

Agreement for Delegation of Partial Administrative Authority of Certain Federal Clean Air Act Indian Country Programs to the Southern Ute Indian Tribe by the United States Environmental Protection Agency

This Agreement for Delegation of Partial Administrative Authority (Agreement) between the Southern Ute Indian Tribe (Tribe or SUIT) and the U.S. Environmental Protection Agency (EPA), sets forth the legal and procedural basis for the EPA's partial delegation of authority to the Tribe to assist the EPA in administering the following two federal Clean Air Act (CAA) programs: (1) the Federal Minor New Source Review Program in Indian country, 40 Code of Federal Regulations (C.F.R.) Part 49, Subpart C, Sections 49.151 through 49.164 (EPA Indian country MNSR Program), and (2) the Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Oil and Natural Gas Processing Segments of the Oil and Natural Gas Sector, 40 C.F.R. Part 49, Subpart C, Sections 49.101 through 49.105 (EPA Indian country Minor Source Oil and Gas FIP). Together, those two delegated programs comprise the SUIT Indian country MNSR Program.

I. Purpose

The purpose of this Agreement is to partially delegate certain administrative responsibilities and authorities of the EPA Indian country MNSR Program and the EPA Indian country Minor Source Oil and Gas FIP to the Tribe. Upon the effective date of this Agreement, the EPA delegates to the Tribe the authority to administer the SUIT Indian country MNSR Program on behalf of the EPA on all lands within the Southern Ute Indian Reservation (Reservation), with certain exceptions as explained below. For example, the EPA Indian country MNSR Program states that enforcement of that program is not delegable to tribes through the administrative delegation process. Further, the Tribe did not seek administrative delegation of enforcement of either of the two CAA programs.

II. Legal Authority

- A. The CAA authorizes the EPA to promulgate regulations to protect air quality within Indian country. See, e.g., sections 301(a) and 301(d)(4) of the Act. Accordingly, the EPA has promulgated the EPA Indian country MNSR Program and the EPA Indian country Minor Source Oil and Gas FIP.
- B. Pursuant to 40 C.F.R. section 49.161, the EPA may partially delegate to a Tribe the authority to assist the EPA in administering the EPA Indian country MNSR Program.
- C. Pursuant to 40 C.F.R. section 49.103, the EPA may delegate to a Tribe the authority to assist the EPA in administering the EPA Indian country Minor Source Oil and Gas FIP.
- D. The Southern Ute Indian Tribe had the authority to submit its administrative delegation request by virtue of (1) the Southern Ute Indian Tribe/State of Colorado Environmental Commission's request that the Tribe submit a request for

an administrative delegation of the EPA Indian country MNSR Program and the EPA Indian country Minor Source Oil and Gas FIP and (2) the Southern Ute Indian Tribal Council's adoption of a resolution authorizing submittal of the Tribe's request. Resolution No. 2019-01 of the Southern Ute Indian Tribe/State of Colorado Environmental Commission (April 24, 2019); Resolution No. 2020-052 of the Council of the Southern Ute Indian Tribe (April 28, 2020).

- E. Pursuant to federal law, EPA regulations, tribal law, and state law, the Tribe has authority to conduct activities in support of this delegation. *Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2004*, Act of October 18, 2004, Pub. L. No. 108-336, 118 Stat. 1354-56 (federal law); 40 C.F.R. § 49.161 and 40 C.F.R. § 49.103 (EPA regulations); Resolution No. 00-09 of the Council of the Southern Ute Indian Tribe (Jan. 18, 2000) and Art. 1; Art. VII, Sec. 1(n), and Art. X, Sec. 1(c), *Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado* (tribal law); and C.R.S. §§ 24-62-101 and 25-7-1301 to 1309 (state law).
- F. This Agreement neither creates nor diminishes any authority otherwise established by tribal or federal law.

III. Delegated Provisions of the EPA Indian country MNSR Program

Below is the list of the provisions of the EPA Indian country MNSR Program delegated to the Tribe, pursuant to which the Tribe will assist the EPA in implementing that program. This delegation includes signature authority.

40 C.F.R. § 49.151. Program Overview. Under this section, the Tribe will, among other things, serve as the reviewing authority, receive and process permit applications, and issue permits or deny permit applications.

40 C.F.R. § 49.154. Permit Application Requirements. Under this section, the Tribe will, among other things, serve as the reviewing authority, receive and process permit applications, and issue permits or deny permit applications.

