



December 4, 2015

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U.S. Environmental Protection Agency  
EPA Docket Center  
Mailcode 2822IT  
Attention: Docket ID No. EPA-HQ-OAR-2014-0606  
12000 Pennsylvania Avenue, NW  
Washington, DC 20460

**Re: Comments on Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Gas Production in Indian Country, Proposed Rule (Docket EPA-HQ-OAR-2014-0606)**

Dear Docket Clerk:

The Gas Processors Association (“GPA”) appreciates this opportunity to submit comments on the Environmental Protection Agency’s (“EPA’s”) proposed rulemaking “Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Gas Production in Indian Country,” 80 Fed. Reg. 54,554 (Sept. 18, 2015) (“proposed FIP” or “proposal”).

GPA has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA is composed of 130 corporate members of all sizes that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as “midstream activities.” Such processing includes the removal of impurities from the raw gas stream produced at the wellhead, as well as the extraction for sale of natural gas liquid products (“NGLs”) such as ethane, propane, butane and natural gasoline. GPA members account for more than 90 percent of the NGLs produced in the United States from natural gas processing. Our members also operate hundreds of thousands of miles of domestic gas gathering lines and are involved with storing, transporting, and marketing natural gas and NGLs.

GPA strongly supports EPA’s proposal to develop a streamlined preconstruction review process for sources in the oil and natural gas sector. A streamlined permitting process, such as the proposed federal implementation plan (“FIP”), offers a number of important benefits that will allow cost effective and efficient development of oil and natural gas resources in Indian Country while at the same time ensuring continued environmental protection in accordance with EPA’s obligations under the national ambient air quality standards (“NAAQS”) program and industry’s commitment to be environmental stewards when engaged in industrial activities. Because

sources within the oil and natural gas production and processing sectors share many design attributes, site-specific permitting is not necessary in many cases. A streamlined preconstruction review process that incorporates uniform requirements across the entire sector is in the best interests of federal permit writers and of the regulated community.

At the same time, however, GPA respectfully requests EPA make a number of enhancements to the program to make it more effective. Specifically, EPA should:

- Expand the scope of the proposed FIP to include both synthetic minor sources and gas processing plants as well as to allow voluntary participation for existing sources;
- Include a self-certification in the registration to voluntarily limit emission rates below regulatory limits, similar to state programs;
- Clarify when sources can rely on prior National Environmental Policy Act (“NEPA”) reviews to establish compliance with the Endangered Species Act (“ESA”) and National Historic Preservation Act (“NHPA”) reviews;
- Eliminate the agency’s ability to require site-specific permits on a case-by-case basis; and
- Develop a uniform process to address preconstruction permitting in areas where design values exceed the NAAQS despite being designated attainment or unclassified.

GPA appreciates the extension of the comment deadline by 17 days from November 18, 2015, to December 4, 2015. However, GPA feels that significantly more time is required to develop adequate comments for this rulemaking, and had requested a 60-day extension. GPA has made its best effort with the limited amount of time available to compile these comments, but needs more time to fully consider the significance of this rule and provide additional comments. GPA will continue review of the proposed rule and requests that any supplemental comments submitted by GPA be included in the rulemaking docket and considered fully by EPA in determining the final rule. GPA looks forward to continuing a collaborative relationship with EPA as it works to finalize the FIP.

## **I. The Proposed FIP Must Be Expanded to Ensure the Competitiveness of Oil and Natural Gas Development in Indian Country**

While the proposed FIP would provide much-needed benefits to true minor sources that would otherwise be required to comply with site-specific preconstruction permitting requirements, it does not go far enough to ensure the continued competitiveness of oil and natural gas development in Indian Country. Therefore, GPA urges EPA to expand the scope of the FIP to include synthetic minor sources, as well as natural gas processing facilities. Streamlined permitting processes are commonplace in state-administered preconstruction review programs. Unlike the proposed FIP, however, state-administered programs typically include both true minor and synthetic minor sources and also extend to both gathering and processing facilities. As proposed, the FIP would result in a more burdensome site-specific permitting approach for synthetic minor sources and gas processing plants than that used by most states. Under such an approach, oil and natural gas production in Indian Country would be at a competitive disadvantage due to higher permitting costs and longer permit lead-times. To avoid this situation and fulfill the federal government’s fiduciary duties, the proposed FIP should be expanded as described below.

