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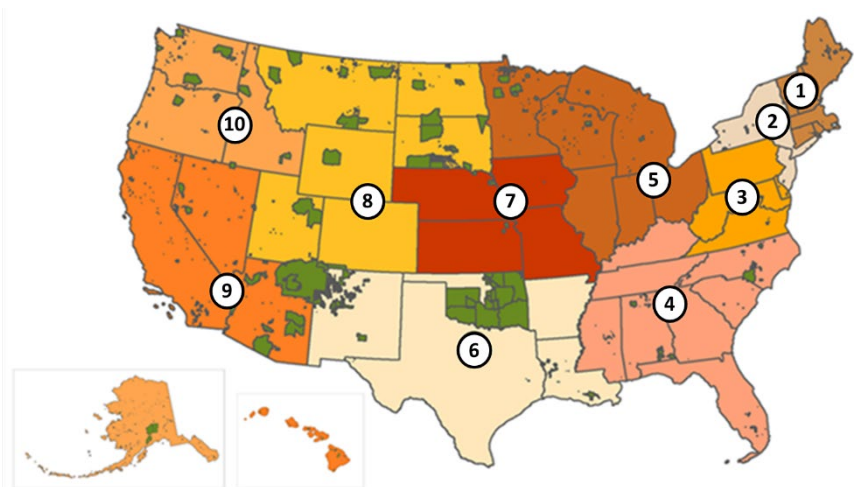
OFFICE OF INSPECTOR GENERAL

## *Improving air quality*

# **EPA's Processing Times for New Source Air Permits in Indian Country Have Improved, but Many Still Exceed Regulatory Time Frames**

Report No. 20-P-0146

April 22, 2020



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## Abbreviations

C.F.R.	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
ETEP	EPA–Tribal Environmental Plan
NAAQS	National Ambient Air Quality Standards
NSR	New Source Review
OAQPS	Office of Air Quality Planning and Standards
OAR	Office of Air and Radiation
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
PSD	Prevention of Significant Deterioration

**Cover Image:** Map of the ten EPA regions showing Indian Country in green.  
(OIG graphic made with data from the U.S. Census Bureau)

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# At a Glance

## Why We Did This Project

We conducted this audit to determine the U.S. Environmental Protection Agency's progress in implementing a Clean Air Act preconstruction permitting program, called New Source Review, for new sources of emissions and modifications to existing sources of emissions in Indian Country.

In 2011, the EPA issued regulations for developing permits that contain emission limitations for new and modified facilities in Indian Country, referred to as the tribal NSR rule. These regulations provide authority for the EPA to issue permits for smaller sources of emissions, called minor sources, in Indian Country where tribes do not conduct such permitting themselves. The tribal NSR rule set regulatory time frames that range from 90 to 365 days for processing minor-source permits, depending on the permit type. We assessed whether the EPA had met these time frames for permit applications received from 2011 to August–October 2018.

### This report addresses the following:

- *Improving air quality.*

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## *EPA's Processing Times for New Source Air Permits in Indian Country Have Improved, but Many Still Exceed Regulatory Time Frames*

### What We Found

Of the tribal minor-source-NSR permits that the EPA issued between 2011 and August to October 2018, 62 percent exceeded the applicable regulatory time frame. In addition, more than half of the permits still in process exceeded the applicable time frame. However, since 2011, the average number of days it has taken the EPA to issue two types of minor-source permits has declined. Further, the EPA processed permits for the construction of new facilities faster than it processed permits for existing facilities. Processing permits for new facility construction is more critical since delays could have negative economic impacts on industry and tribal communities.

**Delays in processing tribal-NSR permits could impact construction projects and increase the risk that existing facilities awaiting a permit could be emitting more pollution than would be allowed if they were operating under an approved permit.**

The main causes of permitting delays included time-consuming back-and-forth communication between the applicant and the EPA during the application process, as well as competing and limited resources. In April 2018, staff and managers from EPA headquarters and regions met to identify ways to make the NSR permitting process more efficient, but they have not implemented all the recommendations from that meeting. The EPA began tracking processing times in the summer of 2018.

In addition, not all EPA regions were accurately documenting the date that applications were deemed complete, which is the basis for computing processing time frames. Without accurate application completion dates, the Agency cannot accurately assess the timeliness of permitting actions. We also found that the EPA does not have a systematic approach to identify non-filers, which are facilities on tribal lands that need an NSR permit but have not applied for one.

### Recommendations and Planned Agency Corrective Actions

We recommend that the EPA (1) establish a permit tracking system that is accessible to both applicants and the EPA, (2) develop guidance for the EPA regions on how to properly determine the date an application is considered to be complete for tracking purposes, (3) develop a strategy to periodically coordinate with tribes to identify potential non-filers, and (4) develop a strategy to conduct outreach to industry to educate facilities on their permitting responsibilities. The Agency agreed with our recommendations and provided acceptable corrective actions and completion dates.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

April 22, 2020

**MEMORANDUM**

**SUBJECT:** EPA's Processing Times for New Source Air Permits in Indian Country Have Improved, but Many Still Exceed Regulatory Time Frames  
Report No. 20-P-0146

**FROM:** Sean W. O'Donnell *Sean W O'Donnell*

**TO:** Ann Idsal, Principal Deputy Assistant Administrator  
Office of Air and Radiation

This is our report on the subject audit conducted by the Office of Inspector General of the U.S. Environmental Protection Agency. The project number for this audit was OA&E-FY18-0267. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends.

The Office of Air and Radiation has primary responsibility for the subjects discussed in this report.

In accordance with EPA Manual 2750, your Office provided acceptable corrective actions and milestone dates in response to OIG recommendations. All recommendations are resolved and no final response to this report is required. However, if you submit a response, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public. If your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at [www.epa.gov/oig](http://www.epa.gov/oig).

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# Chapter 1

## Introduction

### Purpose

The Office of Inspector General for the U.S. Environmental Protection Agency conducted this audit to determine the EPA's progress in implementing a Clean Air Act preconstruction permitting program called New Source Review for new sources of emissions and modifications to existing sources of emissions in Indian Country. Specifically, we sought to determine:

1. The number of NSR permit applications that have been received and processed.
2. The number of NSR applications that are pending approval and reasons for any delays.
3. The procedures or systems in place for identifying sources that are potentially subject to NSR permit requirements but have not submitted a permit application.

### Background

NSR is a preconstruction air permitting program under the Clean Air Act that requires owners and operators of industrial facilities to install modern pollution control equipment when the facilities are built or when making a change to existing facilities that significantly increases emissions, as defined by the applicable regulations. The program requires the owner or operator to obtain a permit from the applicable permitting authority before construction begins. The purpose of the NSR program is to protect public health and the environment by ensuring that air quality:

- Does not worsen where the air is currently unhealthy to breathe, that is, in nonattainment areas, which are areas not in attainment with the National Ambient Air Quality Standards. The NAAQS are health-based standards that the Clean Air Act requires the EPA to establish for pollutants that are common in outdoor air, that are considered harmful to public health and the environment, and that come from numerous and diverse sources.
- Is not significantly degraded where the air is currently clean, that is, in attainment areas, which are areas that are in attainment with the NAAQS.

As shown in Figure 1, the EPA administers NSR through three different types of permits, each with a different set of requirements depending on whether the

facility is a major or minor source of air pollution and is located or locating in an area that is in attainment or nonattainment with the NAAQS. A major source is a facility that has the potential to emit regulated pollutants equal to or above certain emission thresholds.<sup>1</sup> A minor source is a facility that emits pollutants above a certain level but below the major source thresholds.<sup>2</sup>

**Figure 1: Types of permits issued under the NSR program**

The NSR program is the umbrella program under which the following permits fall.		
<p><b><i>Prevention-of-significant-deterioration, or PSD, permits.</i></b></p> <p>These permits are issued for the construction of a new major source or a major modification to an existing source in areas that are in attainment with the NAAQS.</p>	<p><b><i>Nonattainment-NSR permits.</i></b></p> <p>These permits are issued for the construction of a new major source or a major modification to an existing source in an area that is not in attainment with one or more of the NAAQS.</p>	<p><b><i>Minor-source-NSR permits.</i></b></p> <p>These permits are issued for the construction of a new minor source or minor modification to an existing source, both in areas that are in attainment or nonattainment with the</p>

Source: OIG analysis.

The pollutants regulated by NSR include those that are covered by the NAAQS. Table 1 lists the NAAQS pollutants and their impact

**Table 1: Health impacts of NAAQS pollutants**

Pollutant	Health impacts
Ozone	Exposure can cause coughing or a sore or scratchy throat; inflame and damage the airways; and aggravate lung diseases such as asthma, emphysema, and chronic bronchitis.
Particulate Matter	Exposure is linked to a variety of problems, including decreased lung function, increased respiratory problems, and premature death in people with heart and lung disease.
Carbon Monoxide	Exposure to very high levels can cause dizziness, confusion, unconsciousness, and death. Short-term exposure to elevated levels may result in reduced oxygen to the heart accompanied by chest pain.
Sulfur Dioxide	Short-term exposure can harm the respiratory system and make breathing difficult.
Lead	Exposure can adversely affect the nervous system, kidney function, immune system, reproductive and developmental systems, the cardiovascular system, and the oxygen-carrying capacity of the blood. It can also contribute to behavioral problems, learning deficits, and lowered IQ in infants and young children.
Nitrogen Dioxide	Short periods of exposure can cause irritation of airways in the respiratory system and aggravate respiratory diseases, particularly asthma. Longer exposures can contribute to the development of asthma and potentially increase susceptibility to respiratory infections.

Source: The EPA.

<sup>1</sup> For major sources in nonattainment areas, the major source threshold is generally 100 tons per year of a regulated pollutant but can be lower for areas with severe pollution problems. For major sources in attainment areas, the threshold is 100 tons per year of a regulated pollutant for facilities within 28 specific industry classes and 250 tons per year of a regulated pollutant for all other facilities.

<sup>2</sup> Under the 2011 tribal minor-source NSR rule, a minor source is a source, not including the exempt emissions units and activities listed in 40 C.F.R. § 49.153(c), that has the potential to emit regulated NSR pollutants in amounts that are less than the major source thresholds in 40 C.F.R. § 49.167 or § 52.21, as applicable, but equal to or greater than the minor-source NSR thresholds in 40 C.F.R. § 49.153.

