

Attachment

Section - 2:

NSR 101



FACT SHEET

REVIEW OF NEW SOURCES AND MODIFICATIONS IN INDIAN COUNTRY

Action

- On June 10, 2011, EPA finalized a Federal Implementation Plan (FIP) to ensure that Clean Air Act permitting requirements are applied consistently to facilities in Indian country. This action will help newly built or expanding industries protect people's health and the environment.
- These permits limit air pollutants such as particle pollution and sulfur dioxide that are associated with numerous health effects including aggravated asthma, increased respiratory symptoms, missed work and school days, hospitalization for heart or lung diseases and even premature death.
- This action will fill a regulatory gap by clarifying the permit process for large and small sources and ensuring that any increases in emissions from these facilities will not significantly impact air quality in these areas. This will help provide important environmental protection in Indian Country while supporting economic development.
- The FIP puts in place the two remaining pieces of the preconstruction air permitting program, known as New Source Review (NSR), in Indian country. It lays out requirements for EPA to issue air permits to sources in Indian country, or allows tribes to take responsibility for issuing air permits according to EPA's requirements.
- Together with existing rules for permitting major sources in areas of Indian country that currently meet clean air health standards, the FIP establishes the federal program for issuing all pre-construction air permits in Indian country. These permit programs are similar to what is currently done by states and will provide industries the same permitting opportunities as they have in states.
- The FIP is made up of two rules to protect air quality:
 - The minor NSR rule applies to new and modified small facilities or to minor modifications at large facilities in all of Indian country.
 - The nonattainment major NSR rule applies to new major sources or major sources that make significant modifications in areas of Indian country that do not meet national clean air health standards.
- 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 increases emissions above any of the thresholds included in these rules. The permitting authority, either EPA or a tribe, 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.
- Tribes that choose to implement the rules can accept delegation of the federal program or they can develop and seek approval of a Tribal Implementation Plan (TIP) to administer these rules or portions of them, which would include some enforcement authority. EPA will maintain the sole authority to enforce these rules under federal law.

- The rules will provide a 36-month phase-in for small sources. Large sources will need permits upon construction (the same is true everywhere else). Sources interested in synthetic minor permits will be able to get them right away.
- EPA is collaborating with tribes to develop training and other resources to implement these permit programs. More information on the training sessions will be available soon on EPA's Tribal Air Web site: <http://www.epa.gov/air/tribal/>.

Minor NSR Rule

- The minor NSR rule applies to all of Indian country. New or modified industrial facilities with a potential to emit equal to or more than the minor NSR thresholds but less than the major NSR thresholds, generally 100 to 250 tons per year (tpy), are "minor sources" of emissions and subject to the rule requirements.
- The minor NSR program provides three options for obtaining permits. These options are:
 - *Site-specific permits.* A site-specific permit includes case-by-case determinations of the source emissions limits as well as any control technology requirements;
 - *General permits.* A "general permit" is a permit that has been developed for a number of similar equipment types or facilities to simplify the permit issuance process for facilities ; or
 - *Synthetic minor permits.* A synthetic minor permit applies to a source that has the potential to emit pollutants in amounts that are at or above the thresholds for major sources, but has voluntarily accepted emissions limitations so that its potential to emit is less than these thresholds. Under this rule, synthetic minor permits can be issued for both regulated NSR pollutants and toxic air pollutants.
- EPA will work on developing general permits, as a streamlined permitting option, for a number of source types in Indian country (e.g., dry cleaners, rock crushing facilities) and continue to explore other options for improving and streamlining the permit process for sources in Indian country such as permits-by-rule.
- The rule requirements include:
 - Case-by-case review of control technology for source-specific permits by the reviewing authority,
 - Air quality impact analysis upon request by the reviewing authority,
 - Monitoring, recordkeeping and reporting by the source owner or operator,
 - Public participation through public notices and comment requirements and administrative and judicial review upon a permit appeal and
 - Source registration with the reviewing authority
- Under the rule, sources have different responsibilities depending on their status:
 - Existing "true" minor sources, also called "natural" minor sources, will only need to register within the first 36 months of the program. After the first 36 months of the program or 6 months after a general permit for a source category is published, existing sources will need a permit only if the proposed modification emissions exceed the minor source thresholds.
 - New "true" minor sources will not need a permit and will only need to register within the first 36 months of the program. After the first 36 months of the program or 6 months after a general

permit for a source category is published, new sources will need a permit if the source's emissions exceed the minor source thresholds.

- Existing “synthetic” minor sources may need permits depending on the mechanism they used to obtain their status as a “synthetic” minor.
- New “synthetic” minor sources will be able to apply for permits starting on the rule's effective date.
- Minor modifications at major sources will need to apply for permits starting on the rule's effective date

Nonattainment Major NSR Rule

- The nonattainment major NSR rule only applies to areas of Indian country that do not meet national clean air standards. New or modified industrial facilities with a potential to emit equal to or more than the major NSR thresholds, generally 100 tpy, are “major sources” of emissions and subject to the rule requirements.
- The requirements include:
 - *Installing emissions controls that meet the requirements of Lowest Achievable Emission Rate control technology,*
 - *Obtaining emissions offsets.* New or modified major sources contributing to increased emissions would have to obtain emissions reductions from other sources to offset that increase. These emissions offsets would provide a net air quality benefit in the affected area and
 - *Certifying compliance.* Each permit applicant must certify that all other facilities owned or operated by the applicant in the same state as the new or modified source are in compliance with all applicable air quality regulations.
- These requirements are the same as the requirements that apply in states for areas that do not have a State Implementation Plan (SIP) for implementing certain NSR provisions, the transitional NSR program commonly known as “Appendix S.”
- The permit process will include public notice and comment requirements and administrative and judicial review provisions, similar to those in the minor NSR rule.
- Under the rule, major sources will need to apply for and receive a permit before they can construct or modify. The rule simply establishes a clear mechanism for them to do so.

Implementation

- Initial implementation, training and technical assistance will be guided by EPA in close collaboration with tribes.
- EPA Regions will primarily be responsible for implementing this rule until a tribe requests delegation of the federal program or until a tribe develops and gets approval of a Tribal Implementation Plan to run these programs.
- The implementation of the minor NSR rule will be phased in over 36 months, giving sources and EPA Regional Offices time to prepare:

- New and modified synthetic minor sources and minor modifications at major sources will be subject to the rule requirements on the rules' effective date, which will be 60 days after publication in the Federal Register; and
- True minor sources will be subject to the rule requirements 36 months after the rules' effective date or 6 months after a general permit for a source category is published, whichever is earlier.
- The phased implementation will allow EPA headquarters, regions and tribes to focus on capacity building, outreach and education about the permitting requirements. EPA headquarters and regions will work closely together to identify adequate resources to meet any increase in permitting needs.

