



Air Pollution Control
40 CFR 49.151 Tribal Minor New Source Review
Synthetic Minor Permit to Construct
Technical Support Document
Proposed Permit No. SMNSR-TAT-000781-2016.001

Thunder Butte Petroleum Services, Inc.
Thunder Butte Petroleum Services Crude Storage and Loading Facility
Fort Berthold Indian Reservation
Ward County, North Dakota

In accordance with the requirements of the Tribal Minor New Source Review (MNSR) Permit Program at 40 CFR part 49, this Federal permit to construct is being issued under authority of the Clean Air Act (CAA). The Region 8 office of the U.S. Environmental Protection Agency (EPA) has prepared this technical support document (TSD) describing the conditions of this MNSR permit for a proposed crude storage and loading facility and presents information that is germane to this permit action.

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I. Project Description

On May 17, 2016, the EPA received from Thunder Butte Petroleum Services, Inc. (TBPS) an application requesting approval to construct and operate a crude oil storage and loading facility within the exterior boundaries of the Fort Berthold Indian Reservation in Ward County, North Dakota. On October 17, 2016, the EPA received supplemental information, and received a complete application package on February 3, 2017.

TBPS plans to construct and operate the following equipment:

- 2 - crude oil storage tanks with 140,000-barrel capacity each
- 4 – truck-to-tank loading stations
- 3 – tank-to-truck loading stations
- 1 – John Zink Vapor Combustion system designed for a minimum of 350 gallons per minute loading and a maximum of 1,050 gallons per minute loading designed to operate at 98% control efficiency.

The storage tanks will act as intermediate storage between the trucks that will deliver the crude oil to the site and the trucks that will transport the crude oil to its final destination.

TBPS has proposed pumping oil into storage tanks via submerged fill piping during truck load out operations and using internal floating roofs on the crude oil storage tanks for control of volatile organic compound (VOC) emissions pursuant to 40 CFR part 60, subpart Kb. TBPS has also proposed using an enclosed vapor collection system and enclosed combustion device with a 98% VOC control efficiency for the control of VOCs displaced during the loading of crude oil into trucks.

The potential VOC emissions from the proposed facility's operations are greater than 250 tons per year (tpy). Therefore, a Prevention of Significant Deterioration (PSD) pre-construction permit would be required before construction begins. However, TBPS has requested enforceable VOC emission limits to create a synthetic minor source to avoid PSD and title V permitting requirements.

The EPA's proposed permit includes a facility-wide rolling 12-month total VOC emission limit of 95.0 tpy, installation and operation of emission control equipment and monitoring, record keeping, and reporting requirements to provide legal and practical enforceability of the VOC emissions limits.

Other NSR regulated pollutants such as CO, NO_x, SO₂, CO₂^e, and PM will be emitted in much smaller amounts, and are below MNSR permit thresholds, and therefore, not subject to MNSR requirements.

The uncontrolled potential emissions for all pollutants are as follows:

| | |
|---------------------|--|
| VOC = | 272.47 tpy (uncontrolled potential, not a limit) |
| NO _x = | 0.42 tpy (uncontrolled potential, not a limit) |
| SO ₂ = | 0.01 tpy (uncontrolled potential, not a limit) |
| CO = | 1.28 tpy (uncontrolled potential, not a limit) |
| PM = | NIL tpy (uncontrolled potential, not a limit) |
| PM ₁₀ = | NIL tpy (uncontrolled potential, not a limit) |
| PM _{2.5} = | NIL tpy (uncontrolled potential, not a limit) |
| CO _{2e} = | 703.58 tpy (uncontrolled potential, not a limit) |

II. Potential Uncontrolled and Proposed Allowable VOC Emissions

Pursuant to 40 CFR 52.21, “potential to emit” is defined as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation, or the effect it would have on emissions, is federally enforceable.

Therefore, to calculate potential uncontrolled emissions in this proposal, the worst possible case for emissions should be considered since there are currently no existing legally and practically enforceable restrictions on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed.

This is generally calculated by assuming that the facility will be producing at its maximum capacity upon start-up and that all the production equipment are functioning at their maximum operating rates at 8,760 hours in a year.

TBPS has calculated potential emissions assuming a maximum facility throughput of 1.76 million barrels (bbls) of crude oil per year and proposed a 70% capture efficiency and a 98% control efficiency of the VOC collection and control system for vapors emitted from tank to truck loading.

