

**Summary of Public Comments and Responses for General Permits and Permits by Rule for
the Federal Minor New Source Review Program in Indian Country
for Five Source Categories
4/6/15**

This document provides a complete summary of all of the comments the U.S. Environmental Protection Agency (EPA) received on the following action: “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,” U.S. Environmental Protection Agency, January 14, 2014 (79 FR 2546). It also provides a complete summary of EPA’s responses to those comments. Throughout this document, “reviewing authority,” “we,” “us” and “our” refer to EPA.

List of Commenters

Commenter(s)	Affiliation	DCN
Kevin Greenleaf	Kootenai tribe of Idaho	EPA-HQ-OAR-2011-0151-0021
David Scott	Beatty & Wozniak, P.C.	EPA-HQ-OAR-2011-0151-0022
John Cline	John R. Cline, PLLC	EPA-HQ-OAR-2011-0151-0023
Brenda Jarrell	Southern Ute Indian tribe	EPA-HQ-OAR-2011-0151-0025
Richard Hyde	Texas Commission on Environmental Quality (TCEQ)	EPA-HQ-OAR-2011-0151-0027
Tex (Red Tipped Arrow) Hall	Mandan, Hidatsa and Arikara Nation (MHA)	EPA-HQ-OAR-2011-0151-0029
Jeff Applekamp	Gas Processors Association (GPA)	EPA-HQ-OAR-2011-0151-0030
(No name provided)	Tribal Environmental Policy Center (TEPC)	EPA-HQ-OAR-2011-0151-0031
Fredericks Peebles & Morgan LLP	Submitted on behalf of Ute Indian tribe of the Uintah and Ouray Reservation	EPA-HQ-OAR-2011-0151-0032
Stephen B. Etsitty	Navajo Nation Environmental Protection Agency (NNEPA)	EPA-HQ-OAR-2011-0151-0033
Mohsen Nazemi	South Coast Air Quality Maintenance District (SCAQMD)	EPA-HQ-OAR-2011-0151-0035
Kathryn Fontaine	QEP Field Services Company	EPA-HQ-OAR-2011-0151-0037
Cameron Cuch	Crescent Point Energy U.S. Corp	EPA-HQ-OAR-2011-0151-0038
Mike Smith	QEP Resources, Inc.	EPA-HQ-OAR-2011-0151-0039, EPA-HQ-OAR-2011-0151-0049-3

Commenter(s)	Affiliation	DCN
Nez Perce Tribe Air Quality Program Staff	Nez Perce Tribe	EPA-HQ-OAR-2011-0151-0040, EPA-HQ-OAR-2011-0151-0117
Korby Bracken	Anadarko Petroleum Corporation	EPA-HQ-OAR-2011-0151-0041
Matthew Todd	American Petroleum Industry (API)	EPA-HQ-OAR-2011-0151-0042
V. Bruce Thompson	American Exploration and Production Council (AXPC)	EPA-HQ-OAR-2011-0151-0043
Duane Zavadil	Bill Barrett Corporation (BBC)	EPA-HQ-OAR-2011-0151-0044
Jonathan Knight	St. Croix Chippewa Indians of Wisconsin	EPA-HQ-OAR-2011-0151-0045
Scott Mason	Enerplus Resources (USA) Corporation	EPA-HQ-OAR-2011-0151-0046
Brandy Toft	Leech Lake Band of Ojibwe	EPA-HQ-OAR-2011-0151-0047, EPA-HQ-OAR-2011-0151-0122
Robert E. King	WPX Energy, Inc.	EPA-HQ-OAR-2011-0151-0048
Scott Mason	Enerplus Resources (USA) Corporation	EPA-HQ-OAR-2011-0151-0049-1
Jennifer Biever	Hogan Lovells, on behalf of Crescent Point Energy US Corporation	EPA-HQ-OAR-2011-0151-0049-2
TJ McReynolds	Ute Indian tribe	EPA-HQ-OAR-2011-0151-0049-4
Chad Schlichtemeier	Anadarko Petroleum Corporation	EPA-HQ-OAR-2011-0151-0049-5
Gerald Wagner	EPA (Blackfeet Tribe)	EPA-HQ-OAR-2011-0151-0050
Bill Thompson	National Tribal Air Association	EPA-HQ-OAR-2011-0151-0052, EPA-HQ-OAR-2011-0151-0115

1.0 Comments Related to the General Permit Issuance Process

1.1 General comments on EPA’s proposed approach of issuing national general permits and use of two types of minor New Source Review (NSR) preconstruction permits

Comment 1.1.1: Twelve commenters (0025, 0027, 0030, 0031, 0033, 0041, 0042, 0045, 0047, 0048, 0049-5, 0052) support the issuance of general permits, while eight commenters (0025, 0027, 0029, 0030, 0041, 0042, 0048, 0049-5) support the development of both general permits and permits by rule. Although one of these commenters (0025) noted that general permits afford a regulatory agency more oversight than a permit by rule program through the opportunity to review supporting documentation submitted with an application, they also noted that either general permits or permits by rule afford adequate protection of air quality. Two commenters (0042, 0048) added that either general permits or permits by rule would provide maximum implementation flexibility. Four commenters (0025, 0027, 0031, 0033) supported the streamlining of the permitting process, while five commenters (0033, 0045, 0047, 0048, 0052) added that the process would provide time and cost savings to sources and reviewing authorities alike. Two commenters (0025, 0029) noted that the permits would give operators a level of certainty regarding the permitting requirements for planned facilities. Two commenters (0027, 0049-5) noted that the permit streamlining would be successful in maintaining air quality as required by the federal Clean Air Act (CAA). One commenter (0033) noted that the issuance of general permits would make the need for site-specific permits unlikely. Three commenters (0045, 0047, 0052) noted that the issuance of general permits would close the regulatory gap that has existed in Indian country regarding minor source emissions, while another commenter (0031) noted that the issuance of these general permits would benefit the health of Indian tribes by reducing the pollutants emitted by minor sources on their lands. One commenter (0030) noted that, in order to streamline permitting for a modification, operators may wish to request enforceable emission limits through the general permit process for existing sources. Two commenters (0048, 0049-5) noted that the general permit and permit by rule approaches offer sufficient opportunities for public input, particularly for minor sources. One commenter (0033) stated that both the general permit and permit by rule approaches would protect air quality, endangered species, and historic properties in tribal lands.

Response: EPA acknowledges the support of the commenters with respect to development of the general permits and permits by rule in Indian country. EPA agrees that this process allows for public comment and should serve to streamline the permitting process for minor sources locating in Indian country while protecting air quality, endangered species, and historic properties on tribal lands.

1.2 Comments related to administrative procedures for permit issuance (e.g., appeals, reopening, or administrative amendments)

Comment 1.2.1: One commenter (0042) disagreed with EPA’s proposed procedure for amending general permits, noting that the provision is overly broad and inconsistent with the procedures for amending source-specific permits. This commenter (0042) recommended that

EPA treat sources covered by general permits (or permits by rule) in the same manner as facilities covered by source-specific permits.

Response: EPA’s procedure for issuing general permits is governed by 40 CFR 49.156 under the Federal Minor NSR Program in Indian Country (the Federal Indian Country Minor NSR Rule), which was promulgated on July 1, 2011, 76 Fed. Reg. 38788. EPA interprets the Federal Indian Country Minor NSR Rule to require the procedure in 40 CFR 49.156 to be followed anytime a general permit is revised. We note that 40 CFR 49.156 requires general permits to be issued using the same procedures that apply to site-specific permits in 40 CFR 49.154(c), 49.154(d), 49.155, 49.157, and 49.159. It is not clear which procedure(s) for site-specific permits the commenter would prefer apply to general permits that are not already required by the Federal Indian Country Minor NSR Rule. In the proposal (79 Federal Register (FR) 2546), we intended to clarify that although a general permit may be revised in the future, we do not intend to use the revision process to subject existing sources already covered by a general permit to new control requirements, unless and until they modify. By modify, we mean a modification above the minor NSR thresholds in Table 1 to 40 CFR 49.153. In such a case, the modifying source could apply for the new version of the general permit or apply for a site-specific permit. EPA anticipates that in the future there may be different versions of a general permit available for a particular source category. The Approval of Request for Coverage will identify the particular version applicable to the different source types. Note that on the first page of each general permit that EPA has proposed we identify the “version” as “Version 1.0.” In some instances, EPA may make administrative amendments to an existing general permit (e.g., to correct a typographical error). In these cases, EPA would need to update a source’s Approval of Request for Coverage to apply the administratively revised general permit to the source. In the case of updating a general permit to reflect advances in control technology, we would not amend an existing Approval of Request for Coverage to apply the new version of the general permit, unless and until the source proposes to modify and applies for the new version of the general permit.

This process would be consistent with how site-specific permits are revised. A site-specific permit may need revision in two general circumstances: (1) changes that do not involve a modification above the minor NSR thresholds in Table 1 to 40 CFR 49.153; and (2) those that trigger a modification above the minor NSR thresholds. In the first case, such revisions would not be used to subject a source to new control requirements, whereas in the second case review under the Federal Indian Country Minor NSR Rule may require new control requirements for the source.

1.3 Comments on procedures for obtaining coverage under a general permit (e.g., notification requirements)

Comment 1.3.1: Three commenters (0029, 0032, 0035) expressed concern with how the Federal Indian Country Minor NSR Rule would address permitting a source that could cause or contribute to a National Ambient Air Quality Standards (NAAQS) violation or a Prevention of Significant Deterioration (PSD) increment violation, and asked EPA to explain how EPA expects this process will work, under what circumstances EPA would require a source to obtain a site-

specific permit, and whether the general permit itself would include language that recognizes this possibility. Two of these commenters (0029, 0032) noted that an EPA regional administrator's ability to terminate a permit for "cause" would create uncertainty for companies planning significant investments in Indian country, and puts tribally owned companies at risk. One commenter (0035) asked if an adjacent air agency could request that for a specific Indian country area, all sources require site-specific permits. Two commenters (0029, 0032) objected to EPA's stated preference for general permits, noting that the Federal Indian Country Minor NSR Rule does not address the fundamental problem of a lack of staff at local agencies to process these new regulatory requirements. These two commenters noted that lack of staffing has created backlogs in the preconstruction approval process on Indian lands, and that the delay in processing permits would result in loss of revenue to the tribes. These two commenters suggested that EPA needs to include a staffing plan that identifies the staff, expertise and increases in appropriations that will be needed to efficiently process permits for each reservation, or should use permits by rule instead.

Response: EPA believes that the ability to deny coverage under a general permit may cause some uncertainty in the permitting process. However, such latitude is needed given the potential for sources to locate near nonattainment areas, or areas close to nonattainment, or near large, existing sources that have conducted modeling in the past that has shown potential for exceedances of the NAAQS. In order to meet the spirit of the requirements of Section 110(a)(2)(C) of the CAA, EPA must balance the need to protect air quality with our desire to use general permits for relatively common, straight-forward permitting cases and sources that are similar in terms of emissions and operations. As such, the reviewing authority must be able, on a case-by-case basis, to determine that a general permit is not appropriate for a particular source. EPA does not anticipate this situation arising frequently. In addition, we recommend that individual tribal air agencies work with the specific reviewing authority in their area to address concerns related to whether site-specific permits for all sources is more appropriate for a particular area given local air quality concerns.

One of the benefits of the general permit program is that it will help alleviate any potential backlog or delay in the issuance of minor source permits to sources that would otherwise require site-specific permits. This efficiency will come as a result of EPA having already completed the background analysis to ensure that the provisions of the permit are consistent with similar permits issued in other states as well as protective of air quality. EPA intends to manage the permitting workload by issuing streamlined general permits and permits by rule and focusing its limited resources on issuing source-specific permits for more complicated sources that require more in-depth review by EPA permitting staff. The more in-depth review will generally focus on for sources that are covered by source-specific permits, but will also focus on general permits when appropriate.

Relating to terminating a permit for cause, each general permit contains a definition for "cause" with respect to the ability to terminate a permitted source's coverage under a general permit:

1. The permittee is not in compliance with the provisions of this general permit;

2. The reviewing authority determines that the emissions resulting from the construction or modification of the permitted source significantly contribute to NAAQS violations, which are not adequately addressed by the requirements in this general permit;
3. The reviewing authority has reasonable cause to believe that the permittee obtained Approval of the Request for Coverage by fraud or misrepresentation; or
4. The permittee failed to disclose a material fact required by the Request for Coverage or the regulations applicable to the permitted source of which the applicant had or should have had knowledge at the time the permittee submitted the Request for Coverage.

Given this definition, the situations under which coverage under a general permit would be terminated are fairly specific.

2.0. Comments on the Structure and General Requirements of the Draft General Permits

2.1 Comments on the structure of the draft general permits

Comment 2.1.1: One commenter (0040) stated that proposing permit terms related to the reviewing authority's ability to reopen, revise or terminate an individual approval of coverage under the general permit is appropriate. One commenter (0052) noted that Title 40 CFR §49.155(a)(7)(iv) of the Federal Indian Country Minor NSR Rule provides that a "permit may be revised, reopened, revoked and reissued or terminated for cause," and that these provisions are also included in Section 6 of the general permits to clarify how the Federal Indian Country Minor NSR Rule intended these actions to apply to an individual request for coverage. Although EPA stated that it could amend the Federal Indian Country Minor NSR Rule to provide such clarification, this commenter (0052) states it is reasonable that EPA include the provisions in Section 6, as it places the information in a shorter, readable document as compared to the much longer Federal Indian Country Minor NSR Rule. The commenter (0052) also suggests that EPA modify the Federal Indian Country Minor NSR Rule to include the same information as provided under Section 6 of the general permits. Another commenter (0042) objected to allowing the reviewing authority to reopen, revise, or terminate an individual approval of coverage under a general permit, noting that, although EPA has suggested including coverage determinations under the §49.159 revision procedures by incorporating by reference each reviewing authority's approval of a general permit coverage request in the general permit itself, this provision creates substantial uncertainty. The commenter (0042) added that the circumstances that could be used to justify a revision to, or termination of, a general permit coverage approval is unclear, and the broad enforcement mechanisms available under the CAA render this reopening, revision, and termination authority unnecessary. The commenter (0042) recommended that EPA abandon this element of the proposed rule.

Response: Upon review of the comments received, related to incorporating the Approval of the Request for Coverage into the general permits, EPA is finalizing each general permit to include the draft language in Section 6 of each permit. In response to Comment 1.3.1 above, we explained that each permit already contains a definition of "cause" setting forth the circumstances in which an individual permit may be terminated for cause. While one commenter

is correct that we have not identified every situation in which an individual approval may need to be revised, we do not believe such an exercise is necessary. As described in our proposed rule (79 FR 2546), there are numerous situations in which an individual approval may need to be updated to better reflect the covered source. We anticipate that such revisions would be similar to the types of revisions that may be necessary for site-specific permits, which must also contain the same revise, reopen, revoke, reissue or terminate clause in 40 CFR 49.155(a)(7)(d).

Comment 2.1.2: One commenter (0030) stated that a general permit and permit by rule should cover an entire process including multiple equipment types (process units, engines, tanks, etc) rather than a limited type of equipment, noting that more inclusive permits that cover an entire process tend to be easier to administer and comply with rather than multiple permits. One commenter (0025) stated that identification of emission units, control devices, and emission points does not improve the compliance and enforcement aspect of the NSR program and will create an undue burden for industry. One commenter (0027) disagreed with EPA’s interpretation of the CAA that the draft general permits are for “similar” types of emissions units or minor sources, and that this is a limitation on the ability to issue general permits. This commenter (0027) noted that, on March 26, 2012, the Fifth Circuit Court found that EPA’s imposition of a “similar source” requirement applied by EPA to TCEQ’s Pollution Control Project Standard Permit was “neither necessary to safeguard the national ambient air quality standards nor warranted by any applicable provision of the federal Clean Air Act,” and was in excess of EPA’s statutory authority.

Response: EPA agrees that for some source categories it is appropriate and more efficient for a general permit and permit by rule to cover an entire process, and not only a limited number of pieces or types of equipment. As appropriate, EPA has designed the Federal Indian Country Minor NSR Rule general permits as such. For example, in the hot mix asphalt (HMA) permit, both combustion units (engines and generators) and process units (dryer/mixer) are included under the permit. Identification and labeling of emission units and control devices is needed to facilitate identification of equipment covered under the general permit by any potential inspectors.

