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Carl Daly, Acting Director
Air and Radiation Division
U.S. EPA, Region 8
Mail Code 8ARD
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Re: Federal Implementation Plan for Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah, Docket No. EPA-R08-OAR-2015-0709

Dear Mr. Daly:

Western Energy Alliance (Alliance) and the Utah Petroleum Association (UPA) support the Proposed Federal Implementation Plan (FIP) for Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray (U&O) Indian Reservation, 85 Fed. Reg. 3492 (Jan. 21, 2020). We seek a FIP for the U&O Indian Reservation that enables responsible oil and natural gas development to move forward on tribal lands while creating jobs and expanding economic opportunities for the Ute Indian Tribe and improving air quality. We support EPA's stated goal of enabling development of oil and natural gas resources within the U&O Reservation while maintaining a level playing field with adjacent private, state and federal lands.

The Alliance represents 300 member companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. The Alliance represents independent oil and gas producers, the majority of which are small businesses with an average of fifteen employees.

UPA is a statewide oil and gas trade association established in 1958 representing companies involved in all aspects of Utah's oil and gas industry. UPA members range from independent producers, to midstream and service providers, to major oil and natural gas companies widely recognized as industry leaders responsible for driving technology advancement resulting in environmental and efficiency gains.

Our comments focus on eleven main categories for which the FIP could be improved to ensure tribal lands remain competitive in the basin. These focus areas are:

- General Conformity
- Cause or Contribute Demonstrations
- Timing for Rulemaking Completion
- Storage Vessels
- Combustion Devices
- Pneumatic Pumps
- Associated Gas/Flare Requirements
- Leak Detection and Repair
- Reporting/Recordkeeping
- 2014 Emissions Inventory
- Wastewater Disposal Facilities

General Conformity

Before taking or approving any action in a nonattainment area, federal agencies must determine that the action conforms to the applicable implementation plan. 40 C.F.R. § 93.150(b). One option for demonstrating conformity in an ozone nonattainment area is to offset the emissions caused by the federal action so there is no net increase in emissions. 40 C.F.R. § 93.158(a)(2). The Alliance and UPA are concerned that the Proposed FIP may inadvertently limit the future certification of emission reduction credits (ERCs). We ask EPA to preserve the maximum flexibility for federal agencies to determine that their actions conform.

In 2019, EPA published an Advance Notice of Proposed Rulemaking that solicited comment on a potential FIP to establish an ozone precursor ERC trading bank for Indian country lands within the Uinta Basin nonattainment area. 84 Fed. Reg. 24064 (May 24, 2019). Among other things, EPA requested comment on the use of ERCs to show that a new or modified minor source does not cause or contribute to an ozone National Ambient Air Quality Standards (NAAQS) violation or to satisfy general conformity requirements. 84 Fed. Reg. at 24068. The Alliance and UPA submitted joint comments supporting the establishment of a trading bank. Alliance-UPA Comments, August 7, 2019. Our letter highlighted the need for flexibility and encouraged EPA to “clarify that ERCs are not the only way to show conformity.” *Id.* at 10. We reiterate that ERCs are but one of many options for agencies to make general conformity determinations.

The Proposed FIP increases consistency, helps to level the playing field between oil and gas development on state and tribal lands within the Uinta Basin, and will reduce emissions of ozone precursors. We support these objectives. At the same time, the Proposed FIP makes it more difficult for existing sources of air emissions in the U&O Indian Reservation to generate ERCs. Emissions reductions are creditable only if they are quantifiable, enforceable, permanent, and surplus of Clean Air Act requirements. 84 Fed. Reg. at 24066. Any new emission reductions that are mandated by the FIP will not be surplus and will not be certifiable as ERCs. This fact makes it more important for EPA to facilitate options for demonstrating conformity that do not rely on ERCs. The general conformity rules provide several options for demonstrating conformity. Among other things, federal agencies may:

1. Publish lists of actions that are presumed to conform, 40 C.F.R. § 93.153(f);

2. Document that the total emissions from the action are identified and accounted for in the state implementation plan (SIP), tribal implementation plan (TIP), or FIP attainment demonstration, 40 C.F.R. § 93.158(a)(1);
3. Obtain a statement from the applicable air quality agency that the emissions from the action along with all other emissions in the area do not exceed the SIP, TIP, or FIP emissions budget, 40 C.F.R. § 93.158(a)(5)(i)(A);
4. Have the state or tribe commit to submitting a SIP, TIP, or FIP revision that would achieve any needed emission reductions before the federal action occurs, 40 C.F.R. § 93.158(a)(5)(i)(B); or
5. Where EPA has not approved a revision to the relevant SIP since the area was designated or reclassified, show that the total emissions from the action do not increase emissions with respect to baseline emissions, 40 C.F.R. § 93.158(a)(5)(iv).

