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FUELING UTAH'S GROWTH & PROSPERITY

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Mr. Richard Bowen
U.S. Environmental Protection Agency
EPA Docket Center
Docket ID No. EPA-HQ-OAR-2025-1212
Mail Code 28221T
1200 Pennsylvania Avenue NW, Washington, DC 20460

Submitted via regulations.gov to Docket ID No. EPA-HQ-OAR-2025-1212. Also submitted via email to a-and-r-docket@epa.gov and to bowen.richard@epa.gov.

Subject: Comments from the Utah Petroleum Association regarding Minor New Source Review Program Air Permitting Public Participation Requirements for State Implementation Plans, Docket ID No. EPA-HQ-OAR-2025-1212

Dear Mr. Bowen:

On July 7, 2026, the Environmental Protection Agency ("EPA") published a proposed rulemaking in the Federal Register that, if adopted as proposed, would eliminate the requirement to provide public notice and an opportunity for public comment for minor source air permitting actions. The rulemaking addresses all minor source permit actions including true minor permits, synthetic minor permits, and minor modifications to major sources, but does not cover any minor source permits issued for Indian country by EPA or a Tribal authority. EPA seeks comments on whether they should do a separate rulemaking to similarly address minor permitting on Indian country and, if yes, then how to do it.¹ ("Proposal" or "Rulemaking")

The Utah Petroleum Association ("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. Five member companies operate petroleum refineries in the Northern Wasatch Front ozone nonattainment area and several other UPA member companies operate oil and gas production and midstream facilities within the Uintah Basin ozone nonattainment area ("UB"). Our member companies include major and minor source facilities within the UB. Member vendors and suppliers also operate in these areas. Our member companies have an interest in air quality, air permits, air emissions controls, air emissions

¹ 91 FR 41591, *Minor New Source Review Program Air Permitting Public Participation Requirements for State Implementation Plans*, proposed rule.

inventories, and related policies and compliance requirements throughout Utah including on Indian country.

In brief, UPA supports the Proposal and the justification for the Proposal. Additionally, we ask that EPA proceed expeditiously to develop an additional rulemaking to extend the terms of the proposal or final rulemaking to Indian country, as discussed below.

1. Request for feedback regarding Indian Country

The Proposal includes the following paragraph requesting feedback on EPA's plan not to address Indian country under the Proposal and whether EPA should pursue an additional separate rulemaking to do so:

Finally, this proposed rule does not address the existing public participation requirements associated with preconstruction authorizations issued in Indian country as PSD permits, NNSR permits, or minor NSR authorizations. These requirements are contained in 40 CFR part 52 and in 40 CFR part 49.33. Because the existing Tribal minor NSR public participation regulations at 40 CFR 49.157 currently require public participation on all draft permits for minor sources and minor modifications locating within Indian country, the EPA solicits comment on whether to pursue a separate rulemaking to amend the Tribal minor NSR public participation requirements and, if so, how the Agency should propose to amend the minor NSR public participation requirements in Indian country (see section III.B. of this preamble).²

Later in the Proposal, EPA provided a more extensive description of minor permitting on Tribal lands, and asked the following:

The EPA solicits comment on whether to pursue a separate rulemaking that would propose to revise the Agency's public participation requirements for authorizing new minor sources and minor modifications locating in Indian country in light of the reading of CAA section 110(a)(2)(C) in this proposed rule, and, if so, how the Agency should propose to amend the minor NSR public participation requirements in Indian country (question #4 in section V. of this preamble). For example, if pursued, a separate future rulemaking could address public participation requirements in the EPA's [Federal Implementation Plan] for minor sources in areas with partial or full delegation for minor [New Source Review], as well as discretion regarding public participation requirements in [Tribal Implementation Plans] submitted for EPA approval by federally recognized Tribes. Similarly, a separate future rulemaking could consider issues of public participation regarding authorization of minor source preconstruction activities, including site-specific true minor sources, [General Permits], [Permits by Rule], synthetic minor sources, synthetic minor sources established by [General Permits], and minor modifications at major sources. The EPA is not soliciting comment on, or proposing any changes to, public participation requirements for major [Prevention of Significant Deterioration] and [Nonattainment New Source Review] permits on Tribal lands in this action.³

Finally, in the list of topics for public comment included in the rule, the Proposal includes the following:

² Proposal, p. 41598.