A. Crude Oil Storage Tanks and Loading/Unloading

The majority of VOC emissions from the storage tanks occur during the load out (withdrawal) process. Since TBPS is planning to capture and combust the flashed gases from tank to truck loading, the total tank emissions needed to be broken down into flashing gases (to be captured in a closed-vent system and combusted in an enclosed combustor) and standing, working and breathing losses (from interim storage of the crude oil in the tanks).

1. Standing, Working and Breathing Losses

TBPS used the EPA’s TANKS Emission Estimation Software, version 4.09d program to calculate VOC emissions from standing, working and breathing losses from the tanks. Inputs to the program included a Reid Vapor Pressure (RVP) of 11.8, typical for crude oil, and assumed an internal floating roof with a mechanical shoe rim-seal system and welded deck. The program calculated emissions results in tons per year (tpy) based the throughput limitations:

VOC (tpy) Tank TK-2101 (140,000 bbl design size) = **4.44 tpy**

VOC (tpy) Tank TK-2102 (140,000 bbl design size) = **4.44 tpy**

This results in total potential VOC emissions from standing, working and breathing losses of **8.88 tpy**.

2. Flashing Emissions

TBPS estimated the potential flashed gas VOC emissions from truck loading using the methodologies described in AP-42 Fifth Edition – Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources, Section 5.2 Transportation and Marketing of Petroleum Liquids (for loading losses) as follows:

$$L_L = 12.46 \text{ SPM/T} = \mathbf{7.03 \text{ lb}/10^3 \text{ gal}}$$

Where:

L_L = loading loss, pounds per 1,000 gallons of liquid loaded (lb/10³ gal)

S = saturation factor for submerged loading, dedicated normal service – **0.60**
(Table 5.2-1)

P = True vapor pressure of liquid loaded, pounds per square inch absolute (psia) – **6.91 psia**, calculated from the most conservative RVP of **11.8 psia**.

M = molecular weight of vapors, pounds per pound-mole (lb/lb-mole) – **68.20 lb/lb-mole** from speciated emissions profile.

T = temperature of bulk liquid loaded, °R (°F +460) – **501.12 °R**

The total VOC emissions were calculated as follows:

$$\text{VOC (tpy)} = L_L \times C \times (1 \text{ gal}/0.024 \text{ bbl}) \times (1 \text{ ton}/2,000 \text{ lb}) = \mathbf{259.68 \text{ tpy}}$$

Where:

L_L = loading loss, lb/10³ gal of liquid loaded, as calculated above – **7.03 lb/10³ gal**.

C = the maximum total volume of crude oil estimated to be loaded per year – **1.76 million bbls/year**

This results in potential uncontrolled VOC emissions from load out of crude oil from tanker trucks to the storage tanks and off-loading of the crude oil storage tanks into trucks of **259.68 tpy**.

The total proposed allowable VOC emissions were calculated as follows:

$$\text{VOC (tpy)} = \text{uncVOC} \times \{(1-(\text{cap}/100)) + [(1-(\text{cap}/100)) \times (1-(\text{eff}/100))]\}$$

uncVOC = uncontrolled VOC emissions as calculated above – **259.68 tpy**

eff = overall VOC control efficiency of the enclosed combustor – **98 %**

cap = assumed overall VOC capture efficiency of loading losses – **70%**

This results in allowable VOC emissions from controlled off-loading of the crude oil storage tanks into trucks of **77.90 tpy**.

TBPS is estimating 96 hours per year of potential tank degassing for maintenance activities. The VOC emissions from this activity are calculated to be 0.44 tpy.

In addition, TBPS is estimating two roof landings at the facility per year. The total emissions from these maintenance activities are calculated to be 3.47 tpy of VOC. They are calculated American Petroleum Institute’s Manual of Petroleum Measurement Standards Chapter 19.1.

B. Total Facility-Wide VOC Emissions

Table 1 summarizes the total facility-wide potential VOC Emissions in comparison to the proposed controlled, or allowable VOC Emissions. The facility-wide PTE of other regulated pollutants, for which TBPS is not requesting emission limitations, are estimated at: 0.42 tpy NO_x; 0.01 tpy SO₂; 1.28 tpy CO; 703.58 tpy CO_{2e}; and 5.78 tpy total HAP.