Background

- EPA already has a federal plan in place for major sources in attainment areas in Indian country and has been issuing permits. Today's action puts a plan in place for the nonattainment major NSR program and the minor NSR program in Indian country. Only a few tribes have been administering EPA-approved minor NSR programs and no tribes have been administering EPA-approved nonattainment major NSR programs.
- NSR is a Clean Air Act 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 accomplishes this when owners or operators obtain permits limiting air emissions increases before they begin construction.
- The purpose of the NSR program is to protect public health and the environment, even as new industrial facilities are built and existing facilities expand. Specifically, its purpose is to ensure that air quality:
 - does not worsen where the air is currently unhealthy to breathe (i.e. nonattainment areas)
 - 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.
 - Prevention of Significant Deterioration (PSD) program applies to a new major source or a source making a major modification in an attainment area.
 - Nonattainment NSR program applies to a new major source or a source making a major modification in a nonattainment area.
 - 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.
- An essential element of the three NSR programs, as with any federal air permitting program, is the opportunity for public notice and comment on all permits.

FOR ADDITIONAL INFORMATION

- Interested parties can download information on the final action from EPA's Web site at: www.epa.gov/nsr.

- Today's final action and other background information are also available either electronically in www.regulations.gov, EPA's electronic public docket and comment system, or in hard copy at EPA's Air and Radiation Docket and Information Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW, Washington, DC (Docket ID No. EPA-HQ-OAR-2003-0076). The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566-1742.

TRIBAL NEW SOURCE REVIEW IMPLEMENTATION

NSR Training

2/14/12

Tribal NSR Implementation (Overview)

- Communication and Training
- Implementation
 - Permitting process
 - General permits
 - Tribal roles
- Tribal New Source Review Draft Guidance
 - Understanding the Tribal NSR, implications and resource determinations
 - Decision matrix
 - Resources

Training

- Tribal webinars on the NSR rule sections
- On site training
 - National Tribal Forum, Spokane, WA (June 13, 2011)
 - Pechanga, Temecula, CA (November 1- 4, 2011)
 - Midwest location TBD (winter/early spring 2012)
 - ITEP will begin planning for a technical training in 2012

Implementation at Regional Level

- The Tribal NSR Rule will generally be implemented at the regional level through collaboratively developed guidance
- The Tribal workgroup developed two guidance documents with recommendations for the Regions
 - TIPs for consulting with tribes on permits
 - Recommendations for involving tribal communities on permits

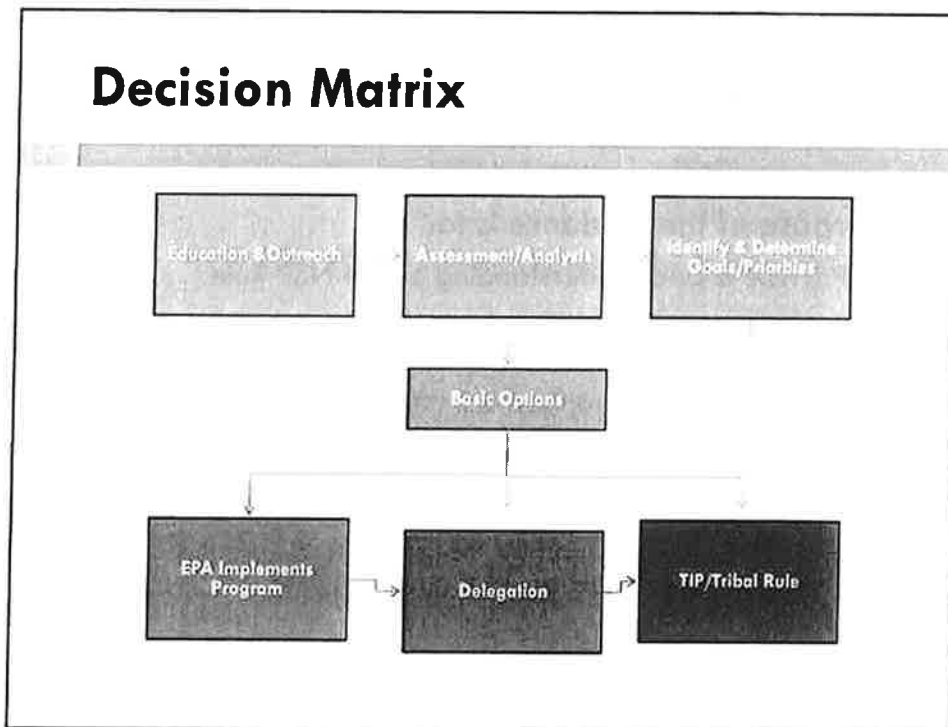
Resources for Implementation

- Purpose of the guidance is to:
 - Provide a clear understanding of the NSR Rule
 - Explore and determine the possibilities that the NSR has for your tribes
 - Provide a decision matrix through which a tribe may determine a direction to take on the rule
 - Provide possible steps to achieve desired outcomes
 - Provide useful examples of products to lessen the administrative and development burden

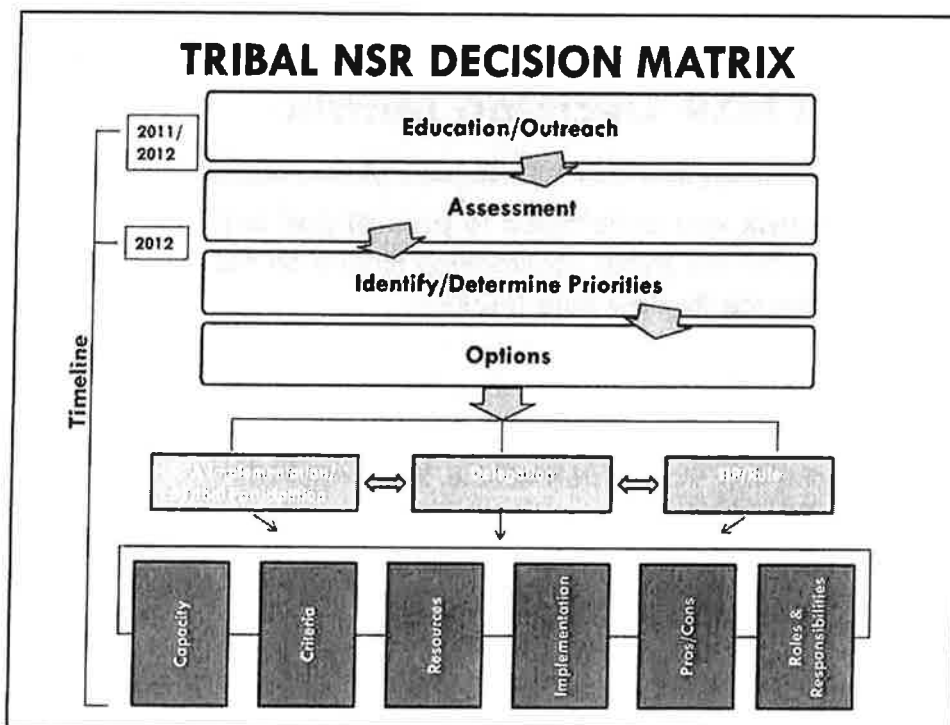
Tribal NSR Decision Matrix

- This matrix was developed to prompt and explore options for the tribes considering taking on the Tribal New Source Review Rule (NSR)
- The following scenarios are explained in the decision matrix process with the assumption that
 - A tribe may want to start with no, little or limited participation
 - A tribe may want to start small and develop their programs over time, understanding that any combination or mixture of these steps are possible to the tribes