EPA rejects the suggestion that it lacks authority to issue general permits available only to similar types of emissions units. To the contrary, EPA’s Federal Indian Country Minor NSR Rule regulation authorizing general permits for minor sources in Indian country expressly limits their availability to “similar emission units or sources.” 40 CFR 49.156(a), (b)(1). The cited Fifth Circuit decision, *Luminant Generation Co. v. EPA*, 675 F.3d 917 (5th Cir. 2012) did not find such a limitation unlawful. The court held only that, in light of a state’s “wide discretion” in developing a minor source program, EPA had not provided, in “the rulemaking record” a sufficient basis to support disapproval of a Texas implementation plan authorizing a standard permit for pollution control projects constituting minor sources. *Id.* at 927.

Comment 2.1.3: Two commenters (0031, 0052) noted that, although the text of the general permits for the five source categories requires that each source post the general permit and the most current Approval of the Request for Coverage, as well as requiring that each affected emissions unit and any associated air pollution control technology be labeled with the identification number listed in the Approval of the Request for Coverage for that permitted

source, §49.156(e)(6) provides that only a copy of the letter granting a request for coverage must be posted at each source. The commenters (0031, 0052) recommended that EPA require posting the additional information, as required under the general permits, and that it would be reasonable and be neither costly nor time-consuming for a minor source to meet. One commenter (0040) stated the general permit and the most current approval of the request for coverage for the permitted source “must be made available immediately upon request,” as opposed to “must be posted.”

Response: As noted by the commenters, posting of the Approval of the Request for Coverage is required under §49.156(e)(6), but the general permit itself is not required under the regulation to be posted and only needs to be available on site as needed. EPA will revise the permits to exclude the requirement that the general permit must be posted.

2.2 General comments on EPA’s Control Technology Review

Comment 2.2.1: While two commenters (003 3, 0040) supported EPA’s control technology review, three other commenters (0030, 0035, 0038) expressed concern with EPA’s decision to apply local control requirements on a nationwide basis, stating that this might lead to a competitive advantage or disadvantage for sources locating in Indian lands. One commenter (0038) noted that if the requirements in the general permits and permits by rule were stricter than in adjacent non-tribal lands, companies would relocate and tribal nations would lose their most important revenue stream. One commenter (0035) recommended that EPA issue a general permit that is applicable in only one region, and that the draft emission limits or other standards in each regional permit be based on the most current version of the rules and regulations of regulatory agencies in adjacent areas. One commenter (0030) stated that EPA must consider factors specific to each region that affect the technical and economic feasibility of controls, including the nonattainment status of the area. The same commenter (0030) noted that the general permit and permit by rule programs *should enable applicants to document federally enforceable, numeric emission limits for both criteria pollutants and hazardous air pollutants (HAP)*. For example, a source that is subject to New Source Performance Standard (NSPS) JJJJ for spark ignition engines that requires a control device for compliance with this regulation would be able to request and document federally enforceable, numeric HAP emission limits through the general permit and permit by rule process, given that the NSPS regulation only covers criteria pollutants.

Response: EPA acknowledges that it is challenging to develop a single general permit for use across a broad range of Indian country lands. EPA believes, however, that it is important to apply the same requirements regardless of where a source is physically locating to the extent possible as such an approach creates certainty for the relevant category of sources and avoids the significant implementation burden associated with issuing different general permits for each region. In developing the draft general permit terms and conditions, EPA has relied on national EPA standards as included in the NSPS program, as well as standards currently in place across the country as part of various state regulatory and permitting programs. EPA has not necessarily adopted the most stringent of these observed standards, but rather, has evaluated all relevant rules and regulations to determine the most appropriate and commonly employed standards for each source and unit type covered under the Federal Indian Country Minor NSR Rule. The

general permit background documents provide the specific approach conducted for each regulated process or unit for each covered source category. As part of the approach, EPA designed the general permits to, in some circumstances, not be available in certain nonattainment areas or to require more stringent control requirements in certain nonattainment areas. In addition, individual EPA regions may deny coverage and require a source-specific permit instead or choose to develop general permits that are applicable within a particular EPA region. EPA recommends that individual tribal air agencies work with their EPA regional office to address concerns related to the use of general permits and permits by rule in their tribal area.

The general permit and permit by rule programs do [enable applicants to document federally enforceable, numeric emission limits for NSR-regulated pollutants](#). However, EPA is not considering inclusion of requirements for controlling HAP as such in any of the general permits or permits by rule. EPA is administering the Federal Indian Country Minor NSR Program in Indian Country under the authority provided in Section 301(d)(4) and consistent with the requirements in Section 110(a)(2)(C) of the CAA. Section 110(a)(2)(C) of the CAA requires the development of a program to regulate the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. The NAAQS address criteria pollutants. In addition to addressing criteria pollutants directly, the Federal Indian Country Minor NSR Program addresses precursors to those pollutants and certain other pollutants as listed in Table 1 of the preamble to the final minor NSR rule and in 40 CFR 49.153. We note, however, that 40 CFR 49.158 provides a specific mechanism for limiting HAP for purposes of establishing a synthetic minor source.

2.3 General comments on the use of surrogate annual allowable emission Limits

Comment 2.3.1: Six commenters (0025, 0031, 0040, 0041, 0042, 0048) supported the use of throughput limits as a surrogate for ton-per-year allowable emissions limitations, and four commenters (0031, 0042, 0025, 0052) also noted that monitoring throughput limits, hours of operation and production are more efficient and cost-effective methods for minor sources to demonstrate their compliance. Three commenters (0041, 0042, 0048) noted that sources should be allowed flexibility in demonstrating compliance and should be allowed to use alternative methods to a throughput limit so that facility capacity is not unnecessarily constrained. One commenter (0041) recommended that EPA allow operators to propose alternative and perhaps superior approaches for showing compliance. Two commenters (0025, 0040) requested that the general permit also include clearly defined, enforceable, annual allowable emission limits to ensure adequate protection of the air shed and public health and safety, noting that emission factors may change. Regarding EPA's consideration of the establishment of annual allowable emission limitations for each pollutant, two commenters (0031, 0052) supported the use of throughput production limits as a surrogate monitoring measure to demonstrate compliance. The commenters recommend that EPA require a minor source to use such an approach for a discrete time period, such as three years, after which time EPA should assess the results and determine if throughput production limits tracked closely with the annual allowable emission limitations.

Response: EPA acknowledges the comments supportive of the use of throughput limits and compliance monitoring as a means of compliance demonstration. These types of permit

terms and conditions are commonly found in state general permits and permits by rule. An advantage of limiting throughput or hours of operation is that this information may be readily available and already being tracked for other purposes, such as inventory management or maintenance requirements. EPA feels that imposing ton per year allowable emission limits on these particular source categories would be burdensome in that such an approach would require each source to determine its emissions on a recurring (e.g., monthly) basis to show compliance with a rolling 12-month limit. For other source categories, annual allowable emissions limits may be more appropriate. If a source feels an alternative limit or compliance monitoring method is more compatible with their operational procedures, they may apply for a source-specific permit. The general permits are intended for common, straightforward sources that do not require case-by-case decisions to determine the means of compliance.

2.4 Inclusion of requirements related to endangered and threatened species and historic properties

Comment 2.4.1: One commenter (0047) expressed support for requiring applicants to comply with the requirements of the Endangered Species Act (ESA) and National Historic Preservation Act (NHPA).

Response: We note that it is EPA's obligation, rather than the applicant's, to comply with the ESA and NHPA in connection with issuance of the general permits and permits by rule. In order to streamline the availability of the general permits and permits by rule, we have chosen to meet these requirements by including in the general permits and as part of the permits by rule screening processes to address potential impacts on the relevant resources, and by providing these screening procedures for permits by rule in a separate document.¹ The screening processes require investigation of potential impacts to threatened and endangered species/habitats, as well as to historic properties when warranted and the determination of measures to address potential impacts.

Comment 2.4.2: One tribal commenter (0021) asks if EPA will be including the endangered species and historic preservation requirements in all air permitting actions.

Response: EPA is required to comply with the ESA and NHPA for each of the current Federal Indian Country Minor NSR Rule permitting actions. Therefore, the listed species and historic properties screening procedures are included in the two general permits being finalized and provided in a separate document referenced in Comment 2.4.1 for the three permits by rule being finalized.

¹ "Procedures to Address Endangered and Threatened Species and Historic Properties for New or Modified True Minor Sources in Indian Country Seeking Air Quality Permits by Rule," <http://www.epa.gov/air/tribal/tribalnsr.html>.

Comment 2.4.3: One commenter (0021) inquired if the threatened and endangered species clause (i.e., the ESA) is also included in the Title V permits.

Response: This rulemaking action is not within the scope of the Title V permit program (i.e., sources in Indian country that are defined as major sources or otherwise required to obtain operating permits under 40 CFR part 71); thus the comment is outside the scope of this action. The general permits/permits by rule in this rulemaking action are intended to streamline and expedite the preconstruction permits issued under the Federal Indian Country Minor NSR Rule. In the present circumstances, the ESA requirements are triggered under Section 7(a)(2) of the ESA because the general permits/permits by rule are a federal agency action, in this case authorizing construction or modification of a minor source.

Comment 2.4.4: One commenter (0021) requested clarification on which geographic areas the ESA “action areas” would encompass.

Response: The term “action area” for the purposes of the ESA is defined in 50 CFR Part 402.02: “Action area means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.”

For the purposes of an NSR general permit/permit by rule this would generally include a source’s footprint and would generally also mean that water quality (e.g., from stormwater runoff), lighting and noise impacts and air emissions beyond a source’s footprint would be a consideration in assessing potential impacts. This definition is also included under footnote 1 of the listed species eligibility criteria section of the permit applications. We have added additional information under Appendix A, Section 2.1 of the ESA screening procedures to further clarify the extent of an action area.

Comment 2.4.5: Three commenters (0021, 0031, 0052) expressed concerns about the ability of permit applicants to meet the time, expertise, and cost burdens of the compliance requirements of the ESA and NHPA. Two commenters (0031, 0052) asked if EPA had assessed the time and cost impacts to a permit applicant in complying with the ESA and NHPA, as this is information that permit applicants and reviewing authorities should know in advance. One commenter (0021) also noted that, in their experience, complying with the requirements in Section 2.2, Step 2 of the endangered species requirements would be extremely costly and will be cost prohibitive, particularly to small tribes and operations, as threatened and endangered species often live in tribal lands.

Response: EPA has structured the ESA/NHPA processes so as to minimize the burdens, as well as the level of expertise needed to complete the processes. EPA understands that satisfactorily addressing the screening procedures for threatened and endangered species and historic properties will impose some burden on sources seeking permits. However, we have attempted to streamline the screening processes in order to minimize the effort needed to complete them. For example, both sets of procedures have been clarified to make more explicit

that sources can rely on prior assessments performed by other federal agencies to satisfy the procedures.

Comment 2.4.6: One commenter (0030) observed that EPA proposed to use a process to demonstrate compliance with the ESA and NHPA that is modeled after the National Pollutant Discharge Elimination System (NPDES) general permit for Stormwater Discharge from Construction Activities. The commenter does not believe this is appropriate. The commenter requested that EPA defer the regulation of ESA and NHPA requirements to Federal Land Management Agencies, noting that federal land management agencies, either the Bureau of Land Management (BLM) or the Bureau of Indian Affairs (BIA) (Federal Land Managers (FLMs)), already have responsibility for administering the ESA and NHPA on Indian lands. The commenter recommended that EPA engage with the FLMs to coordinate ESA and NHPA review in Indian country, thereby avoiding redundant federal agency review.

Response: As stated in the proposal preamble (79 FR 2557), and noted by the commenter, we modeled our screening procedures relating to listed species and historic properties on those used in connection with EPA's general permit under the Clean Water Act NPDES Program for Stormwater Discharges from Construction Activities. We mirrored the NPDES approach because we believe it establishes appropriate screening procedures to ensure that any impacts on listed species and/or historic properties are identified and addressed and because applicants obtaining coverage under both general permits (i.e., minor NSR and NPDES) could make use of the similar assessment criteria, thus streamlining the process and minimizing burden.

EPA is also aware that in many cases, new sources locating in Indian country may also need approvals or other authorizations from other federal agencies such as the BIA or the BLM, which are relevant FLMs for such areas, and that such approvals or authorizations may require the FLMs to address the ESA and/or the NHPA as part of their own procedures. EPA must similarly comply with ESA/NHPA requirements when finalizing the minor NSR general permit(s) and permit(s) by rule. Where possible, we believe it is appropriate for facilities seeking to be covered under the general permits or permits by rule to use listed species and historic property assessments, analyses, and outcomes obtained through the FLMs' compliance with the ESA and NHPA to satisfy the relevant screening procedures of the minor NSR general permits and permits by rule.

Within the ESA screening procedures, we intended that Criterion D (Appendix A, Section 1.0), could be chosen by applicants to satisfy their screening obligation, where "another Federal Agency" would be perhaps be either BLM or BIA. To better clarify that intent, we have revised language in Appendix A, for ESA, and Appendix B, for NHPA (since our intent applies to screening procedures related to both statutes). Further, we have revised the formatting of Section 2.0 in both appendices to clarify that Criterion D can satisfy the listed species screening process on its own. Also, we have added a clarification to Section 1.0 of Appendix B that prior assessments may satisfy the historic property screening requirements. The formatting structure contained in the proposal could have lead applicants to believe that each step had to be followed sequentially in every case.

For sources obtaining coverage under a permit by rule, as noted above, the revised procedures discussed above are now within a document titled: “Procedures to Address Endangered and Threatened Species and Historic Properties for New or Modified True Minor Sources in Indian Country Seeking Air Quality Permits by Rule.”

Comment 2.4.7: One commenter (0042) stated that, because no regulatory text has been provided with respect to EPA’s proposed approach to addressing ESA and NHPA requirements, it is impossible to fully evaluate EPA’s proposal. The commenter (0042) requested that complete regulatory text be made available for public comment, and a full explanation of the intended procedures must be included in the draft general permits. The commenter (0042) also noted that EPA’s approach to addressing the ESA and NHPA poses a number of potentially significant problems: (1) the proposed rule does not expressly address whether this rulemaking action is itself subject to the ESA and NHPA, (2) the process EPA identifies for ensuring compliance with the ESA and NHPA involves requiring applicants to interface with the agencies responsible for guiding implementation of the ESA and NHPA in the absence of any procedure governing that interaction, (3) there are no clear timeframes for these agencies to respond to an applicant’s request for coordination, and (4) the legal consequences of certifying compliance with the ESA and NHPA are undefined. This commenter (0042) also noted that the process does not acknowledge the importance of EPA’s role in compliance with the ESA and NHPA, stating that the no effect determination, or any obligation to undertake consultation with other federal agencies, is EPA’s responsibility and that EPA should not defer to the opinions of other agencies.

Response: EPA recognizes that there are ESA and NHPA requirements associated with EPA’s issuance of the general permits and permits by rule and that those requirements apply to EPA. To address these requirements in a manner consistent with our intent to appropriately streamline the permitting process, EPA has established the listed species and historic properties screening procedures set forth in these actions to provide an effective means of identifying and addressing any impacts on the protected resources as sources seek coverage. We note that sources must demonstrate satisfactory completion of the screening procedures and that this demonstration must form part of the legal basis for concluding that the source is eligible for coverage under a general permit or permit by rule.

To provide an opportunity for the public to review these screening procedures, each of the five draft general permits and associated applications, fact sheets, questionnaires and emission calculators were made available in the docket for review and comment. The draft applications for each general permit contained appendices (Appendix A for listed species and Appendix B for historic properties) with the detailed screening procedures that an applicant will follow to assess the potential impacts of their source as it pertains to the relevant protected resources. We specifically requested comment on these general permits and implementation tools and believe that our process provided an appropriate opportunity for public involvement.

Comment 2.4.8: One commenter (0042) recommended that, in its final rule, EPA should include a determination expressly finding that the minor sources on tribal lands subject to the Federal Indian Country Minor NSR Rule will have no effect on any species listed under the ESA, nor any potential effects on resources protected by the NHPA. This commenter (0042) stated that the use of the term “significant risk” (“... based on the evaluation of available information, that the sources that are the subject of this proposal are unlikely to present a significant risk to listed species and critical habitat and to historic properties ...”) confuses the issue, as that term is not the relevant standard under the ESA or NHPA for determining whether regulatory requirements pursuant to those statutes apply.