We ask EPA to clarify that all legal options for demonstrating conformity remain available and to take any available steps to streamline conformity demonstrations and increase flexibility.

Cause or Contribute Demonstrations under the Tribal Authority Rule

We support EPA's conclusion that it may rely on the emission reductions achieved by the Proposed FIP to determine that future new and modified minor sources of air emissions will not cause or contribute to a NAAQS violation. 85 Fed. Reg. at 3495. This conclusion falls within EPA's discretion to regulate air quality in Indian country and is supported by EPA's discretion over the implementation of prevention of significant deterioration (PSD) permitting requirements. EPA's proposal will ensure that true minor and synthetic minor sources face consistent approval requirements.

As described in the preamble to the proposed FIP, when an operator applies for a permit to construct a new or modified minor source of air pollution in a nonattainment area in Indian country, the Tribal Authority Rule requires the reviewing authority to demonstrate that construction will not cause or contribute to a NAAQS violation in the nonattainment area. 85 Fed. Reg. at 3495, *citing* 40 C.F.R. § 49.155(a)(7)(ii). EPA currently allows true minor sources to register for streamlined authorization to construct without completing a case-by-case cause or contribute demonstration. *See* FIP for True Minor Oil and Gas Sources in Indian Country, 81 Fed. Reg. 35944 (June 3, 2016). However, synthetic minor sources are not eligible for the streamlined construction authorization mechanism and are therefore required to demonstrate that they will not cause or contribute to a NAAQS violation.

EPA has discretion regarding how it makes cause or contribute determinations. Tribal Authority Rule, 63 Fed. Reg. 7254, 7262 (Feb. 12, 1998) ("Congress intended to give to the Agency broad authority to protect tribal air resources"). Individual determinations are not required in every instance. Rather, EPA has discretion to require air quality impacts analysis only where the "reviewing authority has reason to be concerned that the construction of your minor source or modification could cause or contribute to a NAAQS or PSD increment violation." This discretion allows the reviewing authority to protect air quality by requiring an impact analysis when needed "but limits overburdening all minor sources in Indian country with these types of air quality analysis." *Review of New Sources and Modifications in Indian Country*, 76 Fed. Reg. 38748, 38761 (July 1, 2011). The Clean Air Act's PSD program grants EPA similar

discretion over cause or contribute demonstrations. For example, EPA used its discretion to grandfather certain sources from cause or contribute demonstrations. 2015 Ozone NAAQS, 80 Fed. Reg. 65292, 65433 (Oct. 26, 2015).

EPA has estimated that the controls in the Proposed FIP will result in a volatile organic compound (VOC) reduction of approximately 20,000 tons per year (tpy). This is a significant reduction in VOCs and represents approximately 22% of the 90,000 tpy of VOC emissions reported in the 2014 emissions inventory. Docket No. EPA-R08-OAR-2015-0709-0010. Based on this large reduction, EPA's plan to rely on the FIP emission reductions to avoid the need for cause or contribute demonstrations is well within its discretion. The Alliance and UPA encourage EPA to finalize its conclusion that, "this proposed U&O FIP will ensure new development on the U&O Reservation will not cause or contribute to a NAAQS violation." 85 Fed. Reg. at 3492.

Timing for Rulemaking Completion

We support EPA's plan to finalize the proposed FIP rulemaking by mid-summer 2020.¹ Based on Table 1 in 40 C.F.R. § 51.1303(a), the Uinta Basin has three years from the date of designation to attain at Marginal and six years from the date of designation to attain at Moderate, resulting in attainment dates for Marginal and Moderate of August 3, 2021, and August 3, 2024, respectively, based on the effective date of designation of August 3, 2018.

Finalizing the rule in mid-summer 2020 will require controls to be installed by the end of 2021, considering the 18-month compliance timeline specified in the proposal. Thus, the attainment date design value at the Marginal level will not benefit from the controls required by this rulemaking because the controls will be installed after the attainment design value calculation period of 2018 to 2020.