Decision Matrix



TRIBAL NSR DECISION MATRIX



Education & Outreach

- ❑ Resources will need to be identified to learn more about
 - Final rule's technical information
 - Understand the implementation issues
- ❑ Better understand information to present to
 - Tribal leader
 - Community tribal audience
 - Sources on the reservation (if a tribe chooses to engage)

Assessment

- ❑ Using "assessment" in a general context, a tribe will need basic information in order to determine the extent they want to participate in implementation of the NSR rule
- ❑ Determine what level of assessment is appropriate for your area
 - Example: windshield surveys, emissions inventories
- ❑ Identify what sources are out there so when presenting to your councils, you have the data to support a proposed plan of action
- ❑ Identify plans for future economic development (what potential sources are on the way)

Identify/Determine Priorities

- Identification of priorities is important
 - Number of sources on reservation
 - Resources
 - Political direction of the tribe

- Determine what the tribe is willing to engage in or prepared to do today to implement the Tribal NSR Rule
 - And, to what extent in the future

Basic Option Selection

- Develop possible options through meetings within the tribe and with EPA using available information

- Identify questions to ask the Agency to make more informed decisions or to help your tribal government make a more informed decision

Steps in Process

- ▣ Moving from lowest involvement or none at all, the following slides will show EPA implementation to a TIP development
- ▣ Keep in mind, a tribe may determine to jump in between steps due to capacity levels and predetermined work as they move towards developing a Tribal NSR rule implementation plan

Tribal NSR Decision Matrix

EPA Implementation/
Tribal Participation

- ▣ The Tribal New Source Review Rule is a Federal Implementation Plan (FIP)
 - EPA is required to implement the program
 - The tribe is not required to participate
- ▣ A tribe may decide
 - To do nothing
 - Limit participation (i.e., outreach, conference calls)
 - Participate or begin building capacity and work with EPA
 - Review permits
 - Help with outreach to the community

EPA Implementation

Cons:

No fee mechanism – built in
Implementing other rules
Less control over progress/rule implementation
Can be seen as infringement on sovereignty

Pros/Cons:

More supportive of sovereignty than if they had their own rules

Pros:

Builds capacity
Credibility
No TAS necessary
Medium resources – administratively
Control – more than other options
No enforcement for Tribe (no responsibility to track sources)

Tribal NSR Decision Matrix

Delegation

Is an established agreement to authorize the administration of one or more federal rules in a FIP with a tribe to assist in whole or partial administration of a specific Tribal NSR rule, with EPA retaining enforcement responsibility

Delegation

Cons:

No fee mechanism – built in
Implementing other rules

Pros/Cons:

More supportive of sovereignty than if they had their own rules
Can be seen as infringement on sovereignty
No enforcement for Tribe

Pros:

Capacity
Credibility
No TAS necessary
Medium resources - administratively
Control – more than other options

Delegation (cont'd)

- Requirements for delegation
 - Must show federal recognition
 - Have governing structure to carry out the duties and powers over the defined area
 - Identification of the boundaries covered by the delegation; provide adequate authority to carry out the aspects of the provisions
 - Demonstrate tribe has or will have technical capacity
 - TAS is not required to take delegation
- Delegation can be requested for the entire FIP or it can be severable
- Roles and responsibilities: tribes can take on as much or limit the amount of responsibility under delegation
 - A tribe may determine under its own inherent authority to develop tribal rules or codes to implement a program
- Capacity: tribes can work through delegation with EPA to build upon their capacity through the delegation work

Steps in Requesting Delegation

General Process for Delegation

1. The tribe expresses interest to EPA about receiving delegation for certain provisions of the Tribal NSR rule
2. A tribe staff-to-EPA staff phone call is an appropriate first step
3. The tribe and EPA continue ongoing discussions during the development of the delegation request. EPA will review the draft request as appropriate
4. The tribe formally requests delegation by way of a letter to the EPA Regional Administrator from the Tribal Chairperson that includes all of the information required by the delegation rule
5. EPA formally responds to the tribe and acknowledges receipt of their request for delegation
6. EPA sends a letter to all appropriate governmental entities

Steps in Requesting Delegation (cont'd)

General Process for Delegation

7. EPA can provide the tribe with a draft delegation agreement modeled after existing delegation agreements
8. The tribe and EPA review comments by the tribe on the draft delegation agreement and agree on language for the delegation agreement.
9. The tribe and EPA consult on a government-to-government basis at the tribe's request
10. After the delegation agreement is signed, EPA publishes a notice of the delegation in the Federal Register
11. When the notice of the delegation agreement is to be published in the Federal Register, EPA publishes an announcement of the delegation agreement in local newspapers

Tribal NSR Decision Matrix

TIP/Rule

- A tribe can choose to develop a TIP to assume primacy for ensuring that the NAAQS are met within its jurisdiction
- Developing a TIP gives the tribe the option of implementing and enforcing its own program
- Once a TIP is approved by EPA, the provisions of the implementation plan become federally enforceable in addition to being enforceable by the tribe
- TAS is required for a TIP

Tribal Implementation Plan/Tribal Rule

Cons:

- TIP is more involved (TAS, boundary, code writing)
- Enforcement collaboration with other jurisdictions (MOU/MOA)
- Role – resource intensive “High”
- Processing – intensive coordination with EPA

Pros/Cons:

- Enforcement issues

Pros:

- Tribally implemented program
- Tribal rules
- Exertion of Tribal Sovereignty – “higher”
- Fees can be built in
- Most control over sources

Tribal Implementation Plan (TIP)

- ❑ As part of the decision process a tribe may determine to develop/implement a TIP
- ❑ A tribe may request ALL or some elements of the Tribal NSR rule to develop a TIP
- ❑ A TIP may include selected elements of a complete NAAQS implementation plan, provided those elements are reasonably severable from the other CAA elements not included in the TIP
 - Potential elements of a TIP are
 - Maintenance strategies
 - Attainment strategies
 - Source preconstruction permits (NSR)
 - Regional haze plans

TIP Requirements

- ❑ **Request for determination of eligibility**
 - The TAR requires EPA to determine that a tribe is eligible to implement CAA programs (TAS) before approval
 - Tribe must demonstrate federal recognition
 - Have a governing body carrying out substantial government duties and powers
 - Provide evidence that tribe will perform functions pertaining to management and protection of air resources within the exterior boundaries of its reservation or other areas with the tribe's jurisdiction
 - Demonstrate the tribe's capability to administer effectively the program for which it is seeking approval

TIP Requirements (cont'd)

Administrative elements

A letter of submission from the tribal leader requesting EPA approval of the TIP elements

Documentation that the tribe has: 1) adopted the plan into law; 2) the tribe has sufficient authority in tribal law to adopt and enforce a TIP; 3) the adoption date; and 4) the effective date of the plan

Evidence that the tribal environmental agency has sufficient personnel and resources to develop, implement and enforce the proposed TIP elements