Response: EPA does not believe that a single determination for all new sources in Indian country that may be covered under a general permit or permit by rule would be appropriate. At this point, there is insufficient information to evaluate all such potential sources or their potential impacts on the protected resources. Rather, EPA believes that the screening procedures incorporated into the general permits and permits by rule are the appropriate means to address potential impacts as sources seek coverage. The commenter did not provide any specific information to support why they believe a single determination could be made at this point.

To comply with the ESA and NHPA for the Bundle #1 group of source categories, we believe a level of site-specific assessment is needed, primarily for the purpose of investigating the potential impact of land disturbance activities but also to address any other potential impacts. We believe the source screening procedures contained in the request for coverage documents of the final general permits and in the document “Procedures to Address Endangered and Threatened Species and Historic Properties for New or Modified True Minor Sources in Indian Country Seeking Air Quality Permits by Rule” for the permits by rule are the most efficient way to make those determinations. As discussed in the response to comment 2.4.6, in those cases where some degree of ESA and/or NHPA evaluation has been previously conducted during another Federal agency’s approval process, that information may be sufficient to satisfy the screening requirements, or may at least provide useful relevant analyses that may be incorporated into a source’s compliance with the screening procedures.

3.0 Comments on the Specific Terms and Conditions of the Draft General Permits and Implementation Tools for the Proposed Source Categories

3.1 General comments on the draft general permits

Comment 3.1.1: One commenter (0027) declined to provide comments on the specific draft terms and conditions of the general permits or the permits by rule. One commenter (0040) noted that, from the Federal Indian Country Minor NSR Rule website (<http://www.epa.gov/air/tribal/tribalnsr.html>) the link for “permit instructions” goes to <http://www.epa.gov/air/tribal/tribalnsrgp.html>, Tribal Minor NSR general permits.

Response: EPA apologizes for the error in the link to the permit instructions and has corrected the link. The correct information was provided in the docket.

Comment 3.1.2: Two commenters (0029, 0032) expressed concern that, in the draft general permits, EPA has adopted NSPS with little or no analysis of whether such requirements are appropriate for minor sources. Four commenters (0029, 0032, 0048, 0049-4) noted that some of the draft permits include provisions significantly more stringent than NSPS for the same source category with no analysis of the need for such restrictive requirements. Four commenters (0029, 0032, 0048, 0049-4) stated that the draft general permits include burdensome monitoring, recordkeeping, and reporting requirements for minor sources that are more restrictive than comparable permits on state lands, and two commenters (0029, 0032) stated that some of the monitoring, recordkeeping, and reporting requirements go well beyond what states adjacent to reservations require. Two commenters (0029, 0032) observed that EPA's draft permits look more like major source permits than minor source or synthetic minor source permits. Four commenters (0029, 0032, 0048, 0049-4) stated that the more stringent requirements in the general permits provide an unfair economic advantage for the same type of facility that is off the reservation, thus denying the tribes of a much needed revenue source. Three commenters (0029, 0032, 0048) requested that the requirement to have a responsible official certify the truth, accuracy, and completeness of reports be deleted from the general permits and permits by rule, noting that such certifications are generally only seen in the major source context, should not apply to minor source and synthetic minor source permits, and that such a requirement will be costly for tribal member owned businesses.

Response: Concerning the analysis of the NSPS requirements, EPA has evaluated the provisions of these rules with respect to suitability for minor sources as documented in the background documents. As noted in these documents, the Federal Indian Country Minor NSR Rule requires the emissions limits in the general permits to ensure compliance with the NSPS requirements. See 40 CFR 49.154(c)(4). NSPS requirements are generally applicable based on the type of emission unit, and not on the magnitude of emissions from the entire stationary source. The majority of the conditions in the draft permits are based on existing federal standards or comparable state permitting requirements and are consistent with what is required for these source types across the country. In each background document, EPA included a list of the requirements for general permits issued by state and local agencies. Upon review of those requirements, it appears the general permits are neither the most stringent nor the least stringent of other general permits. The commenters only identified the annual reporting and deviation reporting requirements as being too stringent or overly burdensome. These requirements appear in the general permits because they are required by the Federal Indian Country Minor NSR Rule. EPA is not taking comment on these elements, which are required for all Federal Indian Country Minor NSR Rule permits per 40 CFR 49.155(a)(5). The commenters did not identify any other specific conditions that are believed to be too stringent or overly burdensome, or identify the particular requirements in other areas to which they are comparing EPA's draft permits. This makes it difficult to respond more specifically to the comments.

With respect to the draft permits appearing more like major source permits, EPA disagrees as the permitting requirements for a major source are generally much more rigorous than currently required in the draft permits. For example, major source permits require sources to meet emission limitations based on the application of either the Best Available Control Technology (BACT) (in areas that are in attainment with the NAAQS or are unclassifiable) or Lowest Achievable Emission Rate (in nonattainment areas), to install equipment for continuous

emissions monitoring, or to meet more frequent performance testing requirements. In developing these general permits EPA followed the Federal Indian Country Minor NSR Rule, which requires EPA to set emissions limits and to include monitoring and recordkeeping requirements “sufficient to assure compliance with the emission limitations” in the permit. We believe we have met this requirement without overburdening sources with the same rigorous requirements used for major sources.

We note that the requirement to have a responsible official sign any reports required under a general permit is common and consistent with state permitting programs. It is unclear why this certification would be costly for permittees.

3.2 Comments on the Draft Hot Mix Asphalt and Stone Quarrying, Crushing, and Screening General Permits and Implementation Tools

3.2.1 Comments on specific provisions of the draft Hot Mix Asphalt General Permit and Implementation Tools

Comment 3.2.1.1: One commenter (0035) noted that, while the HMA permit does not appear to address compliance with the state and federal ambient air quality standards, the background document for the stone quarrying, crushing, and screening (SQCS) facilities permit noted that a setback of 150 meters would ensure no violation of the 24-hour NAAQS for particulate matter (PM₁₀; 150 ug/m³). This commenter (0035) recommended adding a similar reference to the HMA background document.

Response: Due to the lack of an EPA analysis demonstrating the air quality benefits of requiring setbacks, we lack sufficient information to incorporate them in the final general permits for HMA plants and SQCS facilities. Therefore, the final general permits for HMA plants and SQCS facilities do not contain setback provisions. Nonetheless, the reviewing authority retains the discretion to deny the granting of source coverage under the general permits based on local air quality concerns.

Comment 3.2.1.2: One commenter (0035) noted that the setback requirements may be difficult for existing sources to meet if the source is modified. The commenter (0035) recommended that EPA use the following definition of “sensitive receptor”: “Sensitive Receptor means any residence including private homes, condominiums, apartments, and living quarters; education resources such as preschools, and kindergarten through grade twelve (k-12) schools; daycare centers; and health care facilities such as hospitals or retirement and nursing homes. A sensitive receptor includes long term care hospitals, hospices, prisons, and dormitories or similar live-in housing”.

Response: Due to the lack of an EPA analysis demonstrating the air quality benefits of requiring setbacks, we lack sufficient information to incorporate them in the final general permits for HMA plants and SQCS facilities. Therefore, the final general permits for HMA plants and SQCS facilities do not contain setback provisions. Nonetheless, the reviewing authority retains

the discretion to deny the granting of source coverage under the general permits based on local air quality concerns.

Comment 3.2.1.3: One commenter (0035) clarified that, in Condition #24 of the draft general permit, the SCAQMD documents that were referenced to develop some of the standards for the asphalt plant equipment include Rule 1147, Rule 1155, and SCAQMD BACT² Guidelines for Minor Sources and that this is consistent with the standards developed in the table referenced in Condition #24 for gaseous fuel from mixers/dryers. The commenter (0035) also clarified that the standard for particulate matter (PM)/PM₁₀/PM_{2.5} in SCAQMD Rule 1155 of 0.01 gr/dscf applies to Tier 3 baghouses where the filter surface area is greater than 7,500 square feet.

Response: EPA appreciates this comment and the clarification about SCAQMD rules. We acknowledge that we did consider SCAQMD rules when we developed some of the nonattainment area emission requirements in the HMA general permit. We believe that this is appropriate because many of the nation's tribal lands located in nonattainment areas are in California. We, therefore, decided to draw on California requirements in those areas, namely those issued by the SCAQMD and the San Joaquin Valley Air Pollution Control District. In light of this comment, we have revised the HMA general permit to identify that a limit of 0.01gr/dscf applies in nonattainment areas, except that a limit of 0.04 gr/dscf applies for baghouses with a filter surface area of less than 7,500 square feet.

Comment 3.2.1.4: One commenter (0035) recommended that asphalt batch plants, process heaters, and storage tanks also be subject to BACT, and provided a table showing SCAQMD BACT requirements. [See Table in Docket Id. No. EPA-HQ-OAR-2011-0151-0035.]

Response: EPA appreciates this comment from SCAQMD as we considered SCAQMD rules when developing some of the nonattainment area emission requirements. Accordingly, we have modified the HMA General Permit to include these additional requirements for combustion units and asphalt tanks for nonattainment areas.

Comment 3.2.1.5: One commenter (0035) recommended that EPA add a requirement for hot asphalt conveying, mixing, and truck load out to have "Blue Smoke Control" per the SCAQMD Visible Emission Rule 401.

Response: The draft HMA General Permit applies an opacity limit of 20 percent on all affected emission units (Condition 23 of the draft general permit) and weekly opacity monitoring (Condition 27 of the draft general permit), which can result in corrective action. Condition 28 of the draft HMA permit requires weekly fugitive emission surveys of the entire facility and can also result in corrective action. EPA considers these existing requirements to be adequate for controlling visible emissions from HMA facilities.

² For federal purposes, BACT is a requirement for major sources under the PSD Program. However, the term is being used as it is used by the SCAQMD air program in the context of minor source NSR permitting in nonattainment areas.

Comment 3.2.1.6: Two commenters (0029, 0032) stated that the requirements to submit annual compliance and deviation reports are overly cumbersome when compared to state requirements immediately outside reservations, and that deviation reports are an exorbitantly complicated and unnecessary requirement for minor and synthetic minor sources.

Response: The provision requiring submittal of annual compliance monitoring and deviation reports is included in the Federal Indian Country Minor NSR Rule promulgated July 1, 2011. (40 CFR 49.155) EPA has, therefore, incorporated the requirements into the general permits. EPA is not taking comments on the Federal Indian Country Minor NSR Rule in conjunction with this action. EPA notes that these requirements are needed to ensure that the source is conducting the required monitoring, and to ensure that any problems identified by the facility are addressed in a timely manner.

Comment 3.2.1.7: Two commenters (0048, 0049-1) noted that, while EPA chose to review existing state general permits, and use them as the standard for the HMA permit, EPA failed to recognize the requirements in permits for states containing tribal lands. This commenter (0049-1) stated that EPA has picked the most stringent permit requirements from the state permits reviewed. Another commenter (0048) noted that EPA has created overly burdensome and duplicative requirements, creating an economic disadvantage for operators on tribal lands. This commenter (0049-1) noted that the state permitting agencies have the staff and time to negotiate out the permit terms and conditions for a site-specific permit, but EPA does not.

Response: Please see the response to Comment 2.2.1. We reiterate that it is challenging to develop a single general permit for use across all tribal lands to create a perfectly level playing field. Furthermore, use of the general permits is optional. Applicants may instead choose to submit an application for a source specific permit (which EPA has the resources to process on a limited basis), if they do not wish to comply with the conditions of the general permit.

Comment 3.2.1.8: Two commenters (0048, 0049-1) stated that EPA failed to recognize that many HMA plants are portable in operation, and that the permit does not allow the flexibility for easily relocating HMA plants. One commenter (0049-1) recommended that if an HMA plant had an already-issued state construction permit for state land adjacent to the tribal lands, EPA should honor that permit and allow the industry to operate under that permit. The commenter (0048) recommended that, if an HMA operator submits a Request for Coverage under the HMA General Permit, EPA should presume that it will operate and that records of asphalt production will suffice for demonstrating compliance

Response: The HMA permit includes provisions for relocation of the HMA facility as long as the alternate location was identified in the Approval of the Request for Coverage. We have revised the request for coverage to clarify that the facility may seek approval of multiple locations and additional locations may be added in the future. The permit will create emission

limits that allow the facility to operate on the approved locations as a minor source, but only at the specific locations identified by the Approval of Request for Coverage.

EPA notes that it is our Federal Indian Country Minor NSR Rule that applies in Indian country where no other plan has been approved by EPA. States may issue permits for sources in their areas. However, where such state programs are not approved for Indian country areas, EPA's general permits cannot appropriately recognize the state permitting action as applicable in the Indian country area.

Comment 3.2.1.9: A commenter (0048) stated that requiring operators to submit to EPA a notice of construction each time the facility begins or resumes operations provides unnecessary enforcement risk to operators on tribal lands and should be stricken from the HMA General Permit.

Response: Condition 46 of the draft HMA General Permit requires the permittee to submit notifications to the reviewing authority when the permittee begins actual construction, and when the permittee begins operations or resumes operations. EPA considers these notifications necessary to document when the requirements in the permit become applicable. However, EPA recognizes this provision, as included in the draft general permit, is confusing as it could be read to require notifications on a more frequent basis than intended. EPA is, therefore, revising this condition to clarify that these notifications are only needed at the time the source begins construction of a new or modified source, and when it initially begins operating the new or modified source.

Comment 3.2.1.10: One commenter (0035) noted that it is not clear what sources will be allowed to conduct the performance testing and whether they have to be certified and approved for the different test methods, and recommended that EPA should specify that certain qualifications be met. Two commenters (0048, 0049-1) also recommended that EPA recognize an existing proved stack test on the same facility approved by an adjoining state agency, as stack tests are expensive, and the HMA industry has thin (profit) margins, creating an economic disadvantage for operators on tribal lands. One commenter (0048) stated that most HMA plants are portable and will have re-located onto tribal lands from an area under state jurisdiction.

Response: EPA has not provided requirements to specify who must conduct the performance test or whether such person(s) must be certified to conduct each test. Currently, EPA does not have established standards for certification. Note that we have provided that performance tests shall be performed according to a test plan approved by the reviewing authority using test methods from 40 CFR part 60, Appendix A, unless alternative methods are approved. Review of the test plan and test methods used will ensure that tests are conducted properly.

Regarding the commenters' suggestions that EPA recognize an existing proved stack test on the same HMA facility, EPA has considered this comment and will allow a previous performance test that meets the performance test requirements identified in the HMA General Permit to be used in lieu of an initial performance test. Such existing performance tests must have occurred less than two years prior to the date the performance test is required by EPA's

HMA General Permit. However, the permittee must still conduct the inspection and tune-up requirements in the general permit.

Comment 3.2.1.11: One commenter (0049-1) stated that the HMA permit application reads as if operators are required to know every location that they will be at when they register or request coverage under the general permit, but the operators do not know this in advance.

Response: Please see the response to Comment 3.2.1.8. The application materials have been modified to explain the procedure for adding additional locations.

Comment 3.2.1.12: One commenter (0052) noted that EPA used tons-per-month average throughput production limits as a surrogate for nitrogen oxide (NO_x) emissions to help ensure continuous compliance for portable plants that may relocate to ozone nonattainment areas during the same year. This commenter (0052) stated that the restriction on HMA plants locating in severe and extreme ozone nonattainment areas and serious carbon monoxide (CO) nonattainment areas would place an automatic restraint on any Indian tribe in these areas that might want to establish or attract an HMA plant for economic development purposes.

Response: The HMA General Permit is not available to sources locating in severe and extreme ozone nonattainment areas or serious CO nonattainment areas because in such areas the air quality is already considerably degraded. Although EPA considered throughput limits for facilities locating in severe and extreme ozone nonattainment areas, we determined that these limits would need to be set at very low levels and would not provide sufficient flexibility for sources. We note that it is still possible for sources to locate in these areas; however, they would be required to obtain a site-specific NSR permit. In light of this comment, we have removed the restriction prohibiting sources from locating in a serious CO nonattainment area. EPA acknowledges that there are currently no CO nonattainment areas in the United States. However, we have added asphalt production limits to the HMA General Permit that would allow a source located in a serious CO nonattainment area to be eligible for the general permit.

Comment 3.2.1.13: One commenter (0048) stated that EPA's inclusion of nonattainment area limitations in the HMA General Permit is regulatory overreach, adding that the Federal Implementation Plans (FIPs) or Tribal Implementation Plans (TIPs) are the regulatory path for moving nonattainment areas back into attainment, and not permits. This commenter (0048) recommended that more stringent requirements for nonattainment areas should only be addressed during development of a FIP or TIP.