Table 1 – Summary of Potential and Proposed Allowable VOC Emissions

| Emission Unit Description | Potential Emissions (tpy) | Proposed Allowable Emissions (tpy) |
|---|----------------------------------|--|
| Crude Oil Storage Tank TK-2101 (140,000 bbl). | 4.44 | 4.44 |
| Crude Oil Storage Tank TK-2102 (140,000 bbl). | 4.44 | 4.44 |
| 4 Truck to tank loading stations. | 259.68 | Negligible Fugitive Emissions - Submerged Fill Piping |
| 3 tank to truck loading stations. | | 70% Routed to 98% Control Efficiency Enclosed Combustion Device 77.90 |
| Enclosed Combustion Device. | - | 4.26 |
| Tank Degassing. | 0.44 | 0.44 |
| Landing Losses. | 3.47 | 3.47 |
| Total | 272.47 | 95.0 |

III. Particulate Emissions from Construction Activities

In past permitting actions, EPA has received public comments concerning road dust associated with oil and gas production on the Fort Berthold Indian Reservation. In light of these past comments, this permit contains requirements for minimizing fugitive dust through work practices and operational requirements. The permit requires that TBPS take all reasonable precautions to prevent fugitive dust emissions at the facility and construct, maintain, and operate the facility in a manner to minimize fugitive dust emissions. Reasonable precautions include, but are not limited to the following:

1. Use, where possible, of water or chemicals for control of dust during construction and operations, grading of roads, or clearing of land;
2. Application of asphalt, oil (but not used oil), water, or other suitable chemicals on unpaved roads, materials stockpiles, and other surfaces, located at the facility, that can create airborne dust;

3. The prompt removal from paved streets, located at the facility, of earth or other material that does or may become airborne; or
4. Restricting vehicle speeds at the facility.

IV. Applicability – Federal Minor New Source Review in Indian Country

Potential air emissions indicate that the proposed facility would exceed the PSD thresholds for VOCs, thus, PSD permitting would be required. However, the regulations at 40 CFR 49.151-Tribal Minor New Source Review provide the EPA with the authority to establish enforceable emission and operational limits in MNSR permits to create a synthetic minor source.

V. Synthetic Minor Permitting

Under 40 CFR 49.152, PTE is defined as the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable as a practical matter. Secondary emissions, as defined at §52.21(b)(18), do not count in determining the PTE of a source.

Under 40 CFR 49.152, “Enforceable as a practical matter” means that an emission limitation or other standard is both legally and practically enforceable as follows:

- (1) An emission limitation or other standard is legally enforceable if the reviewing authority has the right to enforce it.
- (2) Practical enforceability for an emission limitation or for other standards (design standards, equipment standards, work practices, operational standards, and pollution prevention techniques) in a permit for a source is achieved if the permit's provisions specify:
 - (i) A limitation or standard and the emissions units or activities at the source subject to the limitation or standard;
 - (ii) The time period for the limitation or standard (e.g., hourly, daily, monthly, and/or annual limits such as rolling annual limits); and
 - (iii) The method to determine compliance, including appropriate monitoring, recordkeeping, reporting, and testing.

A. National EPA Guidance on PTE

National EPA guidance on PTE states that air pollution control equipment can be credited as restricting PTE only if federally enforceable requirements are in place requiring the use of such air pollution control equipment. The primary applicable guidance for establishing PTE limits is a memo titled, “Guidance on Limiting Potential to Emit in New Source Permitting,” (NSR) dated June 13, 1989, to the EPA Regional Offices, from Terrell F. Hunt, Associate Enforcement Counsel, Air Enforcement Division, Office of Enforcement and Compliance Monitoring (OECA), and from John Seitz, Director, Stationary Source Compliance Division,

Office of Air Quality Planning & Standards (OAQPS) (available online at: https://www3.epa.gov/ttn/atw/pte/june13_89.pdf). The 1989 guidance identifies the following as essential components of a restriction on PTE:

1. An emission limitation, in terms of mass of emissions allowed per unit of time; and
2. A production or operational limitation (which can include requirements for the use of in-place air pollution control equipment).

The 1989 guidance explains that restrictions on PTE must be enforceable as a practical matter. This means there must also be adequate monitoring, reporting and recordkeeping requirements. The 1989 memo also explains that an emission limitation alone, expressed as a long-term rolling average (e.g., a rolling 12-month total) should not be relied upon as the basis for a PTE limit, with the exception of sources that are VOC surface coating operations, and where no add-on emission control equipment is employed at those sources, and where operating and production parameters are not readily limited due to the wide variety of coatings and products and due to the unpredictable nature of the operation.