### **A. EPA Should Expand the Proposed FIP to Include Synthetic Minor Sources**

GPA agrees with EPA that a streamlined process for approving new and modified sources in Indian Country can provide important benefits from both an environmental and business perspective. However, to fully realize EPA's goals and promote oil and gas development with appropriate environmental protections, it is critical that EPA expand the proposed FIP to incorporate synthetic minor sources.

As proposed, the FIP would apply only to true minor sources with a potential to emit that is below major source thresholds. 80 Fed. Reg. at 56,572. Including synthetic minor sources in this streamlined permitting process would alleviate uncertainty for owners and operators in the oil and natural gas sector and provide necessary consistency with other preconstruction review programs administered by EPA and the states.

First, expanding the proposed FIP to include synthetic minor sources will provide regulatory certainty to GPA's members while also realizing the strongest environmental protection. Due to constantly changing conditions in oil and natural gas production, there is often some uncertainty about calculating a source's potential to emit at the time of construction. While GPA's members operate many sources that are true minor sources, the ability to operate as a synthetic minor source can often provide regulatory and operational certainty because the binding emissions limitations established in a synthetic minor permit ensure that a facility will remain a minor source as changes in demand for gathering lines and associated equipment occur. In addition, expanding the streamlined FIP to synthetic minor sources will reduce the administrative burden on both EPA and the regulated community by eliminating the need to prepare, review, and issue site-specific preconstruction permits for sources seeking to operate as synthetic minor sources. Further, while a synthetic minor option provides operators with consistency, predictability, and efficiency, it also provides important environmental benefits by creating an incentive for operators to reduce emissions below major source thresholds in order to avoid more onerous requirements associated with site-specific and/or major source PSD permitting, such as long permit lead times and complicated best available control technology ("BACT") demonstrations. Thus, providing an option for streamlined preconstruction review for synthetic minor sources will provide benefits for operators, for EPA, and for the environment.

Second, providing a streamlined preconstruction review process for synthetic minor sources is consistent with state permitting programs for the oil and natural gas sector and with EPA's precedent for other preconstruction review programs in Indian Country. Most states with significant oil and natural gas production have implemented general permits, permits by rule, or other streamlined permitting processes for preconstruction review that apply to both true minor and synthetic minor sources. Attachment 1 contains a table showing the state-level permit options commonly used by oil and gas sites. These programs are extremely effective, protect air quality, and allow the continued development of oil and natural gas production without the risk of unnecessary delays caused by preconstruction review. As shown in Attachment 1, the median time to obtain construction approvals under these state-level permit options is approximately 30 days. In stark contrast, EPA is currently afforded one year after an application for a synthetic minor permit has been deemed complete to grant or deny the permit. *See* 40 C.F.R. § 49.158(b)(7). Moreover, application of streamlined permitting to synthetic minor sources reduces the burden on state regulators that would otherwise strain their limited resources. For

the same reasons, expanding the proposed FIP to include synthetic minor sources would ease the burden imposed on EPA's permit review staff.