Response: EPA agrees with commenters that FIPs or TIPs are the primary regulatory path for moving nonattainment areas back into attainment. However, we note that the Federal Indian Country Minor NSR Rule requires that all permits issued be protective of the NAAQS. Specifically, 40 CFR 49.154(c)(1)(i) and (ii) provide that the reviewing authority must conduct a case-by-case control technology review that considers local air quality conditions, typical control technologies, and emissions reduction measures used by similar sources in surrounding areas to determine the appropriate level of control necessary to assure that NAAQS are achieved. In

keeping with these requirements, EPA has conducted a control technology review as part of this rulemaking and included limits within the general permits that will provide the appropriate level of control for areas designated as attainment or nonattainment, as appropriate. Nonattainment areas where the NAAQS are currently violated require a greater level of control, which is reflected in the general permits by more stringent control requirements.

Comment 3.2.1.14: Two commenters (0048, 0049-1) noted that HMA permit requirements (emissions rate limitations, emissions concentration limitations, throughput limitations, consumption limitations, routine inspections, Method 9 opacity readings, portable analyzer testing, and continuous parametric monitoring) create major source-like requirements for a true minor source and synthetic minor source, and noted that the HMA permit is a very complex permit for a not very complex industry. One commenter (0048) stated that this combination is unnecessary and overly burdensome creating an economic disadvantage for operators on tribal lands. The same commenter stated that emission limitations should exclusively limit operations to major source thresholds and the NSPS Subpart I (Hot Mix Asphalt Facilities) particulate matter concentration limitation to be consistent with permit conditions issued by state agencies adjoining tribal land.

Response: EPA believes that the conditions in the general permit for this source category are appropriate. The complexity of this source category is demonstrated by there being multiple pieces of equipment and/or processes and pollutants and it being typically co-located with SQCS facilities. Protecting air quality for sources in such a source category this complex does necessitate a more comprehensive and specific set of emissions limitations and standards and associated requirements than might otherwise be appropriate. It is important to also keep in mind that a comparison of the requirements in EPA's HMA General Permit and the limits listed in Attachment A of EPA's background document for the HMA General Permit, which contains a summary of permitting requirements for state-issued general permits, demonstrates that EPA's general permit for HMA plants is not the most stringent, nor the least stringent, in the country for HMA plants. EPA's limits on throughput, fuel use, fuel sulfur content, NO_x emissions, CO emissions, and PM emissions for attainment, unclassifiable or attainment/unclassifiable areas are all within the range of limits established by state-issued general permits. In addition, the general permits reviewed by EPA also includes several permits for states that contain Indian country, such as Alaska, Arizona, New Mexico, Washington, and Wisconsin.

Note that EPA's emission limits for fuel use, NO_x and PM at HMA plants in nonattainment areas are more stringent than the limits we set for attainment, unclassifiable or attainment/unclassifiable areas. The fuel use limits ensure a particular source is below the applicable major source threshold and the NO_x and PM limits were based on emission rates achieved in practice as BACT within the South Coast Air Quality Management District – an area that is nonattainment for ozone and PM_{2.5}.

EPA disagrees with the comment that throughput and emission limitations should exclusively limit operations to major source thresholds or to the particulate matter concentration limitations issued by state agencies. EPA has included limits within the general permits that will provide the appropriate level of control for areas designated as attainment, unclassifiable or

attainment/unclassifiable or nonattainment, as appropriate. Furthermore, when developing the throughput limits for each permit, we set emission limitations sufficiently below the major source thresholds to provide a margin of safety and ensure that emissions from the facilities do not result in an exceedance of the thresholds (e.g., in the event of excess emissions). This is particularly important for sources that would otherwise require a major source permit but have accepted synthetic minor limits. Further, because the requirements were set to control the limiting pollutants (i.e., those nearest the major source level), the throughput limitations set by EPA translate to emission rates that could be well below the major source thresholds for certain non-limiting pollutants. For example, as shown in the table below which is from Attachment C of the final version of the “Background Document: True Minor Source Hot Mix Asphalt Plants General Permit,” the limited emissions for a drum mix asphalt plant located in a serious ozone nonattainment area are as follows:

Process	PM₁₀	PM_{2.5}	NO_x	CO	Volatile Organic Compounds (VOC)	SO₂
Dryer/Mixer	11.5	1.44	18.9	64.7	15.9	5.48
Load-out/Silo Filling	0.55	0.55	-	1.22	8.02	-
Conveying	2.74	2.74	-	-	-	-
Screening	0.37	0.02	-	-	-	-
Storage Piles	1.35	0.20	-	-	-	-
Lime Silo Loading	4.82	4.82	-	-	-	-
Auxiliary Heater	1.03	0.80	6.26	3.61	0.48	0.1
Engine/Generator	3.23	3.23	18.9	4.1	1.51	1.25
Total Emissions	25.54	13.81	44.12	73.65	25.94	6.80

In this case, for a serious ozone nonattainment area, the limiting pollutant is NO_x, which must be maintained below the 50 ton per year (tpy) threshold. In order to limit NO_x, EPA has set a 83,000 tons-per-month production limit on the dryer/mixer), as well as a fuel consumption limit of 5,200 gallons-per-calendar month for all engines and generators. Although the production limits remain the same for a serious ozone nonattainment area, the fuel consumption limit for NO_x effectively reduces CO emissions from the engines to 4.1 tpy, which brings total facility CO emissions (73.65 tpy) to well below the major source threshold.

Comment 3.2.1.15: Two commenters (0048, 0049-1) noted that EPA did not provide any opportunity to use on-specification waste oil or used oil, which is common in the asphalt industry, and could create an economic disadvantage for operators on tribal lands. One

commenter (0048) stated that the HMA permit sulfur content limit for liquid fuels (< 0.0015 % S) is a very stringent on-road fuel standard being applied to stationary or non-road equipment, and that this creates a disadvantage for operations on tribal Land. This commenter (0048) stated that sulfur dioxide (SO₂) is not the pollutant which has the potential to exceed major source thresholds or to cause an exceedance of the SO₂ NAAQS.

Response: Regarding the use of on-specification waste oil or used oil, EPA has accounted for the use of waste oil and recycled oil in the definition of “distillate fuel” in Attachment B to the general permit. “Distillate fuel” is defined as “fuel oils, including recycled oils that comply with the specifications for fuel oil numbers 1 and 2, as defined by ASTM 396, or equivalent.” Regarding sulfur content limits, we have limited the sulfur content for all fuels used to less than 0.0015% sulfur in order to maintain consistency with the current fuel standards for sulfur in 40 CFR 80.510, which are already required for engines under NSPS III (Stationary Compression Ignition Internal Combustion Engines) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart ZZZZ (Stationary Reciprocating Internal Combustion Engines).

Comment 3.2.1.16: One commenter (0049-1) noted that EPA created duplicative requirements for engines that already have extensive federal requirements applicable through NSPS, Maximum Achievable Control Technology (MACT), and on-road engine rules. Another commenter (0048) stated that the performance test for engines provision provides for expensive stack test requirements for engines and establishment of operating parameters during stack testing, and it is unclear whether this provision applies to stationary or non-road engines or whether this provision applies to liquid or gaseous fuels. This commenter (0048) noted that engines used in any application with any type of fuel are already regulated by EPA and stated that duplicative emission limitations, work practice requirements, and additional testing requirements beyond what is already required in existing regulation is overreaching and provides for an economic disadvantage on tribal lands.

Response: EPA acknowledges that the permit includes requirements for engines that are covered by NSPS and NESHAP engine rules. However, we did not simply duplicate the NSPS and NESHAP requirements in the permits. Instead, we followed the case-by case control technology review of the source category and established engine requirements that are consistent with the NSPS and NESHAP requirements. In addition, following this approach is in line with the requirement of the Federal Indian Country Minor NSR rule, which requires that each permit must include applicable emission limitations that assure each affected emissions unit will comply with all requirements of parts 60, 61 and 63 (see 40 CFR 49.155(a)(2) and 40 CFR 49.154(c)(4)). As noted in the “Background Document: True Minor Source Hot Mix Asphalt Plants General Permit,” in creating HMA permit conditions, EPA also considered and included requirements from parts 60, 61, and 63 that apply to HMA facilities, including 40 CFR 60, subpart I, 40 CFR 60, subpart III, and 40 CFR 63, Subpart ZZZZ. The requirements included in the general permit are intended to harmonize with the existing NSPS and NESHAP rules to the greatest extent possible. Regarding performance testing for engines, the general permit includes requirements for certain compression ignition engines that must comply with the CO, NO_x and PM emission limits in the general permit. These particular engines are subject to 40 CFR Part 63, Subpart

ZZZZ and may use the testing performed under subpart ZZZZ to meet the general permit performance testing requirements. We have clarified in the final permit that a source may use this prior testing for up to two years after the test date.

Comment 3.2.1.17: One commenter (0048) stated that fuel consumption limits are overly burdensome and unnecessary for determining compliance with the HMA General Permit, and recommended that they be removed from the general permit. This commenter (0048) recommended that actual fuel consumption should be tracked and used to calculate emissions to verify that facilities do not exceed major source thresholds. One commenter (0048) stated that operators on tribal land lose the flexibility operators will have off tribal lands through the use of a fuel consumption limit.

Response: EPA is retaining the fuel consumption limits in the general permit in this final rule. EPA chose to include limitations on fuel use in lieu of ton-per-year emission limits because tracking fuel use is easier for sources and reduces burden. If EPA were to take an emission limit approach, this would require facilities to track fuel use, calculate emissions, and to perform additional recordkeeping and reporting to verify that the calculated emissions are correct. By adopting fuel use limits, the permittee is only required to track and report types and quantities of fuel combusted in each affected emissions unit each month. Furthermore, EPA's survey of states, conducted in the development of the draft permit, indicates that states are using fuel consumption limits for these sources. Therefore, we disagree with the commenter that calculating emissions to verify that facilities do not exceed major source thresholds is necessary to ensure the same level of flexibility offered by states.

Comment 3.2.1.18: Two commenters (0049-1, 0048) noted that EPA did not provide any allowance or justification for not allowing wet scrubbers for particulate controls when they may be allowed on adjoining state lands, creating an economic disadvantage for operators on tribal lands. One commenter (0048) noted that the requirement to control particulate emissions from the dryer/mixer with a baghouse is arbitrary and capricious, as many HMA facilities on adjacent state lands are allowed to use venturi wet scrubbers. This commenter recommended that a venturi wet scrubber be allowed if they are able to meet the NSPS particulate concentration limit and maintain particulate matter mass emission rates below major source thresholds.

Response: EPA agrees with the commenter that some sources may currently use venturi wet scrubbers. In this final rule, we are adding provisions to the HMA General Permit to provide monitoring and recordkeeping requirements to facilitate the use of a wet scrubber in appropriate circumstances. These conditions include continuous monitoring of the pressure drop across the scrubber, as well as continuous monitoring of the liquid flow rate to the scrubber. The permitted source must maintain the operating parameters within plus or minus thirty percent of the average value from the most recent performance test. Continuous monitoring of a wet scrubber is appropriate for this source category because it is an active control device (where the emission rate from the control device is affected by the particular set point of the operating parameters), whereas a baghouse is a passive control device (where the emission rate is not affected by particular operating parameters).

Comment 3.2.1.19: One commenter (0048) recommended that EPA remove the provision requiring that extra bags and spare parts be maintained on site, and allow operators the choice to shut down a facility that has a torn bag in the baghouse until a replacement is transported to the site.

Response: EPA agrees with the commenter's concern and has modified Condition 22 in the final general permit to suggest the permittee maintain extra bags and spare parts on site to ensure timely repair. However, replacement bags can be transported on site when needed. In either case, the permittee must shut down the facility until a replacement bag is installed.

Comment 3.2.1.20: One commenter (0048) stated that EPA has created excessively burdensome monitoring, recordkeeping and reporting requirements, creating an economic disadvantage for operators on tribal lands.

Response: EPA notes that the commenter has not provided specifics as to why the monitoring, recordkeeping, and reporting requirements are excessively burdensome. We further note that in the development of the draft permits, EPA attempted to design minor NSR general permits that are enforceable and include adequate monitoring, recordkeeping, and reporting requirements that ensure compliance with the emission limitations. These requirements are consistent with the strictures of the Federal Indian Country Minor NSR Rule, which requires that each permit include monitoring and recordkeeping sufficient to assure compliance with the emission limitations and annual allowable emissions limits that apply to the affected emissions units (see 40 CFR 49.155(a)(3) and (4)). All permits must be equally enforceable. As discussed in the preamble to the proposed rule, we have crafted the draft minor source general permits to ensure air quality is protected and to provide a streamlined approach where appropriate. EPA also undertook a survey of existing state requirements, and reviewed, weighed, and compared these requirements to develop general permits that would provide a level playing field for minor sources in Indian country. In some cases, we dismissed requirements that were not necessary to demonstrate compliance (e.g., we did not include fuel limits for the dryer/mixer, which would have required additional recordkeeping for these units). For nonattainment areas, where appropriate, EPA has proposed more stringent requirements. As noted in the preamble to the proposed rule, these requirements are necessary to help ensure compliance and mitigate any further degradation of air quality in those areas. See response to Comment 3.2.1.13 of this document.

3.2.2 Comments on specific provisions of the draft SQCS General Permits and Implementation Tools

Comment 3.2.2.1: Two commenters (0031, 0052) stated that the monthly total emissions limitation based on a 30-day rolling total would be appropriate since an SQCS facility can relocate much like an HMA plant, and even perhaps to an area in nonattainment for PM₁₀. One commenter (0052) recommended that, as an alternative, EPA could retain the 12-month period limits on raw material throughput but establish different throughput production limits for areas in attainment and for areas in serious, severe, or extreme nonattainment for PM₁₀.³

Response: EPA has considered the commenters' suggestion and revised the throughput and fuel use limits consistent with the approach used in the HMA General Permit. In addition, upon review of this and other comments we discovered an error in the throughput limit initially proposed for SQCS facilities. The proposed throughput limit of 10,500,000 was inadvertently calculated based on an assumed maximum hourly rate of 1,198 tons per hour instead of 119.8 tons per hour. The revised permit limits reflects a rate equivalent to about 2,700,000 tons of material per year. This rate includes consideration of emission reductions achieved through the control requirements of the general permit. The material throughput limits in the final permit are as follows:

- The maximum raw material throughput shall not exceed 226,000 tons-per-month based on a 12-month rolling average; and
- For a SQCS operation co-located with a HMA operation, and that requests to take additional limits to lower PTE to a level that does not trigger Title V applicability, the maximum raw material throughput shall not exceed 146,000 tons-per-month based on a 12-month rolling average.

We also revised the fuel use limits consistent with the approach for HMA plants. For SQCS plants, the combined fuel consumption in all engines and generators, excluding nonroad mobile engines, shall not exceed:

- 24,200 gallons per calendar month if the permitted source is located in an ozone attainment, unclassifiable or attainment/unclassifiable area or a marginal or moderate ozone nonattainment area;
- 12,000 gallons per calendar month if the permitted source is located in a serious ozone nonattainment area;
- 5,500 gallons per calendar month if the permitted source is located in a severe ozone nonattainment area; and
- 1,900 gallons per calendar month if the permitted source is located in an extreme ozone nonattainment area.

For an SQCS operation that is co-located with an HMA operation that requests to take additional limits to lower the combined PTE of the entire facility to a level that does not trigger

³ It is important to note that Subpart 4 of Part D of the Clean Air Act provides for only Moderate and serious classifications for PM₁₀ nonattainment areas.

Title V applicability, the combined fuel consumption in all engines and generators, excluding nonroad mobile engines, shall not exceed 18,275 gallons per calendar month.

These limitations will provide for SQCS facilities to relocate to different areas (attainment, unclassifiable or attainment/unclassifiable and nonattainment) and allow facilities flexibility to adjust their throughputs as they relocate.

Comment 3.2.2.2: One commenter (0035) recommended that EPA consider SCAQMD adopted Rule 1157 to address PM₁₀ emission reductions from aggregate and related operations, and use Rule 1157 to address standards for visible emissions, fugitive dust controls from storage piles, loading, unloading and transfer of materials stored, and track-out from trucks. The commenter (0035) provided data in a table reflecting the requirements that can be found SCAQMD Rule 1157.