³ Proposal, pp. 41601-41602.

Question #4: In light of the reading of CAA section 110(a)(2)(C) that is presented in this proposed rule, should the EPA pursue a separate rulemaking that would propose to make regulatory changes to the Federal public participation requirements for authorizing new minor sources and minor modifications locating within Indian country? If so, how should the EPA propose to amend the minor [New Source Review] public participation requirements in Indian country?⁴

UPA responds “yes” to the above noted Question #4. The remainder of these comments focus primarily on minor permits issued by EPA or by a Tribal authority for Indian country including some details about how to apply the changes to Indian country.

2. If EPA finalizes the proposal for minor sources, then UPA requests that EPA proceed expeditiously with a similar rulemaking to address Indian country.

Several member companies of UPA drill and operate oil and gas wells in the Uinta Basin ozone nonattainment area (“UB”), of which a significant amount of the oil and gas production occurs on Tribal lands owned by the Ute Tribe on the Uintah and Ouray Reservation and where, at present, EPA operates the air permitting program and some other aspects of air quality programs.⁵ The remaining oil and gas production occurs on lands (including lands owned by the federal government) under Utah state jurisdiction for air quality matters including minor and major air permits.

UPA maintains a fundamental principle that oil and gas production should be neither advantaged nor disadvantaged on lands under one jurisdiction or the other. However, minor permitting on Tribal lands would be disadvantaged in the case of permits for Tribal lands requiring public notice and comment compared to other jurisdictions not requiring it. Therefore, assuming that EPA finalizes the proposal, ***we request that EPA conduct a second rulemaking in consultation with the Ute Tribe to extend the proposal to Tribal lands by addressing Tribal minor New Source Review air permit requirements.***

Operators on Indian country in the UB typically utilize the “Registration Program for minor sources in Indian country” which applies to any true minor source.⁶ Nonetheless, operators sometimes need a synthetic minor permit and are unable to use the registration program. Moreover, oil and gas operations currently have relatively few major source permits in the UB, but this is changing with the advent of more well pads with multiple wells and longer, horizontally drilled wells and associated higher emissions per well pad (even though current emission control technology results in lower emissions per barrel of oil or gas equivalent produced). With major source well pads and the likelihood of minor modifications to these major sources in the fast-paced oil and gas production industry, the likelihood of operators needing minor modifications to these major sources increases.

Minor air permitting between the two jurisdictions should be as similar as possible with the fewest number of dissimilar hurdles applied in either jurisdiction. The two jurisdictions already have dissimilarities. An EPA-issued permit may be appealed to Environmental Appeals Board (“EAB”) and then, after the EAB decision, the permit may be subject to judicial review. In contrast, a State-

⁴ Proposal, p. 41603.

⁵ Currently, the Tribe operates the portion of the air monitoring program for regulatory monitors located on Tribal lands and some other aspects of air programs for the oil and gas sources.

⁶ 49 CFR §49.160, located at <https://www.ecfr.gov/current/title-40/section-49.160>.

issued permit could potentially be subject to judicial review but not the added middle step of an EAB review or state equivalent.

Finalizing the Proposal would create an additional difference of the public notice and comment process applicable only on Indian country unless EPA proceeds to complete a parallel rulemaking for Indian country.

UPA remains concerned about the additional time required to issue a permit for Indian country compared to a permit issued by the state permitting authority if EPA finalizes the Proposal without pursuing an additional rulemaking to address public comment for minor permitting in Indian country. Not only will the permits for Indian country be subjected to a 30-day public comment period that will not be required for state-issued permits, but the issuing agency will require additional time to develop responses to comments submitted.

UPA contends that it is contingent on EPA to ensure that a new or modified air permit meets *all* requirements – EPA is capable of doing their job and does not need public comment to do it.