40 C.F.R. § 49.155. Permit Requirements. Under this section, the Tribe will, among other things, serve as the reviewing authority for issuing permits in compliance with this provision and administering permits as authorized (e.g., conducting inspections).

40 C.F.R. § 49.156. General Permits and Permits by Rule. Under this section, the Tribe will, among other things, serve as the reviewing authority for the development, issuance, and administration of general permits or permits by rule, if any.

40 C.F.R. § 49.157. Public Participation Requirements. Under this section, the Tribe will, among other things, serve as the reviewing authority for conducting the required public participation process.

40 C.F.R. § 49.158. Synthetic Minor Source Permits. Under this section, the Tribe will, among other things, serve as the reviewing authority for purposes of synthetic minor source permitting.

40 C.F.R. § 49.159. Final Permit Issuance and Administrative and Judicial Review. Under this section, the Tribe will, among other things, serve as the reviewing authority for purposes of final permit issuance, but not for purposes of administrative or judicial review.

40 C.F.R. § 49.160. Registration Program for Minor Sources in Indian Country. Under this section, the Tribe will, among other things, serve as the reviewing authority for (1) receiving the Part 1 Registration Forms submitted by owners and operators; (2) receiving the Part 2 Registration Forms submitted by owners and operators; (3) receiving additional reports submitted by owners and operators after registration of their sources.

40 C.F.R. § 49.162. Air Quality Permit by Rule for New or Modified True Minor Source Auto Body Repair and Miscellaneous Surface Coating Operations in Indian Country. Under this section, the Tribe will, among other things, serve as the reviewing authority for (1) receiving and processing permit applications, and issuing permits or denying permit applications; and (2) determining compliance with all applicable provisions within the permit by rule.

40 C.F.R. § 49.163. Air Quality Permit by Rule for New or Modified True Minor Source Petroleum Dry Cleaning Facilities in Indian Country. Under this section, the Tribe will, among other things, serve as the reviewing authority for (1) receiving and processing permit applications, and issuing permits or denying permit applications; and (2) determining compliance with all applicable provisions within the permit by rule.

40 C.F.R. § 49.164. Air Quality Permit by Rule for New or Modified True Minor Source Gasoline Dispensing Facilities in Indian Country. Under this section, the Tribe will, among other things, serve as the reviewing authority for (1) receiving and processing permit applications, and issuing permits or denying permit applications; and (2) determining compliance with all applicable provisions within the permit by rule.

IV. Delegated Provisions of the EPA Indian country Minor Source Oil and Gas FIP

Below is the list of the provisions of the EPA Indian country Minor Source Oil and Gas FIP delegated to SUIT, pursuant to which SUIT will assist the EPA in implementing that program.

40 C.F.R. § 49.104. Requirements Regarding Threatened or Endangered Species and Historic Properties. Under this section, the Tribe will, among other things: (1) serve as the reviewing authority for receiving documentation submitted by owners and operators to demonstrate compliance with this provision; (2) provide the determinations of (A) satisfactory completion of the screening procedures; or (B) submitted documentation is inadequate and additional information is needed; and (3) serve as the reviewing authority, providing letters to owners and operators indicating that they have adequately completed

the screening procedures necessary to submit the Part 1 Registration Form under §49.160(c)(1)(iv) and begin construction under this FIP.

40 C.F.R. § 49.105. Requirements. Under this section, the Tribe will, among other things conduct inspections for compliance with the requirements of this provision.