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
- Public hearings should be advertised at least 30 days in advance (preferably 60 days)

Technical information used to prepare the TIP

TIP Requirements (cont'd)

Demonstration of enforcement authority

- An 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 emissions data and other information needed to determine compliance to the tribe
 - Procedures for inspecting sources to verify that emission limits are met, issuing notice of violations, and assessing fines
- Limitations on a tribe's criminal enforcement authority will not prevent TIP approval
 - Generally covered by an MOU between the tribe and EPA

Treatment as a State (TAS)

- Tribes need TAS to implement Tribal NSR via a TIP and may get TAS for delegation
- Can obtain TAS for Tribal NSR or with other elements of the CAA
- Requirements for TAS

TAS Timeline

- EPA's process for reviewing a federally-recognized tribe's eligibility application for TAS in order to administer a regulatory program under the Clean Air Act (CAA) consists of four steps. They are

Step 1: The tribe submits an application

Pre-application discussions and technical assistance (between Tribe and EPA)

EPA review of pre-application materials (if requested)

Tribe submits application to EPA

- EPA notifies the tribe of receipt of the application, and, as needed, requests additional information from the tribe, within 30 days of receipt of the application

Tribe submits additional information (if applicable)

Step 2: EPA review

EPA reviews application and determines if the application is complete

- EPA notifies all appropriate governmental entities of the application and how it identifies the reservation's boundaries, and of any assertions regarding tribal authority over non-reservation areas, within 30 days of receipt of initial, complete application

EPA notifies the tribe, in writing, that the application is complete no later than when EPA provides the notification in step 1

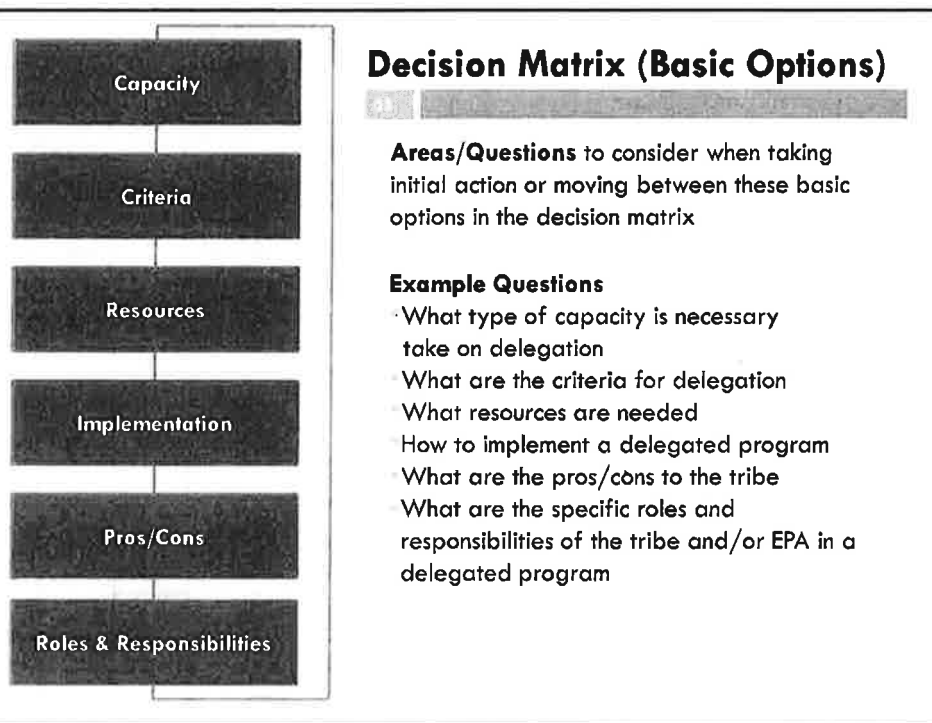
TAS Timeline (cont'd)

Step 3: Comment period (if needed)

- Appropriate governmental entities and the public have the opportunity to comment regarding the reservation's boundaries or tribal authority over non-reservation areas; comments are generally due within 30 days
- EPA provides the comments to the tribe within 30 days of the close of the comment period
- The tribe reviews the comments and may respond
- Where there is a dispute concerning tribal authority that EPA cannot promptly resolve, it may approve the portion of an application addressing undisputed areas. See 40 CFR 49.9(e)

Step 4: Final TAS Eligibility decision

- EPA prepares decision document and response to comments
- EPA regional official signs decision document
- EPA notifies tribe of decision within 30 days of signature



Permit Application Deadline

Permit Application Timeline	Permit Timeline									
	Modifications to Existing Sources				Existing Sources		New Sources			
	Major Mod. of Existing Major Source	Minor Mod. of Existing Major Source	Minor Mod. of Existing Synthetic Minor Source	Minor Mod. of Existing True Minor Source	Existing True Minor Source	Existing Synthetic Minor Source	New Major Source in an Attachment Area	New Major Source in a Nonattachment 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 mod.	Apply for permit before construction of mod.			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 8/30/11 or 90 days after source begins operation	Register source within first 18 months after 8/30/11 or 90 days after source begins operation					
36 months after Effective Date (Sept. 7, 2014)				Apply for permit by 9/7/12 or 6 months after s.p. is published	No permit needed unless modification is proposed				Apply for permit by 9/7/14 or 6 months after s.p. is published	

33 Permit Issuance Timeline

Permit Issuance Timeline	Modifications to Existing Sources					New Sources			
	Major Mod. of Existing Major Source In Attainment Area	Major Mod. of Existing Major Source In Nonattainment Area	Minor Mod. of Existing Major Source In Any Area	MOD. of an Existing Synthetic Minor Source In Any Area	Mod of an Existing Minor Source In Any Area	New Major Source In Attainment Area	New Major Source In Nonattainment Area	New True Minor Source	New Synthetic Minor Source
Permit Program	PSD	Manufacturing TGR	Minor NSR	Minor NSR	Minor NSR	PSD	Nonattainment NSR	Minor NSR	Minor NSR
90 Days After Approval Authority Received App.								GP will be granted or denied within 90 days after reviewing authority receives application	
135 Days After App. Deemed Complete					A Site-Specific permit will be granted or denied no later than 135 days after app. is deemed complete			A Site-Specific permit will be granted or denied no later than 135 days after app. is deemed complete	
1 Year After App. Deemed Complete	Permit will be granted or denied no later than 1 year after application has been deemed complete	Permit will usually be granted or denied no later than 1 year after application has been deemed complete	Site-specific permit will be granted or denied no later than 1 year after application has been deemed complete	Site-specific permit will be granted or denied no later than 1 year after application has been deemed complete		Permit will be granted or denied no later than 1 year after application has been deemed complete	Permit will usually be granted or denied no later than 1 year after application has been deemed complete		Synthetic Minor permit will be granted or denied no later than 1 year after the date the application is deemed complete
Permit Decision Appeals	Decisions may be appealed to the Env. Appeals Board within 30 days after a final permit	Decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit	Decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit	Decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit	Decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit	Decisions may be appealed to the Env. Appeals Board within 30 days after a final permit	Decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit	Decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit	Decisions may be appealed to the Environmental Appeals Board within 30 days after a final permit
Effective	Permits are generally effective 30 days after notice of issuance unless otherwise noted								