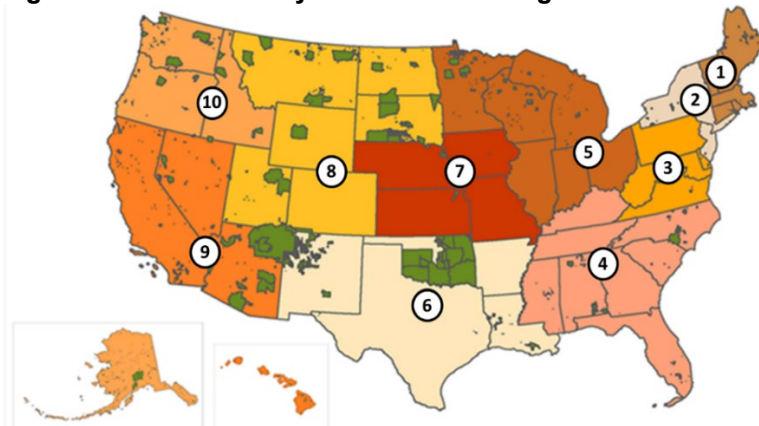


## 2011 Tribal NSR Rules

In 2011, the EPA issued two rules establishing a federal program for issuing nonattainment-NSR permits and minor-source-NSR permits in Indian Country.<sup>3</sup> Under these rules, a source owner or operator must 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 the rules. One of the goals of the rules was to develop a minor-source permitting program that is comparable to those implemented by the states. Such a program would provide industries in Indian Country the same permitting opportunities as industries have in the states. Prior to these rules, the EPA had requirements in place just for PSD permits in Indian Country.

Tribes can implement the NSR permitting requirements on their lands if they have an EPA-approved program to do so. The EPA is responsible for issuing NSR permits in Indian Country where an approved tribal program does not exist, which includes most of Indian Country. As of November 2018, when we conducted this assessment, out of 573 federally-recognized tribes, only two had authority to issue NSR permits for minor sources. The EPA was responsible for all other permitting in Indian Country. Figure 2 shows the locations of Indian Country within the ten EPA regions.

**Figure 2: Indian Country within the EPA regions**



Source: OIG map developed with data from the U.S. Census Bureau.

Note: The numbers represent the ten EPA regions. Green areas represent Indian Country. This map provides a basic understanding of the location of Indian Country in the different EPA regions. It is not intended as a legal representation.

<sup>3</sup> Indian Country includes but is not limited to tribal reservation lands. Specifically, Indian Country means (1) all land within limits of any Indian reservation under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. 18 U.S.C. § 1151; 40 C.F.R. § 171.3. The U.S. Court of Appeals for the District of Columbia, in *Oklahoma Department of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014), issued a decision preventing the EPA from implementing the tribal NSR rule for nonreservation areas of Indian Country until a tribe, or the EPA on behalf of a tribe, demonstrates tribal authority over those areas.

## Tribal Minor-Source NSR Rule

The tribal minor-source NSR rule applies to 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. It also applies to minor modifications at existing major sources. The rule established several types of permits for minor sources, described in Figure 3.

**Figure 3: Types of tribal NSR minor-source permits**

<p><b>Synthetic-minor permits</b></p>	<p>Sources that would otherwise be major sources based on their potential to emit can voluntarily take enforceable emission limitations so that their potential to emit is less than the major source threshold. Under the tribal minor source NSR rule, synthetic-minor permits can be issued for both regulated NSR pollutants and hazardous air pollutants.<sup>a</sup> The rule allowed facilities built before August 30, 2011, to apply for synthetic-minor permits. In general, these existing facilities had to apply for a permit by September 4, 2012.<sup>b</sup></p>
<p><b>Site-specific permits</b></p>	<p>Site-specific permits include a case-by-case control technology review and, at the discretion of the region, an Air Quality Impacts Analysis (air dispersion modeling) to assess air quality impacts from air pollutant emissions from the facility. These types of permits can apply to new or modified minor sources and to minor modifications at a major source.</p>
<p><b>General permits</b></p>	<p>General permits can be applied to many similar equipment types or facilities. The purpose of a general permit is to simplify the permit issuance process for facilities that have similar emissions units and emissions and would be subject to similar requirements governing operations, emissions, monitoring, reporting, and recordkeeping.</p>

Source: The EPA.

<sup>a</sup> Although the NSR program does not regulate hazardous air pollutants, the 2011 tribal minor-source NSR rule allows a major hazardous air pollutant source to obtain federally enforceable limits on its potential to emit to not be subject to the major source maximum achievable control technology regulations under 40 C.F.R. Part 63.

<sup>b</sup> For facilities built before August 30, 2011, that were already permitted as synthetic minor facilities in a 40 C.F.R. Part 71 operating permit, the permitting authorities (i.e., the EPA regions) had the discretion to allow the facilities to apply for a synthetic-minor permit at the time they renewed their Part 71 operating permit, rather than by September 4, 2012, under 40 C.F.R. § 49.158.

## Tribal Major-Source NSR Rule

The tribal major-source NSR rule establishes a preconstruction permitting program for new major sources or major sources that make significant modifications in areas of Indian Country that do not meet the NAAQS. These types of permits are referred to as nonattainment-NSR permits. Requirements for nonattainment-NSR permits include the following:

- **Installing emissions controls.** These controls have to meet the lowest achievable emission rate, which is the most stringent emission limitation for a category or class of facility that has been achieved in practice or is contained in any state's implementation plan. A state implementation plan

is an EPA-approved plan that is made up of various air pollution control measures and activities that a state will implement to meet the NAAQS.

- **Obtaining emissions offsets.** New or modified major sources contributing to increased emissions must obtain emissions reductions from other sources that are equal to or greater than the new proposed emissions.
- **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 comply with all applicable emission limitations and standards under the Clean Air Act.

In conjunction with the PSD permit requirements that were in place before 2011, the provisions of the 2011 rules for minor-source permits and nonattainment-NSR permits ensured that all types of new and modified sources in Indian Country would be subject to permitting requirements.

### ***Permit Processing Time Frames***

The 2011 tribal minor NSR rule established specific time frames for processing minor-source permits. This includes time frames for (1) reviewing the permit applications for completeness and (2) how quickly the EPA issues or denies a final permit based either on the date the application was deemed complete (for synthetic-minor permits, site-specific-minor permits, and permits for minor modifications at major sources) or when the request for coverage was received (for general permits). For synthetic-minor permits and permits for minor modifications at major sources, the EPA is to issue or deny the final permit within one year of determining the application to be complete and within 135 days for site-specific-minor-source permits. For general permits, the EPA must grant or deny the request for coverage within 90 days of receipt.

The tribal minor NSR rule includes specific provisions for when a permit application is to be deemed complete, which apply to synthetic-minor, site-specific-minor, and minor-modification-at-major-source permits. After receiving an application for one of these types of permits, the EPA is to notify the applicant either that the Agency has determined the application to be complete or that the Agency is requesting additional information. This notification should be postmarked within 60 days of receipt of the permit application, or 45 days for site-specific-minor permits. If the EPA does not request additional information or send a notice of application completeness within this time frame, then the application will be deemed complete after 60 days, or 45 days for site-specific minor sources.

The EPA does not provide such specific requirements for nonattainment- NSR and PSD sources. The only requirement is that PSD permits should be issued within one year of the date the EPA determines the application to be complete.

There are no specific statutory or regulatory time frame requirements for nonattainment-NSR permits. Table 2 shows the time frames for each type of permit, along with the statutory or regulatory basis for the different time frames.

**Table 2: Regulatory and statutory review times for types of permits**

Permit type	Source type	EPA review of application and determination of completeness	Final decision time frame	Applicable statute or regulation
PSD—major sources	New major source	N/A	One year to grant or deny permit after the date of complete application.	Clean Air Act § 165(c)
	Major modification	N/A	One year to grant or deny permit after the date of complete application.	Clean Air Act § 165(c)
Nonattainment—major source	New major source	N/A	N/A	Clean Air Act § 173 40 C.F.R. § 49.166
	Major modification	N/A	N/A	Clean Air Act § 173 40 C.F.R. § 49.166
Synthetic minor, Indian Country	Synthetic minor source	60 days	One year to grant or deny permit after the date the application is deemed complete and all additional information necessary to make an informed decision has been provided.	40 C.F.R. § 49.158(b)(2) and § 49.158(b)(7)
Minor modification at a major source, Indian Country	Major source seeking a minor modification	60 days	One year to grant or deny permit after the date the application is deemed complete and all additional information necessary to make an informed decision has been provided.	40 C.F.R. § 49.154(b)(1) and § 49.154(b)(4)
Site-specific minor, Indian Country	Minor source	45 days	135 days to grant or deny permit after the date the application is deemed complete and all additional information necessary to make an informed decision has been provided.	40 C.F.R. § 49.154(b)(1) and § 49.154(b)(4)
General permit, Indian Country	Minor source	45 days	90 days to grant or deny request for coverage under the general permit from the date of receipt of the request.	40 C.F.R. § 49.156(e)(3) and § 49.156(e)(4)

Source: OIG analysis of the Clean Air Act and 40 C.F.R. Part 49.

### ***Efforts to Improve Efficiency of NSR Program***

The *FY 2018-2022 U.S. EPA Strategic Plan* includes an Agency priority goal to accelerate permitting-related decisions, which includes modernizing the Agency’s permitting practices to increase the timeliness of reviews and decisions. To accomplish this, the Plan states that the EPA would employ business process improvement strategies, such as Lean. The EPA defines Lean as “a set of principles and methods used to identify and eliminate waste in any process.” In April 2018, the Office of Air Quality Planning and Standards, commonly known

as the OAQPS, led a Lean workshop to streamline the NSR permitting process with the initial goal of issuing the permits within six months of receiving an application. This goal was later revised to one year to align with most regulatory and statutory NSR permitting time frames. The workshop was focused on all EPA-issued NSR permits, not just tribal-NSR permits. The event participants included staff from the OAQPS and EPA regions and resulted in eight recommendations to improve the NSR permitting process. The OAQPS is responsible for establishing workgroups to implement the recommendations and action items resulting from the Lean workshop.