Response: EPA has considered the limits in SCAQMD Rule 1157. Rule 1157 establishes an opacity limit of 20 percent on any equipment, activity, storage pile, or disturbed surface area. While Rule 1157 requires a baghouse for crushing equipment, the rule alternatively allows dust suppressant methods to also be used as long as the 20 percent opacity standard is met. EPA's SQCS General Permit establishes an opacity limit of 12 percent for crushers and 7 percent for other affected units and requires weekly opacity surveys. The general permit also requires fugitive emissions surveys and corrective action when fugitive emissions are observed crossing the property line. The existing permit conditions appear to be at least as stringent as, or more stringent, than those suggested by the commenter.

Comment 3.2.2.3: One commenter (0048) noted that the general permit assumes that all engines used for this operation would be diesel-fired compression ignition engines and asked why provisions for spark ignition engines and the use of other fuels were not included.

Response: EPA did not include provisions for spark ignition engines in the draft SQCS General Permit because it is unlikely that many minor sources in this source category are using these engines. Additionally, inclusion of spark ignition engines would require additional fuel limits, monitoring, recordkeeping, and reporting requirements to address the use of gasoline and natural gas fuels. EPA has attempted to adopt a streamlined approach to the general permitting process that provides simplified provisions and reduces burden on the permittee. In order to maintain this streamlined approach, EPA has limited the general permit requirements to compression ignition engines as this is the most common engine type found at the SQCS sources likely to be covered by the general permit. Moreover, electricity for the motors running the crushers, screens, and conveyors at SQCS facilities is provided either by grid electric power or by diesel engines. Diesel engines are preferred in this source category because of their improved efficiency and reliability in these heavy work-intensive, industrial applications versus spark ignition engines. In EPA's view, adding spark ignition engines to the SQCS General Permit is, therefore, not justified.

Comment 3.2.2.4: One commenter (0048) recommended that the general permit should reference the specifics of compliance such as stack testing, and emission limits to the NSPS and MACT requirements in the federal regulations. This commenter (0048) stated that the way the general permit is written could lead to conflicts with the current rules and also noted that the general permit does not seem to give credit for compliance certified engines.

Response: The emission limitations in EPA's SQCS General Permit are intended to ensure compliance with the applicable NSPS and NESHAPs for this source category, as required by the Federal Indian Country Minor NSR Rule. EPA's pre-construction permitting program under the Federal Indian Country Minor NSR Rule is not an operating permit program. As a result, the terms and conditions in permits issued pursuant to the Federal Indian Country Minor NSR Rule must be enforceable independent of the NSPS and NESHAP requirements. Similarly, sources subject to an NSPS and/or NESHAP must comply with all of the requirements of those rules whether they are specified in a permit or not. However, to aid permittees in ensuring compliance with all of EPA's regulations we have included a list of regulatory requirements in the background document for each permit that identifies conditions from the NSPS and NESHAP regulations that are included in the general permit. EPA acknowledges that the tribal general permits may require revisions in the future to maintain consistency with changes to NSPS and NESHAP requirements. As noted in the preamble to the draft rule, we intend to use methods consistent with the procedures in 40 CFR 49.159 to reopen or administratively amend final permits if we determine it is necessary and appropriate (e.g., to account for changes to NSPS or NESHAP or to consider advances in control technology). See response to Comment 1.2.1 above. EPA would provide the opportunity for notice and comment under §49.157 for these changes. Further, the draft general permits include provisions to provide for compliance certified engines. For example, see Condition 24.a. of the draft SQCS General Permit.

3.2.3 Comments on the use of throughput limitations for HMA and SQCS facilities

Comment 3.2.3.1: One commenter (0033) agreed with the throughput production limits and fuel-type and usage limits stated in the draft permits for HMA plants and SQCS facilities and believes that the emission limitations based on those factors are reasonable, since calculations show that emissions from such sources are generally below the major source thresholds and these types of facilities do not operate continuously year-round. One commenter (0047) stated that, in regards to HMA and SQCS, we agree with EPA's plans for throughput limits. We support monthly limits with HMA plants and feel that fuel use restrictions are a viable option for both HMA plants and SQCS facilities. We would accept either scenario of fuel usage limits per attainment area or an across the board single fuel usage limit. Two commenters (0031, 0052) stated their support for EPA's proposed combined fuel use restrictions (a range of between 33,000 gallons and 162,000 gallons annually based on a 12-monthly rolling total for each month) for HMA plants and SQCS facilities based on an area's attainment status, stating that it accounts for the realities of the airshed in which a source wishes to locate (i.e., attainment versus nonattainment).

Response: EPA acknowledges the support provided by several commenters for the production limits, fuel-type and usage limits.

Comment 3.2.3.2: One commenter (0042) asserted that the inclusion of different emission limits (or throughput limits) in general permits for attainment versus nonattainment areas is unnecessary because each such nonattainment area will have a nonattainment State Implementation Plan (SIP) that, by definition, will include measures adequate to achieve attainment. Two commenters (0029, 0032) stated that the requirements in the SQCS permit (materials throughput limits, fuel usage limits, fuel sulfur limits, wet suppression of fugitive dust, engine emission and opacity limitations) can be damaging to tribal member-owned companies and may cause them to go out of business.

Response: We disagree with the comment that the existence of nonattainment SIPs renders the inclusion of nonattainment-area specific emission limitations unnecessary. A state's SIP may or may not account for activities in Indian country and the state may lack authority to implement or enforce the SIP there.⁴ As a result, EPA believes that establishing different throughput limits for nonattainment areas is necessary to move such areas toward attainment. Although a nonattainment SIP or TIP provides a path for moving nonattainment areas back into attainment, the Indian Country Minor Source NSR rule requires all permits issued to be protective of the NAAQS. Specifically, 40 CFR 49.154(c)(1)(i) and (ii) provide that the reviewing authority must conduct a case-by-case control technology review that considers local air quality conditions, typical control technologies, and emissions reduction measures used by similar sources in surrounding areas to determine the appropriate level of control necessary to assure that NAAQS are achieved. In keeping with these requirements, EPA has conducted a control technology review as part of this rulemaking and included limits within the general permits that will provide the appropriate level of control for areas designated as attainment or nonattainment, as appropriate. Nonattainment areas where the NAAQS are currently exceeded require a greater level of control, which is reflected in the general permits by more stringent control requirements.

EPA does not believe that the requirements in the SQCS General Permit will be damaging to tribal member owned companies. EPA conducted a survey of states during the development of the draft permit to identify and review similar material throughput limits, fuel usage limits, fuel sulfur limits, fugitive dust suppression methods, and engine emission and opacity limitations in state-issued permits. EPA based the requirements in the SQCS on the results of that analysis. As noted in the "Background Document: True Minor Source Stone Quarrying, Crushing, and Screening Facilities General Permit," all state permits typically limit raw materials throughput and fuel usage as a surrogate for limiting emissions. EPA evaluated the emission rates at which a new or modified source would become a major source under Title V, depending on whether the source was located in an attainment or nonattainment area. We note that the raw material and fuel throughput limits established in the draft permit are higher than the

⁴ In *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3rd 185 (D.C. Cir. 2014), the U.S. Court of Appeals for the District of Columbia Circuit held that the state, not tribes or the EPA, has initial primary responsibility for implementation plans under Clean Air Act section 110 in non-reservation areas of Indian country (i.e., dependent Indian communities and Indian allotments) in the absence of a demonstration of tribal jurisdiction by the EPA or a tribe. However, SIPs generally do not apply in reservations, including informal reservations or trust lands, and these areas are believed to comprise the bulk of Indian country.

limits typically established by states. Further, several state permits (e.g., Arizona, Florida, Indiana, Washington, and Wisconsin) require control of particulate emissions, and all of the state sand and gravel permits include opacity limitations for stone quarrying, rock crushing, and screening activities as well as for engines. Review of the state regulations and existing general permits resulted in draft permit conditions requiring emissions from all crushers, screens, drop points, and other possible release points to be controlled by wet suppression, limiting fugitive emissions from crushers to 12% opacity, limiting fugitive emissions from all other processes to 7% opacity, and requiring fugitive emissions to be controlled by a fugitive dust control plan. Most states require an operation and maintenance plan, and all of the reviewed permits include some variation of the monitoring and recordkeeping requirements. Therefore, we have determined that the emission limitations and controls proposed in the general permit for both attainment, unclassifiable or attainment/unclassifiable and nonattainment areas are consistent with what is required of similarly located SQCS facilities across the country, based on the attainment status where the source is locating, and would not present an unfair or undue burden for tribal member-owned sources. For additional information, see the background document for SQCS facilities at <http://www.epa.gov/air/tribal/tribalnsrbackground.html>.

3.2.4 Comments on setback limitations for HMA plants and SQCS facilities

Comment 3.2.4.1: Three commenters (0031, 0035, 0047) agreed with EPA's setback requirements for mobile HMA and SQCS facilities. Four commenters (0031, 0035, 0047, 0052) recommended that EPA include schools, daycares, assisted living/nursing homes, hospitals/clinics, community centers, agricultural fields, playgrounds/parks/ball fields, recreational areas, waterways, and tribal cultural and subsistence activity areas in the list of areas that must have setback requirements. Another commenter (0040) stated support for applying setback requirements to schools, nursing homes, community centers, health care facilities, daycares, hospitals, parks, and ball fields. One commenter (0035) recommended that EPA consider the term "sensitive receptor" to include schools, hospitals, residential areas, and long-term medical care facilities. One commenter (0035) recommended that the setback requirements should be extended to gasoline dispensing facilities (GDFs), which emit air toxics such as benzene. One commenter (0042) stated that it is unnecessary to restrict HMA facilities from locating in severe and extreme ozone nonattainment areas or serious CO nonattainment areas by limiting the geographic applicability of general permits, because each such nonattainment area will have a nonattainment SIP that, by definition, will include measures adequate to achieve attainment.

Two commenters (0030, 0035) recommended that EPA consider allowing a source that wishes to locate within the "setback" to make an individualized demonstration that its emissions would not cause significant adverse health effects to those receptors, e.g., by modeling maximum cancer risk and acute and chronic hazard indices. One commenter (0035) recommended that, if a source shows that its emissions create a cancer risk of less than 1 in a million at the nearest sensitive receptor to its chosen location, it should be permitted to locate there even if it were in the "setback." Another commenter (0030) stated that setback requirements should be specific to the emission source type, based on a scientific evaluation of potential health risks, and paired with additional control requirements to mitigate the health risk if the source cannot meet the setback requirement. This commenter (0030) recommended that for sources that do not meet the setback requirement, control requirements should be included in the general permit or permit by

rule. The commenter (0030) noted that locating emission sources 150 feet from the nearest property boundary may not always be feasible for midstream facilities. The commenter (0030) expressed concern that automatic setback requirements could cause significant issues for existing sites that do not meet the setback requirements and, therefore, could not qualify for a general permit or permit by rule when they are modified. Another commenter (0040) suggested allowing sources that did not meet the setback limitations for the general permit to apply for a site-specific permit.

One commenter (0040) did not support requiring the facilities to use physical markers on their property to show compliance with the setback requirements. One commenter (0030) recommended that, if setbacks are deemed appropriate, modern mapping tools and satellite imagery provides a better permanent record than physical markers on the ground that are subject to disturbance and deterioration. Another commenter (0052) stated that the use of physical markers on their property to show compliance with setback requirements may or may not be acceptable to a given tribe, depending on its specific perspective. One commenter (0030) asked that setback requirements be based on the physical location of the emission point and the nearest sensitive receptor, not the property boundary.

Two commenters (0029, 0049-4) stated that they believe a setback requirement does interfere with tribal authority. One of these commenters (0029) stated that EPA does not have jurisdiction over the surface estate of the tribal lands, and that EPA has no business trying to usurp tribal sovereignty and self-determination in the name of air quality. One commenter (0049-4) asked that setback requirements be deleted from any permitting regime. One commenter (0029) stated that EPA should be cognizant of what federal law already requires with respect to setbacks and the oil and gas sector, noting that tribal and Allottee mineral leases, and the tribal laws and federal regulations governing the same, already include specific setback requirements. This commenter (0029) stated that EPA does not have the authority to modify those contractual setback zones. Another commenter (0035) stated that they did not believe a setback requirement interferes with tribal authority over zoning, but would enhance its purposes. This commenter (0035) asserted that one of the purposes of zoning is to ensure adjacent land uses are compatible. The commenter (0035) provided that due to lack of knowledge about air pollution issues, sometimes zoning decisions will locate sources that threaten the health or comfort of neighbors in the same or adjacent zone, thus creating incompatible uses. The commenter (0035) noted that although there are California statutes preventing air districts from interfering with local government authority to plan or control land use, those statutes have historically been interpreted as not to prohibit imposing additional controls on pollution sources, including distance requirements, but generally require sources to meet more stringent requirements if they are located within specified distances of a sensitive receptor. One commenter (0031) stated their agreement with the general concept of setback requirements and their purpose, but advised EPA to consider carefully each Indian tribe's sovereign right to manage and oversee land use within its own boundaries. This commenter (0031) noted that approaches to zoning vary among tribes: some tribes may not provide for setback requirements whereas others may have setback requirements that are less restrictive than those under the proposed rule. Another commenter (0052) stated that setback requirements can be found in the land use and/or zoning codes for a number of Indian tribes, although not necessarily at the distance which EPA proposes. The same commenter (0052) stated that EPA's proposed setback requirements could conflict with Indian

tribes that don't provide for setback requirements in their land use and/or zoning codes, provide for setback requirements in their land use and/or zoning codes that are less restrictive than what is being proposed by EPA, or don't have a land use and/or zoning code and may never choose to have one. Two commenters (0031, 0052) recommend that EPA retain the proposed setback requirements, but also insert a provision allowing a tribe to obtain a partial or full waiver from the requirements based on its sovereign right to manage and oversee land use matters within its boundaries. Two commenters (0030, 0048) recommended that EPA should defer to the local jurisdiction with authority when determining setback requirements.

Response: Due to the lack of an EPA analysis demonstrating the air quality benefits of requiring setbacks, we lack sufficient information to incorporate them in the final general permits for HMA plants and SQCS facilities. Therefore, the final general permits for HMA plants and SQCS facilities do not contain setback provisions. Nonetheless, the reviewing authority retains the discretion to deny the granting of source coverage under the general permits based on local air quality concerns.

3.2.5 Comments on a single, combined permit for HMA plants and SQCS facilities

Comment 3.2.5.1: One commenter (0031) stated its preference for a permitting approach that requires each HMA plant and SQCS facility to request coverage under its own general permit, rather than placing both sources under one general permit. Another commenter (0047) stated that co-location of HMAs and SQCSs is quite probable, but believed that they cannot be combined and permitted in one permit. One commenter (0040) did not support offering a single permit for both facilities because most often it would be two different companies. One commenter (0047) recommended that HMAs and SQCSs be permitted separately, but when operated at the same location and utilizing materials from one operation to another that they combine (and limit) the emissions (as if they were one source) to protect the airshed and don't create a double emissions loophole. Another commenter (0033) recommended that a single general permit should be issued covering sources that are co-located in addition to issuing separate general permits for each source, noting that the requirement for co-located sources would be used to ensure that the two sources' combined emissions are below the major thresholds. Two commenters (0031, 0052) stated that placing both sources under one permit would make for a more efficient process, much like what is done under the Title V permit program. However, these commenters (0031, 0052) noted that if both sources were under one general permit, relocation of either facility to another location could complicate matters with two sources being covered under the same general permit while being located in different places.