A subsequent memo to the EPA Regional Offices, dated January 25, 1995, from Kathie Stein, Director, Air Enforcement Division, OECA, titled “Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and Section 112 Rules and General Permits,” (available online at: <http://www.epa.gov/region07/air/title5/t5memos/potoem>) explains that the averaging time for the emission limitation must readily allow for determination of compliance: “EPA policy expresses a preference toward short term limits, generally daily but not to exceed one month.”

Independently enforceable applicable requirements, such as New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) are considered enforceable to the extent that the source is in compliance with the standard. In addition, reductions in non-targeted pollutants resulting from compliance with an independently enforceable applicable requirement may be counted as restrictions on PTE, provided the emission reduction of the non-targeted pollutant is enforceable as a practical matter.

B. Components of PTE Restrictions

The 1989 guidance identifies six (6) components of PTE restrictions:

1. Emission Limit Requirements: Can be a pollutant specific facility-wide emission limit of a unit specific emission limit;
2. Work Practice and Operational Requirements, such as:
 - a. A requirement to equip specific emission unit controls, and specifying the emission reduction efficiency;
 - b. A fuel restriction requirement; or
 - c. Operating parameter restriction to ensure proper control equipment operations (temperature, pressure, flow rates, etc.);

3. Stack Testing Requirements (reference method);
4. Monitoring Requirements;
5. Record Keeping Requirements; and
6. Reporting Requirements.

The restrictions in the proposed permit ensure that the facility will meet the relevant regulations and guidance.

Specifically, in response to TBPS's request, the EPA proposes practically and legally enforceable conditions for the TBPS Crude Storage and Loading Facility for the following emission sources at the facility:

- Crude Oil Storage Tanks;
- Tank-to-Truck Loading Stations;
- Truck-to-Tank Loading Stations; and
- Enclosed Combustion Device.

C. Emission and Operational Limits

The facility-wide annual VOC emission cap must be sufficiently low to ensure that the net emission increase of the new facility is below the PSD major source threshold(s), and to account for margin of error in emission estimations. Region 8 has typically set this margin at 5 to 8 % below the applicability threshold. For this project, Region 8 proposes facility-wide annual emission limits of 5% below the major source thresholds for Title V and HAP pollutants. For this project, the Region proposes a facility-wide annual emission cap of **95.0 tpy VOC**. This emission cap is 5% below the Title V major source threshold and, therefore, is consistent with the margin set by the Region in the past where applicants seek to maintain minor source status with respect to the PSD and Title V permit programs.

TBPS requested that the enforceable VOC emission limit account for the actual emission reductions that would occur from using an enclosed combustion device at the rail loading stations, internal floating roofs on the crude oil storage tanks, and submerged fill piping and arms at the tank-to-truck loading stations.

The proposed permit specifies the additional requirements necessary to establish enforceability of the requested VOC emission limits.

D. Work Practice and Operational Requirements (*Specific Control Device Requirements*)

The EPA determined that operational and work practice requirements are necessary for the practical enforceability of the facility-wide VOC emission limit. The EPA proposes work practice and operational requirements that include, but are not limited to:

1. The use of an enclosed vapor recovery system and enclosed combustor with VOC emission control efficiency at least as high as 98%;

2. The use of a truck load out piping system designed for submerged off-loading of crude oil from trucks to the storage tanks at the facility; and
3. The use of crude oil storage tanks with internal floating roofs and mechanical shoe rim seal systems.

E. Monitoring Requirements [40 CFR 49.155(a)(3)]

The EPA proposes to require that the applicant directly measure, or calculate using approved models, various parameters (i.e., product throughput, enclosed combustor flame presence/temperature, etc.) related to the proper operation of emissions units and required control devices to assure compliance with the proposed emissions and work practice and operational limitations.

The applicant shall calculate monthly and rolling 12-month facility-wide actual emissions of VOC. The calculations shall include emissions from all controlled and uncontrolled emitting units at the facility and shall be made using various required assumptions or emission factors, or results of required measurements or testing.