## **Responsible Offices**

The OAQPS, within the EPA's Office of Air and Radiation, is responsible for oversight of the tribal NSR program, while the regional offices are responsible for issuing individual tribal-NSR permits. The EPA's Office of Enforcement and Compliance Assurance, along with the EPA regions' enforcement offices, are responsible for assuring compliance with the permitting requirements and taking appropriate enforcement action when those requirements are not met.

## **Scope and Methodology**

We conducted our performance audit from August 2018 through February 2020 in accordance with generally accepted government auditing standards. Those standards require that we obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To address our overall objective, we requested tribal-NSR permitting data from all EPA regions for each permit ever issued by the Agency. This included dates for the following: permit application received, application deemed complete, public comment period, and final permit issued. We verified all dates using permitting documentation, including permit applications, final permits, notices for public comment periods, and technical support documents. Using the verified dates, we then calculated the time elapsed between the date the application was deemed complete (for general permits, the date the request for coverage was requested) and the date the final permit was issued, and we compared that to the applicable regulatory time frames. We conducted this analysis for all permits with applications received in 2011 or later. This included permitting actions for synthetic-minor, site-specific-minor, minor-modifications-at-major-sources, and general permits under the tribal NSR program, as provided to the OIG by each EPA region that had issued tribal-NSR permits. Our analysis included appealed permits but did not include administrative revisions, withdrawn permits, or permits that are no longer in effect. The analysis was conducted as of the date we obtained data from the individual regions, as shown in Table 3. Thus, the cut-off

date for the time frame of our analyses varied slightly by region. At the time we conducted our analyses, Regions 1–4 had not issued any tribal-NSR permits.

**Table 3: Dates regions provided requested data**

Region	Date data was obtained
Region 5	9/26/18
Region 6	8/23/18
Region 7	10/18/18
Region 8	10/9/18
Region 9	8/28/18
Region 10	9/27/18

Source: OIG analysis of data obtained from EPA regions.

In addition, we interviewed EPA staff and managers in the OAQPS on multiple occasions, as well as staff in the Office of the Administrator’s Office of Continuous Improvement and OECA. We also interviewed EPA regional managers and staff in Regions 5–10 to discuss their implementation of the tribal-NSR permitting program, the results of our analysis about the timeliness of tribal-NSR permits, and actions they took to identify facilities that need to obtain a permit but have not (that is, non-filers). In addition, we interviewed representatives from three tribes. These tribes are larger and have more infrastructure than many other tribes, and thus they may not be representative of all tribes. For more details on our methodology, see Appendix A.

## Prior Report

In June 2012, the U.S. Government Accountability Office issued a report on NSR titled, *Air Pollution: EPA Needs Better Information on New Source Review Permits* ([GAO-12-590](#)). The report was related to the NSR air permitting program in general and was not specific to the EPA’s tribal NSR program. The Government Accountability Office reported that the EPA did not have complete information on NSR permits issued to fossil fuel electricity generating units, and that the EPA did not have complete or centralized information on permits. The Government Accountability Office recommended that the EPA, among other actions, consider ways to develop a centralized source of data on NSR permits issued to electricity-generating units to enhance oversight of NSR permitting and enforcement. The EPA expressed its commitment to filling gaps in its data systems but disagreed with the action the Government Accountability Office recommended and did not implement the recommendation.

## **Chapter 2**

### **EPA Improved Timeliness of Its Minor-Source Permits, but Majority Still Exceeded Regulatory Time Frames**

From 2011 through August–October 2018, the EPA issued 91 minor-source permits, 61.5 percent of which were not issued within the applicable regulatory time frame. During this same period, the EPA decreased the processing time to issue permits for synthetic and site-specific minor sources. However, as of August–October 2018, when the regions provided their data to the OIG, more than half of the pending permits had already exceeded the regulatory time frame. Thus, while the processing times overall have improved since 2011, the EPA was still not issuing the majority of minor-source permits within the regulatory time frames. Permits that are not issued within the regulatory time frame can have a negative financial impact on tribal communities and facilities and permits for construction of new sources are most susceptible to these effects. We found that permits for new construction sources were more likely to meet the regulatory time frames than permits for existing sources, indicating that the EPA has prioritized issuing permits for these types of facilities.

The EPA regions have exceeded the regulatory time frame for issuing permits for several reasons, including:

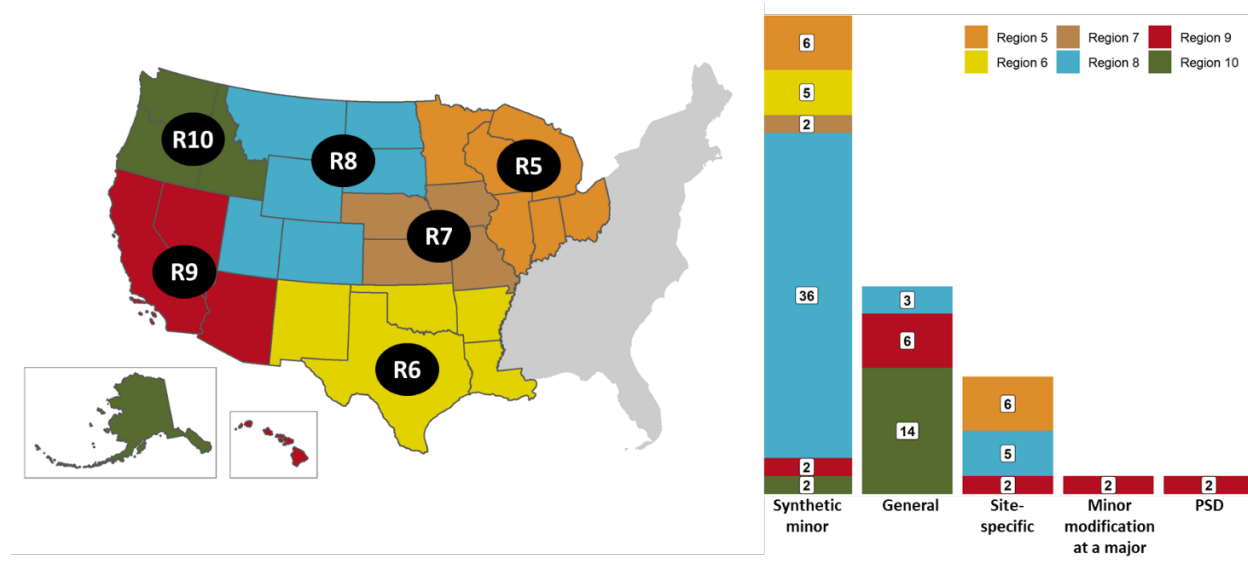
1. Applicants submitting incomplete applications.
2. A learning curve in the initial years of the tribal NSR program.
3. Lack of priority and resources to implement the program.

The EPA can increase the number of permits that are issued within the regulatory time frame by implementing a tracking system that is accessible to the EPA and permit applicants and improving the permit application process.

### **Majority of Permits Issued by EPA Exceeded Regulatory Time Frames**

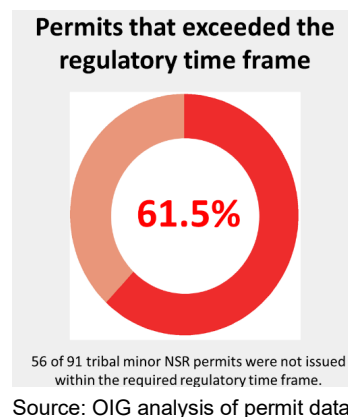
From the time the tribal minor-source NSR rule went into effect in 2011 until the dates we conducted our analysis for each region in 2018, the EPA issued 91 minor-source permits. All these permits were issued in Regions 5–10. The number and type of permits issued varied by region, as shown in Figure 4. Region 8 issued 44 minor-source permits, the most of any region and nearly half of the total minor-source permits issued by the EPA. By comparison, Region 7 issued two minor-source permits.

**Figure 4: Type and number of permits issued by EPA Regions 5–10**



Source: OIG analysis of permit data.

From 2011 through August–October 2018, the EPA regions did not process and issue 61.5 percent of minor-source permits within the regulatory time frames specified in the tribal minor-source NSR regulations. The EPA issued 91 minor-source permits during this time frame, and 56 of these permits exceeded the applicable regulatory processing time frame. Table 4 shows, by permit type, the number of permits issued and the percent of permits that exceeded the applicable regulatory time frame.



**Table 4: Average permit processing times for minor-source permits**

Permit type	Permits issued	Percentage of permits that exceeded regulatory time frame
Synthetic minor	53	69.8%
Site-specific minor	13	53.9
Minor modification at a major source	2	100
General <sup>a</sup>	23	43.5
<b>All minor source permits</b>	<b>91</b>	<b>61.5%</b>

Source: OIG analysis of permit data.

<sup>a</sup> For general permits, this represents the time between when the request for coverage was received and when the request was approved.

In addition to the minor-source permits discussed above, there were two major-source-PSD permits issued by Region 9 in tribal areas. Both were issued within the one-year regulatory time frame for major-source permits. We only counted permits whose applications were received in or after 2011 and were the first PSD



permit issued to the facility. We also did not count permits that were for administrative revisions.