EPA has previously used a FIP on the Fort Berthold Indian Reservation ("FBIR") to create federally and practicably enforceable synthetic minor source restrictions such that a site's potential to emit ("PTE") does not exceed PSD major source thresholds. *See* 78 Fed. Reg. 17,836 17,839-51 (Mar. 22, 2013). EPA notes in the preamble to the FBIR FIP the benefits of this approach below:

[P]reconstruction PSD permits are one mechanism available to the EPA to assure that emissions increases associated with economic development do not threaten the NAAQS. Under the Federal Tribal NSR rule, sources located on the FBIR may also obtain synthetic minor NSR permits to limit their emissions below major source levels. Either of these options would require that the EPA review and issue several hundred air permits to emissions limitations similar to those required by this FIP. We determined, therefore, that issuing this FIP, and imposing emission limitations for these sources at one time was a more efficient and streamlined mechanism than issuing individual permits. We believe that this is the best way to address the potential harm that these previously unregulated VOC emissions would create, and ensure that we are not inhibiting the growth of oil and natural gas due to the permitting process, which could put the Tribe at an economic disadvantage. Finally, while actual emissions for some sources may be lower than potential emissions, there are no federally and practicably enforceable emission control requirements for the affected equipment limiting the potential to emit. **This rule imposes emission limitations that are federally and practicably enforceable.**

*Id.* at 17,839 (emphasis added). EPA offers no explanation in the proposal as to why it is excluding synthetic minor sources here. *See Dillmon v. NTSB*, 588 F.3d 1085, 1089-90 (D.C. Cir. 2009) (citing *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1811 (2009)) ("Reasoned decision making ... necessarily requires the agency to acknowledge and provide an adequate explanation for its departure from established precedent."). Given this precedent and the successful implementation of streamlined permitting programs for synthetic minor sources at the state and federal level, there is simply no reason to limit the proposed FIP to true minor sources.

Furthermore, EPA has several options available to expand the scope of the proposed FIP to include synthetic minor sources while ensuring that all of the Clean Air Act's requirements for synthetic minor sources are met. EPA could look to existing state programs, including the many examples provided in Attachment 1 that currently administer a streamlined permitting process for the types of facilities that would be covered under the Proposed FIP. As GPA suggested in its comments on EPA's Advance Notice of Proposed Rulemaking, EPA could impose federally enforceable emissions limits through a self-certification process and/or sending a response letter to synthetic minor sources confirming authorization under the streamlined program. Both approaches are very common in states that use streamlined permitting programs. For example, many oil and gas sites in Texas are authorized under a permit by rule, and the Texas Commission on Environmental Quality's ("TCEQ's") rules specify federally-enforceable emission limitations for PBRs. *See* 30 TAC §§ 106.4 and 106.6. In addition, a site can submit a Form APD-CERT to the TCEQ to self-certify voluntary federally-enforceable emission limitations below any limits in a rule or permit for that source type. The TCEQ lists several purposes of this self-certification,

including avoiding applicability of state and Federal major source rules, NSR major source permitting, and Title V major source permitting. Oklahoma offers several General Permits for oil and gas sources and allows federally-enforceable emission limitations to be established in the Authorization confirmation letter from the Oklahoma Department of Environmental Quality (“DEQ”) or by the permittee in a Notice of Modification Form. Arkansas primarily authorizes compressor stations under a General Air Permit (1868-AGP-000). Sites requesting coverage under Arkansas’ General Permit provide emissions on a Notice of Intent Form, and emission limitations are established through a Confirmation Letter from the Arkansas Department of Environmental Quality (“ADEQ”). *See* ADEQ Permit #1868-AGP-000, Section III.3 and ADEQ Reg. 19.501.

Based on these examples and EPA’s past practice, we urge EPA to include an option for operators to self-certify voluntary emission limits in order to construct a synthetic minor source under the FIP when the rule is finalized. Under such an approach, the operator would be able to certify emission limits below minor source thresholds and would then be legally bound by such limits. Because the proposed FIP is based on existing NSPS and NESHAP requirements, we urge EPA to further streamline the process by allowing such sources to demonstrate compliance with self-certified emissions limits by referencing existing monitoring, recordkeeping, and reporting requirements already established in those NSPSs and NESHAPs for these sources.