F. Recordkeeping and Reporting Requirements [40 CFR 49.155(a)(4)(i) and (a)(5)]

The EPA proposes that the applicant keep extensive records to be made available upon EPA request, in lieu of voluminous reporting requirements. The records to be kept include, but are not limited to, all required measurements, testing, monitoring and calculations, as well as any manufacturer specifications and guarantees, deviations from permit conditions and corrective actions taken and any determinations that vapor recovery is not feasible.

The EPA proposes that the applicant submit a report of rolling 12-month VOC emissions each year covering the period for the previous calendar year. The applicant shall also promptly report any deviations or exceedances of emission or operational limits and a description of any corrective actions or preventative measures taken. Additionally, a report shall be submitted for any required performance test.

G. Records Retention [40 CFR 49.155(a)(4)(ii)]

All required records shall be retained for at least 5 years from the date the record was created.

VI. Air Quality Review

A. Regulatory Requirements

The MNSR Regulations at 40 CFR 49.159(d) require that an Air Quality Impact Assessment (AQIA) modeling analysis be performed if there is reason to be concerned that new construction would cause or contribute to a National Ambient Air Quality Standard (NAAQS) or PSD increment violation. If the AQIA reveals that the proposed construction could cause or contribute to a NAAQS or PSD increment violation, such impacts must be addressed before a pre-construction permit can be issued.

Based on the available data, discussed below, there do not appear to be any significant air quality concerns within the exterior boundaries of the Fort Berthold Indian Reservation. Additionally, operating emissions from the proposed facility will be well controlled at all times. Therefore, the EPA has determined that an AQIA modeling analysis is not required for the proposed permit.

The following air quality review of the proposed project is in accordance with the instruction in the EPA's Form NEW which can be found at: <https://www.epa.gov/caa-permitting/tribal-nsr-permits-region-8#Applications>.

B. Review of Proposed Project

1. Existing Air Quality and Monitoring Stations

There are no designated NAAQS non-attainment areas in the regional vicinity of the proposed project.

The state of North Dakota operates seven (7) ambient monitoring stations, including three (3) stations in western North Dakota near Dunn, Theodore Roosevelt National Park (TRNP), and Lostwood National Wildlife Refuge (LNWR) that are designed to characterize regional background pollutant levels.¹

2. Topography

According to information provided in the synthetic MNSR application for the proposed facility, the proposed project area is in relatively flat to gently rolling open terrain. There is little industrial development within a few miles of the site, with the exception of an occasional oil well production facility.

3. Pollutants of Concern

a. Ozone:

The NAAQS for ozone is 70 parts per billion (ppb), and compliance with the NAAQS is determined by comparison to a "design value" that is calculated as the three-year average of the fourth highest daily eight-hour ozone concentration at each site. Based on the most recent monitoring data, the 2016 ozone design values at the Williston, Dunn, TRNP and LNWR sites are 56, 58, 57 and 59 ppb, respectively.² Thus, current air quality for western North Dakota is substantially lower than the ozone NAAQS.

The primary air pollutant that would be emitted from the proposed facility is VOC which can contribute to ozone formation. Generally, a photochemical

¹Annual Report, North Dakota Ambient Air Quality Monitoring Program Network Plan with Data Summary, 2016, available online at: http://www.ndhealth.gov/AQ/ambient/Annual%20Reports/ARNP_15-16.pdf

²The Air Quality System (AQS) – the EPA's Repository of Air Quality Data, available online at: <http://www.epa.gov/ttn/airs/airsaqs/>.

modeling analysis is needed to determine if VOC contributes to ozone formation. However, in rural areas ozone is typically insensitive to changes in VOC emissions. Additionally, because ozone is generally a regional air pollutant, smaller projects such as the proposed project subject to this permit are not expected to significantly affect NAAQS attainment for ozone. Therefore, VOC emissions are not expected to cause or contribute to exceedances of the ozone NAAQS as a result of the proposed project.

While NO_x emissions can also contribute to ozone formation, emissions of less than a few hundred tons per year typically do not have a detectable impact on ambient ozone levels. For example, a photochemical modeling study of a source in Colorado with 400 tpy NO_x and 200 tpy VOC emissions showed increases in ozone of less than 1 ppb on most days.³ Because ambient monitoring data show that ozone levels in North Dakota are substantially below the ozone NAAQS, and because NO_x emissions from the project are less than 40 tpy, photochemical model simulations would not be expected to indicate exceedances of the ozone NAAQS.

b. NO_x:

NO_x would be emitted in small amounts due to combustion units at the proposed facility. For NO₂, the proposed project would include two (2) emission sources, an emergency generator engine meeting EPA “Tier 2” NSPS for NO_x and other criteria pollutants, and the enclosed combustion device for the rail loading stations. The increase in allowable (controlled) NO_x emissions from the proposed project is estimated at 0.42 tpy.