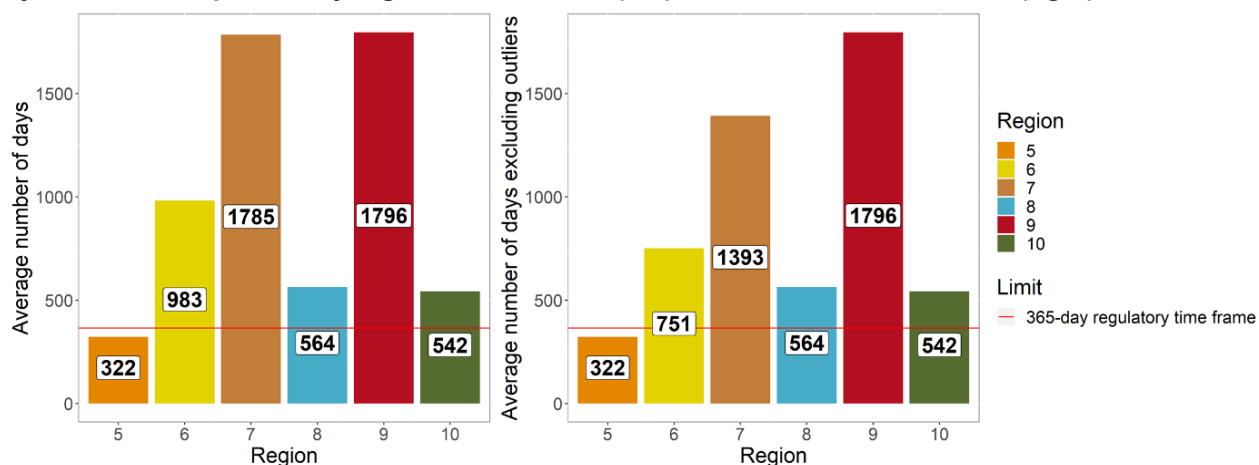
### **Average Time Taken to Issue Tribal Minor-Source Permits by Region**

The regions varied in the time it took to issue permits. When looking at the average number of days it took the regions to process minor-source permits, only the following regions met the respective time frames:

- Region 5 met the regulatory time frame for synthetic-minor-source permits.
- Region 9 met the regulatory time frame for site-specific-minor-source permits.
- Region 8 met the regulatory time frame for general permits.

We analyzed minor-source permits issued by the regions to identify outliers in terms of processing time by permit type. Outliers are permits that took an exceptionally long time to issue and differ significantly from the processing time of other permits. Outliers for synthetic-minor-source and general permits took longer than 1,811 and 441 days, respectively, to process. We identified two synthetic-minor-source permits issued by Regions 6 and 7 that were outliers. We did not identify any outliers for site-specific-minor-source permits, but we did identify four outliers for general permits, all issued by Region 10. Figures 5, 6, and 7 show, by permit type, the average processing time for each region. The figures to the right show the average processing times with the outliers removed, if applicable. The red line in each figure indicates the applicable regulatory time frame for the number of days between the application being deemed complete and the final permit being issued.

**Figure 5: Average number of days from application being deemed complete to permit issuance for synthetic-minor permits by region, with outliers (left) and with outliers removed (right)<sup>a, b</sup>**

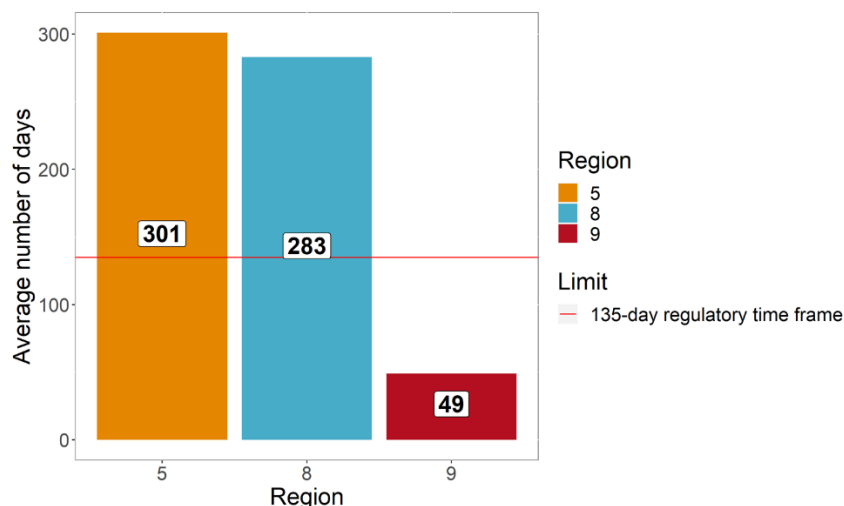


Source: OIG analysis of permit data.

<sup>a</sup> A region is not shown if it did not issue any tribal-minor-NSR-synthetic-minor permits.

<sup>b</sup> The red line indicates the 365-day regulatory time frame for synthetic minors.

**Figure 6: Average number of days from application being deemed complete to permit issuance for site-specific-minor permits, by region<sup>a, b</sup>**

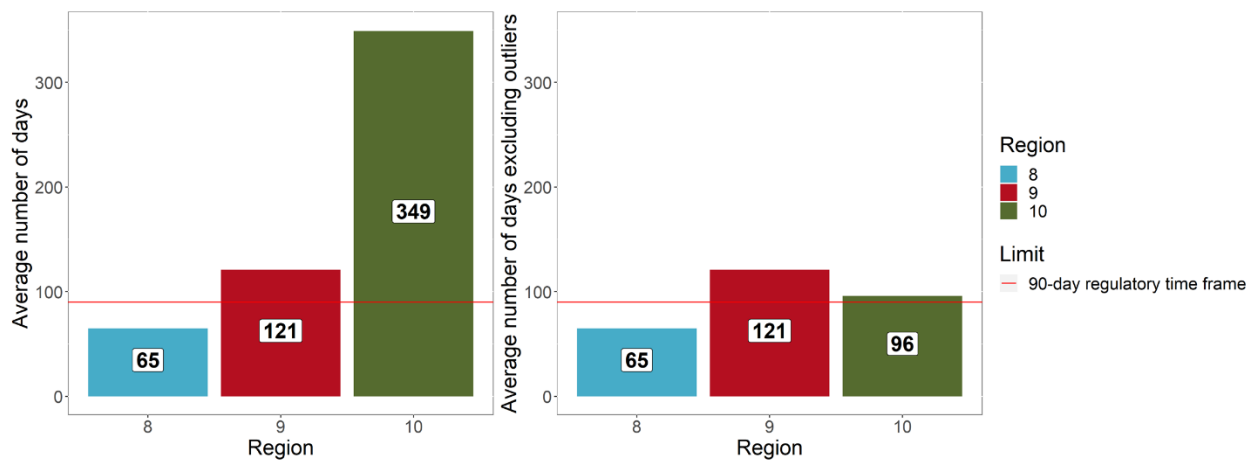


Source: OIG analysis of permit data.

<sup>a</sup> A region is not shown if it did not issue any site-specific-tribal-minor-NSR permits.

<sup>b</sup> The red line indicates the 135-day regulatory time frame for site-specific-minor sources.

**Figure 7: Average number of days from request for coverage to request granted for general permits, by region, with outliers (left) and with outliers removed (right)<sup>a, b</sup>**



Source: OIG analysis of permit data.

<sup>a</sup> A region is not shown if it did not issue any general permits.

<sup>b</sup> The red line indicates the 90-day regulatory time frame for general permits.

## EPA Emphasized Issuing Permits for New Construction and Decreased Processing Times for Minor Sources Overall

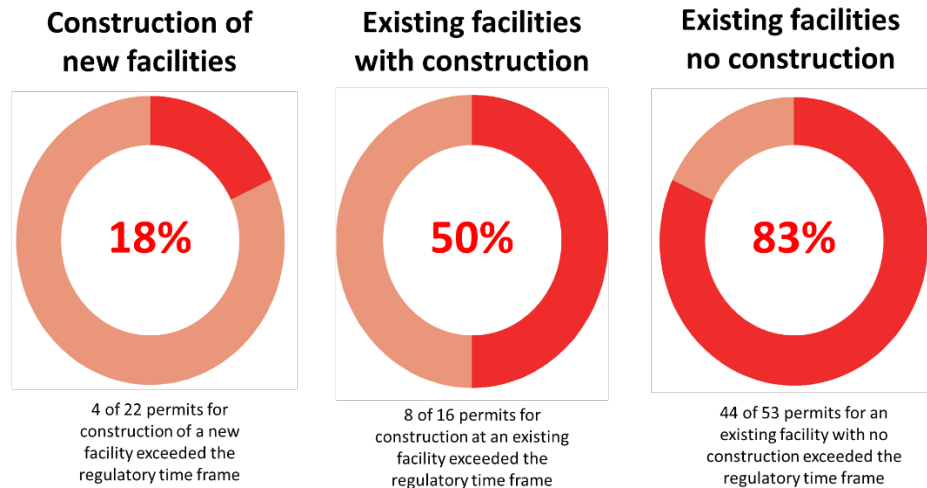
Our analysis found that the EPA emphasized issuing permits for the construction of new facilities. While there were still some that exceeded the regulatory time frames, a greater percentage of these met the regulatory time frames compared to permits for existing sources with and without construction projects. In addition,

the EPA improved its processing times between 2011 and 2017 for synthetic-minor-source and site-specific-minor-source permits.

### ***Permits for New Construction Were More Likely to Be Issued Within Regulatory Time Frames***

Permits for new construction were more likely to be issued within the regulatory time frames than permits for existing facilities. Figure 8 shows the percentage of permits that exceeded the applicable regulatory time frame for three different categories of permits: permits involving construction of a new source; permits involving construction at an existing facility;<sup>4</sup> and permits for an existing facility with no construction, such as facilities taking synthetic-minor-source status.

**Figure 8: Percentage of permits exceeding the applicable regulatory time frame, by construction status**

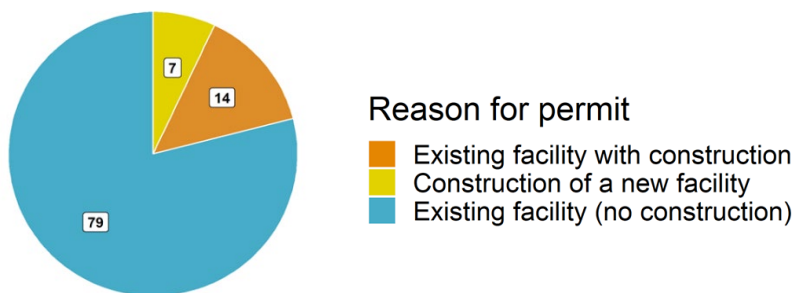


Source: OIG analysis of permit data.

In addition, we found that of all the permits that exceeded the regulatory time frames, those for construction of new facilities accounted for 7 percent, those for modifications at existing facilities accounted for 14 percent, and those for existing facilities with no construction accounted for the remaining 79 percent, as shown in Figure 9. This suggests that the EPA emphasized issuing permits that involved new construction. Processing permits for new facility construction is more critical since delays could have negative economic impacts on industry and tribal communities. Figure 10 shows the number of permitting actions that exceeded regulatory time frames and whether they involved new construction for each permit type.