If the area bumps up to Moderate, installing the controls by the end of 2021 would have a positive effect on two of the three years in the Moderate attainment design value calculation (2021 to 2023), thereby providing the best opportunity to affect attainment at the Moderate level and prevent further bump-up to Serious. A delay of just six months in finalizing the rule would result in a missed opportunity to improve air quality in the first quarter of 2022, thus positively affecting only one of the three years used in the Moderate attainment date design value calculation. A delay of eighteen months in finalizing the rule would further erode the benefits of the rule and prevent controls from helping to achieve attainment at the Moderate level. The following table illustrates this in more detail:

¹ "EPA Region 8 Proposed FIP for Oil and Natural Gas Sources on the Uintah and Ouray Indian Reservation in Utah", Pre-Federal Register Publication Presentation; December 19, 2019; located on the EPA website at <https://www.epa.gov/air-quality-implementation-plans/proposed-fip-oil-and-natural-gas-sources-uintah-and-ouray-indian> (accessed on March 9, 2020).

Area Classification	Attainment Date			Impact on Attainment Design Value Based on Controls Installation Date	
	Years from Designation	Date Based on 8/3/2018 Designation	Attainment Design Value Period, Years	FIP Controls Installed by 12/31/2021	FIP Controls Installed by 12/31/2022
Marginal	3	8/3/2021	2018 – 2020	None	None
Moderate	6	8/3/2024	2021 - 2023	2 of 3 Years	1 of 3 Years

Storage Vessels

The Alliance and UPA support EPA’s consistency with the New Source Performance Standards (NSPS) Subpart OOOOa (OOOOa) in the proposed FIP and appreciate the exemptions for VOC emissions control requirements. Exempting crude oil, condensate and produced water storage tanks already subject to emissions controls through OOOOa will relieve an otherwise redundant reporting burden. In addition, the FIP should include language similar to that under the definitions section of OOOOa (60.5430a) which allows for a 60-day exemption period for storage vessels related to well completion.

We recognize that setting the applicability threshold for tank batteries at 8,000 barrels (bbl) of crude oil and 2,000 bbl of condensate on a 12-month rolling basis was intended to align with the most recent Utah Department of Environmental Quality (UDEQ) standards. However, we would prefer for the standards to align with the current OOOOa requirements that determine applicability based on facility emissions rather than production.

It is unclear whether the proposed FIP intends to apply OOOOa standards to well pads that have both existing wells and new wells. Currently, when an operator uses an existing pad to bring on a new well, only the new well and its ancillary facilities are subject to OOOOa requirements related to combustion control devices. We request clarification that production sent to storage tanks that are subject to OOOOa does not contribute to the emissions or production thresholds for determining whether adding a combustion control device is required by the FIP.

Combustion Devices

Control devices triggered by this rule would be required by the FIP to be equipped with a continuous measuring and recording device to indicate proper operation of the pilot flame or auto-ignitor or connected to a SCADA system to monitor and document proper operation of the flare/combustor. Installing and connecting a SCADA system to older equipment in locations where SCADA has not previously been installed would be economically infeasible and cost prohibitive.

Pneumatic Pumps

We request EPA add an exemption in the rule that states operators are not required to install a control device solely for the purpose of complying with the pneumatic pump emissions reduction requirements. Pneumatic pump emissions should only be required to be controlled if a control device already exists at the facility or if a control device is required for controlling storage tanks and/or dehydrator emissions as well.

Likewise, an exemption for pneumatic pumps that operate less than 90 days per year would maintain consistency with OOOOa. We suggest the following language for this exemption:

A pneumatic pump that is in operation less than 90 days per calendar year is not required to be controlled at a site where the potential for source-wide emissions from all storage tanks, glycol dehydrators, and pneumatic pumps is equal to or greater than 4 tpy, as determined according to § 49.4174, provided the owner/operator keeps records of the days of operation each calendar year. For the purposes of this section, any period of operation during a calendar day counts toward the 90 calendar day threshold.

Additionally, we believe the language in §49.4176(a) should refer to actual emissions instead of potential emissions. Pneumatic pumps can be operated over a large range of inlet pressures and pump rates. Use of potential emissions could significantly over-estimate emissions and result in burdening an otherwise low emission site, e.g. one with actual VOC emissions less than 4 tpy with installing and operating costly controls.

Flare Requirements

The proposed FIP addresses EPA's intent to incorporate UDEQ's recent requirements for the management of associated gas. However, because the proposed rule fails to incorporate specific requirements (85 FR 3506), it is unclear whether EPA intends to include associated gas flaring rules in the pending FIP or a future FIP.

If the intent is to control venting and flaring in the current FIP, we suggest implementing an enforceable limit. The language should mirror the FIP for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation. The language in 49.4164(d)(1)(i) and (ii) requires produced natural gas be routed to, "a natural gas gathering pipeline system for sale or other beneficial purpose; or a utility flare or equivalent combustion device capable of reducing the mass content of VOC in the produced natural gas vented to the device by at least 98 percent or greater." Because operators in the basin are already complying with this language, it would not add an additional burden but would provide appropriate clarification and further mirror the produced natural gas requirements outlined in the Utah Administrative Code Title R307-511.