The greatest potential air quality concern for projects involving combustion of petroleum-related gases is with respect to the EPA’s 1-hour NAAQS for NO₂ promulgated in June 2010. Compliance with the NAAQS for this pollutant is determined by calculating a “design value” which is a statistical average of data collected at the monitor over a three year period.

Data reported to AQS for the period of 2014 through 2016 show a pattern of generally low concentrations. The design value for the 1-hour NO₂ NAAQS is defined as the eighth highest value in each year, averaged over a three-year period. 1-hour NO₂ design values for the Dunn, TRNP and LNWR sites are 12, 11 and 12 ppb, respectively, compared to the standard of 100 ppb.

Given the above discussion of existing monitored concentrations in the general project area, which demonstrates that there is large margin of compliance with the 1-hour NO₂ NAAQS, and the proposed allowable NO₂ emissions of less than 40 tpy, it is expected that combustion sources at the proposed project site are unlikely to cause or contribute to non-attainment of the 1-hour NO₂ NAAQS.

³ Morris, R.E, Sakulyanontvittaya, T., McNally, D., and Loomis, C., Final Report: EFFECT OF THE HIGH PLAINS ENERGY STATION ON THE FINAL 2010 OZONE ATTAINMENT DEMONSTRATION MODELING FOR THE DENVER 8-HOUR OZONE SIP, March 9, 2009, submitted to High Plains Energy Associates, LLC 400 Chesterfield Center, Suite 110, St. Louis, Missouri 63017

VII. Tribal Consultations and Communications

EPA Region 8 offers the Tribal government leaders an opportunity to consult on each proposed MNSR permit action. EPA Region 8 projected that consultation on this project, if requested, could take approximately 30 days total. The EPA sent a letter offering the opportunity to consult on this permit action on February 3, 2017, to the Chairman of the Mandan, Hidatsa, and Arikara Nation (MHA Nation) that asked for a response within 10 days of receipt of the offer letter. On February 24, 2017, the EPA received a letter from Chairman Mark Fox to Assistant Regional Administrator Martin Hestmark that stated MHA Nation did not believe it was necessary to consult on the proposed TBPS facility.

All minor source applications (synthetic minor, modification to an existing facility, new true minor or general permit) are submitted to both EPA Region 8 and the Tribal Environmental Director per the application instructions (see <https://www.epa.gov/caa-permitting/tribal-nsr-permits-region-8>). The Tribal Environmental Office has 10 business days to respond to the EPA with questions and comments on the application. In the event an Air Quality Impact Assessment (AQIA) is triggered, a copy of that document is emailed to the tribe within 5 business days of receipt by Region 8.

Additionally, the Tribe's Environmental Director is notified of the public comment period for the draft permit and provided copies of the notice of public comment opportunity to post in various locations on the Reservation that they deem fit. The Tribe is also notified of the issuance of the final permit.

Tribal Environmental Contact:

Edmund Baker, Environmental Director
MHA Nation
404 Frontage Road
New Town, North Dakota 58763-9404

VIII. Environmental Justice

On February 11, 1994, the President issued Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." The Executive Order calls on each federal agency to make environmental justice a part of its mission by "identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations."

The EPA defines "Environmental Justice" as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and polices. The EPA's goal with respect to Environmental Justice in permitting is to enable overburdened communities to have full and meaningful access to the permitting process and to develop permits that address environmental justice issues to the greatest extent practicable under existing environmental laws. *Overburdened* is used to describe the minority, low-income, tribal and indigenous populations or communities in the United States that potentially experience disproportionate environmental harms and risks as a result of greater vulnerability to environmental hazards.

This discussion describes our efforts to identify environmental justice communities and assess potential effects in connection with issuing this permit in Ward County, North Dakota, on Indian country lands within the Fort Berthold Indian Reservation.

A. Region 8 Air Program Determination

We conclude that issuance of the aforementioned permit is not expected to have disproportionately high or adverse human health effects on overburdened communities in the vicinity of the facility.