V. Inspections & Investigations

- A. The Tribe is delegated authority to conduct inspections and investigations on the Reservation to evaluate compliance with the SUIT Indian country MNSR Program. For example, the Tribe may conduct compliance inspections of minor sources of air pollution registered or permitted under the SUIT Indian country MNSR Program, including but not limited to oil and gas operations, gravel pits, automobile surface coating, and additional permitted sources. Similarly, the Tribe may investigate sources it believes may be subject to permitting or registration under the SUIT Indian country MNSR Program.
- B. Inspections and investigations conducted under this Agreement are authorized only within the boundaries of the Reservation.
- C. An inspection or investigation by a Tribal inspector is the review of a facilities' applicable CAA regulatory requirements, the physical observation of conditions, and the gathering of evidence to document compliance or non-compliance with applicable requirements. Inspection reports may make recommendations concerning compliance but these recommendations are not a determination of compliance with federal law by the Tribe. The EPA will be responsible for final compliance determinations.
- D. The results of inspections and investigations carried out by Tribal inspectors may be used by EPA in follow-up compliance monitoring and enforcement actions; however, the EPA is responsible for subsequent enforcement action. To the extent practicable, the EPA will coordinate with the Tribe prior to initiating any enforcement action within the boundaries of the Reservation, in accordance with established policies, procedures, and agreements.
- E. A 5-year compliance monitoring strategy (CMS) will be developed and updated as necessary by the Tribe. The CMS will, among other things, describe the types of compliance monitoring the Tribe will utilize, describe the Tribe's compliance monitoring strategy in detail (i.e., identify the facilities the Tribe will inspect and the schedule for those inspections), describe the Tribal inspector positions that are qualified and authorized by the Tribe to conduct the inspections, and outline the Tribe's reporting obligations. The CMS must be submitted to the EPA for approval. EPA's approval will not be unreasonably withheld.
- F. The Tribe will conduct inspections and report findings in accordance with the applicable CMS and the Tribe's Inspector Protocol Manual.

- G. In addition to the recordkeeping and reporting requirements described in the applicable CMS, the Tribe will maintain files of compliance monitoring inspections in the Tribe's Air Records Management System (ARMS). The Tribe will maintain the files for a period of at least five years from the date of the inspections. After this period, the Tribe may retain or destroy the files as needed.
- H. The EPA and the Tribe hereby designate the following persons as the contacts for inspection activities for their respective program:

Southern Ute:
Daniel Powers, Air Quality Division Director
Southern Ute Indian Tribe, Air Quality Division Environmental Program
365 Ouray Drive
P.O. Box 737, MS #84
Ignacio, Colorado 81137-0737
Phone: (970) 563-2265
E-mail: dpowers@southernute-nsn.gov

EPA:
Scott Patefield, Branch Manager
Air & Toxics Enforcement Branch (8ECA-AT)
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 8
1595 Wynkoop St.
Denver, Colorado 80202
(303) 312-6248
patefield.scott@epa.gov

EPA:
Katelyn Bergl
Air & Toxics Enforcement Branch (8ECA-AT)
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 8
1595 Wynkoop St.
Denver, Colorado 80202
Office: (303) 312-6147
E-mail: bergl.katelyn@epa.gov

AND

R8AirReportEnforcement
E-mail: R8AirReportEnforcement@epa.gov

The EPA Contact and the Tribal Contact will be the primary contacts between the EPA and the Tribe regarding inspection activities. The contacts may be changed at any time with written notice to the other party.

- I. Nothing in this Agreement shall prevent the EPA or the Tribe from offering compliance assistance to a source owner or operator, if appropriate and practicable. Compliance assistance efforts may include sharing information and resources regarding legal requirements as well as offering technical assistance or support.

VI. Enforcement

- A. Enforcement of the SUIIT Indian country MNSR Program will remain the sole responsibility of EPA Region 8.
- B. The EPA will promptly (within 60 days) confer with the Tribe about any compliance monitoring information submitted to the EPA pursuant to the CMS to discuss the Tribe's findings and, if applicable, the Tribe's recommendations regarding an enforcement response.
- C. If the EPA and the Tribe disagree about the appropriate enforcement response, the parties will meet promptly (within 60 days) and work in good faith to discuss and, if possible, resolve, the disagreement. Nothing in this Agreement shall be interpreted to limit or constrain the EPA's or the Tribe's enforcement discretion.
- D. The EPA, to the extent practicable, will confer with the Tribe prior to initiating any enforcement action for sources subject to the SUIIT Indian country MNSR Program located within the Reservation.
- E. The EPA will follow all established Federal policies and procedures, including policies and procedures issued by the Office of Enforcement and Compliance Assurance (OECA) and EPA Region 8, in the pursuit of enforcement remedies for violations of the SUIIT Indian country MNSR Program.
- F. The EPA will, on an annual basis, provide the Tribe a report on the status of all air enforcement actions for sources subject to the SUIIT Indian country MNSR Program located within the Reservation.
- G. The Tribe shall retain the primary authority to enforce upon the New Source Performance Standards (NSPS) under Clean Air Act Section 111 and the National Emission Standards for Hazardous Air Pollutants (NESHAP) under Clean Air Act Section 112, at minor sources, independent of the SUIIT Indian country MNSR Program, so long as the NSPS and NESHAP standards have been incorporated, unchanged, into the Reservation Air Code, as required by federal law.

