

## EPA Provides Streamlined Permit Mechanism for True Minor Sources in Indian Country

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**PRACTICES** Environmental, Energy, Power and Natural Resources, Indian Law

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On June 3, 2016, EPA published its Final Rule designating use of a federal implementation plan ("**FIP**") to carry out the Federal Indian Country Minor New Source Review ("**NSR**") Program issued under the federal Clean Air Act ("**CAA**"). The FIP will apply to new and modified minor sources used in oil and natural gas exploration and production operations that are or will be located in Indian country. Specifically, EPA will use the FIP, in contrast to individual permit applications, as a means to more effectively implement the Program's requirements and to simplify the burdensome pre-construction review process for new and modified *true minor sources* in the oil and natural gas sector (*i.e.*, sources that emit, without artificial restraints, lesser amounts of specified pollutants than the amounts designated for major sources). Notably, the Final Rule incorporates a number of provisions that blunt its impact on industry.

First, the FIP provides a streamlined mechanism to expedite the review of pre-construction permits. Unlike a source-specific approach for pre-construction permits, the FIP eliminates the need for advance review and approval of coverage before beginning construction. Second, after a long period without guidance, owners and operators will have certainty as to applicable standards. Additionally, the FIP reduces individualized, potentially onerous scrutiny of a new construction or modification project. As a result, impediments to oil and gas development on Indian lands should be reduced as sources can now minimize delays in new construction that had previously resulted from EPA's inability to process hundreds of true minor source permits in an acceptable time frame.

The FIP will apply throughout Indian country except to non-reservation areas and those few instances where a tribe has developed a Tribal Implementation Plan. As a general matter, under the CAA, EPA exercises jurisdiction in Indian country unless a tribe has developed a suitable implementation plan or otherwise assumed certain implementation responsibilities. While the FIP covers areas of Indian country designated as attainment or unclassifiable in regards to National Ambient Air Quality Standard ("**NAAQS**"), it does not extend to nonattainment areas. Operators of sources located in nonattainment areas for a particular NAAQS must apply for a source-specific permit or comply with reservation-specific FIPs, such as the Fort Berthold Indian Reservation FIP, where those exist. For those operators with current or future interests in the Uintah Basin, EPA has stated its intent to propose a separate reservation-specific FIP addressing the impact of emissions on the Uintah and Ouray Reservation in Utah.

Under the streamlined mechanism, sources must register with EPA using a two-step process. Beginning October 3, 2016, new and modified true minor sources must submit the Part 1 Registration Form 30 days prior to beginning construction or modification of a true minor source. After the date of startup or production, the source has 60 days to submit the Part 2 Registration Form. The FIP requires that sources comply with eight federal standards, including emission standards, monitoring, testing, record keeping, and reporting, for a range of equipment and processes used in oil and natural gas production and natural gas processing.

The FIP changes the permitting process for true minor sources in Indian country and finally implements the requirements previously contemplated under the July 2011 Federal Indian Country Minor NSR rule. A key aspect of this rule is that not only are owners and operators subject to air quality review and emission standards, they are also subject to procedures addressing potential impacts of sources relating to listed threatened and endangered species and historic properties. Moreover, owners and operators should be aware that it is possible that EPA may seek to extend requirements under the FIP to address existing sources in the future. Lastly, it is notable that sources that qualify for minor source status due to the application of artificial means to emit below the major source standards (*synthetic minor sources*) are carved out of the FIP process.

Those with current or future oil and gas interests on Indian lands have until October 3, 2016 to review the requirements established by the FIP and to prepare development in Indian country accordingly.

For additional information contact one of the lawyers listed below.