**B. EPA Should Expand the Proposed FIP to Include Natural Gas Processing Plants**

GPA also urges EPA to expand the proposed FIP to include natural gas processing plants. The vast majority of natural gas processing plants are operated as minor sources and thus would benefit from a streamlined preconstruction review process for the same reasons as sources in the oil and natural gas production sector.

As an initial matter, drawing a line between gathering and processing sources is arbitrary. Operators typically employ the same types of equipment at both compressor station sites for gathering lines and at gas processing plants. For example, compressor engines, dehydrators, and tanks are commonly used at both types of sites. Moreover, this same equipment is commonly found at well sites, too. As a result, both compressor station sites and gas processing plants produce similar types of air emissions and emissions from both types of sources can be controlled in the same manner. Thus, extending the FIP to include natural gas processing plants would help to ensure uniformity and consistency within the natural gas sector. While there are some types of equipment, such as turboexpanders, refrigeration equipment, and mole sieve dehydration units that are unique to natural gas processing plants, these types of equipment are not significant enough sources of emissions to justify a separate site-specific permitting program for gas processing plants in Indian Country.

Further, state regulators who are responsible for the vast majority of minor source preconstruction permitting do not distinguish between the gathering and processing sources within the natural gas sector. Instead, they typically develop a single streamlined permitting program that applies broadly to sites in the oil and natural gas industry. For example, the Oklahoma DEQ has developed a General Permit for Oil and Gas Facilities<sup>1</sup> that is not limited to one sector of the industry:

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<sup>1</sup> Available at <http://www.deq.state.ok.us/apps/nondiv/permitspublic/storedpermits/1256.doc>.

This permit is limited to air pollutant emitting sources located at [oil and gas facilities] that are designed and operated for the production, gathering, processing, storage, or transportation of crude oil, refined petroleum products, natural gas, and natural gas liquids (NGL), including condensate.

In addition, the TCEQ's permit by rule for Oil and Gas Handling and Production Facilities, 30 TAC § 106.352, is not limited to one sector of the industry:

*Applicability.* This section applies to all stationary facilities, or groups of facilities, at a site which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids or gases found in geologic formations on or beneath the earth's surface including, but not limited to, crude oil, natural gas, condensate, and produced water with the following conditions.

Several other states take similar approaches. The collective experience of these states demonstrates that gas processing plants can be effectively regulated under the same streamlined permitting process as compressor station sites and other sources in the production sector. Thus, there is ample support for EPA to expand the proposed FIP to include gas processing plants without jeopardizing air quality in Indian Country. Further, the many state permitting programs referenced in Attachment 1 can serve as a template for EPA if it chooses to extend the streamlined permitting process to include gas processing plants.

In addition, GPA recommends that EPA clarify the definition of *natural gas processing plant* by revising it to be consistent with the definition in other air rules. In particular, EPA should specifically note that a Joule-Thompson valve, dew point depression valve, or an isolated or standalone Joule-Thompson skid does not make a site a *natural gas processing plant*. GPA recommends that EPA reference or incorporate the definition of a *natural gas processing plant* contained in NSPS OOOO. *See* 40 CFR 60.5430.

### **C. The Proposed FIP, If Finalized as Proposed, Would Disadvantage Oil and Natural Gas Development in Indian Country**

While GPA supports EPA's efforts to provide a streamlined process for true minor sources in the oil and natural gas production sector, the proposed FIP does not go far enough and, unless changes are made, will disadvantage oil and gas development in Indian Country. As explained above, the vast majority of states with oil and natural gas resources have streamlined permitting programs that go beyond the scope of the proposed FIP by including synthetic minor sources and natural gas processing plants. Because these state permitting programs offer more flexibility to both oil and natural gas producers, gatherers, and processors by increasing the types of sources that can qualify for streamlined preconstruction permitting, most companies would prefer to site their sources on non-tribal lands that are subject to state permitting instead of the more time-consuming, complicated, and costly site-specific permitting requirements that will apply to sources that do not qualify for the proposed FIP.