VII. Data and Reporting Requirements

- A. Data and information obtained by the Tribe relating to implementation of the SUIIT Indian country MNSR Program shall be reported to the EPA in summary format, on an annual basis. This summary information shall include summaries of permit applications, but shall also include complete copies of draft permits.

- B. Upon request by the Tribe, the EPA shall furnish the Tribe requested information in its files related to implementation of the SUIT Indian country MNSR Program.
- C. Confidential business information submitted to the Tribe must be claimed as such by the person submitting the information. Information without a proper claim of confidential business information may be made available to the public without further notice.
- D. The Tribe must submit to EPA Region 8 such information as the Region may reasonably require to ascertain whether the Tribe is implementing and administering the SUIT Indian country MNSR Program in compliance with the requirements of the CAA and of the EPA Indian country MNSR Program and the EPA Indian country Minor Source Oil and Gas FIP.

VIII. Additional Provisions

- A. The Tribe has the technical capability and adequate resources to implement the SUIT Indian country MNSR Program delegated through this Agreement. As requested by the Tribe, the EPA will strive to provide technical assistance and financial resources under existing CAA funding mechanisms to enable the Tribe to maintain sufficient technical capability and adequate resources. If the EPA is not able to provide adequate technical assistance or financial resources, and as a result the Tribe is not able to maintain technical capability and adequate resources, the Tribe may suspend or terminate this Agreement pursuant to section X.E. below, or the EPA may modify, amend or revoke this Agreement pursuant to section X.C. below.
- B. If the EPA revokes this Agreement in part or in whole due to the EPA not providing the Tribe with adequate technical assistance or financial resources, the EPA will explain its role in the revocation in any published notices concerning the revocation, and the Tribe may apply in the future for delegation to administer the SUIT Indian Country MNSR Program. If the Tribe suspends or terminates this Agreement, pursuant to section X.E. below, because the EPA is not able to provide adequate technical assistance or financial resources, and if the EPA subsequently resolves those issues, then the Tribe may seek to reinstate this Agreement (if previously suspended) or apply again for delegation to administer the SUIT Indian country MNSR Program (if previously terminated).
- C. The Tribe will provide a process to resolve issues arising between a regulated entity and the Tribe from the Tribe's decisions or actions relating to their delegated authority under this Agreement, before raising the issue to the EPA.
- D. EPA Region 8 and the Tribe will maintain open communication about the SUIT Indian country MNSR Program. Should a dispute arise between the EPA and the Tribe, best efforts should be made for resolution at the staff level. If staff are unable to resolve the issue, staff will present the issue in writing to progressively higher levels of management until consensus is reached. If consensus cannot be reached, the EPA retains final implementation and

enforcement authority for the SUIT Indian country MNSR Program, and may modify, amend, suspend or revoke this Agreement pursuant to section X.C. below.

- E. The Tribe will follow all EPA-issued policies, guidance and determinations involving implementation of the SUIT Indian country MNSR Program and this Agreement. The EPA will provide the Tribe with copies of these policies, guidance, and determinations. Where no current EPA policy or guidance clearly covers a specific situation, the Tribe and EPA Region 8 shall consult with each other.
- F. Pursuant to 40 C.F.R. section 49.161(c)(1), this Agreement does not delegate the EPA Administrator's authority to object to the issuance of a minor NSR permit under the EPA Indian country MNSR Program.
- G. Retention of records. Under the EPA Indian country MNSR Program, where the Tribe prepares draft or final permits or receives applications for permit revisions on behalf of the EPA, the records for each draft and final permit or application for permit revision must be kept by the Tribe for a period not less than 5 years.
- H. This Agreement is effective upon the date it is signed by both the EPA and the Tribe (the "effective date").
- I. This Agreement creates no right or benefit, substantive or procedural, enforceable by law or equity by a third party against the Tribe or the EPA, their officers or employees, or any other person. This Agreement does not direct or apply to any person other than the Tribe or the EPA.
- J. If any provision of this Agreement is determined to be invalid or prohibited by law, that provision shall be ineffective only to the extent of such invalidity or prohibition, without affecting the validity of the remaining provisions of this Agreement. The Tribe and the EPA agree to meet and negotiate in good faith to amend this Agreement in order to cure any such legal defect.
- K. For EPA Indian country MNSR Program permit applications submitted to the EPA and deemed complete by the EPA prior to the effective date of this Agreement, the EPA will retain authority to process those applications, and to approve or deny them. For permit applications submitted to the Tribe after the effective date of this agreement, and which are not in addition or supplementary to a permit application previously deemed complete by the EPA, the Tribe will be responsible for implementing all delegated permitting authorities pursuant to this Agreement, including but not limited to, acting as the reviewing and approval authority for permit applications and permit issuances. Upon the effective date of this Agreement, the Tribe will be responsible for implementing all delegated authorities pursuant to this Agreement for the EPA Indian country MNSR Program, including the approval of Part I and Part II registrations, pursuant to 40 CFR § 49.160. However, in instances in which EPA has approved a Part I