General Permits (Current)

- **Source Categories (in process)**
 - Auto body shops
 - Gasoline dispensing facilities (a.k.a. gas stations)
 - Hot mix asphalt
 - Petroleum based dry cleaners
 - Rock crushing facilities

- In the proposal, we will take comment on whether these source categories should be covered by Permit by Rule (PBR) or by General Permits (GP)

General Permits (Future)

- **Additional source categories that will be proposed in the near future**
 - **Oil & Natural Gas (only)**
 - Dehydration systems
 - Hydrocarbon storage tanks (oil/condensate/produced water)
 - Hydrocarbon loading facilities
 - Pneumatic pumps, pneumatic controllers, blow down vents
 - Fugitive emissions (multiple source categories of VOC, dust, etc.)
 - Separators/heaters-treaters
 - Enclosed combustors
 - Flares
 - **General Combustion**
 - Industrial boilers
 - Heating units
 - Biomass boilers
 - **Solvents**
 - Surface coating operations
 - Degreasers
 - Solvent cleaners
 - Spark ignition engines
 - Sand and gravel production
 - Stone quarrying and processing
 - Concrete batch plant
 - Saw mills
 - Landfills
 - Printing operations

Contacts

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Jessica Montañez, Rule Lead
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Raj Rao, NSR Group Leader
Phone: 919-541-5344

raj.rao@epa.gov

Tips on Working with Tribes

- ❑ Familiarize yourself with the community, history, groups, and issues
- ❑ Research how the community public receives information and learn which sources they trust
- ❑ Work with the tribal environmental professional, **this is key since the Tribal Governments want you to work with them in contacting their communities**
- ❑ Work with other EPA staff or other Agencies that have built credibility, build off of their experience
- ❑ Identify any community-based organizations
- ❑ Consider working with a neutral party, often times it will be via the tribal contact

Tips on Working with Tribes (cont'd)

- ❑ Respect local work or traditional/cultural schedules for public outreach and communications
- ❑ Develop project specific mailing and contact lists using all appropriate methods
- ❑ Outreach methods should be tailored for each community and can include (electronic mail, printed flyers, mailings, meetings, door-to-door contact, radio, tribal newspapers, common regional mainstream papers)
- ❑ Make sure all communications are in plain language and includes appropriate contact information
- ❑ Notices should be visible in local tribal offices, social, faith-based and civic organizations, malls, banks, grocery stores, libraries, schools and senior centers
- ❑ Where appropriate you may need to have information translated into native languages

Tips on Consultation Outline

- ❑ **Timely communication is highly emphasized by tribal environmental professionals who work with their respective EPA contacts**
- ❑ **To assist with the communication process, most tribal environmental professionals prefer to be copied on any correspondence going to their tribal leader**
- ❑ **Consultation generally consists of meaningful and timely communication between EPA officials and tribal government officials in developing Agency actions that affect tribes**
- ❑ **Consultation vs. Participation/Collaboration: it is important to distinguish between government-to-government consultation and participation/collaboration of tribal environmental professionals**
- ❑ **Federal Indian Trust Responsibility: government-to-government consultation recognizes and ensures the federal government's trust responsibility to protect tribal sovereignty**

Consultation Tips (cont'd)

- ❑ **Tribal governments do not have the same organizational structure as a state, local agencies, or even other tribes**
- ❑ **Be aware of your perceptions and be open-minded**
- ❑ **Tribe-specific and site-specific factors**
- ❑ **Privileged or confidential cultural information**
- ❑ **Don't assume you know what the tribe may want to review, provide all information to the tribe and let them tell you what's important**
- ❑ **If the Region is developing a permit plan and communication strategy, the outreach and consultation process should be built in**

Contact Information

For questions about the NSR Rule for Indian country, contact:

- *Jessica Montanez* (919-541-3407, montanez.jessica@epa.gov)
- *Raj Rao* (919-541-5344, rao.raj@epa.gov)

For specific information on the permitting process and requirements, contact:

Region 1 (CT, ME, MA, NH, RI, VT)

Ida McDonnell - 617-918-1653

Region 2 (NJ, NY, PR, U.S. Virgin Islands)

Gavin Lau - 212-637-3708

Region 3 (DE, MD, PA, VA, WV, DC)

There are currently no federally recognized tribes in Region 3.

Region 4 (AL, FL, GA, KY, MS, NC, SC, TN)

Gracy Danois - 404-562-9119

Region 5 (IL, IN, MI, MN, OH, WI)

Benjamin Giwojna - 312-886-0247

Region 6 (AR, LA, NM, OK, TX)

Richard Thomas - 214-665-8528

Region 7 (IA, KS, MO, NE)

Robert Fenemore 913-551-7745

Region 8 (CO, MT, ND, SD, UT, WY)

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Region 9 (AZ, CA, HI, NV, Guam, American Samoa)

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Helpful Web Sites

US EPA

- www.epa.gov

NSR Website

- www.epa.gov/nsr
- www.epa.gov/Region7/programs/artd/air/nsr/nsr.htm

Full Text of CAA

- www.epa.gov/oar/oaq_caa.html

Office of Air and Radiation Tribal Air Website

- www.epa.gov/oar/tribal

American Indian Environmental Office (AIEO)

- www.epa.gov/indian/index.htm

Small Business Information (SBI)

- www.epa.gov/smallbusiness

Electronic Dockets and Information Centers

- www.regulations.gov

Federal Register - EPA Documents

- www.epa.gov/fedigstr/index.html

Code of Federal Regulations (CFR)

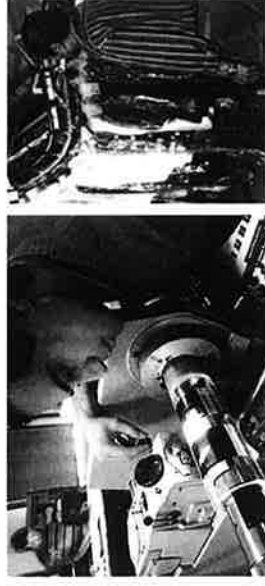
- www.gpoaccess.gov/index.html

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Minor New Source Review (NSR) Rule for Indian Country



AN OVERVIEW FOR SMALL BUSINESS



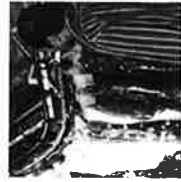
Title I of the Clean Air Act (CAA) requires that the New Source Review (NSR) program be established to protect public health and welfare, national parks, and wilderness areas as new sources of pollution are built or existing sources modified. The program is designed to ensure that new sources of pollution are constructed to be as clean as possible, recognizing that facility construction is typically the most economical time to incorporate state-of-the-art pollution prevention practices or air pollution control technologies.

The EPA is filling a regulatory gap by developing New Source Review Rules for Indian country, which will establish a **preconstruction permitting program** for minor stationary sources throughout Indian country and major stationary sources located in nonattainment areas in Indian country.