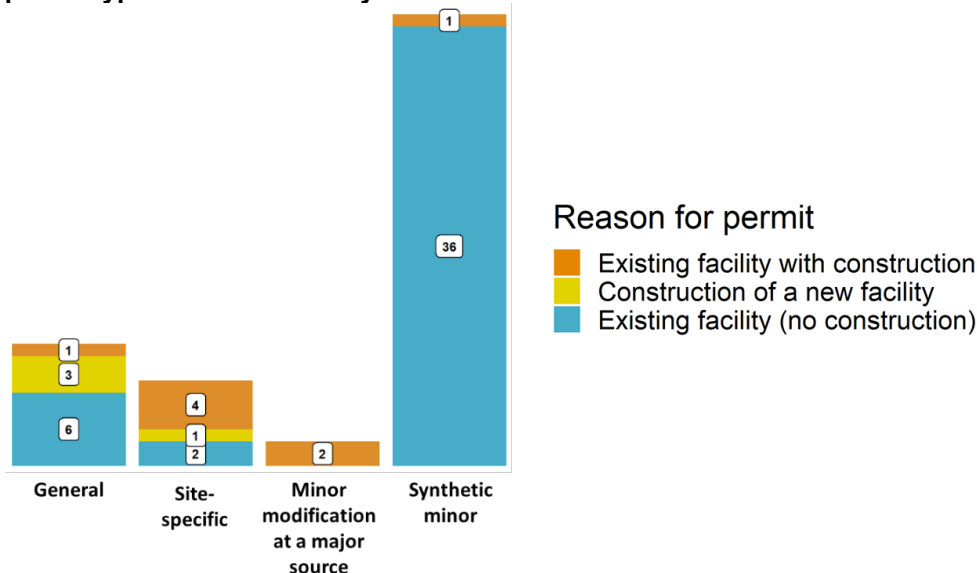
<sup>4</sup> We included any permit that was for new construction at an existing facility and did not determine whether it met the definition of “modification” per the regulations for the purpose of this construction-related analysis.

**Figure 9: Percentage of issued permits that exceeded regulatory time frames by construction status**



Source: OIG analysis of permit data.

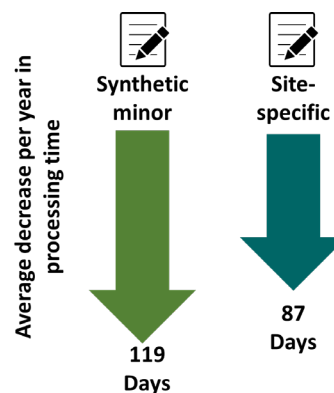
**Figure 10: Number of issued permits that exceeded regulatory time frames by permit type and whether they involved construction**



Source: OIG analysis of permit data.

***EPA Decreased Number of Processing Days to Issue Synthetic-Minor-Source and Site-Specific-Minor-Source Permits From 2011 Through 2017***

Although most minor-source permits issued since the start of the tribal minor-source NSR program did not meet regulatory processing time frames, the EPA decreased the processing time for both synthetic-minor-source and site-specific-minor-source permits. From 2011 through 2017, the last year for which we had a full year’s data, the processing time for synthetic-minor-source permits decreased by an average of 119 days per year. Over the same period, the processing time



Source: OIG analysis of permit data.

for site-specific-minor-source permits decreased by an average of 87 days per year. When the outliers for general permits are removed, there was not a statistically significant decrease in processing time for these types of permits from 2011 through 2017.

## **Over Half of Pending Permits Exceeded Regulatory Time Frames**

Although the EPA is issuing permits more quickly, we found that more than half of the permits pending at the time of our review exceeded the regulatory time frame. As of the dates when we obtained data from the regions in the fall of 2019, there were 20 pending permitting actions for minor-source permits. All the pending permits were received in 2016 and 2018, except for one that was received in 2014. Seventeen applications had already been deemed complete, and we were thus able to conduct timeliness analyses for those actions. We found that ten of the 17 permits, all synthetic-minor-source permits, had already exceeded the regulatory permitting time frame.

There was no significant statistical difference when comparing the percentage of issued permits (from 2011 through 2018) that exceeded the regulatory time frame to the pending permits that had already exceeded the regulatory time frame. This suggests that, although the processing time has decreased, the percentage of permits that are not being issued within the regulatory time frame has not improved for minor-source permits. There was also one pending major-source-PSD permit in Region 10, which was within the regulatory permitting time frame.

## **Several Factors Delayed Permit Processing, and Processing Times Were Not Tracked to Assess Timeliness**

Three key factors contributed to delays in permit processing times: (1) back-and-forth between regions and applicants to obtain a full application, (2) a learning curve in the early years of the program, and (3) competing priorities and resources. In addition, from the start of the program until 2018, the OAQPS did not have a centralized and comprehensive system to conduct oversight of the permit issuance process, including tracking the timeliness of permit processing from completed application to permit issuance.

### ***Obtaining Complete Applications Is Often Time-Consuming and Can Lead to Delays***

The application process was one of the issues identified at the EPA's Lean NSR event for improvement in April 2018. One area of the process that can take a long time is obtaining required information from applicants. Regions spent a considerable amount of time, sometimes months, communicating with the applicant to obtain all the needed information to determine an application to be complete and develop a draft permit. Some of this back-and-forth occurred because some facilities are small operations and the staff could be unfamiliar with

permitting requirements. In one instance, the EPA requested additional information from an applicant on multiple occasions over an eight-month period. Overall, it took nine months before the region considered the application to be complete. A representative from another company told us that it was not as responsive as it could have been to the EPA's request for additional information since it was an existing facility seeking a synthetic-minor-source permit and there was no urgency.

### ***Regions Faced Learning Curve in Initial Years of Program***

Regions told us that in the beginning of the program, the regulatory time frames were not met because there was a learning curve in implementing the new program, which is supported by our data. The regions told us that one reason for the delays was because they were waiting for guidance from the OAQPS on how to handle new issues or needed to work through novel situations. One example the regions provided was determining when to conduct modeling for site-specific-minor-source permits, as the regulations leave that largely up to the discretion of the permitting authority. At a meeting on June 19, 2019, regional managers told us that they recently started a workgroup to share ideas about modeling and develop consistent practices across the regions. They also told us in this meeting that they did not need written guidance from the OAQPS on this topic.

### ***Regions Lacked Resources to Prioritize Tribal-NSR Permits***

Competing priorities within the regions have contributed to permits exceeding regulatory time frames. For example, according to one of the regional section chiefs for the Air Permits Program, the region paused its tribal-NSR permitting program from 2012 to 2014 to prioritize issuing greenhouse gas permits in one of the region's states. That state did not take delegation of the greenhouse gas program from the EPA and large construction projects were awaiting permits. In addition, the EPA's Lean event briefing documents cited competing priorities as a root cause for permitting delays for the entire NSR permitting program. Regions 6 through 10 told us they experienced workload issues, limited resources (including staff), or competing priorities. For example, Region 8 told us that due to limited staff, it had to focus on permits for new construction before other permits. The Region has since acquired two additional staff to develop permits.

### ***EPA Has Not Comprehensively Tracked Processing of Minor-Source Permits***

The OAQPS has not tracked the timeliness of permitting actions from application completion to permit issuance in a consistent or comprehensive manner. From the start of the program until mid-2018, the OAQPS did not have a centralized and comprehensive database to conduct oversight of the permit issuance process. The OAQPS uses a database called the OAR Tribal System to track tribal permits. However, that database does not track permit timeliness from application

completion to permit issuance, nor do all the regions input data into the system in a comprehensive and accurate manner. In 2018, the OAQPS started collecting permitting information in a permit tracker database, which was developed to address an overarching permit timeliness initiative in the Office of Continuous Improvement. This database does track permit timeliness, but only for permits issued after the database was implemented.

According to a program specialist in the OAQPS, the Office recently allocated \$500,000 to develop the Electronic Permit System for EPA-issued permits, specific components of which are still being determined. This system, still in the early stages of development, could serve as a comprehensive tracking system that could be viewed by EPA personnel, applicants, and eventually the public.

## **Tribal Communities and Facilities Could Be Affected by Permitting Delays**

For permitting that involves new construction or modifications to existing facilities, delays in meeting the regulatory time frames can postpone construction, financially affecting both industry and the tribes. For example, some tribes rely on royalty payments from industry, such as oil and natural gas development, and not receiving a permit on time could impact the availability of royalties necessary for developing and funding tribal programs such as social services. Moreover, one oil and natural gas industry consultant we spoke to said that if delays are significant, facilities could respond by moving their development outside of the tribal boundary. In the *FY 2018-2022 U.S. EPA Strategic Plan*, the EPA committed to improving the timeliness of permitting actions to create certainty for industry and increase economic prosperity.

In addition, permitting actions that exceed regulatory time frames increase the risk that facilities awaiting a permit could be emitting more pollution than would be allowed if they were operating under an approved permit. We did not identify or assess whether that occurred.

## **EPA Actions to Improve NSR Permitting Efficiencies**

Staff from EPA regions and the OAQPS met in April 2018 at a Lean event to improve the efficiency of the NSR program. The participants were divided into four workgroups, two of which were particularly relevant to our review: (1) Process Delays and (2) Technology and Knowledge. Each workgroup developed recommendations along with action items or steps to implement the recommendations. Most of the participants were from Regions 2, 4, 6, 8, and 9, with Regions 6, 8, and 9 all having issued tribal-NSR permits. The OAQPS is ultimately responsible for establishing workgroups to implement the recommendations and action items resulting from the Lean efforts.

One of the Technology and Knowledge workgroup's recommendations focused on expanding the capabilities for the Electronic Permit System. Based on our discussions with the OAQPS, many of the key action items for the Technology and Knowledge workgroup have been completed, including determining the needs of the system, meeting with and acquiring a cost estimate for the system, and briefing and receiving approval for funding from senior management. In June 2019, the OAQPS told us that \$500,000 had been approved for the development of the Electronic Permit System for EPA-issued permits and that development of the system is currently underway.