registration prior to the effective date of this agreement, the EPA will be responsible for the subsequent Part II registration approval.

IX. Funding

- A. The EPA acknowledges that the Tribe's request for partial administrative delegation of the EPA Indian country MNSR Program and the EPA Indian country Minor Source Oil and Gas FIP was submitted on condition that the EPA would provide adequate grant funding to enable the Tribe's administration of the programs on the Reservation. The Tribe acknowledges that this Agreement is neither a fiscal nor a funds obligation document and that nothing in this Agreement obligates the EPA or the Tribe to expend appropriations or to enter into any contract, assistance agreement or interagency agreement, or to incur other financial obligations. Further, the Tribe acknowledges that this Agreement does not exempt transactions between the EPA and the Tribe from EPA policies governing competition for assistance agreements and contracts. Any obligation or expenditure of funds by the EPA will be subject to the availability of appropriations and the EPA's discretion in making budgetary determinations. All obligations and expenditures of funds by the Tribe will be subject to the availability of appropriations and the Tribe's discretion in making budgetary determinations. Nothing in this Agreement may be construed to give rise to a claim for compensation for services performed to further the goals of this Agreement.
- B. Payments to be made and actions to be taken by the EPA pursuant to this Agreement are subject to the availability of funds appropriated for such purpose. No provision of the Agreement shall be interpreted as or constitute a commitment or requirement that the EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

X. Agreement Evaluation, Modification, Amendment or Termination

- A. The EPA and the Tribe will engage in an evaluation of this Agreement upon the request of either party but no more than once per calendar year or at least once every five years. This evaluation may include, among other things, identification of level of effort, description of program activities, costs, evaluation of complaints, and identification of areas for improvement.
- B. This Agreement may be modified to account for any changes to the EPA Indian country MNSR Program or the EPA Indian country Minor Source Oil and Gas FIP promulgated after the effective date of this Agreement. Implementation of new or revised requirements after the effective date of this Agreement will remain the sole responsibility of the EPA until this Agreement is modified.
- C. Pursuant to 40 C.F.R. sections 49.103(c)(2) and 49.161(b)(4), this Agreement may be modified, amended, or revoked, in part or in whole, by the EPA Region 8 Regional Administrator or the EPA Administrator, respectively, after EPA consultation with the Tribe.

- D. The Tribe may, at any time, submit to the EPA Administrator or Region 8 Regional Administrator a written request for modification or amendment of this Agreement.
- E. The Tribe may, at any time, suspend or terminate this Agreement by providing 180 days written notice to the EPA Administrator and the EPA Regional Administrator.

XI. Signatures

- A. The EPA and SUIIT recognize that each reserve all rights, powers, and remedies now or hereafter existing in law or in equity, by statute, treaty or otherwise. Nothing in this Agreement is, or shall be construed, to be a waiver of the sovereignty of the Tribe or the United States. By entering into this Agreement, the EPA and the Tribe reserve, and do not waive, any jurisdictional claims relating to proper application of the CAA or any other matter. This Agreement creates no rights in third parties, including but not limited to the right to judicial review.
- B. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered in a “.pdf” data file or any other electronic format, such signature shall create a valid and binding obligation of the party signing this Agreement, with the same force and effect as if such “.pdf” signature page or other electronic signature were an original thereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year below.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY – REGION 8

Becker,
Kathleen

Digitally signed by
Becker, Kathleen
Date: 2024.05.23
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KC Becker, Regional Administrator, EPA Region 8

Date

SOUTHERN UTE INDIAN TRIBE



Melvin J. Baker, Chairman
Southern Ute Indian Tribal Council

06/11/2024

Date