This brochure highlights the provisions of the Tribal Minor NSR rule as they would apply to small businesses, which are generally minor sources. Although many states have developed regulatory programs for minor sources, the state regulations generally do not apply in Indian country. In addition, there is currently no federal minor NSR program.

What are Minor Sources?

For the purposes of this rule, minor sources are sources which emit or have the potential to emit (PTE) any regulated NSR pollutant in amounts less than the major source thresholds for those pollutants. Examples of minor sources could include gasoline stations, dry cleaners, spray paint operations, automotive repair shops, etc. These minor sources, which are currently unregulated, constitute a significant percentage of the total number of sources in Indian country.



What will this Rule Achieve?

The purpose of the rule is to ensure that economic growth will occur in harmony with the preservation of existing clean air resources by providing tribal governments and businesses with an effective business development tool that supports an improved quality of life for Native Americans, both economically and environmentally.

How will Small Businesses be Affected by the Rule?

Once a Tribal NSR rule is put in place, a small business will have to determine whether the rule applies to the facility. If it does, then the business will apply for and obtain an enforceable permit that meets the requirements of the rule. These requirements may include the installation of control technologies and air quality analysis before the business begins construction.



The business would apply for a federal permit from EPA in most instances, as EPA will be primarily responsible for program implementation. Should a tribe choose to, they could apply for delegation for the program and, after making the required demonstrations, become responsible for issuing permits under the authority of the Tribal Authority Rule.

New Minor Sources: Currently, new minor sources locating in Indian country may not be subject to enforceable permits, emission limits, or controls. The Tribal NSR rule will put in place uniform requirements for obtaining a federally enforceable permit for small businesses locating in Indian country.



Existing Minor Sources: Existing minor sources will be impacted by this rule if they plan to make changes or modifications to their equipment and operations that result in increases in emissions above the minor source thresholds.

"Synthetic Minor" Sources: Any stationary source that would otherwise be a major source may voluntarily accept enforceable limits on its potential to emit to avoid review as a major source. Such sources are referred to as "synthetic minor" sources.

The Minor New Source Review Rule for Indian country will fill a significant regulatory gap because there is currently no permitting mechanism for minor stationary sources located anywhere in Indian Country.

How can Small Businesses Comment on the Proposed Rule?

Small business owners and operators possess information about their facility's operation that enables the regulation writers to craft more practical, informed rules that can be less burdensome to the business owner and tribal governments.

Upon proposal of the rule, there will be a minimum 90-day comment period during which interested parties can submit written comments. You can submit your comments, identified by Docket ID No. EPA-HQ-OAR-2003-0076, by one of the following methods:

- www.regulations.gov. Follow the on-line instructions for submitting comments.
- E-mail: a-and-t-docket@epamail.epa.gov.
- Fax: 202-566-1741
- Mail: Attention Docket ID No. EPA-HQ-OAR-2003-0076, U.S. Environmental Protection Agency, EPA West (Air Docket), Mailcode: 6102T, 1200 Pennsylvania Avenue, Northwest, Washington, DC 20460. Please include a total of 2 copies.

Do not submit information that you consider to be Confidential Business Information (CBI) through www.regulations.gov or e-mail.

Small businesses can review the rulemaking docket upon proposal, which contains information EPA reviewed and considered in developing the rule. Docket materials can be viewed between 8:30 a.m. and 4:30 p.m. Eastern Time (ET), Monday through Friday, excluding Federal holidays, at:

EPA Docket Center
Public Reading Room, Room B102
EPA West Building
1301 Constitution Avenue, NW
Washington, DC 20460

Anyone can contact the Docket office with phone and fax requests for material. A reasonable fee is charged for the duplication of materials.

You may also access the docket online at www.regulations.gov. Use the docket number listed above.



NEW SOURCE REVIEW

What is New Source Review?

New Source Review (NSR) is a Clean Air Act (CAA) 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 accomplishes this when owners or operators obtain permits limiting air emissions before they begin construction. For that reason, NSR is commonly referred to as the "preconstruction air permitting program."

The purpose of the NSR program is to protect public health and the environment, even as new industrial facilities are built and existing facilities expand. Specifically, its purpose is to ensure 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).

What are permits?

Permits are enforceable legal documents that an industrial facility, or stationary source, must comply with. Permits may place restrictions on:

- What construction is allowed;
- What air emission limits must be met; and
- How the source can be operated.

To assure that sources comply with a permit's emission limits, a permit almost always contains monitoring, recordkeeping, and reporting requirements.

Who issues the permits?

Usually NSR permits are issued by state or local air pollution control agencies. State, tribal, and local air pollution control agencies may have developed their own NSR permit programs, as part of their State Implementation Plans (SIP) or Tribal Implementation Plans (TIP), that are approved by EPA or they may be delegated by the authority to issue permits on behalf of EPA. If a state or a tribe chooses not to develop a SIP or a TIP and also not seek delegation of the federal NSR programs, EPA would implement the programs and issue the NSR permit, as we do for the PSD program in Indian country.

What sources are regulated in NSR?

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

1. **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.
2. **Minor sources** are facilities that have the PTE pollutants in amounts less than the corresponding major source thresholds.
3. **Synthetic minor sources** are facilities that have the PTE pollutants at or above the major source threshold level, but voluntarily accept enforceable limits to keep their emissions below the major source thresholds and avoid the major NSR requirements.

What pollutants are regulated under the NSR program?

The NSR program applies to regulated NSR pollutants. In the Prevention of Significant Deterioration (PSD) program, the regulated NSR pollutants include the National Ambient Air Quality Standards (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 sets NAAQS for six principal pollutants, which are commonly called "criteria" pollutants and include: ozone, carbon monoxide, particulate matter, sulfur dioxide, lead, and nitrogen oxide. The NAAQS are set at levels that protect human 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 actions to improve air quality and attain the NAAQS within a certain period of time.

What are the types of NSR permitting programs and what do they require?

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.

1. **Prevention of Significant Deterioration (PSD) program** applies to a new major source or a source making a major modification in an attainment area. The program requirements include:
 - Installation of the Best Available Control Technology (BACT)
 - Emission limitation based on the maximum degree of emission reduction (considering energy, environmental, and economic impacts) achievable through application of production processes and available methods, systems, and techniques.
 - An Air Quality Analysis
 - Assesses existing air quality and predicts through modeling the ambient concentrations that will result from the proposed project and future growth associated with the project.
 - An Additional Impacts Analysis
 - Assesses the impacts of air, ground, and water pollution on soils, vegetation, and visibility caused by any increase in emissions of any regulated pollutant from the source or modification under review.
 - Public Involvement
 - Opportunities include public comment period, hearings, appeals, etc., during the permit issuance process.
2. **Nonattainment NSR program** applies to a new major source or a source making a major modification in a nonattainment area. The program requirements include:
 - Installation of the Lowest Achievable Emission Rate (LAER)
 - The rate of emissions that reflect: (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.
 - 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.
 - Public Involvement
 - Opportunities include public comment period, hearings, appeals, etc., during the permit issuance process.
3. **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. Minor NSR may apply to criteria pollutants as well as other pollutants depending on the state. The program requirements include:
 - New sources or modifications at existing sources must comply with any emissions control measures required by the state.
 - The program must not interfere with attainment or maintenance of the NAAQS or the control strategies of a SIP or TIP.
 - An implementation plan is a set of programs and regulations developed by the appropriate regulatory agency in order to assure that the NAAQS are attained and maintained.