Response: EPA has considered the concerns and recommendations of commenters and has determined that it is appropriate to maintain separate permits for HMA and SQCS sources even when they are co-located. As commenters noted, in many situations permits would need to be issued to two different companies to cover each source, and a new permit would be required if either facility relocated. Issuance of more than one permit to each source (e.g., a single general permit for both sources and separate general permits for each source) would increase the burden on sources as they would need to comply with provisions in multiple permits. Furthermore, it is unlikely that co-located sources with separate permits would result in an emissions loophole. As part of the Request for Coverage, sources must list all equipment at the site owned, leased or operated by the applicant, as well as identify whether the source is a co-located HMA/SQCS

source. Additionally, the applicant must tally up the potential to emit (PTE) for all new, modified, and existing units at the source and compare the PTE to the major source thresholds for both attainment and nonattainment areas. The reviewing authority retains the discretion to not allow coverage under a general permit if it determines that a particular source may cause adverse impacts on the NAAQS that are not sufficiently addressed by the conditions in the permit. However, in the final HMA and SQCS permits, we are providing alternative throughput limits for instances where HMA and SQCS operations are co-located and the owner/operator wishes to limit emissions such that the combined emissions of the two processes are below the Title V permitting thresholds. This option is not available to co-located sources in serious, severe or extreme ozone nonattainment areas⁵ or serious CO nonattainment areas. The alternative throughput limits for co-located HMA and SQCS sources are as follows:

Facility Type	Combined Engine Fuel Usage Limit (gallons/month)	Throughput Limit (tons/month)
SQCS	18,275	146,000
HMA, Drum Mix		73,000
HMA, Batch Mix		25,000

Based on the aforementioned throughput limits for co-located HMA and SQCS sources, the limited PTE from co-located drum-mix HMA and SQCS facilities are shown in the table below.

Potential to Emit from Co-located Drum-Mix HMA and SQCS Facilities Located in Attainment, Unclassifiable or Attainment/Unclassifiable Areas

PM ₁₀	PM _{2.5}	NO _x	CO	VOC
43 tpy	30 tpy	90 tpy	78 tpy	27 tpy

Comment 3.2.5.2: Two commenters (0033, 0040) supported general permits authorizing relocation of a facility to pre-approved site locations, in so long as the source submits a notification to the reviewing authority and tribe each time it relocates to a pre-approved site. Two commenters (0041, 0048) stated that EPA's proposed rule would continue an unworkable approach toward permitting facilities that can operate at multiple locations. One commenter (0048) stated that EPA failed to recognize that many plants are portable and frequently move to new locations, and that the proposed regulations do not allow the flexibility for easily relocating the plants. Three commenters (0041, 0042, 0048) explained that the proposed rule would require

⁵The co-location option for these source categories is not available in serious, severe and extreme ozone nonattainment areas. For Severe and extreme areas, the co-location option is not available because the HMA general permit is not available in those areas because the major stationary source thresholds are very low in such areas and we do not envision that any minor source HMA plants would be able to remain below the thresholds through the use of a general permit. For serious areas, EPA evaluated the viability of setting co-location limits at levels low enough to ensure that emissions remain below the applicable 50 tpy major source threshold for serious areas and determined that we would have to set the throughput limits at levels so low that we do not envision minor, co-located sources being able to meet them. In such areas, we believe that co-location is more appropriately addressed through a site-specific permit.

a source to “identify multiple sites of operation in its request for coverage” and if the reviewing authority “does not approve a specific location, the source will need to reapply for coverage under the general permit or for a site specific permit before relocating to this site.” These three commenters (0041, 0042, 0048) recommended that EPA should instead adopt an approach based on generalized relocation criteria that would not require identification of specific locations.

Response: EPA agrees with commenters that the general permits should authorize relocation of a facility to approved site locations listed in the Approval of Request for Coverage. EPA has considered the option of taking a general approach that would not require identification of specific locations. However, we do not think such an approach is appropriate for the HMA and SQCS general permits. Given the wide applicability of these general permits in Indian country, it is difficult to develop criteria that would be appropriate for all possible locations. In addition, EPA must meet its obligations under the ESA and NHPA for each of these general permits and to do so, EPA must be able to identify with some specificity each of the areas where the source might locate.

3.2.6 Comments on control measures for spark ignition engines

Comment 3.2.6.1: One commenter (0040) stated that it is not necessary to include spark-ignition engine controls.

Response: EPA agrees with the commenter, see response to Comment 3.2.2.3 of this document.

3.3 Comments on the draft Auto Body Repair and Miscellaneous Surface Coating Operations General Permit and Implementation Tools

Comment 3.3.1: One commenter (0035) recommended that, for ozone nonattainment regions, EPA should consider requiring the most stringent emissions limitation or installation of BACT⁶ based on the requirements of the neighboring air district regardless of a facility’s PTE or throughput. The commenter (0035) asserted that emissions generated by equipment operating in Indian country will have an effect on neighboring air districts’ air quality and their compliance with federal standards. The commenter (0035) recommended that EPA include the following SCAQMD BACT requirements as part of the draft autobody repair and miscellaneous surface coating operations general permit for regions in which serious, severe, and extreme ozone nonattainment areas are located:

- Facilities utilizing fuel combustion heating units (e.g. ovens, make-up air heaters, etc.) should use only natural gas as their primary fuel, and the NO_x emissions from these devices should not exceed 30 parts per million by volume – dry (ppmvd) corrected to 3% oxygen.
- Facilities with the potential to emit VOC emissions greater than or equal to 22 lbs/day from their spray booth should install add-on control devices (VOC control system with

⁶ The SCAQMD requires minor sources locating in such areas to install BACT. This level of control is distinct from BACT as determined under EPA’s major source PSD program.

greater than or equal to 90% collection efficiency and greater than or equal to 95% destruction efficiency) or use materials with less than 5% VOC by weight or low VOC materials that results in an equivalent emission reduction.

- Facilities engaged in spray application of coatings to plastic and/or metal substrate on a part or a product should comply with emission standards similar to the SCAQMD's Rules 1145 and 1107, respectively. The emission limits specified in SCAQMD's Rules 1145 and 1107 are more stringent than the emission limits specified in the draft general permit. [The commenter (0035) provided hyperlinks to the text of the SCAQMD Rules 1145 and 1107 in their written comments]
- Facilities engaged in coating operations conducted on motor vehicle assembly lines should comply with emission standards similar to the SCAQMD's Rule 1115. [The commenter (0035) provided hyperlinks to the text of the SCAQMD Rule 1115 in their written comments]
- All solvent cleaning operations and surface preparation at a facility, excluding batch loaded cold cleaners, should comply with emission standards similar to the SCAQMD's Rule 1171. [The commenter (0035) provided hyperlinks to the text of the SCAQMD Rule 1171 in their written comments]
- Facilities that use adhesives should comply with standards similar to the SCAQMD's Rule 1168. [The commenter (0035) provided hyperlinks to the text of the SCAQMD Rule 1168 in their written comments]

Response: EPA has considered the commenter's recommendations and has incorporated some of the requirements proposed by the commenter into the final Auto Body Repair and Miscellaneous Surface Coating Operations Permit by Rule requirements for serious, severe, and extreme ozone nonattainment areas. EPA has concluded that in nonattainment areas where the NAAQS are currently exceeded, a greater level of control is required to protect air quality. The more stringent provisions recommended by the commenter will only apply in these nonattainment areas. We have determined that the adopted SCAQMD provisions are appropriate to include because the majority of serious, severe and extreme nonattainment areas in Indian country are located in California. Facilities in these nonattainment areas are, therefore, located near other facilities outside of Indian country that already comply with these more stringent requirements based on their location in a nonattainment area. Inclusion of the adopted requirements thus serves the dual purpose of ensuring that air quality is adequately protected and of creating a more level regulatory playing field for facilities within and outside of Indian country.

We did not include requirements for activities that we do not expect to occur at sources eligible for this final Auto Body Repair and Miscellaneous Surface Coating Operations Permit by Rule, such as those in Rule 1115 and many of the limits in Rules 1145 and 1107. In addition, we did not include the specific work practice standards in Rule 1171 referenced by the commenter. We believe the permit already includes similar work practice standards (see Section 2.0 of the final Permit by Rule). Note that surface coating operations not covered by this Permit by Rule will be required to obtain a site-specific permit under the tribal minor NSR rule. The list of VOC content limits in the final Permit by Rule for serious, severe, and extreme ozone nonattainment areas is provided in the response to Comment 3.3.3.

Comment 3.3.2: One commenter (0048) stated that the materials use provisions in the proposed Auto Body Repair and Miscellaneous Surface Coating Operations general permit are unclear. This commenter (0048) asked if the material use limits meant that the permittee is limited to that quantity regardless of the VOC content or if it is based on allowing 5,000 gallons of 100% VOC materials. Another commenter (0035) recommended that the coating VOC content limits specified in the draft general permit be measured in grams/liter or lbs/gallon, excluding water and any other compounds exempted by the permitting authority or the local/neighboring air district. The commenter (0035) noted that the limit for spraying operations located in serious, severe or extreme ozone nonattainment areas as specified in the draft general permit are less stringent than the limits in SCAQMD rules. The commenter (0035) recommended that the total VOC emissions from the spray coating operation should be calculated as applied excluding water and exempt compounds.

Response: The material use provisions in Condition 15 of the draft general permit are based on a worst-case VOC content limit of 8.34 lb/gallon. Therefore, a facility would be limited to 5,000 gallons of materials (coatings, thinners, and clean-up solvents) with a VOC content of 8.34 lbs/gallon or less. For clarification, EPA is revising the final Permit by Rule in §49.162(d)(2)(vii) to include a maximum content limit of 8.34 lb/gal for all VOC-containing materials (coatings, thinners, and clean-up solvents) for marginal and moderate ozone nonattainment areas, as well as attainment, unclassifiable and attainment/unclassifiable areas. EPA agrees with the recommendation that the coating content limits should also be provided in grams per liter and has added VOC content limits measured in grams per liter.

We also agree with the recommendation that the coating content limits should be on an “as applied” basis, excluding water. We added a definition for VOC to the Permit by Rule to clarify the compounds not included when considering VOC. The definition references the list of exempt compounds in 40 CFR 51.100(s)(1).

Comment 3.3.3: One commenter (0048) stated that the VOC content limits for nonattainment areas make sense. In addition, this commenter (0048) recommended that an emission limit based on the Indian Country Minor NSR Rule permitting levels be used instead of a throughput limitation. Another commenter (0035) noted that the coating’s VOC content limits listed for spraying operations located in serious, severe or extreme ozone nonattainment areas in the draft autobody repair and miscellaneous surface coating operations general permit are based on SCAQMD Rule 1151, December 2, 2005, a version which has been amended, and that the current coating VOC content limits can be found in Appendix A (effective July 1, 2008) of SCAQMD Rule 1151. The commenter (0035) provided hyperlinks to the text of the SCAQMD Rule 1151 in their written comments. The commenter (0035) included a table with the aforementioned VOC content limits. See Docket Id. No EPA-HQ-OAR-2011-0151 for additional information.

Response: EPA is retaining both the VOC content and material use limits in the final Permit by Rule in this final action. EPA chose to include limitations on material use in lieu of

ton-per-year emission limits because tracking material use is easier for sources and, thus, reduces their burden. If EPA were to take an emission limit approach, this would require facilities to track material use, calculate emissions, and to perform additional recordkeeping and reporting to verify that the calculated emissions are correct. By adopting material use limits, permittees are only required to track and report types and quantities of materials used each month. Furthermore, EPA's survey of states, conducted in the development of the draft permit, indicates that states are using material use limits for these sources.

EPA agrees that the VOC content limits for spraying operations located in serious, severe or extreme ozone nonattainment areas should reflect the most current VOC content limits approved by EPA. Therefore, we have updated the content limits in the final rule as follows:

Type of Coating	VOC Content Limits (grams/liter)	VOC Content Limits (lbs/gallon)
Adhesion Promoter	540	4.5
Clear Coating	250	2.1
Color Coating	420	3.5
Multi-Color Coating	680	5.7
Pretreatment	660	5.5
Primer	250	2.1
Single-Stage Coating	340	2.8
Temporary Protective Coating	60	0.5
Truck Bed Liner Coating	310	2.6
Underbody Coating	430	3.6
Uniform Finishing Coating	540	4.5
One or Two-Component Coatings for Plastics	120	1.0
Tire Retread Adhesive	100	0.8
Any other coating type or adhesive	250	2.1

In addition, while reviewing this comment EPA determined that it would be appropriate to add definitions for the various coatings listed in this table to the Permit by Rule. The

definitions are based on the underlying SCAQMD rules reviewed and will provide clarity and consistency for sources complying with these requirements.

Comment 3.3.4: One commenter (0035) recommended that, to reduce potential health risk and odor impacts, EPA should add a setback for new facilities, similar to the approach in the draft HMA and SQCS general permits.

Response: Due to the lack of an EPA analysis demonstrating the air quality benefits of requiring setbacks, we lack sufficient information to incorporate them in the final general permits for HMA plants and SQCS facilities. Therefore, the final general permits for HMA plants and SQCS facilities do not contain setback provisions. Nonetheless, the reviewing authority retains the discretion to deny the granting of source coverage under the general permits based on local air quality concerns. See response to comment 3.2.4.1.

Comment 3.3.5: One commenter (0035) recommended that EPA consider adding a requirement like SCAQMD Rule 1151 that prohibits the use of automotive coatings that contain cadmium or chromium to help ensure adequate public health protection.

Response: EPA appreciates the commenter's concern for public health. However, EPA's Indian Country Minor NSR Rule permitting program is intended to be consistent with the requirements of Section 110(a)(2)(c) of the CAA to ensure protection of the NAAQS. Minor NSR permitting is only triggered based on the NSR pollutants listed in Table 1 to 40 CFR 49.153. While 40 CFR 49.154(c)(4) requires EPA to set emission limits consistent with EPA's regulations for HAP emissions (40 CFR part 63), the Federal Indian Country Minor NSR Rule permitting program does not provide the EPA authority to regulate HAP other than through the issuance of a synthetic minor permit. Therefore, the content limits in the final Permit by Rule are limited to VOC-containing coatings and do not address cadmium or chromium.

Comment 3.3.6: One commenter (0035) noted that there are no limits or work practices for stripping operations in the draft Autobody Repair and Miscellaneous Surface Coating Operations general permit and recommended that EPA adopt requirements as listed under SCAQMD Rules 1107 and 1168 for stripping operations.

Response: EPA notes that the recommended limits for stripping operations primarily address HAP. As previously noted, EPA lacks authority under the Federal Indian Country Minor NSR Program to impose limits on HAP emissions other than in conjunction with issuing a synthetic minor source permit and the commenter did not provide information indicating that such work practices are necessary for other reasons, EPA has, therefore, not included limits or work practices for stripping operations in the final Autobody Repair and Miscellaneous Surface Coating Operations Permit by Rule. See response to Comment 3.3.5 above.

Comment 3.3.7: One commenter (0035) noted that, in Section 1: General Provisions, Condition 9 of the draft general permit (Information Requests), the term “Reasonable time” is subjective and not easily enforceable as it pertains to reviewing authority information requests of permittees. This commenter (0035) recommends that a specific time frame should be included in the Autobody Repair and Miscellaneous Surface Coating Operations general permit.

Response: EPA agrees with the commenter. The term “reasonable time” in Condition 9 is based on provisions of the Federal Indian Country Minor NSR Rule (see 40 CFR 49.155(a)(7)(vi)) as follows: “You, as the permittee, shall furnish to the reviewing authority, within a reasonable time, any information that the reviewing authority may request in writing to determine whether cause exists for revising, revoking and reissuing or terminating the permit or to determine compliance with the permit. For any such information claimed to be confidential, you must also submit a claim of confidentiality in accordance with part 2, subpart B of this chapter.” We have replaced “reasonable time” with “30 days unless another timeframe is specified by the EPA.” We have made this change for all of the final permits in this action.

Comment 3.3.8: One commenter (0035) recommended that, in Section 2: Emission Limitations and Standards, Condition 18, the draft autobody repair and miscellaneous surface coating operations general permit should identify a specific test method (e.g., ASHRAE 52 Standards or equivalent) to ensure consistency in determining the efficiency of filters used in conjunction with capturing overspray in enclosed painting areas.

Response: EPA agrees with the commenter and has revised the final Autobody Repair and Miscellaneous Surface Coating Operations Permit by Rule accordingly.

Comment 3.3.9: One commenter (0035) noted that airless and air-assisted airless spray guns are not equivalent to high-volume low-pressure (HVLP) spray guns. This commenter (0035) considers low-volume low-pressure (LVLP) spray guns and air brush operations equivalent to HVLP spray guns. The commenter (0035) recommended removal of airless and air-assisted air less spray guns from Section 2: Emission Limitations and Standards, Conditions 19 and 33 of the draft general permit, unless the spray gun manufacturer can demonstrate that their device is capable of achieving transfer efficiency comparable to that of a HVLP spray gun.