For example, consider a gathering company that is evaluating two sites for a new compressor station which will be a synthetic minor source, Site A in Indian Country and Site B in a nearby state. Since gathering pipelines often span several miles, it is common for a gathering company to have several siting options for a compressor station. Under the proposed FIP, the permitting process for Site A would likely take well over a year and the resultant permit conditions would be unknown in advance, creating equipment design uncertainties. On the other

hand, Site B qualifies for a state-level streamlined permitting approach with known permit conditions and a prescribed 30-day issuance timeline. Absent other factors, a company would select Site B due to its efficiency and certainty. Indeed, compressor stations can be conceived, designed, installed, and put into operation in less than one year. Streamlined state-level permitting programs accommodate the fast-moving nature of the oil and gas industry, whereas EPA's proposed approach would be the limiting factor in starting construction for synthetic minor sources. This puts tribes at a significant economic disadvantage in attracting new investments in the oil and natural gas sector.

Therefore, it is imperative that EPA level the playing field between tribal and non-tribal land by adopting streamlined permitting programs that are similar in scope to those in competing states. As discussed above, EPA must include both synthetic minor sources and natural gas processing plants in its streamlined preconstruction review program. Indeed, EPA arguably has an obligation to do so here. As a trustee for tribal resources, the federal government has a fiduciary duty to protect and promote tribal resources. *Two Shields v. United States*, 119 Fed. Cl. 762 (Ct. Fed. Claims 2015) ("The BIA has a fiduciary duty to ensure that the Indians' mineral resources 'will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental impacts or cultural impacts resulting from such development'" (quoting 25 C.F.R. § 212.1(a))). A permitting program that creates systemic barriers to the development of oil and natural gas resources in Indian Country is inconsistent with that mandate. Thus, EPA has an obligation to develop regulatory programs for Indian Country that allow tribes to compete with other landowners with respect to oil and gas development. To ensure the competitiveness of oil and gas production in Indian Country, EPA must expand the FIP to include both synthetic minor sources and gas processing plants.

## **II. EPA Should Create a Process for Existing Sources to Participate in the FIP on a Voluntary Basis**

In addition, GPA urges EPA to create a process for existing sources to participate in the FIP on a voluntary basis. GPA agrees with EPA that the FIP should not be extended to include all existing sources as a matter of law. *See* 80 Fed. Reg. at 56,569-71. At the same time, however, there may be a number of reasons why a specific existing source may wish to participate in the FIP on a voluntary basis. In light of the EPA's conclusion that compliance with the FIP will be protective of the environment and achieve air quality goals for Indian Country, allowing existing sources to register and be regulated under the FIP should, on balance, have a positive effect on air quality.

On a case-by-case basis, certain operators may have an interest in reconsidering their existing operations at a site and electing to comply with the NSPS and NESHAPs included in the proposed FIP. Furthermore, operators that also have new or modified sources that are subject to the FIP may prefer to operate under a uniform regulatory program for all of their sources, regardless of whether they are new, modified, or existing. Operating under a uniform regulatory structure can reduce compliance costs and improve efficiency by reducing the number of unique permitting requirements with which an operator's employees must be trained to implement.

Further in some cases, voluntary participation by existing sources may provide a means to improve air quality. For example, in near-nonattainment areas with significant existing oil and natural gas production, a FIP that applies only to new sources may not have a significant impact on air quality, given the large number of existing sources. However, existing sources could

potentially reduce their emissions and improve air quality by voluntarily complying with the FIP. As explained above, individual sources may prefer a single regulatory program for new and existing sources from an efficiency standpoint, even if the emissions limitations included in the FIP are slightly more stringent for existing sources. Thus, GPA urges EPA to include an open-ended process for existing sources to voluntarily register to become subject to the FIP and rescind existing minor permits, if necessary, at any time after the FIP is finalized.

