribes2008.pdf
NTAA Website	http://www.ntaatribalair.org/
TAMS: Tribal Climate Change Toolkit	http://www4.nau.edu/tams/
TIP	**Gila River Indian Community** **Margaret Cook, Director – Environmental Quality Division** **520-562-2234** Margaret.cook@gric.nsn.us **Daniel Blair, Air Quality Specialist** **520-562-2234 ext. 241** air@gilanet.net
	St. Regis Mohawk Tribe Angela Benedict-Dunn angela.benedict@srmt-nsn.gov 518-358-5937
	Mohegan Tribe of Indians of Connecticut Jean McInnis, Environmental Protection Administrator **860-862-6112** jmcinnis@moheganmail.com
Title V Delegation	**Southern Ute** Brenda Jarrell bjarrell@southern-ute.nsn.us 970-563-4705 ext. 2246
	Navajo Part 71 Delegation Agreement: http://www.navajonationepa.org/airqty/Pdf_files/navajodeleg.pdf
Monitoring	**Technical Guidance for the Development of Tribal Air Monitoring Programs** http://www.epa.gov/ttn/oarpg/t1/memoranda/techguidancetribalattch.pdf
Clean Air Act (CAA)	**Supporting Documents** • The Plain English Guide to the Clean Air Act http://www.epa.gov/air/caa/peg/peg.pdf • The Clean Air Act – Full Text as of February 2004 http://epw.senate.gov/envlaws/cleanair.pdf

XV. ATTACHMENTS

This attachment section contains sample letters, strategies, rules, forms and outreach materials. Each section goes more in depth on the specific topics and includes steps or information sheets that can be modified and used to implement a program or to give general guidance on what can be developed for implementation of the tribal NSR rule.

SECTION - 1: BACKGROUND

SECTION - 2: NSR 101

SECTION - 3: EPA CONSULTATION POLICY AND OAQPS CONSULTATION PLAN

SECTION - 4: TRIBAL IMPLEMENTATION PLAN

SECTION - 5: MODEL CODES AND RULES

SECTION - 6: PERMITS

SECTION - 7: EDUCATION, TRAINING, AND RESOURCES

SECTION - 8: CONTACTS INFORMATION

[This page intentionally left blank.]