Response: EPA agrees with the commenter in the context of serious, severe, and extreme ozone nonattainment areas. EPA has concluded that in nonattainment areas where the NAAQS are currently exceeded, a greater level of control is required to protect air quality. The revision recommended by the commenter will only apply in these nonattainment areas. For other areas, we believe consistency with the spray gun requirements in Subpart HHHHHH (identify what 6 H covers) is more appropriate. We have added the following condition to the final Permit by Rule (see §49.164(d)(2)(xi)): “In serious, severe, and extreme ozone nonattainment areas, all spray-applied coating operations must be applied with an HVLP spray gun, LVLP spray gun, or air brush spray operation. An equivalent spray technology may be used if it has been demonstrated by the spray gun manufacturer to achieve a transfer efficiency comparable to that of an HVLP

spray gun and the spray gun manufacturer has obtained written approval for the use of such technology from the U.S. Environmental Protection Agency (EPA).”

Comment 3.3.10: One commenter requests that the exemption for spray guns with a cup capacity of 3 fluid ounces or less be removed for facilities located in serious, severe, or extreme ozone nonattainment areas. The commenter recommended continuing to exempt spray guns with this capacity used in air brush operations.

Response: EPA agrees with the commenter that the 3 fluid ounces cup capacity exemption should not apply in serious, severe, or extreme ozone nonattainment areas. EPA has concluded that in nonattainment areas where the NAAQS are currently exceeded, a greater level of control is required to protect air quality. The revision recommended by the commenter, which will result in a more stringent requirement, will only apply in serious, severe, and extreme ozone nonattainment areas. The condition added for spray guns used in serious, severe or extreme ozone nonattainment areas does not provide for the 3 fluid ounces cup capacity exemption. See response to comment 3.3.9 in this document for additional information.

Comment 3.3.11: One commenter (0035) recommended that, in Section 3: Monitoring and Testing Requirements, Condition 25 of the draft general permit, EPA include language requiring installation and maintenance of a pressure gauge across each filter bank, such as: “Pressure gauges shall be installed and maintained to indicate, in inches of water, the static pressure differential across the exhaust filters.” One commenter (0048) noted that, in the surface coating permit, there is no requirement in Condition 18 to install exhaust filter pressure gauges, even though measurement and recordkeeping is required in the permit.

Response: EPA agrees with the commenters that the permit should include a provision requiring the installation of exhaust filter pressure gauges to maintain consistency with the monitoring and recordkeeping requirements in the permit, and we have included this requirement in the final Autobody Repair and Miscellaneous Surface Coating Operations Permit by Rule.

Comment 3.3.12: One commenter (0035) noted that, in Section 5: Notification and Reporting Requirements, Condition 38 (Notification of Change in Ownership) of the draft general permit, the proposed regulation is unclear in establishing whether it is the responsibility of the new permittee or the old permittee to comply with the notification requirements.

Response: The commenter is correct. We have revised the final permit for clarification. If the permitted source changes ownership, then the new permittee must submit a written or electronic notice to the reviewing authority within 90 days before or after the change in ownership is effective. This clarifying change to the notification and reporting requirements has been applied to all final general permits and permits by rule. In addition, upon review of this comment we removed the condition from each permit by rule related to administrative revisions to the permit by the reviewing authority when there is a change in ownership. This condition is not necessary for source categories covered by a permit by rule.

Comment 3.3.13: One commenter (0035) recommended inclusion of the following definitions for “Air Brush Operations,” “Freeboard Area,” “Freeboard Height,” and “Liquid Leak”:

- “Air Brush Operations are conducted with a type of coating application equipment that operates at air pressures between 25 psi and 116 psi and an air volume of 0.7 cfm and 1.75 cfm respectively. These operations apply a very thin film of coating to a substrate from a paint reservoir of eight ounces or less.”
- “Freeboard Area is the air space in a batch-loaded cold cleaner that extends from the liquid surface to the top of the tank.”
- “Freeboard Height is the distance from the top of the solvent to the top of the tank for Batch-Loaded Cold Cleaners.”
- “Liquid Leak is a VOC-containing liquid leak from the degreaser at a rate of three drops per minute or more or any visible liquid mist.”

Response: EPA agrees with the commenter that definitions for “Freeboard Area,” “Freeboard Height,” and “Liquid Leak” are appropriate to include in the final permit, and we have adopted the definitions proposed by the commenter. We have determined that these definitions accurately describe the intended use of the terms in the permit. We have not included a definition for “Air Brush Operations” because this term is not included in any of the conditions of the final Autobody Repair and Miscellaneous Surface Coating Operations Permit by Rule.

Comment 3.3.14: One commenter (0048) recommended that, in the surface coating permit, the expected transfer efficiency of the HVLP spray gun should be defined. This commenter (0048) also asked why the equivalent spray gun is only defined as the HVLP when electrostatic application, airless spray gun, air-assisted airless spray gun are also listed. One commenter (0035) recommended that the definition of HVLP spray equipment should be corrected to read as follows: “high-volume, low-pressure (HVLP) spray equipment means spray equipment that is permanently labeled as such and used to apply any coating by means of a spray gun which is designed and operated between 0.1 and 10 pounds per square inch gauge (psig) air atomizing pressure measured dynamically at the center of the air cap and at the air horns.”

Response: EPA disagrees with the commenter that a specific transfer efficiency for an HVLP spray gun should be specified. The draft Auto Body Repair and Miscellaneous Surface Coating Operations permit defined an HVLP spray gun as “one in which spray equipment that is permanently labeled as such and used to apply any coating by means of a spray gun which is designed and operated between 0.1 and 10 pounds per square inch gauge (psig) air atomizing pressure measured dynamically at the center of the air cap and at the air horns.” This is the definition in the Paint Stripping and Miscellaneous Surface Coating Operations Area Source NESHAP (Subpart HHHHHH). We prefer to maintain consistency with this regulation and not specify a particular transfer efficiency. A spray gun not meeting specifications of one of the defined types of spray guns identified in the final Permit by Rule can only be used if it has been demonstrated to be equivalent to HVLP technology. This is consistent with the requirements of

Subpart HHHHHH. The suggested edits are minor, but we prefer to keep the definition in the permit consistent with the definition in 40 CFR 63 Subpart HHHHHH. As a result, we have not made the changes to the definition of HVLP spray equipment as recommended by the commenter.

Comment 3.3.15: One commenter (0048) stated that the materials use provisions for cold cleaning solvent in the draft Autobody Repair and Miscellaneous Surface Coating Operations general permit are unclear. This commenter (0048) recommended that an emission limit based on the Federal Indian Country Minor NSR Rule permitting levels could be used instead of a throughput limitation for cold cleaning solvent. One commenter (0035) recommended adding the following paragraph to Attachment C – Standards for Batch-loaded Cold Cleaner Degreaser in the draft general permit, as required in SCAQMD’s Rule 1122: “The average draft rate in the work room, as measured parallel to the plane of the degreaser opening, shall not exceed 9.1 meters per minute (30 feet per minute).” This commenter (0035) provided hyperlinks to the text of the SCAQMD Rule 1122 in their written comments.

Response: EPA believes that the requirements are sufficiently clear and that the materials use requirements are preferable to an emission limit in this context because it is far easier for small sources to track material use than emissions. As a result, the EPA is retaining material use limits in the final Permit by Rule. The commenter has not provided any substantive comments to explain why an emission limit is needed in lieu of a material use limitation. EPA chose to include limitations on material use in lieu of ton-per-year emission limits because tracking material use is easier for sources and reduces burden. If EPA were to take an emission limit approach, this would require facilities to track material use, calculate emissions, and to perform additional recordkeeping and reporting to verify that the calculated emissions are correct. By adopting material use limits, reporters are only required to track and report types and quantities of materials used each month. Furthermore, EPA’s survey of states, conducted in the development of the draft permit, indicates that states are using material use limits for these sources.

Regarding the recommendation to add language to Attachment C – Standards for Batch-loaded Cold Cleaner Degreaser,⁷ EPA is declining to include this requirement in the final Permit by Rule. It is unclear how this condition is enforceable through appropriate monitoring and recordkeeping. Therefore, we are making no changes to the final permit based on this comment.

Comment 3.3.16: One commenter (0033) stated that, although they are not aware of any [surface coating] facility in their jurisdiction with a throughput of VOC-containing materials even close to the 5,000 gallons per year specified in the proposed rule, they would be comfortable issuing a general permit or permit by rule for any such facility meeting the above-mentioned threshold.

Response: EPA thanks the commenter for their support.

⁷ This is §49.162(e) in the final Auto Body Repair and Miscellaneous Surface Coating Operations Permit by Rule.

Comment 3.3.17: One commenter (0048) requested clarification on whether sources that do not exceed the permitting limit for Federal Indian Country Minor NSR Rule but are subject to the MACT still need to obtain a general permit. The commenter (0048) recommended that any rule potentially applicable to the source, such as 40 CFR Part 63 Subpart HHHHHH, Paint Stripping and Miscellaneous Surface Coating Operations, should be referenced in the permit. The commenter (0048) also noted that there are no requirements concerning the use of paint strippers like there are in the MACT.

Response: Independent of whether a source is subject to a NESHAP, a permit under the Federal Indian Country Minor NSR Rule is only required when constructing or modifying a source and the emissions increase is above the minor source permitting thresholds. Regarding the need for requirements for paint strippers, see response to comment 3.3.6 of this document. The application documents have been revised to identify when requirements for an NSPS or NESHAP are included in a final general permit or permit by rule.

Comment 3.3.18: One commenter (0048) stated that the surface coating permit requires the permittee to keep records of the VOC and HAP content of the solvent used in a solvent degreaser, but asked why the permittee would need to keep records when there are no limits on the VOC content of the solvents. This commenter (0048) stated that keeping similar records is not required for the attainment area coatings. The same commenter (0048) recommended that the VOC content limit of 25 g/L for cleaning materials used in serious, severe and extreme ozone nonattainment areas (in Attachment C of the draft general permit) be listed in the body of the permit like the coating limits.

Response: EPA agrees with the commenter that the recordkeeping requirements for VOC and HAP content of halogenated solvents used in a degreaser are unnecessary and has revised the condition to be consistent with the other recordkeeping requirements for VOC-containing material by requiring the Material Safety Data Sheet to be kept onsite. Additionally, we agree with the commenter that the VOC content limit for cleaning materials used in serious, severe and extreme ozone nonattainment areas specified in Attachment C of the draft general permit should be listed in the body of the final Autobody Repair and Miscellaneous Surface Coating Operations Permit by Rule. It now can be found in §49.162(d)(2)(xvii).

Comment 3.3.19: One commenter (0048) noted that, in the notification of construction or modification requirement, it is not clear whether the notification required for beginning operations is within 30 days of start of construction or within 30 days after operations begin or resume.

Response: EPA agrees with the commenter that the permit is unclear. We have revised this condition in the final Autobody Repair and Miscellaneous Surface Coating Operations Permit by Rule to clarify that the permittee must provide written notice within 30 days of beginning construction, and within 30 days of beginning initial operations or resuming operation after a modification.

Comment 3.3.20: One commenter (0048) requested clarification on when the refresher training (mentioned in Attachment D – Training and Certification Requirements for Spray-Applied Surface Coating Personnel of the draft general permit) is required for spray booth operators.

Response: EPA appreciates this comment and has updated §49.162(f) in the final Autobody Repair and Miscellaneous Surface Coating Operations Permit by Rule to specify that training must be conducted within 180 days for new hires and that operators must be re-certified at least every 5 years thereafter. This is consistent with the requirements in 40 CFR 63.11173(g), the NESHAP applicable to this source category.

3.4 Comments on the draft Gasoline Dispensing Facility General Permit and Implementation Tools

Comment 3.4.1: One commenter (0040) stated that: for GDFs, the percentage onboard refueling vapor recovery (ORVR) estimate seems optimistic. This commenter (0040) stated that basing applicability on throughput based on those assumptions may under-estimate source emissions.

Response: EPA disagrees with the commenter. As discussed in the “Background Document: Air Quality Permit by Rule for New or Modified True Minor Source Gasoline Dispensing Facilities in Indian Country”, we determined the percent ORVR for the vehicle fleet based on an Agency analysis using the 2012 memorandum, “Updated Data for ORVR Widespread Use Assessment” (see Docket Id. No. EPA-HQ-OAR-2010-1076). This analysis has been through a rulemaking review which involved substantial participation by gasoline marketing and automotive interests and is similar to an analysis prepared by the California Air Resources Board (CARB). It is our determination that the estimates of source emissions based on the throughput limitations and %ORVR are reasonable and well substantiated.

Comment 3.4.2: One commenter (0040) noted an error in Table 3: the units in the table are not correct; the correct unit for Disp. Breathing losses, Stage I, and Total columns in Table 3 should be lb/10³ gallons (lb/1000 gallons).

Response: EPA agrees with the commenter. We note that there was an error in the printing of the Federal Register proposal notice, and that the correct units for Table 3 should be lb/10³ gallons.

Comment 3.4.3: One commenter (0040) supports the inclusion of standing loss control (SLC) requirements in the draft GDF general permit for those parts of Indian country that are located in serious, severe and extreme ozone nonattainment areas in California and recommended that SLC for VOC emissions from above ground storage tanks (ASTs) should also be applied in potential future serious, severe, and extreme ozone nonattainment areas outside California. Another commenter (0052) stated that the addition of SLC requirements to the draft

GDF general permit for those parts of Indian Country in California that are located in serious, severe, and extreme ozone nonattainment areas could cause increased costs to the GDFs in Indian country that would have to provide SLC for VOC emissions from ASTs. The commenter (0052) also stated that applying the SLC for VOC emissions from ASTs in potential future serious, severe, and extreme ozone nonattainment areas outside of California, could lead to increased cost to GDFs in these areas and the reviewing authorities that would need to monitor for compliance. One commenter (0035) recommended that EPA apply SLC outside of California, stating that SLC is a very cost effective way to reduce emissions from gasoline storage and it is independent of throughput.

Response: EPA has considered the points raised by commenters and has determined that SLC requirements for VOC emissions from ASTs should be applied to GDFs in Indian country serious, severe, and extreme ozone nonattainment areas as proposed. In doing this, EPA has tried to balance the primary purpose of protecting the NAAQS with the desire to provide a level regulatory playing field. Moreover, we have determined that these provisions are appropriate to include because the majority of Indian country serious, severe and extreme nonattainment areas are located in California, where SLC is already required. Facilities in these nonattainment areas are located near other non-tribal facilities that already comply with SLC based on their location in serious, severe, or extreme nonattainment areas. The inclusion of SLC requirements in areas of Indian country with the same designation will ultimately create a more level regulatory playing field for GDFs within and outside of Indian country.

Comment 3.4.4: One commenter (0035) noted that the draft GDF general permit requires Stage I control for both underground storage tanks and aboveground storage tanks and SLC for aboveground storage tanks, but that Stage II control is not required under the draft general permit, even though Stage II control is still required in some states. This commenter (0035) noted that EPA has declared that there is widespread use of ORVR and allowed states to obtain a waiver of Stage II requirements. The commenter (0035) noted that Paragraph (c) of 40 CFR 49.154 provides that EPA should take into consideration, among other criteria, the typical control technology or other emissions reduction measures used by similar sources in surrounding areas, to determine the appropriate level of controls to be employed. The commenter (0035) stated that there are Stage II control systems (e.g., CARB certified Phase II Enhanced Vapor Recovery Systems or CARB Phase II EVR Systems) that have been certified to be ORVR compatible and effective while fueling non-ORVR vehicles and stated that these systems can certainly qualify as BACT for both types of vehicles. The commenter (0035) recommended that EPA require Stage II controls in states that still require Stage II controls, Phase II EVR systems in states that require them, and Phase II EVR systems in serious, severe, or extreme nonattainment areas.

Response: Stage II and vehicle ORVR were initially both required by the 1990 Amendments to the CAA under Sections 182(b)(3) and 202(a)(6), respectively. As noted by the commenter, the Agency previously issued a notice of final rulemaking to allow the states to phase out Stage II controls for serious, severe, and extreme ozone nonattainment areas (77 FR 28772, May 12, 2012). At that time, the Administrator made the determination that ORVR is in widespread use, as authorized under Section 202(a)(6) of the CAA, and that Stage II controls could be removed to reduce costs for redundant control. However, this notice allowed, but did

not require, states to discontinue Stage II vapor recovery programs. As such, some states may have maintained Stage II controls as part of their SIP but indications are that most are not requiring Stage II controls for new GDFs.