In addition, GPA urges EPA to allow the FIP to be used to authorize minor modifications at major sources. Minor modifications at major sources can involve the same equipment and emissions profile as modifications at minor sources. Further, major sources that have already undergone very-involved NSR permitting review at the time of construction should not be at a disadvantage when undertaking minor modifications. Many state-level permitting programs allow this type of approach. For example, the TCEQ allows major sources to utilize permits by rule to authorize minor modifications.

### **III. EPA Must Clarify Requirements for Endangered Species Act and National Historic Preservation Act Compliance**

GPA agrees with EPA that the streamlined processes included in the proposed FIP will generally allow affected facilities to ensure compliance with pre-construction permitting requirements with limited additional burdens. As new or modified sources, each affected facility would already be subject to the substantive NSPS and NESHAP requirements that EPA is including in the proposed FIP. As a result, the sources would not be subject to any additional air quality-related requirements beyond those already applicable to new and modified sources. In fact, as EPA explains, even those six programs are only applicable if a source falls within each program's regulatory requirements. *See, e.g.*, 80 Fed. Reg. at 56,560 ("In cases where a facility may have VOC emissions above 5 tpy but below 6 tpy, owners or operators would not be subject to the storage vessel provisions ...."). However, GPA is concerned about the potential burdens associated with ESA and NHPA compliance provisions and urges EPA to clarify (and potentially expand) when an affected facility is permitted to rely on a prior NEPA analysis to fulfill its ESA and NHPA requirements.

In the proposed rule, EPA provides two options for complying with ESA and NHPA requirements. First, an affected facility can rely on a prior NEPA analysis that incorporated ESA and/or NHPA compliance. 80 Fed. Reg. at 56,567. Second, as an alternative, an affected facility can conduct its own screening process for ESA and NHPA compliance and submit documentation to EPA. *Id.* However, under this second option, a source cannot commence construction until EPA has reviewed and approved of the screening process. *Id.* ("[O]nce an owner/operator completes the screening procedures, they would submit documentation to the EPA Regional Office and receive written verification of completion before beginning construction."). For sources subject to the screening process under the second option, the screening process itself represents a substantial and time consuming burden, and the requirement to obtain EPA approval prior to commencing construction is contrary to the FIP's focus on providing a streamlined preconstruction review process and could substantially delay projects. This is particularly problematic for GPA's members who often have to respond quickly to changing demands from producers and can ill afford significant preconstruction delays.

To avoid these concerns, GPA urges EPA to clarify and, if necessary expand, when a facility can comply with ESA and NHPA requirements by referencing prior NEPA reviews.

Specifically, GPA urges EPA to clarify that the prior NEPA review need not be conducted simultaneously with the construction or modification of the affected facility. In many cases BIA or BLM may complete an applicable NEPA review well in advance of the specific construction activity that may trigger preconstruction review. This is particularly true when an existing facility is modified in a manner that does not expand the footprint of the existing facility or modify the types of activities that will take place at the site. In such circumstances, the BIA or BLM may conclude that the proposed changes do not require further NEPA review. (In contrast, if a proposed change at an existing facility would expand the facility's footprint or otherwise include new and unique activities, a new NEPA review may be required.) GPA urges EPA to clarify that if a site-specific NEPA review has been conducted in the past and the new construction or modification project does not trigger additional NEPA review, the operator can continue to rely on the prior NEPA review for ESA and NHPA compliance, regardless of when that NEPA review occurred. Without such clarification, operators may be forced to conduct a screening process and delay construction pending EPA approval in situations where BIA or BLM concluded that additional NEPA review was not necessary. As long as a prior site-specific NEPA review has occurred, GPA urges EPA to defer to these land use agencies when they conclude that new construction or modification projects will not produce new environmental impacts that require additional NEPA review. In addition GPA urges EPA to consider whether programmatic EISs can satisfy the relevant ESA and NHPA requirements. Programmatic EISs can address both ESA and NHPA issues on a reservation-by-reservation basis in a manner that addresses both the historic resources and endangered species that may be present in a given area. Allowing individual sources to rely on the ESA and NHPA analyses in a programmatic EIS can provide further streamlining benefits that will reduce the costs of implementation while ensuring that environmental goals are met.