Furthermore, ensuring a level playing field between Tribal and non-Tribal lands by pursuing an additional rulemaking to provide the changes of the Proposal to minor permitting on Indian country is consistent with President Trump's Executive Order for Unleashing American Energy because it encourages oil and gas production in both areas equally, and renders them equally accessible.

3. Public notice and comment would not be required for permits issued by a State, and therefore legally it should not be required for permits issued for Indian country.

EPA's best reading of the CAA says that the minor permit does not need to undergo public notice and comment. ***EPA must apply the same best reading to permits issued for Indian country.*** UPA does not see a path where any other conclusion can be reached and supported under the CAA.

EPA justified the Proposal to no longer require public notice or comments for minor permitting because the CAA does not require public notice under EPA's "best reading" of the CAA and therefore it should not be required by regulation.⁷ The preamble in the Proposal provides the following helpful discussion:

. . . . The establishment of major NSR in the 1977 CAA amendments fundamentally changed how NSR programs operate, enacting more specific requirements for major sources with greater environmental impacts, while leaving State and local air agencies with discretion to regulate all other sources, i.e., minor sources, as necessary to assure achievement and maintenance of the NAAQS. The regulations at 40 CFR 51.160–51.161 are in part a historical remnant from before the existence of the detailed statutory program to regulate major sources and modifications. When the EPA added regulations to implement the more stringent requirements for construction of major sources and major modifications of these sources, the regulations at 40 CFR 51.160–51.161 were largely superseded for major sources and modifications, but they remained the only regulations governing minor sources and modifications. It is thus appropriate to assess whether these regulations and their requirements as applicable to minor sources and modifications are appropriate in light of the CAA's language providing States with discretion to regulate such sources and modifications as necessary to achieve the NAAQS. This proposed rule seeks

⁷ Proposal, p. 41599.

to address the historical inconsistency in a manner supporting the historical CAA effect of allowing State and local air agencies to manage their respective airsheds in the “minor” NSR context while meeting the statutory obligation of CAA section 110(a)(2)(C).

Applying the Supreme Court’s framework under Loper Bright v. Raimondo, the best reading of CAA section 110(a)(2)(C) is that it delegates discretionary authority to the EPA with regard to determining whether a State or local air agency’s program for regulating stationary source construction and modification that is not subject to the major source requirements in parts C and D of title I of the CAA is sufficient to assure maintenance and attainment of the NAAQS. Because of its lack of specificity and use of the term “as necessary,” which leaves flexibility, CAA section 110(a)(2)(C) is best read to limit the EPA’s authority to impose specific regulatory requirements in determining what is “necessary” for a minor NSR program to satisfy statutory requirements such that it is approvable under CAA section 110(k)(3). Therefore, consistent with the statute, the EPA provides State and local air agencies significant discretion in developing SIP-approvable programs to regulate minor NSR preconstruction activities. Extending this discretion to the degree of public participation that State and local air agencies determine to be effective to achieve the objective of such programs is consistent with this reading. There is no explicit requirement for public participation in preconstruction review of minor sources in CAA section 110(a)(2)(C). Thus, the best reading of this provision of the CAA is that it does not require a Federal minimum standard for public participation in minor NSR programs. Consistent with statutory requirements, the EPA therefore leaves it to State and local air agencies to determine whether and to what extent public participation should be required in their respective minor NSR programs.⁸ [internal footnotes omitted]

EPA goes on to cite additional statutory justification supporting this “best reading” of the statute.

We understand that states may continue to require public notice in some or all cases even if EPA finalizes the Proposal, but they would no longer be *required* to require public notice for *all* minor permitting. Therefore, UPA supports the justification to eliminate the requirement for public notice addressing minor permitting including true minor, synthetic minor, and minor modifications to major sources. And UPA supports extending the concept by developing another rulemaking to extend the same “best reading” of the CAA to minor permits issued for Indian country, considering the cited portions of the CAA that clearly allow this.