What is the Tribal NSR Rule?

The EPA filled a regulatory gap by developing NSR rules for Indian country, which establishes a preconstruction permitting program for minor stationary sources throughout Indian country and major stationary sources located in nonattainment areas in Indian country. The rule was finalized on June 10, 2011.

Where can I find additional information about NSR?

EPA's NSR Website
<http://www.epa.gov/nsr/>

The NSR website provides links to regulations, publications and state permitting contacts pertaining to NSR.



Overview of the Tribal New Source Review (NSR) Rule

**U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards (OAQPS)
Research Triangle Park, NC**



What We Will Cover

- **Background on Tribal Authority Rule(TAR)**
- **History of Tribal New Source Review(NSR) rule**
- **Purpose and benefits of NSR**
- **Provide a brief overview of New Source Review Program**
- **Provide an understanding of the impacts of the rule for Tribes**



The Tribal Authority Rule

- Prescribes how eligible tribes can be, “treated in a manner similar to a state”, (TAS)
- Provides for tribes to implement the CAA within the exterior boundaries of the reservations
- Allows eligible tribes to take on severable elements of the program
- EPA is responsible for implementing a program where tribes choose not to
- TAR highlights regulatory gaps in Indian country
 - SIP requirements/permits vacant
 - No NSR programs

Background – Tribal NSR Rule

The Tribes indicated this rule is a priority because they are:

- Concerned about number of unregulated sources in Indian country.
- Wanting equal opportunity for economic development.
- Interested in building program capacity.
- Concerned with clarification of jurisdiction – to prevent states from issuing permits in Indian country



Benefits of the Tribal NSR Rules for Tribes

- **Filling regulatory gap through:**
 - **Minor NSR**
 - **Nonattainment major NSR****
- **Leveling the economic playing field**
- **Providing a cost-effective and timely permitting mechanism**
- **Protecting Tribal sovereignty from State incursion by clarifying jurisdiction**
- **Ensuring resources are protected through controlled growth**
- **Building tribal capacity**
 - **Supply potential model for Tribal Implementation Plan (TIP) development**
- **Allowing administration of the program by tribes through delegation**

