



REGION 8 ADMINISTRATOR

DENVER, CO 80202

MEMORANDUM TO FILE

The Southern Ute Indian Tribe (Tribe) submitted an April 28, 2020 request for delegation of partial administrative authority to assist the United States Environmental Protection Agency (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). The regulations administering the EPA Indian country MNSR Program and the EPA Indian country Minor Source Oil and Gas FIP allow the EPA to delegate partial administrative authority to a Tribe if the Tribe requests such authority and meets certain requirements listed in the regulations.

Upon review of the Tribe's submission, EPA Region 8 has determined that the Tribe's request included the following information which satisfies the requirements to partially delegate the two programs, as listed in 40 C.F.R. section 49.161(b)(1)(i)-(iv) and 40 C.F.R. section 49.103(b)(1)-(3):

- A. **Identification of the specific provisions for which delegation is requested, as required by 40 C.F.R. section 49.161(b)(1)(i) and 40 C.F.R. section 49.103(b)(1).** The Tribe's request identified the specific provisions for which delegation was requested, which are listed below.

Provisions of the EPA Indian country MNSR Program:

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.

Provisions of the EPA Indian country Minor Source Oil and Gas FIP:

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.

- B. **Identification of the Indian Reservation or other areas of Indian country for which delegation is requested, as required by 40 C.F.R. section 49.161(b)(1)(ii) and 40 C.F.R. section 49.103(b)(2).** The Tribe's request identified the Southern Ute Indian Reservation as the area for which delegation was requested, and included a legal description and map of the Reservation.

- C. **A statement by the applicant's legal counsel (or equivalent official) that the applicant is a Tribe recognized by the Secretary of the Interior, as required by 40 C.F.R. section 49.161(b)(1)(iii)(A) and 40 C.F.R. section 49.103(b)(3)(i).** The Tribe's request included a statement by the Tribe's legal counsel that the Tribe is recognized by the Secretary of the Interior, including a citation to the Department of the Interior Bureau of Indian Affairs listing of all federally recognized Indian Tribes in the United States. The list has been updated for 2024, and continues to include the Tribe. Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 89 Fed. Reg. 944, 946 (Jan. 8, 2024).

- D. **A descriptive statement by the applicant's legal counsel (or equivalent official) that is consistent with the type of information described in 40 C.F.R. section 49.7(a)(2) demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area, as required by 40 C.F.R. section 49.161(b)(1)(iii)(B) and 40 C.F.R. section 49.103(b)(3)(ii).** The Tribe's request included a descriptive statement by the Tribe's legal counsel making the required demonstration. The Tribe's request detailed the Tribe's form of government and the types of governmental powers exercised by the Tribe (including legislative power, police powers, administration of justice, taxation, intergovernmental relations, and other powers). This

finding is consistent with previous findings by the EPA that the Tribe is currently carrying out substantial governmental duties and powers, including in the EPA's March 28, 2018 approval of the Tribe's application for Treatment in a Similar Manner as a State, or TAS, for Clean Water Act Section 303(c) Water Quality Standards and Section 401 Water Quality Certification.

- E. **A statement by the applicant's legal counsel (or equivalent official) describing the laws of the Tribe that provide adequate authority to administer the Federal rules and provisions for which delegation is requested, as required by 40 C.F.R. section 49.161(b)(1)(iii)(C) and 40 C.F.R. section 49.103(b)(3)(iii).** The Tribe's request included a statement by the Tribe's legal counsel describing the laws of the Tribe as required. Among other things, the statement described legal authority to adopt rules and regulations for air quality programs applicable to all lands within the exterior boundaries of the Tribe's Reservation pursuant to an Intergovernmental Agreement between the Tribe and the State of Colorado, laws of the Tribe (such as Resolution of the Council of the Southern Ute Indian Tribe No. 00-09), State of Colorado law (C.R.S. § 24-62-101), and federal law (Act of October 18, 2004, Pub. L. No. 108-336, 118 Stat. 1354). This finding is consistent with previous findings by the EPA that the Tribe has adequate legal authority to implement civil regulatory environmental programs within its Reservation, including in the EPA's March 28, 2018 approval of the Tribe's TAS application referenced above.
- F. **A statement by the applicant's legal counsel (or equivalent official) demonstrating that the tribal agency that will be responsible for administration has the technical capability and adequate resources to administer the provisions for which delegation is requested, as required by 40 C.F.R. section 49.161(b)(1)(iv) and 40 C.F.R. section 49.103(b)(4)(iv).** The Tribe's request included a statement by the applicant's legal counsel (or equivalent official) demonstrating that the Tribe's Environmental Programs Division, including its Air Quality Division, has the technical capability to administer the EPA Indian country MNSR Program and the EPA Indian country Minor Source Oil and Gas FIP. For example, the Tribe's request described the Tribe's many years of experience in managing federal programs, including federal environmental programs delegated or approved by the EPA under the Clean Air Act and Clean Water Act, and the technical and administrative experience and training of the Tribe's existing Air Quality Program staff and the experience and training of the additional staff that will be hired to implement the delegated programs. This finding is consistent with previous findings by the EPA that the Tribe has adequate technical capability to implement civil regulatory environmental programs within its Reservation, including in the EPA's March 28, 2018 approval of the Tribe's TAS application referenced above. Additionally, the EPA finds that the Tribe will have adequate resources to administer the EPA Indian country MNSR Program and the EPA Indian country Minor Source Oil and Gas FIP, on the basis of grant funds that the EPA has agreed to provide to the Tribe.

This memo to file does not effectuate the delegation of partial administrative authority. Pursuant to the EPA's regulations at 40 C.F.R. sections 49.103(c) and 49.161(b)(2), the delegation must be effectuated pursuant to a separate delegation agreement signed by the EPA and the Tribe.

KC Becker, Regional Administrator, EPA Region 8