4. With tightening budgets at agencies, the Proposal would improve practicability.

Many state agencies have tightening budgets making it difficult for them to offer the public notice process for all minor permits. The Proposal indicates the following:

Many air agencies were surprised to hear the EPA express the view that the existing regulations at 40 CFR 51.161 require minor NSR programs to provide a 30-day opportunity for public comment on all proposed new minor sources and minor modifications regulated under such programs. Some air agencies questioned whether their air permit programs’ limited budgets, time, and personnel could actually fulfill the existing requirement at 40 CFR 51.161(b)(2) to provide a 30-day “opportunity for public comment” on all regulated minor NSR preconstruction activities due to the high volume of minor NSR applications. Recent research also suggests that many State governments presently face budget shortfalls, which in turn further restrict the resources available to State and local air agencies. Air agencies further

⁸ Proposal, p. 41599.

asserted that providing public participation on all minor source preconstruction activities would be an ineffective use of their limited resources compared to reviewing proposed preconstruction activities with greater air quality impacts and of greater public interest. To support these arguments, some air agencies noted that many of the proposed minor source preconstruction activities they reviewed were so small in terms of their air quality impacts and public interest that in cases in which the air agency did provide an opportunity for public comment, they received very few comments, most of which were either insubstantial or non-actionable. These air agencies further argued that subjecting all such activities to public participation requirements risked overwhelming the public with inconsequential information about minimal-impact minor sources and modifications, which could discourage public participation in the overall NSR decision-making process instead of promoting it.⁹ [internal footnotes omitted]

Likewise, with respect to permits issued for Indian country, EPA has received continued pressure on its budgets from some Administrations and some in Congress. We expect that some Tribal entities may not have adequate resources to address the public notice process for all minor permits. Speculating, perhaps this is one reason why EPA noted that the majority of Tribal organizations rely on EPA for issuing both major and minor air permits.¹⁰

Therefore, eliminating the requirement for the public notice process for all minor permits adds a level of practicability to agencies to support any resource limitations they may have.

5. EPA needs to provide clarity around various aspects of a proposal to address Indian country.

A few items need to be clarified or addressed when EPA develops a new rulemaking to remove the requirement for the public notice and comment process for minor permitting on Indian country.

First, when EPA Region 8 develops a draft minor permit, the operator or applicant sees the draft at the same time that it goes to public notice. Operators will need to have an opportunity to review a draft permit prior to the permit becoming final and therefore, EPA would need to insert that step into the process. Misunderstandings may occur that result in unexpected or inappropriate permit descriptions or permit conditions which can be addressed through discussion between EPA and the owner or applicant. UPA recommends that the rule establish a minimum two week or perhaps as much as a four week period to allow the applicant and/or owner to review the draft permit and associated documentation developed by EPA or any other issuing agency of a permit for Indian country. In Utah, operators have that opportunity to review the draft permit before it goes to public notice.

Without a public comment period, UPA requests that EPA clarify – perhaps in the preamble -- that there would be no opportunity for a member of the public to request a public hearing. We interpret the regulations this way, but clarification would be beneficial.

Additionally, the lack of an opportunity for the public to request a judicial review also needs to be clarified. Again, the regulations might be read to say this but clarification – again, perhaps in the preamble – would be highly beneficial.

⁹ Proposal, p. 41600.

¹⁰ Proposal, p. 41595.

6. If the CAA allows issuing updates to Title V that address minor permit changes without public notice and comment, we also recommend opening a separate rulemaking to address this.

UPA requests that EPA evaluate whether updates to Title V permits that address minor permit changes under New Source Review or Prevention of Significant Deterioration may also be issued without incurring the public notice and comment process. If EPA believes this would be possible under the language of the CAA, codifying this into regulation would provide another efficiency in the use of government, Tribal, and industry resources.

7. Concluding Comments

UPA supports the Proposal to eliminate the requirement for the public notice and comment process for minor permitting activities and supports EPA's "best reading" of the CAA as justification for this Proposal. Furthermore, UPA has a vested interest in EPA pursuing an additional rulemaking to extend the changes to minor permitting in Indian Country, in consultation with the Ute Tribe. Without the additional rulemaking, oil and gas operations in the UB, when located on Indian Country, would be inappropriately disadvantaged when compared to oil and gas operations nearby but on Utah jurisdictional lands for CAA requirements. Making the additional rulemaking for Indian country will be consistent with and support the President's executive order on Unleashing American Energy.

Sincerely,



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