The Process Delays workgroup from the Lean event made a recommendation intended to improve the quality of applications received by the regions and reduce the processing time for NSR permits. Key actions items to be completed involve standardizing and implementing pre-application meetings, developing a standard pre-application meeting agenda or standard operating procedure, and updating regional websites to provide recommendations for pre-application meetings. In June 2019, the OAQPS told us the workgroup's recommendation and action items have not been fully implemented, although some regions have started to implement them. For example, a Region 8 manager told us that the Region posted a notice on its permitting website to encourage applicants to set up a pre-application meeting, and the Region has since seen an increase in such meetings.

Based on our discussions with the regions, receiving a complete application from a permit applicant is a critical element in reducing the processing time of permitting actions. The pre-application meeting is a mechanism the regions can use to help increase the completeness of the application. Regions 6 and 9 told us that the OAQPS could help the regions receive more complete applications by developing guidance or improving application instructions for the applicants.

## **Conclusions**

While the EPA has reduced the amount of time it takes to issue synthetic-minor-source and site-specific-minor-source permits in Indian Country, the average processing time still exceeds the regulatory time frames. The EPA has identified actions that it can take to improve permitting efficiencies, but the Agency still needs to fully implement some of these actions. The EPA should implement a tracking system that is accessible to both EPA staff and permit applicants, as well as a strategy to improve the application process and permitting timeliness for tribal-NSR permits, taking into consideration the findings and recommendations from the Agency's previous Lean efforts. Improved processing times will help provide economic certainty for both industry and tribal communities.



## Recommendations

We recommend that the assistant administrator for Air and Radiation:

1. Implement a system that is accessible to both the EPA and the applicants to track the processing of all tribal-New-Source-Review permits and key permit dates, including application received, application completed, draft permit issued, public comment period (if applicable), and final permit issuance.
2. Establish and implement an oversight process to verify that the regions update the tribal-New-Source-Review permit tracking system on a periodic basis with the correct and required information.
3. Develop and implement a strategy to improve the application process and permitting timeliness for tribal-New-Source-Review permits, taking into consideration the findings and recommendations from the Lean event. The strategy should include procedures to measure results.

## Agency Response and OIG Assessment

The Agency agreed with Recommendations 1, 2, and 3. Regarding Recommendation 1, the Agency stated that it is developing a system for tracking permit applications to which applicants will be able to directly submit applications. In a subsequent email, Agency staff clarified that applicants will also be able to access the system to track the progress of their applications. We believe that this planned corrective action meets the intent of our recommendation, and the associated completion date is acceptable. Regarding Recommendations 2 and 3, the Agency provided acceptable planned corrective actions with completion dates. Recommendations 1–3 are considered resolved with corrective actions pending. See Appendix B for the Agency’s response to the draft report.

# **Chapter 3**

## **All Regions Did Not Determine and Document Application Completion Dates in Accordance with Regulations**

While most of the regions properly determined application completion dates, Regions 6 and 9 used improper dates for at least some of the permits they issued under the tribal minor-source NSR program. We found that the OAQPS had not issued guidance to the regions instructing them how to accurately determine and document the correct application completion date. Assessing the timeliness of permitting actions starts once the EPA determines the application to be complete. If the application completion date is not applied correctly, the EPA cannot accurately assess timeliness of permitting actions in accordance with the regulations. The EPA should develop guidance for the regions on how to accurately determine and document the application completion date that should be used for tracking and assessing the timeliness of the permit issuance process.

### **Requirements for Determining Application Completion Date**

The EPA is to notify a permit applicant in writing that it has determined the application to be either complete or incomplete and is requesting additional information. As stated in the 2011 tribal NSR rule, the notification is to occur within 45 days of receipt of an application for a site-specific-minor-source permit and within 60 days of receipt of an application for a synthetic-minor-source permit or a permit for a minor modification at a major source. If the EPA does not send notification to the facility within that time frame, the application defaults to completeness for the purpose of tracking timeliness. If it defaults to completeness, the default application completion date is either 45 or 60 days after receipt of the application, depending on type of permit.

The OAQPS had not issued any guidance instructing regions how to determine and document application completion dates to demonstrate compliance with the rule's requirements.

### **Regions 6 and 9 Determined and Documented Improper Application Completion Dates**

We identified two regions that were not determining and documenting the application completion date in accordance with the regulations. For the five synthetic-minor-source permits that Region 6 issued, it documented the application completion date as the date the draft permit was made available for public comment. Region 9 similarly documented the application completion date

as the date the proposed draft permit was issued to the applicant for four of the six minor-source permits it issued, excluding general permits.

For the application completion date to coincide with the public notice of a draft permit or draft permit issuance date, the region would have to first notify the applicant in writing, within 45 or 60 days of receipt of the application depending on the type of permit, that the initial application was incomplete. Additionally, the region would have to issue the draft permit or public notice on the same day it received the missing information. However, written notification of completion was not issued for the permits we identified in Regions 6 and 9. Thus, the application completion date should have defaulted to 45 or 60 days, depending on permit type, after the application was received, which would have been earlier than the draft permit date or public notice date for all the instances we identified.

A Region 6 manager told us that the Region did not issue application completeness letters to the five facilities we identified because the tribal NSR program was essentially on hold during that time while the region prioritized issuing greenhouse-gas permits for the State of Texas. When the staff returned to the tribal-NSR permits, they worked with the applicants to obtain needed information and did not worry about sending application completeness letters. Region 6 considered the applications to be complete when the draft permits were made available for public comment. Region 6 told us that it has been issuing application completeness letters since 2017.

Region 9 staff told us the Region was advised by EPA headquarters to enter the draft permit issuance date as the application completion date when entering dates for historical permits in the Air Permit Tracker Database if written determination of application completeness could not be found.

## **Using Wrong Application Completion Date Results in Inaccurate Assessment of Permit Processing Timeliness**

The EPA cannot accurately assess timeliness of permitting actions, in accordance with the regulations, if the application completion date is not determined and documented correctly. Using the public notice or draft permit date as the application completion date would make the permitting process seem much shorter than if the correct date—that is, the date the application defaulted to completeness—was used to assess timeliness. For Region 6, the average processing time when using the public notice date is 53 days, compared to 983 days, or more than two-and-a-half years, when the correct application completion date is used. For Region 9, the average processing time when using the draft permit date is 192 days, compared to 1,158 days—more than three years—when the correct application completion date is used.

## **Conclusions**

Regions 6 and 9 both inappropriately determined and documented the application completion date for at least a portion of their minor-source permits. The application completeness date is crucial to tracking and assessing the timeliness of tribal-NSR permits, since the regulatory time frames are based on when an application is deemed complete. The EPA should develop guidance for the regions to help assure they accurately determine and document the application completion date for purposes of tracking and assessing the timeliness of the permit issuance process.

## **Recommendation**

We recommend that the assistant administrator for Air and Radiation:

4. Provide guidance to the regions on how to accurately determine and document the application completion date that should be used for tracking the tribal-New-Source-Review permitting process and assessing timeliness.

## **Agency Response and OIG Assessment**

The Agency agreed with Recommendation 4 and provided an acceptable planned corrective action and completion date. Recommendation 4 is considered resolved with corrective actions pending. See Appendix B for the Agency's response to the draft report. In addition, Region 6 provided technical comments, which we incorporated as applicable.

## **Chapter 4**

### **EPA Does Not Take Regular Actions to Identify Non-Filers or Conduct Outreach to Industry**

Regions 5 and 10 said that they take regular steps to identify facilities in Indian Country that could be subject to NSR permitting requirements but have not applied for a permit, known as “non-filers.” The remaining four regions that had issued tribal-NSR permits said that they do not. Regions 7 and 8 told us that they conduct limited searches for non-filers while out in the field conducting inspections at known facilities. In addition, Region 7 told us that it has occasionally used satellite imagery and business journals to look for non-filers.

All the regions told us that they communicate with the tribes in their regions, and the regions relied on tribes to inform them about facilities that needed a permit. Tribal authorities from the three tribes we interviewed said that they were able to assist the EPA with identifying facilities that could need permits. Two of the three tribes told us that they communicate with the facilities on their reservation and share information as needed with the EPA. One tribe told us that the EPA needs to provide guidance on how it wants the tribes to assist them in identifying non-filers.

In addition, EPA headquarters does not take steps to identify non-filers. An OAQPS manager told us that looking for non-filers is a compliance issue. Thus, OECA would have primary responsibility for this activity. However, OECA staff and managers told us that they do not look for facilities in Indian Country that need tribal-NSR permits because that activity is not among the EPA’s national enforcement priorities, which is what OECA focuses its resources on. Thus, neither the OAQPS nor OECA are undertaking activities specifically to identify non-filers.

#### **EPA Can Coordinate with Tribes to Identify Non-Filers Through EPA-Tribal Environmental Plans**

One way the EPA can coordinate with tribes to identify non-filers is through the development of EPA-Tribal Environmental Plans, or ETEPs. ETEPs are plans that the EPA develops in partnership with each tribe that lay out environmental priorities for all types of environmental media, including air. The plans contain inventories of all known emitting facilities on the tribes’ lands. The then acting director of Region 5’s Enforcement and Compliance Assurance Division told us that developing ETEPs with tribes has helped the Region learn about new facilities on tribal lands. The director said that the tribes can provide information about facilities that the Region was previously unaware of through this process, but the Region has not identified any facilities needing a tribal-NSR permit through this process to date. The director of Region 9’s Enforcement and

Compliance Assurance Division told us that the Region is currently using the ETEP with one tribe to identify sources that could need tribal-minor-source permits. The ETEPs are one way that all regions can better partner with tribes to learn about previously unknown facilities that could need an NSR permit, especially given the regions' limited resources.

## **EPA Has Not Conducted Continued Outreach to Industry**

The EPA has not conducted continued outreach to industry to help assure that facilities are aware of their permitting responsibilities. Two of the regions told us that they conducted outreach to industry groups at the start of the program to inform them of the 2011 rule and new requirements. OAQPS staff told us that they conducted outreach to the tribes when the rule was passed, so that tribes could contact facilities about the new requirements. However, neither the OAQPS nor the regions told us about any recent outreach to industry. The OAQPS and Region 6 recently included information on the tribal NSR program during an air training for tribes, which was not aimed at industry. This is important because according to regional staff, some of the facilities that need a minor-source permit are small facilities without environmental staff and might not have previous experience with environmental regulations.