#### **IV. EPA Should Eliminate the Option to Require Site-Specific Permits on a Case-by-Case Basis**

GPA is also concerned that the effectiveness of the streamlined FIP program may be diminished by the risk that, at any time prior to construction, EPA could inform an operator that a site-specific permit is required. *See* 80 Fed. Reg. at 56,564. Under the proposed FIP, a facility is only required to provide notice 30 days before construction. *Id.* at 56,576. Operators incur significant, non-refundable expenses within the 30 days prior to construction, as materials must be ordered and delivered and contractors must be retained to perform the work. Thus, a last-minute decision by EPA to require a site-specific permit would impose a substantial burden on an operator. As a result, GPA opposes this provision and urges EPA to eliminate any option to require a site-specific permit, particularly with so little notice.

At the same time, GPA appreciates EPA's concern that the requirements in the FIP may not be appropriate in all cases, particularly in near-nonattainment areas or other locations where air emissions are not adequately controlled. *See* 80 Fed. Reg. at 56,564. However, rather than addressing those concerns on a case-by-case basis after an operator has already made significant and irreversible investments in a new project, GPA urges EPA to provide advance notice of specific areas where the general FIP would not be applicable and where an area-specific FIP and/or site-specific permits would be required. To ensure notice to the regulated community and a sufficient public process for such changes to the scope of the FIP's applicability, GPA urges EPA to publish any decisions to exclude certain areas from the FIP in the Federal Register and provide the public with an opportunity to comment. Such an approach would ensure both the

uniformity and advance notice that are necessary to ensure that operators can make investments in new construction in reliance on the FIP.

**V. EPA Must Address Sources in Areas that Exceed NAAQS Design Values**

In the preamble to the proposed FIP, EPA suggests that this streamlined permitting process may not be appropriate for sources located in near-nonattainment areas where ambient pollutant concentrations approach or exceed NAAQS design values. 80 Fed. Reg. at 56,564. Such areas are at risk of being designated nonattainment in the future, which would potentially subject sources to different and more stringent emissions limits through a nonattainment FIP. The threat of a looming nonattainment designation could have a chilling effect on oil and gas development in such an area because sources would lack certainty about applicable permit conditions and how they may change over time if the area's attainment status changes.

To provide certainty to the regulated community, GPA urges EPA to allow this proposed FIP to bridge the gap between attainment and nonattainment area requirements in the event that current attainment areas are redesignated in the future due to NAAQS revisions. Specifically, we urge EPA to specify that this FIP and its streamlined NSR review provisions will remain in effect for near-nonattainment areas and areas redesignated to nonattainment until EPA takes further action for that area. If EPA later adopts a FIP specific to a nonattainment area or near-nonattainment area in Indian Country, that later FIP would then supersede the requirements of the currently proposed FIP. An area-specific FIP would undergo a notice and comment rulemaking process that would provide affected sources with an opportunity to shape the FIP and adjust their future development plans accordingly. Including such an approach in the proposed FIP would give sources certainty about the future regulatory requirements of conducting business in near-nonattainment areas, thereby allowing them to make informed business decisions about where to invest.

**Conclusion**

GPA appreciates the opportunity to submit these comments on the proposed FIP. We look forward to continuing to work with EPA as it develops policies to address air emissions from the oil and natural gas sector. GPA is standing by to provide further information or answer any questions that EPA may have.

