
Indian Country New Source Review (NSR) Rule under the Clean Air Act

Implementation Concerns

Presentation to Office of Management and Budget

Washington, DC

November 10, 2010



Background

- **EPA proposed the rule August 21, 2006 to fill the gap for permitting minor sources in Indian Country**
- **Would constitute a Federal Implementation Plan (FIP) for minor source permitting that could eventually be replaced by a Tribal Implementation Plan (TIP)**
- **EPA plans to promulgate final rule by February 2011 with an effective date 60 days thereafter**



Implementation Challenges

- **The EPA does not have an adequately defined schedule, budget, or personnel for implementation of the pending permit program**
- **The program lacks the permitting infrastructure (application forms, instructions, oil and gas specific provisions) that is needed to provide reasonable efficiency for operator applications and agency review**
- **The program lacks a general permit, something most surrounding states use to efficiently process the large number of applications for production sites**
- **Air quality in the basin involves several other complex issues that must be accounted for:**
 - **ozone attainment/nonattainment**
 - **Air quality analysis and mitigation required by NEPA**
 - **Interaction of State and Tribal air quality functions**



Operational Impacts

- **Tribal oil and gas development will be interrupted for an extended period of time while EPA is developing the permitting program.**
- **Permit processing will be extremely slow and inefficient, creating a bottleneck that constrains development and increases costs for the permitting agency**
- **Operator investment on tribal lands will be curtailed and driven elsewhere, probably for an extended period of time**



Tribal Impacts

- **Opportunity to develop tribal resources would be delayed or lost**
- **Employment opportunities diminished**
- **Substantial oil and gas revenues, taxes, and other commerce would be lost**
- **Operator confidence in investment on tribal lands would suffer**



Recommendations

The Office of Management and Budget (OMB) should:

- **Require that EPA make the effective date of the rule conditional based on deployment of a straightforward, robust and efficient oil and gas permitting process**
- **Require that EPA ensure adequate staff and funding prior to making the rule effective and to facilitate delegation of the program to the tribes in the long term.**