## **Tribes, States, and External Parties Have Provided EPA with Tips About Non-Filers**

Staff and managers from five out of the six regions we interviewed told us that they had received tips from tribal authorities, state agencies, or external parties about facilities operating without a tribal-NSR permit in Indian Country. These tips have identified at least five facilities since 2011 that required a tribal-NSR permit but did not have one.

Regions 5 and 7 were notified about facilities that had a state-issued permit but needed a permit issued by the EPA, since facilities that operated in Indian Country with a state-issued permit prior to the 2011 tribal NSR rule needed to apply for a federal permit by September 4, 2012. Region 5 became aware of two facilities from its tribal and state outreach, and Region 7 was notified by the State of Nebraska. Region 10 had two enforcement cases as a result of facilities not obtaining a tribal-NSR permit. One of these cases resulted from a complaint by an external party. In September 2019, staff and managers from Region 8 and OECA told us that they were jointly pursuing an enforcement case against a facility that allegedly started construction prior to obtaining a tribal-NSR permit. A Region 8 manager told us that before the issuance of the facility's synthetic-minor-source permit, it was considered a major PSD source as there was not a federally enforceable requirement in place to reduce volatile organic compounds emissions. This facility was brought to the EPA's attention by an external party.

## Conclusions

The EPA does not have a systematic process to look for non-filers, instead relying primarily on tribes, other external parties, and intermittent actions to identify facilities in Indian Country without tribal-NSR permits that are potentially subject to permitting requirements. In addition, the EPA does not conduct outreach to inform smaller facilities of the permitting requirements. The fact that external entities have provided the EPA with tips about at least five non-filers indicates that there could be other facilities operating without the required permit.

We believe this warrants the EPA to develop a plan to periodically coordinate with tribes to identify facilities that could be operating without a required permit. One way the EPA could accomplish this is by coordinating with tribes about non-filers through the existing ETEP development process. In addition, because some non-filer facilities could be smaller and are unaware of the tribal-NSR permitting requirements, the EPA should develop a plan to conduct outreach to industry groups, so that they understand their responsibilities under the tribal NSR program.

## Recommendations

We recommend that the assistant administrator for Air and Radiation:

5. Develop and implement a plan, in consultation with the Office of Enforcement and Compliance Assurance and the EPA regions, to periodically coordinate with tribes to identify facilities that are operating in Indian Country without the required tribal-New-Source-Review permit.
6. Develop and implement a plan, in consultation with the Office of Enforcement and Compliance Assurance and the EPA regions, to periodically conduct outreach to industry groups to educate them on the tribal-New-Source-Review permit requirements for facilities that are constructed or modified in Indian Country.

## Agency Response and OIG Assessment

The Agency concurred with Recommendations 5 and 6 and provided acceptable planned corrective actions and completion dates. Recommendations 5 and 6 are considered resolved with corrective actions pending. See Appendix B for the Agency's response to the draft report.

# **Status of Recommendations and Potential Monetary Benefits**

## RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	19	Implement a system that is accessible to both the EPA and the applicants to track the processing of all tribal-New-Source-Review permits and key permit dates, including application received, application completed, draft permit issued, public comment period (if applicable), and final permit issuance.	R	Assistant Administrator for Air and Radiation	9/30/21	
2	19	Establish and implement an oversight process to verify that the regions update the tribal-New-Source-Review permit tracking system on a periodic basis with the correct and required information.	R	Assistant Administrator for Air and Radiation	3/31/22	
3	19	Develop and implement a strategy to improve the application process and permitting timeliness for tribal-New-Source-Review permits, taking into consideration the findings and recommendations from the Lean event. The strategy should include procedures to measure results.	R	Assistant Administrator for Air and Radiation	6/30/22	
4	22	Provide guidance to the regions on how to accurately determine and document the application completion date that should be used for tracking the tribal-New-Source-Review permitting process and assessing timeliness.	R	Assistant Administrator for Air and Radiation	9/30/21	
5	25	Develop and implement a plan, in consultation with the Office of Enforcement and Compliance Assurance and the EPA regions, to periodically coordinate with tribes to identify facilities that are operating in Indian Country without the required tribal-New-Source-Review permit.	R	Assistant Administrator for Air and Radiation	9/30/22	
6	25	Develop and implement a plan, in consultation with the Office of Enforcement and Compliance Assurance and the EPA regions, to periodically conduct outreach to industry groups to educate them on the tribal-New-Source-Review permit requirements for facilities that are constructed or modified in Indian Country.	R	Assistant Administrator for Air and Radiation	9/30/22	

<sup>1</sup> C = Corrective action completed.  
R = Recommendation resolved with corrective action pending.  
U = Recommendation unresolved with resolution efforts in progress.



## ***Details on Scope and Methodology***

To address our objectives, we identified and reviewed applicable statutes, regulations, policies, and guidance, including:

- Clean Air Act.
  - Part C of Title 1 (PSD).
  - Part D of Title 1 (nonattainment NSR).
  - Section 110(a)(2)(C) (minor NSR).
- EPA regional websites on tribal and permitting programs.
- *FY 2018-2022 U.S. EPA Strategic Plan*.
- Regulations, policies, procedures, and guidance related to developing and processing tribal-NSR permits, including the following:
  - Review of New Sources and Modifications in Indian Country, 76 Fed. Reg. 38748 (July 1, 2011) (codified at 40 C.F.R. Parts 49 and 51).
  - General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories, 80 Fed. Reg. 25068 (May 1, 2015) (codified at 40 C.F.R. Part 49).
  - General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Six Source Categories, 81 Fed. Reg. 70944 (October 14, 2016) (codified at 40 C.F.R. Part 49).
  - Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country To Address Requirements for True Minor Sources in the Oil and Natural Gas Sector, 81 Fed. Reg. 35944 (June 3, 2016) (codified at 40 C.F.R. Part 49).
  - Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington, 70 Fed. Reg. 18074 (April 8, 2005) (codified at 40 C.F.R. Parts 9 and 49).
  - 40 C.F.R. § 52.21.
  - 40 C.F.R. Part 124 Procedures for Decisionmaking.
  - 40 C.F.R. Part 51, App. S.
  - 40 C.F.R. §§51.160.
  - Indian Tribes: Air Quality Planning and Management, 63 Fed. Reg. 7254 (February 12, 1998) (codified at 40 C.F.R. Parts 9, 35, 49, 50, and 81).
  - Presidential Memorandum for the Administrator of the Environmental Protection Agency (April 12, 2018).
  - *Timely Processing of Prevention of Significant Deterioration (PSD) Permits when EPA or a PSD-Delegated Air Agency Issues the Permit, EPA Office of Air Quality Planning and Standards* (October 15, 2012 memorandum).
  - Federal Minor New Source Review Program In Indian Country: Application for New Construction. EPA Form No. 5900-248.

- Federal Minor New Source Review Program In Indian Country: Application For Synthetic Minor Limit. EPA Form No. 5900-246.
- Tribal New Source Review Implementation Manual (May 2012).
- Regional policies and procedures related to issuing tribal-NSR permits.

## **Timeliness Analysis**

To conduct our timeliness analysis, we requested data from each EPA region for all facilities, including major and minor sources, that were issued permits through the EPA’s tribal NSR program, or whose permit applications were pending at the time of our data request. For each permitting action, we requested the following information:

- Tribe or reservation name.
- Type of permit (e.g., PSD, NSR, minor NSR, modification, etc., and site-specific, general permit, administrative etc.).
- Date the application or request was received.
- Date application or request was deemed complete.
- Date of public comment period (if one was held).
- Date of permit issuance or request granted for a general permit.
- A link to the documents or docket for the permit, if available.

We received data from EPA Regions 5–10 between August 23 and October 18, 2018. Regions 1–4 had not issued tribal-NSR permits. We conducted our analyses for each of the individual regions as of the date we obtained their data. For example, our analysis included permits that were pending as of the date we obtained the data from the region, regardless of whether the final permit was later issued. Table 3 in the report outlines the dates the regions provided our requested data.

We verified the regions’ data for each date and public comment period with supporting documentation found in the online permit docket or on the regions’ websites. When information could not be found from those sources, we asked the regions for documentation. We only used the information that was verified by supporting documentation such as final permits, technical support documents, letters to applicants concerning the proposed draft permit, notice of issuance of draft permits, letters of application completeness determination, request for coverage documentation (for general permits), and public notice documentation.

### ***Application Completeness Determination***

For the application completion date, we found it was necessary to develop a methodology for what date to use, based on the regulations in 40 C.F.R. §§ 49.151–49.158 for minor sources, because we often were unable to find documentation to verify this date. We shared our methodology with the OIG Office of Counsel along with an OAQPS manager to get their feedback on our planned methodology.

We used the approach described in Table A-1 for synthetic-minor-source, minor-modification-at-major-source, and site-specific-minor-source permits.

**Table A-1: Approach for determining application completion date**

<p><b>Letter of determination of application completion</b></p>	<p>In cases where the EPA notified a facility in writing within 60 days (or 45 days for site-specific-minor permits) after receiving the application that it considered the application to be complete (and we were able to obtain that documentation), we used the date of the written communication as the application completion date for our analyses. If a letter was sent after the 60- or 45-day window, we used the date the application would have defaulted to completeness, per the regulations (i.e., 60 days after application received for synthetic-minor and minor-modification permits and 45 days after application received for site-specific minor sources).</p>
<p><b>Letter of determination of application incompleteness</b></p>	<p>In cases where the EPA notified a facility in writing within 60 days (or 45 days for site-specific-minor permits) after receiving an application that it needed additional information, the date the Agency received all the necessary information was used as the completion date, as long as we were able to obtain the applicable documentation. If we were not able to obtain documentation of the request for additional information or of when the additional information was obtained, or if the notification was sent after the 45- or 60-day window, we used the date the application would have defaulted to completeness, per the regulations.</p>
<p><b>No documentation of determination of application being complete or incomplete</b></p>	<p>In cases where we were unable to obtain documentation of written notification of application completeness or request for additional information, we used the date the application would have defaulted to completeness, per the regulations.</p>

Source: OIG analysis.

For general permits, the regulatory time frame is the time between when the request for coverage is received and when it is granted. Hence, we used the date of receipt of the request for coverage rather than the application completion date for our analyses.