Leak Detection and Repair (LDAR)

To ensure tribal lands are not put at a disadvantage compared to adjacent federal, state and private lands, we recommend consistency with OOOOa. Consistency with OOOOa, which operators have largely

implemented for assets in the basin and elsewhere, ensures that tribal lands are not burdened with a new system of requirements. To that end, we recommend a provision be added to the FIP that allows operators to opt into OOOOa regulations for LDAR in order to relieve the administrative burden of applying multiple LDAR regulatory frameworks to the same equipment.

The proposed rule requires monthly auditory, visual and olfactory (AVO) inspections of tank control vent systems with a 15-day timeline to correct observed leaks. To encourage consistency with OOOOa, we recommend changing this timeline to a 30-day repair time. In addition, the rule requires that AVO monthly inspections be performed while the crude oil, condensate and produced water storage tanks are being filled. This is an impractical request because the window for tank filling is very small and sites do not necessarily have workers at them at all times. It would be more practical to require monthly AVO without the added requirement to do it while filling tanks. We suggest the FIP include the provision in OOOOa that, "if the repair or replacement is technically infeasible, would require a vent blowdown, a compressor station shutdown, a well shutdown or well shut-in, or would be unsafe to repair during operation of the unit, the repair or replacement must be completed during the next scheduled compressor station shutdown, well shutdown, well shut-in, after a planned vent blowdown or within 2 years, whichever is earlier."²

To ensure safe working conditions, we also recommend adding a delay of repair provision to the leak detection and repair program such as that found in 40 C.F.R. § 60.5397a(h)(2).

Reporting/Recordkeeping

To achieve a level playing field that does not cause tribal lands to be at a disadvantage in comparison to federal and private lands within Utah's Uinta Basin, the U&O FIP should not be overly burdensome in terms of record-keeping and reporting. Overly burdensome regulations can have the unintended effect of making tribal lands less attractive to new development, thereby suppressing economic opportunity and job growth for the Ute Indian Tribe. Please refer to our comments provided to the Office of Management and Budget on February 20, 2020 on the Information Collection Requirements, which are attached for convenience.

To streamline reporting for operators, it would be beneficial to align requirements with OOOOa reporting requirements. For example, deadlines for annual reporting should be on the same timeframe as annual reporting for OOOOa. In addition, the proposed requirement to identify components not subject to FIP LDAR due to a OOOOa exemption has the potential to be an administrative burden with no real benefit.

2014 Emissions Inventory

The FIP preamble references the 2014 emissions inventory as an important basis of the FIP rather than the more recent 2017 inventory prepared by the State of Utah and EPA. The preamble doesn't address the 2017 inventory as a basis for the proposed FIP rules. To reflect the most up-to-date information, we encourage EPA to use the 2017 inventory.

² 40 C.F.R. § 60.5397a(h)(1))

There are not significant differences for total VOC emissions from tanks, dehydrators or pneumatic pumps between the 2014 and 2017 inventories. There are, however, key differences between the numbers for fugitives, wastewater ponds and venting. For example, wastewater ponds represent 34% of total 2014 VOC emissions and only 12% of total 2017 VOC emissions.

The differences between the categories in the 2014 and the 2017 inventories reflect some of the uncertainty in the understanding of emissions in the Uinta Basin for the source types mentioned above. As suggested in the preamble of the Federal Register, there is a need to better understand emissions from those source categories, especially given the recognized uncertainty in understanding wastewater pond emissions.

Wastewater Disposal Facilities

As referenced in the 2014 Emissions Inventory section above, we agree with EPA that the data regarding wastewater disposal facilities needs further review. There is considerable uncertainty in emission calculations for ponds and more data needs to be collected to determine their impact to the air quality in the basin. Currently, pre-treatment standards are the best available and most cost-effective method of control, but industry continues to investigate new options and technologies. EPA requested comment on potential Title V status of wastewater ponds but emissions from the ponds are considered fugitive emissions and would not be included in the determination for Title V status.

The Alliance and UPA support efforts to improve air quality throughout the Uinta Basin. We are committed to working with the Ute Tribe and EPA to ensure that the FIP achieves that goal while being implemented in a way that encourages continued oil and natural gas development on the U&O Indian Reservation. Thank you for considering our suggestions on ways the proposed FIP could be improved so that tribal lands remain competitive in the basin.

Sincerely,



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Enclosure

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