Respectfully Submitted,  
Mark Sutton  
President and Chief Executive Officer  
Gas Processors Association

## ATTACHMENT 1: COMPARISON OF COMMONLY USED STATE LEVEL PERMIT OPTIONS FOR OIL AND GAS SITES

Agency	Permit Commonly Used by O&G Sites	Citation	Construction Approval Timeline	Federally-Enforceable Limit Options
ADEQ	General Air Permit for Compression Stations	Reg. 26.705	Construction may begin 30 days after submittal of complete NOI or receipt of ADEQ Confirmation Letter, whichever is earlier.	Yes, listed in confirmation letter.
CDPHE	General Air Permit for RICE (GP02)	<a href="https://www.colorado.gov/pacific/sites/default/files/AP_General-Permit-GP02.pdf">https://www.colorado.gov/pacific/sites/default/files/AP_General-Permit-GP02.pdf</a>	“Conditional certification of a registration under this general permit is effective from the date the complete registration request is received by the APCD.” If the engines do not qualify for registration, the owner or operator accepts liability.	Yes.
NDDOH	Permit to Construct (PTC) and Permit to Operate (PTO)	NDAC 33-15-14	Construction may begin upon receipt of a PTC by NDDOH. Typical application processing time is 30-60 days.	Synthetic Minor Source Permit option available.
NDDOH	Storage Tank Registration	Guidance Policy/ NDAC 33-15-07	Tank registration due within 30 days of start of operation.	Yes.

Agency	Permit Commonly Used by O&G Sites	Citation	Construction Approval Timeline	Federally-Enforceable Limit Options
NMED	GCP1 Level One Oil and Gas Installations	NMAC 20.2.72.220	NMED must grant or deny within 30 days after receiving an application.	Yes.
NMED	GCP4 Combustion Sources & Related Equipment	NMAC 20.2.72.220	NMED must grant or deny within 30 days after receiving an application.	Yes.
ODEQ	General Permit for Oil & Gas Facilities	OAC 252:100-7-15(b)(2)	Construction may begin upon receipt of a Notice of Intent by ODEQ.	Yes, can be requested in application.
PADEP	GP-5 Natural Gas Compression and/or Processing Facilities	25 Pa. Code § 127.611	PADEP will issue authorization within 30 days after receipt.	The GP-5 limits are enforceable.
TCEQ	O&G Permit by Rule - Barnett Shale	30 TAC 106.352	Notification prior to start of construction followed by full application within 90/180 days after start of operation.	Yes, can be requested in application.

Agency	Permit Commonly Used by O&G Sites	Citation	Construction Approval Timeline	Federally-Enforceable Limit Options
TCEQ	O&G Permit by Rule - non-Barnett Shale	30 TAC 106.352 & 106.512	Registration required to be submitted 10 days after start of construction if installing natural gas engine > 240 hp. Registration required to be submitted prior to start of construction if sour gas (> 24 ppmv sulfur). Otherwise, no registration required.	Yes, can be requested in application.
TCEQ	O&G Standard Permit	30 TAC 116.620	Construction may begin 45 days after application submittal or receipt of written notification from TCEQ, whichever is earlier.	Yes, can be requested in application.
TCEQ	O&G Standard Permit - Barnett Shale	Non-Rule Standard Permit	Notification prior to start of construction followed by full application within 90 days after start of operation.	Yes, can be requested in application.
UDAQ	Approval Order - Certification	R307-120-4	Within 120 days of the filing date of the application.	Yes, can be requested in application.

Agency	Permit Commonly Used by O&G Sites	Citation	Construction Approval Timeline	Federally-Enforceable Limit Options
WVDEP	General Permit G35 - Natural Gas Facility	CSR 45-13-5.7.b.	WVDEP must issue registration with 45 days after application is determined complete.	Yes, can be requested in application.
WDEQ	Site Specific, Pre-Construction Permits	Chapter 6, Section 2	120-180 days; with or without modeling (inclusive of public comments).	Yes, can be requested in application.

Median Construction Approval Timeline (days) - 30