### ***Permit Status Determination***

We then determined which permits were original permitting actions versus revisions; which were active versus inactive; and which were withdrawn, appealed, or terminated. We reviewed regional notes and permit documentation, along with a facility’s permit history, to categorize a permit’s status. The information we needed was usually found in the permit summary of the final or draft permit, or the permit’s technical support document.

Our timeliness analysis focused on original permits, which are the first permit of that type issued to a facility, and revisions to an existing permit for the purposes of a modification at a facility, as the regulatory time frames apply only to these actions. When there was an action to revise an existing permit at a facility that did not involve modification at the facility, we categorized that as a revision. We did not conduct timeliness analyses on revised permits, as the regulatory time frames do not apply to them. Table A-2 summarizes our permit status definitions.

**Table A-2: Permit status definitions**

Permit type	Description
Original	The first permit of its type at a facility or a revision to an existing permit that involved modification at a facility.
Revision	The permit revises a prior permit of its type and does not involve modification at a facility.
Active	The current permit that is in effect.
Inactive	The permit is not in effect due to being revised or terminated.

Source: OIG analysis.

## ***Timeliness Calculations***

Once all dates had been verified and the status of each permit determined, we conducted timeliness calculations for each original and pending permit based on the applicable regulatory or statutory time frames, as laid out in Table 2 in Chapter 1 of this report. For these assessments, we excluded permit revisions, withdrawn permits or applications, terminated permits, and permits with applications received before 2011. We did include appealed permits.

For all permits except general permits, we calculated the number of days elapsed between the application completion date and the final permit issued date. We then compared that to the applicable regulatory time frame to determine if the time frame was met.

For general permits, we calculated the number of days elapsed between the date the request for coverage was received and the date the request was granted. We then compared that to the applicable regulatory time frame to determine if the time frame was met.

For pending permits, we could only conduct timeliness analyses on applications that already had an application completion date. For these pending permits, we calculated the time elapsed between the application completion date and the date we obtained the data from the region. We then compared that to the applicable regulatory time frame to determine if the time frame had already been exceeded.

We also used the number of days elapsed for each permit to conduct analyses at the regional and national levels, such as the average number of days elapsed for each type of permit. We repeated this assessment after outliers were identified and removed. Outliers were any permit that had a significantly higher processing time when compared to the other permits. We also completed an assessment of the difference in the number of days it took to issue permits over time. To conduct this assessment, we generated a linear trendline for each permit type.

## ***Assessment of Construction Status***

To assess the timeliness of permits with new construction versus those that involved existing facilities, we reviewed each permit (or supporting permit documentation) and categorized it as one of the following:

- Construction of a new facility.
- Construction project at an existing facility.
- Existing facility (no construction).

We then calculated how many of the permits within each construction status exceeded the applicable regulatory time frames.

We also reviewed the construction status for permits that exceeded their applicable regulatory time frames and determined how many of them were in each construction status category.

## Agency Response to Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

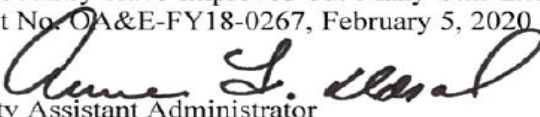
WASHINGTON, D.C. 20460

March 6, 2020

OFFICE OF  
AIR AND  
RADIATION

### MEMORANDUM

**SUBJECT:** Comments on Draft Report: "EPA's Processing Times for New Source Air Permits in Indian Country Have Improved but Many Still Exceed Regulatory Time Frames" Project No. OA&E-FY18-0267, February 5, 2020

**FROM:** Anne L. Idsal   
Principal Deputy Assistant Administrator

**TO:** Kevin Christensen  
Assistant Inspector General  
Office of Audit and Evaluation  
Office of the Inspector General

The Office of Air and Radiation (OAR) welcomes the opportunity to review and comment on the Office of the Inspector General's (OIG) report titled *EPA's Processing Times for New Source Air Permits in Indian Country Have Improved but Many Still Exceed Regulatory Time Frames* (Draft Report).

On June 10, 2011, the EPA issued a Federal Implementation Plan (FIP) to ensure that Clean Air Act permitting requirements are applied consistently to facilities in Indian country. The FIP included the tribal minor New Source Review (NSR) rule that applies to new and modified small facilities or to minor modifications at large facilities in all Indian country. This rule allowed source owners to obtain different types of permits for minor sources, with their associated permit processing deadlines or timeframes.

We appreciate the OIG audit team's comprehensive investigation of these permit processing timeframes between 2011 and the second half of 2018, and the recognition that since 2011 the average number of days it has taken the EPA to issue two types of minor source permits has decreased. We agree with the finding of the draft report that the main causes of permitting delays are time-consuming back-and-forth between the applicant and the EPA during the application process, as well as limited resources in the Regional offices and competing priorities.

We agree that permit issuance on a timely basis will streamline and improve the efficacy of the tribal minor NSR program. To that end, we appreciate the recommendations for improvement that the OIG has offered, and we will work towards implementing them. OAR's responses to the OIG's specific recommendations follow:

**Recommendation 1:** Implement a system that is accessible to both the EPA and the applicants to track the processing of all Tribal New Source Review permits and key permit dates including the application received, application complete, draft permit issued, public comment period (if applicable) and final permit issuance.

**Response 1:** OAR agrees and will implement the following corrective action:

OAR's Office of Air Quality Planning and Standards (OAQPS) has already begun work on the Electronic Permit System (EPS), which will include a module to receive and process applications for the EPA-issued tribal new source review permits. Specifically, this module will allow sources to submit electronic applications for tribal minor NSR permits and then allow the EPA staff to process those applications in EPS. The system will allow the EPA staff to update the status of the application and permit to reflect when the application is complete, the draft permit is issued, the beginning and ending of the public comment period, and the issuance of the final permit and response to public comments document. We anticipate having a workable version of the EPA-issued permit module ready in FY2021, Q2 and a finished product by the end of FY21.

**Planned Completion Date:** FY21, Q4 for a finished product of the EPA-issued permit module of EPS for tribal NSR permits.

**OIG Response 1:** The Agency concurred with the recommendation. In a subsequent email, Agency staff clarified that in addition to submitting applications directly to the Electronic Permit System, applicants will also be able to access the system to track permitting progress. Based on this, the Agency provided acceptable planned corrective actions and completion dates. Recommendation 1 is resolved.

**Recommendation 2:** Establish and implement an oversight process to verify that the Regional offices update the permit tracking system on a periodic basis.

**Response 2:** OAR agrees and will implement the following corrective action:

Upon completion of the EPS, OAQPS will work with the Regional offices to establish an oversight process to ensure complete, consistent and timely entry of data into the EPS.

**Planned Completion Date:** FY22, Q2 for development of oversight process.

**OIG Response 2:** The Agency concurred with the recommendation and provided acceptable planned corrective actions and completion dates. Recommendation 2 is resolved.

**Recommendation 3:** Develop and implement a strategy to improve the application process and permitting timelines for Tribal New Source Review permits, taking into consideration the findings and recommendations from the LEAN event. The strategy should include procedures to measure results.

**Response 3:** OAR agrees and will implement the following corrective action:

As discussed during the LEAN Kaizen event, OAQPS is currently working with the Regional offices on various actions to improve the application process and permitting timelines for all NSR permits, including tribal minor NSR permits. These actions include: (1) standardizing the permitting procedures and application forms used by the agency to streamline the permit application process, and (2) tracking the effectiveness of the implementation of this and other improvement actions identified at the LEAN event using permit tracking flow boards and performance boards in every Region that issues NSR permits. In addition, we will also draft an education and communication strategy to reduce time-consuming back-and-forth activity between the permit applicants and the EPA during the application process.

**Planned Completion Date:** FY22, Q3 for standardizing the permitting procedures and application forms and to establish the education and communication strategy for improving the permit application process.

**OIG Response 3:** The Agency concurred with the recommendation and provided acceptable planned corrective actions and completion dates. Recommendation 3 is resolved.

**Recommendation 4:** Provide guidance to the Regions on how to accurately determine and document the application complete date that should be used for tracking the permitting process and assessing timeliness.

**Response 4:** OAR agrees and will implement the following corrective action:

OAQPS will meet with the Regional offices that issue NSR permits to determine how they are currently determining completeness of NSR permit applications. Based on this input, OAQPS will then work with the Regions to standardize criteria to be used for determining permit application complete date and its application to permitting actions. Furthermore, OAQPS will periodically evaluate if the Regions are implementing the criteria consistently.

**Planned Completion Date:** FY21, Q4 for final criteria.

**OIG Response 4:** The Agency concurred with the recommendation and provided acceptable planned corrective actions and completion dates. Recommendation 4 is resolved.

**Recommendation 5:** Develop and implement a plan, in consultation with the Office of Enforcement and Compliance Assurance (OECA) and the Regions, to periodically coordinate with Tribes to identify facilities that are operating in Indian country without the required Tribal New Source Review permit.

**Response 5:** OAR agrees and will implement the following corrective action:

OAQPS will work with OECA, the Regional offices and Tribes to develop a plan to identify facilities that may be subject to this program.

**Planned Completion Date:** FY22, Q4 for a final implementation plan.

**OIG Response 5:** The Agency concurred with the recommendation and provided acceptable planned corrective actions and completion dates. Recommendation 5 is resolved.

**Recommendation 6:** Develop and implement a plan, in consultation with OECA and the Regional offices, to periodically conduct outreach to industry groups to educate them on the Tribal New Source Review permit requirements for facilities that are constructed or modified in Indian country.

**Response 6:** OAR agrees and will implement the following corrective action:

OAQPS will work with OECA, the Regional offices and Tribes to develop a plan to inform industry groups located in Indian country about the tribal minor NSR permit requirements that might be applicable to them.

**Planned Completion Date:** FY22, Q4 for a final implementation plan.

**OIG Response 6:** The Agency concurred with the recommendation and provided acceptable planned corrective actions and completion dates. Recommendation 6 is resolved.

Finally, we wish to point out that Regions 9 and 10 are mislabeled on the cover page and on page 4.

If you have any questions regard in g this response, please contact Mike Jones, OAQPS/OAR Audit Liaison, at (919) 541-0528.

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