

Emily Schilling

Partner
801.799.5753
Salt Lake City
ecschilling@hollandhart.com

EPA Applies More Rigorous Emission Controls on Uintah and Ouray Indian Reservation Lands

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EPA is poised to publish a final Federal Implementation Plan (FIP) for emissions from oil and natural gas sources on Indian country lands within the Uintah and Ouray Indian reservation in northeast Utah. EPA recently released the content of the FIP prior to publication in the Federal Register. The FIP requirements will become effective 60 days after publication and compliance is required within one year.

EPA has jurisdiction over Indian Country where, as here, the Ute tribe has not received Treatment as a State under the Clean Air Act (CAA) and therefore does not implement its own approved air program. The Indian Country lands at issue are within the Uinta Basin Ozone Nonattainment Area, an area designated as failing to meet the national ambient air quality standard (NAAQS) for ozone.

Once published, the FIP will apply more rigorous emissions controls, monitoring, and reporting requirements than current oil and gas rules implemented by the Utah Division of Air Quality on lands under Utah's jurisdiction. EPA forecasts compliance with the FIP will cost the industry more than a half-billion dollars. Among other measures, the FIP will require the following:

- enhanced emissions control technology for combustors, flares, storage vessels, dehydrators, pneumatic pumps, vent systems, and tank truck loading;
- leak detection and repair programs to limit fugitive emissions;
- monthly inspections of emissions equipment;
- the use of specific monitoring methodology for VOC control devices; and,
- reporting of emissions to EPA every three years.

The FIP's emissions reporting requirements apply to both new and existing oil and gas facilities that emit more than one ton per year of VOCs, NOx, SOx, $PM_{2.5}$, PM_{10}, and CO. Specific controls for VOCs will apply to facilities with the “potential to emit” four tons per year or more of VOCs. Operators must calculate the “potential to emit” for their facilities by monitoring VOC emissions for the 12 months leading up to the FIP compliance deadline. The FIP defines “potential to emit” as the maximum average daily throughput of VOCs during the highest 30-day period of production over the 12-month period prior to the compliance date. Thus, while triannual

reporting and specific VOC controls will not be required until one year after the effective date of the FIP (one year and 60 days after publication in the Federal Register), operators will need to begin monitoring VOC throughput 60 days after publication to properly calculate “potential to emit.”

Additionally, adding a new well or increasing production from an existing well will trigger a re-evaluation of the facility's “potential to emit” VOCs. After the compliance deadline, the FIP also requires operators to re-evaluate “potential to emit” on a rolling monthly basis and install VOC controls within 30 days if a facility's “potential to emit” increases and exceeds the four ton per year threshold.

Although EPA designated portions of the Uinta Basin as in “marginal” nonattainment for the ozone NAAQS in 2018, “marginal” ozone nonattainment areas do not require a separate implementation plan. While the Basin could be upgraded to “moderate” ozone nonattainment based on a failure to attain the NAAQS, EPA recently granted a one-year attainment extension and has signaled that a second one-year extension is likely. Based on recent monitoring, the area may be able to attain the standard by the extended attainment date.

The FIP notes that EPA may consider further regulation if the Uinta Basin does not come into attainment with the ozone NAAQS and is upgraded to “moderate” ozone nonattainment. However, this FIP will act as a new baseline for emission controls in Uinta Basin Indian Country regardless of whether the Basin attains the ozone NAAQS.

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