B. Environmental Impacts to Potentially Overburdened Communities

The permit contains a provision stating, “*The permitted source shall not cause or contribute to a National Ambient Air Quality Standard violation or a PSD increment violation.*”

Noncompliance with this permit provision is a violation of the permit and is grounds for enforcement action and for permit termination or revocation. As a result, we conclude that issuance of the aforementioned permit will not have disproportionately high or adverse human health effects on communities in the vicinity of the Fort Berthold Indian Reservation.

C. Tribal Consultation and Enhanced Public Participation

Given the presence of potentially overburdened communities in the vicinity of the facility, we are providing an enhanced public participation process for this permit.

1. Interested parties can subscribe to an EPA email list that notifies them of public comment opportunities on the Fort Berthold Indian Reservation for proposed air pollution control permits via email at <https://www.epa.gov/caa-permitting/caa-permit-public-comment-opportunities-region-8>.
2. All minor source applications (synthetic minor, modification to an existing facility, new true minor or general permit) are submitted to both the Tribe and us per the application instructions (see <https://www.epa.gov/caa-permitting/tribal-nsr-permits-region-8>).
3. The Tribe has 10 business days to respond to us with questions and comments on the application.
4. In the event an AQIA is triggered, we email a copy of that document to the Tribe within 5 business days from the date we receive it.
5. We notify the Tribe of the public comment period for the proposed permit and provide copies of the notice of public comment opportunity to post in various locations of their choosing on the Reservation. We also notify the Tribe of the issuance of the final permit.
6. We offer the tribal government leaders an opportunity to consult on each proposed permit action. We ask the tribal government leaders to respond to us within 10 days. We offered an opportunity to consult on this permit action to the Chairman of the MHA Nation via letter dated February 3, 2017.

IX. Public Notice & Comment, Hearing and Appeals

A. Public Notice

In accordance with §49.157, the EPA Region 8 Air Program (Air Program) must provide public notice and a 30 day public comment period to ensure that the affected community and the general public have reasonable access to the application and draft permit information. The application, the draft permit, this technical support document, and all supporting materials for the draft permit are available at:

MHA Nation
Environmental Division Office
404 Frontage Road
New Town, North Dakota 58763-9404

and

US EPA Region 8
Air Program Office
1595 Wynkoop Street (8P-AR)
Denver, Colorado 80202-1129

All documents are available for review at the U.S. EPA Region 8 office Monday through Friday from 8:00 a.m. to 4:00 p.m. (excluding Federal holidays). Additionally, the draft permit and technical support document can be reviewed on the Air Program's website at <https://www.epa.gov/caa-permitting/caa-permit-public-comment-opportunities-region-8>.

Any person may submit written comments on the draft permit and may request a public hearing during the public comment period. These comments must raise any reasonably ascertainable issue with supporting arguments by the close of the public comment period (including any public hearing).

B. Public Hearing

A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised at the hearing. The Air Program will hold a hearing whenever there is, on the basis of requests, a significant degree of public interest in a draft permit. The Air Program may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

C. Final Permit Action

In accordance with §49.159, a final permit becomes effective 30 days after permit issuance, unless: (1) a later effective date is specified in the permit; or (2) appeal of the final permit is made as detailed in the next section; or (3) the Air Program may make the permit effective immediately upon issuance if no comments resulted in a change in the draft permit or a denial of the permit. The Air Program will send notice of the final permit action to any individual who commented on the draft permit during the public comment period, as well as to any persons

subscribed to the Air Program's public email list for the Fort Berthold Indian Reservation. In addition, the source will be added to a list of final minor NSR permit actions which is posted on the Air Program's website at <https://www.epa.gov/caa-permitting/caa-permits-issued-epa-region-8>. Anyone may request a copy of the final minor NSR permit at any time by contacting the Region 8 Tribal Air Permit Program at (800) 227-8917 or sending an email to r8airpermitting@epa.gov.

D. Appeals to the Environmental Appeals Board (EAB)

In accordance with §49.159, within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Board to review any condition of the permit decision. The 30-day period within which a person may request review under this section begins when the Region has fulfilled the notice requirements for the final permit decision. Motions to reconsider a final order by the EAB must be filed within 10 days after service of the final order. A petition to the EAB is, under section 307(b) of the Act, a prerequisite to seeking judicial review of the final agency action. For purposes of judicial review, final agency action occurs when a final permit is issued or denied by the Air Program and agency review procedures are exhausted.