**Prevention of Significant Deterioration(PSD) is currently being implemented by EPA.

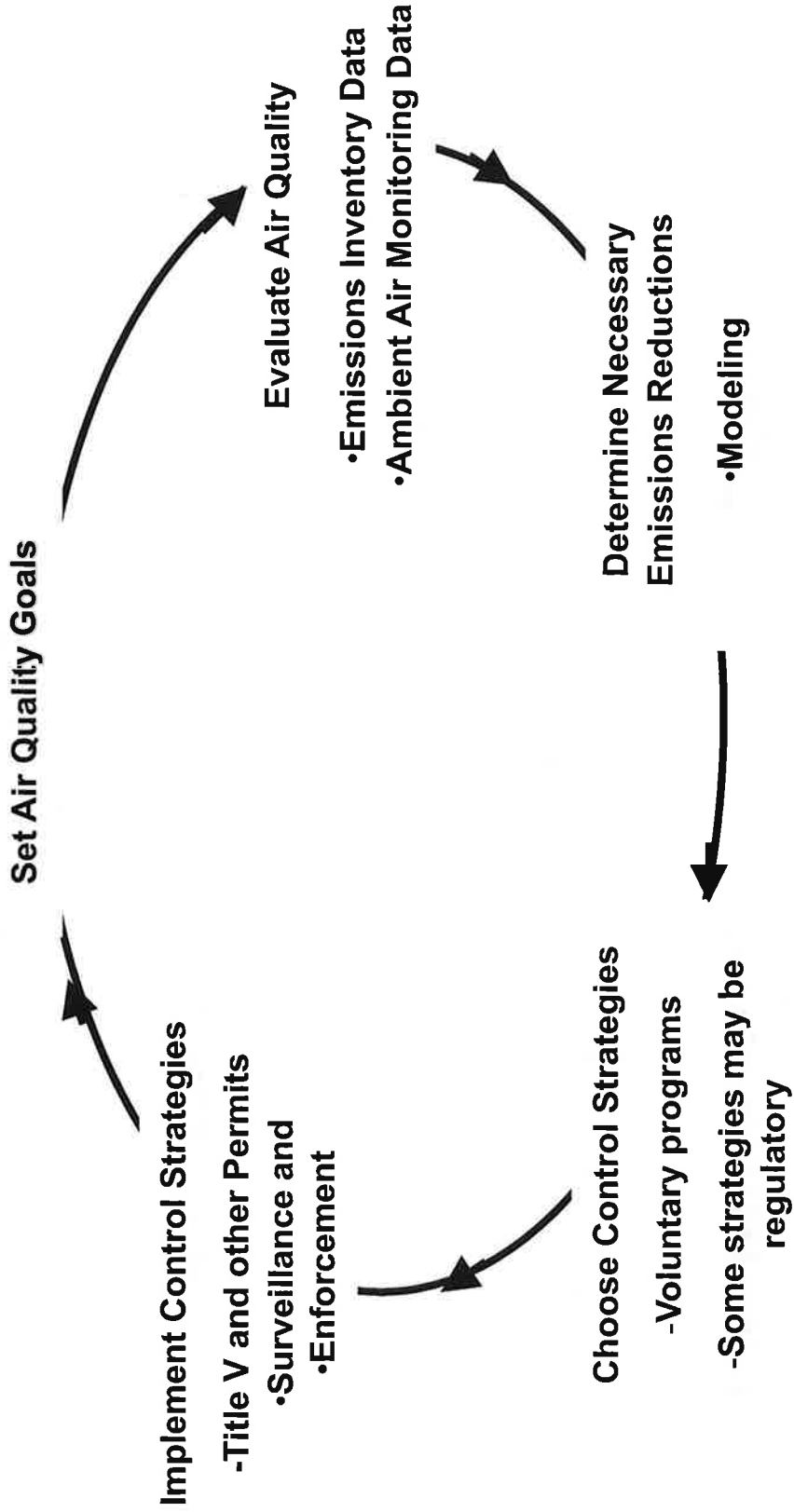


Environmental Benefits of the NSR Rules

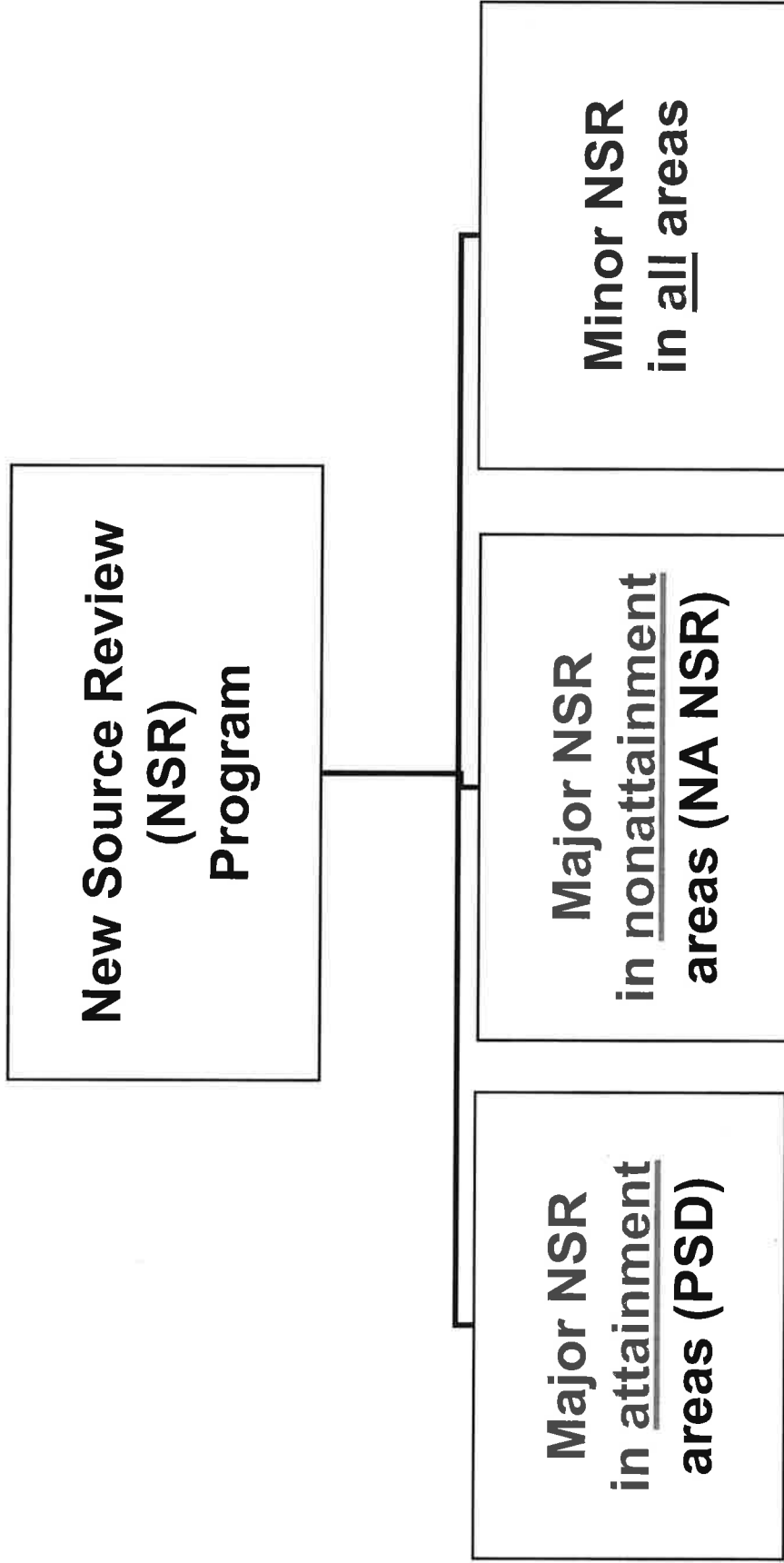
A key tool for

- **Enabling nonattainment areas to reach attainment**
- **Maintaining the National Ambient Air Quality Standards (NAAQS)**
- **Protecting/preserving clean air in national parks and wilderness areas, as well as, other attainment areas**
- **Provides source specific requirements on new or modified sources**
- **Allowing economic growth and improvements/protection of air quality**

Tribal Air Quality Management Process



Components of the NSR Program





The NSR Program Requires

- New or modified sources to get permits prior to construction**
- Sources to install state-of-the-art control technology**
- Sources/agencies to make sure air quality impacts from the source will be acceptable**



PSD Permit Requirements

Main requirements:

- **Install Best Available Control Technology (BACT)**
- **Perform air quality analysis to assess impacts on air quality**
- **Perform additional impacts analysis**
 - **Assess impacts on national parks & wilderness areas**
 - **Assess impacts on soils and vegetation**
 - **Assess other Air Quality Related Values**
- **Allow for opportunities for public involvement**



NonAttainment NSR Permit Requirements

- **Main requirements:**
 - **Install Lowest Achievable Emission Rate (LAER) technologies**
 - **Obtain emission offsets**
 - **Perform alternative sites analysis**
 - **Show statewide facility compliance w/air regulations**
 - **Allow for opportunities for public involvement**



Minor NSR Permit Requirements

CAA is silent on specific requirements

- Minimal requirements found on 40CFR 51.160-51.164

New sources and modifications cannot

- Violate NAAQS or FIP/SIP/TIP control strategies
- Interfere with attainment or maintenance of the

NAAQS

State program requirements vary greatly



Consultation and Outreach History

1990's draft rule was developed by R9 & sent to HQ

2002 Consultation letters sent to tribal leaders

- Tribes agreed to 4 onsite meetings: Menominee Tribe, WI; Mohegan Tribe, CT; Chehalis Tribe, WA; and NAU/ITEP, AZ

2006 Proposal presented

Training:

- 4 webinar trainings for tribes, EPA regional offices, air program managers and tribal organizations (Pechanga/CA, Salt River/AZ, R5 and R10

Comment period was reopened & extended twice at Tribes request

Tribal NSR Workgroup organized to work on implementation issues



Tribal New Source Review Rule

- Proposed in 2002
- Finalized and signed June 10, 2011
- Published in Federal Register July 1, 2011
 - Final rule can be found at

<http://www.epa.gov/fdsys/pkg/FR-2011-07-01/pdf/201-14981.pdf>

Permit Timeline

Permit Application 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 After August 30, 2011	PSD or Nonattainment NSR Apply for permit before construction of modification	Minor NSR Apply for permit before construction of mod.	Minor NSR Apply for permit before construction of mod.	Minor NSR Apply for permit before construction of mod.	Minor NSR	Minor NSR Source may need to apply for permit depending on how existing synthetic minor status was obtained**	PSD Apply for permit before construction	Nonattainment NSR Apply for permit before construction	Minor NSR	Minor NSR Apply for permit before construction
18 months after Effective Date (March 1, 2013)				Register source within first 18 months after 8/30/11 or 90 days after source begins operation						
36 months after Effective Date (Sept. 2, 2014)				Apply for permit 36 months after 8/30/11 or 6 months after g.p. is published in the Federal Register	No permit needed unless modification is proposed				Apply for permit 36 months after 8/30/11 or 6 months after g.p. is published in the Federal Register	



Synthetic Minor Permits

- Two forms need to be completed to obtain a synthetic minor permit
 - Application for New Construction
 - Application for Synthetic Minor Limit
- Both forms are to be submitted to the reviewing authority
- Reviewing authority will make determination
- The forms are available at <http://www.epa.gov/air/turbine/bains.html>
 - Both forms are interim and will be revised soon



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