EPA estimates that approximately 84% of gasoline will be dispensed to ORVR equipped vehicles by the end of 2014 and that by the end of 2020 this value will increase to 94%. There remains a small but continually decreasing percentage of gasoline refueling emissions not captured by ORVR controls. EPA, nevertheless, considers additional emission reductions achieved through Stage II controls as technically achievable. Those controls would, however, only apply to emissions from those vehicles without ORVR, while the costs to the GDF would be the same regardless of the volume of non-ORVR vehicle gasoline throughput at the GDF. Thus, while Stage II controls would provide a benefit, the cost of this control would be disproportionately large and there would be follow-on annual costs to the GDF operator. Nevertheless, given that areas of California have chosen to continue requiring the program, these additional emission reductions continue to be necessary and required in California plans for demonstrating how they will attain the NAAQS. We do not, however, anticipate any other areas in the country continuing to require Stage II controls at new GDFs.

In the development of the final rule, we have tried to balance the need to provide a level regulatory playing field with the need to protect the NAAQS. Because of the costs associated with installing Stage II controls, extending Stage II requirements to GDFs in current or future Indian country nonattainment areas outside of California would likely create a significantly disproportionate regulatory requirement when compared with the requirements applicable in the surrounding area. In this particular case, where such a disparity in typical control requirements in different parts of the country will likely exist, we do not think it is appropriate to make a permit by rule available in all areas of Indian country. Therefore, the final Permit by Rule for GDFs will not include Stage II controls, but sources located within the geographical boundaries of California will not be eligible for the Permit by Rule. This approach will allow EPA Region 9, the current reviewing authority in all areas of Indian country in California, to develop a general permit or permit by rule for areas within California, that can more closely consider the unique air quality concerns in that area of the country.

Comment 3.4.5: One commenter (0035) recommended that, in the case of EPA adopting Stage II controls, that CARB Vapor Recovery Test Procedures TP-201.1B, TP-201.1C, and TP-201.1D or equivalent should be included for testing of Stage II components.

Response: Consideration of California ARB test procedures covering the implementation of Stage II EVR for GDFs would be highly appropriate if the rule were to require Stage II controls. However, for the reasons discussed above, Stage II is not a requirement for new GDFs in Indian country.

Comment 3.4.6: One commenter (0035) recommended that EPA require In-Station Diagnostics (ISD) for all GDFs that dispense more than 600,000 gallons/year, noting that ISD is important since it provides continuous real time monitoring of critical emission-related vapor

recovery system parameters and components, and alerts the station operator when a failure mode is detected so that corrective action can be taken.

Response: Consideration of California ARB requirements such as ISD might be appropriate if the rule were to require Stage II controls. However, for the reasons discussed above, Stage II is not a requirement for new GDFs in Indian country. Therefore, we are not requiring ISD in the GDF Permit by Rule.

Comment 3.4.7: One commenter (0035) explained that vapor recovery systems at GDF are often certified with a group of components designed to work together under specific conditions, and are to be operated and maintained within specified constraints which are defined in the certification for these systems, including equipment configuration, performance standards, testing methods, and installation, operational and maintenance procedures. The commenter (0035) recommended that EPA incorporate these constraints by referring to the certification documents for such systems.

Response: The commenter seems to be referring to the fact that Stage II installations are certified in addition to some components needing to meet specific requirements. This is quite sensible, but it is not relevant since we are not requiring Stage II controls for new GDFs in Indian country.

Comment 3.4.8: One commenter (0035) supports the exemption for tanks < 250 gallon capacity.

Response: EPA thanks the commenter for their support.

Comment 3.4.9: One commenter (0035) requested that EPA revise the first sentence of Section 2: Emission Limitations and Standards, Paragraph 14 in the draft GDF general permit to read: “The permittee shall install, maintain and operate each affected emission unit,”

Response: The commenter’s suggested text would modify Condition 14 to clarify that the permittee shall install each affected emissions unit, including any associated air pollution control equipment, in a manner consistent with good air pollution control practices and considering the manufacturer’s recommended operating procedures at all times, including periods of startup, shutdown, maintenance and malfunction. EPA agrees with the suggested change and has revised §49.164(d)(2)(i) of the final GDF Permit by Rule, accordingly. This change has been applied to all final general permits and permits by rule.

Comment 3.4.10: In commenting on the draft GDF general permit, one commenter (0035) recommended that EPA add one housekeeping measure in Section 2: Emission Limitations and Standards, Paragraph 15. “f. The spill bucket shall be free from standing liquid and of debris.”

Response: EPA agrees that the provision suggested by the commenter is appropriate for inclusion in the final permit. The provision is a good air pollution control practice and would not increase the burden to sources. The provision has, therefore, been added to §49.164(d)(2)(iv)(B) of the final GDF Permit by Rule.

Comment 3.4.11: One commenter (0035) noted that, in Section 2: Emission Limitations and Standards, Paragraph 19: All gasoline storage tanks greater than 250 gallons should have a Stage I dual-point vapor balance system. Any Stage I coaxial system should not be allowed because these systems are prone to blockage. This commenter (0035) further recommended that the phrase “that are constructed after January 20, 2008” under Item A and Item B be deleted in its entirety.

Response: EPA concurs with these suggestions.

Comment 3.4.12: One commenter (0035) recommended that, in Section 2: Emission Limitations and Standards, Paragraph 20, EPA add the following requirements for cargo tanks: “h. A sight glass shall be installed in the fuel drop hose to verify that there are no bubbles forming during the fuel drop.”

Response: EPA does not agree that this provision is necessary to include in the final permit. The commenter has not provided a substantive explanation for the suggested requirement or explained why bubble formation would be problematic. As a result, EPA has not made any changes to the final GDF Permit by Rule in response to this comment.

Comment 3.4.13: One commenter (0035) noted that, in Section 3: Monitoring and Testing Requirements, Paragraph 23 of the draft general permit, which states: “An initial performance test should be conducted as soon as practical but no more than 180 days after initial, or resumption of, fuel dispensing operation.,” the condition as stated may provide a much longer period in cases where the reviewing authority does not timely issue the Approval of the Request for Coverage.

Response: A particular source may not begin construction or modification until either an Approval of the Request for Coverage is issued for a general permit or a completed Notification of Coverage is received by the reviewing authority for a permit by rule. As such, the period for conducting the initial performance test is specific, making the commenter’s concern unclear.

Comment 3.4.14: One commenter (0035) recommended that, in Section 3: Monitoring and Testing Requirements, Paragraph 25 of the draft general permit, should read: “The permittee should follow maintenance procedures as specified in the equipment certification documents (e.g. CARB Executive Orders) where applicable.” EPA should also add a requirement for daily

visual inspection of equipment because fueling equipment is used by a consumer or delivery truck driver and not GDF employees.

Response: In the final GDF Permit by Rule, EPA has considered the commenter's suggestion and is revising §49.164(d)(3)(iii) of the final GDF Permit by Rule, Condition 25 to include a requirement for a daily visual inspection of equipment in extreme ozone nonattainment areas. This is standard practice and is recommended by the Petroleum Equipment Institutes in their Recommended Practice 300-09. We have determined that this inspection is appropriate to protect the air quality in these areas. We did not include a reference to CARB Executive Orders, as equipment certification documents may be issued by other reviewing authorities.

Comment 3.4.15: One commenter (0035) recommended that, in Attachment B: Definitions of the draft general permit, EPA change the definition for ullage to: "Ullage means the empty volume of any container. For example, the ullage of a tank designed primarily for containing liquid is the volume of the tank minus the volume of the liquid it contains."

Response: EPA has considered the commenter's suggestion and is revising the definition of ullage in the final GDF Permit by Rule. We have not adopted the commenter's suggested language in its entirety because it does not provide clarity. The definition of ullage included in the final permit reads, "Ullage means the volume of a container not occupied by liquid. For example, the ullage of a tank designed primarily for containing liquid is the volume of the tank minus the volume of the liquid it contains."

Comment 3.4.16: One commenter (0035) recommended that, in Attachment C: Vapor Balance System Design Criteria, Management Practices, and Performance Testing of the draft general permit, Paragraph 10, EPA add a requirement to perform the test at least once every three years, and at Paragraph 11, add a requirement to perform the test at least once a year. This commenter (0035) recommended that Item b. be deleted from Paragraphs 10 and 11, because the permitted source has to be in a non-operational state to conduct the test (no fuel transfer and no vehicle being fueled).

Response: This comment is mostly related to testing frequency for Stage II requirements, which are not included in the final GDF permit by rule. EPA agrees with the recommendation to delete the requirement to conduct the testing while the permitted source is operating under typical conditions and has done so in §49.164(e)(2)(i) and (ii).

Comment 3.4.17: One commenter (0035) recommended that, in Attachment C: Vapor Balance System Design Criteria, Management Practices, and Performance Testing of the draft general permit, Paragraph 11, EPA revise the requirement because the two test methods (under c. and d.) are interchangeable and should be alternative to each other (i.e. "c. or d." instead of "c. and d.").

Response: EPA concurs with this comment and has made the suggested change in §49.164(e)(2)(ii)(C).

Comment 3.4.18: One commenter (0035) recommended that, in Attachment C: Vapor Balance System Design Criteria, Management Practices, and Performance Testing of the draft general permit, Paragraph 11, for AST, CARB Vapor Recovery Test Procedures, EPA should use TP-206.3, instead of TP-201.3.

Response: EPA concurs that the testing requirements for ASTs should include TP-206.3. However, the testing requirements for ASTs were in Paragraph 12 of the draft general permit. TP-206.3 has been added to the list of testing requirements in §49.164(e)(2)(iii).

Comment 3.4.19: One commenter (0035) noted that, in Attachment C: Vapor Balance System Design Criteria, Management Practices, and Performance Testing of the draft general permit, Paragraph 12, the tests under TP-206.1 and TP-206.2 are meant for use in certifying AST and not for testing of individual storage tanks.

Response: EPA agrees with this comment and has revised §49.164(e)(2)(iii) to indicate that the permittee must use ASTs certified with these procedures.

Comment 3.4.20: One commenter (0035) recommended that, in Attachment C: Vapor Balance System Design Criteria, Management Practices, and Performance Testing of the draft general permit, Paragraph 12, EPA should require the installation of CARB certified AST for SLC instead of testing ASTs.

Response: EPA concurs with this comment and, thus, we have added a requirement in §49.164(e)(2)(iii) that ASTs be CARB certified for SLC.

Comment 3.4.21: One commenter (0033) noted that an average GDF has a throughput of 1.5 million gallons per year. This commenter (0033) stated that most, if not all, GDFs on the Navajo Nation have a yearly throughput of four million gallons or less and will not qualify as minor sources.

Response: EPA thanks the commenter for their input.

EPA acknowledges that many sources will be below the upper threshold to qualify for the final GDF Permit by Rule. Note, however, that the facility must also determine whether it qualifies as a minor source based on the facility PTE. If the facility PTE is below the minor NSR thresholds in Indian country in 40 CFR 49.153 (see Table 1 of the “Background Document: Air Quality Permit by Rule for New or Modified True Minor Source Auto Body Repair and Miscellaneous

Surface Coating Operations in Indian Country”),⁸ then the facility is exempt from the minor NSR program. Translated into throughput levels, if the source is above the following lower levels, then it is a minor source subject to minor NSR (provided it is below major source levels):

- If located in an attainment, unclassifiable or attainment/unclassifiable area for ozone, after the proposed construction or modification project, the facility is projected to dispense more than 4,000,000 gallons of fuel over a consecutive 12 month period; and
- If located in an ozone nonattainment area, after the proposed construction or modification project, the facility is projected to dispense more than 2,100,000 gallons of fuel over a consecutive 12 month period.

Facilities with throughput above these levels that have PTEs below the NSR major source thresholds may seek coverage under the final GDF Permit by Rule if they meet the throughput limits and operating requirements established in the Permit by Rule.

Comment 3.4.22: One commenter (0048) recommended that the MACT standard for GDFs, 40 CFR part 63, subpart CCCCCC, should be referenced in the draft general permit. This commenter (0048) noted that a side-by-side comparison suggests the permit conditions are more stringent than are the MACT requirements in some respects. This commenter (0048) recommended that it should be made clear in the permit that when there is a contradiction that the MACT rule meaning applies. This commenter (0048) recommended that it would be better to remove any sections from the general permit that duplicate what is in the MACT rule.

Response: See response to Comment 3.2.1.16. The emission limitations in the final GDF Permit by Rule, as well as those in other general permits and permits by rule, are consistent with the requirements of the Federal Minor NSR Program in Indian Country, which requires that each permit include applicable emission limitations for each affected emissions unit as determined by the reviewing authority, and that the emission limitations assure that each affected emissions unit will comply with all requirements of parts 60, 61 and 63 (see 40 CFR 49.155(a)(2) and 40 CFR 49.154(c)(4)). The requirements included in the final GDF Permit by Rule are intended to harmonize with the existing NESHAP rule to the greatest extent possible. We have tried to maintain consistency with 40 CFR part 63, subpart CCCCCC to streamline the permit and to reduce burden to sources who must comply with both sets of requirements. We note, however, that sources subject to subpart CCCCCC must fully comply with the requirements of that rule independent of what is required in the final GDF Permit by Rule.

⁸ Background Document: Air Quality Permit by Rule for New or Modified True Minor Source Gasoline Dispensing Facilities in Indian Country, Docket ID No. EPA-HQ-OAR-2011-0151, <http://www.epa.gov/air/tribal/tribalnsr.html>.

3.5 Comments on the draft Petroleum Dry Cleaning Facilities General Permit and Implementation Tools

Comment 3.5.1: One commenter (0033) stated that they are not aware of any petroleum dry cleaning facilities on the Navajo Nation with a throughput of VOC-containing materials close to 5,600 gallons per year, but that they would be comfortable issuing a general permit or permit by rule for any such facility meeting the above-mentioned threshold. One commenter (0047) agreed with EPA on the throughput limits for dry cleaning facilities and on inspections for dry cleaners every 15 months, at a minimum. This commenter (0047) noted that although there may be related recordkeeping with marginal costs, they do not seem “unreasonable” and would assist in protecting the tribe’s air shed. Another commenter (0052) stated that although requiring the inspections of cleaning dryers and dry cleaning equipment does not appear to be unreasonable, the timeframe for performing inspections of cleaning dryers and the turnaround time for repairing any leaks that are discovered for these dryers, in particular, could be burdensome for dry cleaning facilities. This commenter (0052) recommended that the permit be revised to allow a slightly longer timeframe for each activity.

Response: EPA thanks the commenters for their support of the proposed throughput limits and inspection requirements; we are maintaining these provisions in the final Petroleum Dry Cleaning Facilities Permit by Rule. Regarding the timeframe for inspections and repair, the proposed timeframe for inspections and repair is actually every 15 days. We disagree with the comment that this timeframe is unreasonable. The Petroleum Dry Cleaners NSPS (40 CFR part 60, subpart JJJ) requires labeling of dryers for periodic inspections of the petroleum solvent dryer every 15 days and repair of all vapor or liquid leaks within the subsequent 15 day period. As such, we anticipate that many facilities are currently implementing inspections and repair within this time frame. The final Petroleum Dry Cleaning Facilities Permit by Rule, therefore, requires that each petroleum solvent dry cleaning dryer be inspected every 15 calendar days for evidence of leaks and that all vapor or liquid leaks be repaired within the subsequent 15 calendar day period.

Comment 3.5.2: One commenter (0035) noted that there is no requirement in the draft Petroleum Dry Cleaners general permit for BACT. This commenter (0035) recommended that EPA include BACT guidelines for new petroleum dry cleaning equipment in nonattainment areas identical to the SCAQMD BACT guidelines, which specify BACT for petroleum dry cleaning equipment as a “Closed Loop, Dry-to-Dry Machine with a Refrigerated Condenser (manufacture date on or after 10-20-2000) or Evaporatively Cooled Condenser (manufacture date on or after 7-9-2004)”.

Response: As stated previously, EPA intended to include more stringent requirements for sources locating in certain ozone nonattainment areas. Those requirements were based on requirements applicable in California where the majority of the Indian country nonattainment areas exist. The draft permit included some requirements from SCAQMD rules for sources locating in serious, severe, and extreme ozone nonattainment areas, but inadvertently did not specifically identify that a closed-looped dryer is required in these areas. All other requirements

applicable to this equipment were included. We have included a requirement to use closed-loop dryers in serious, severe, and extreme ozone nonattainment areas as suggested by the commenter.

Comment 3.5.3: Another commenter (0048) recommended that the MACT standard for dry cleaners, 40 CFR Subpart M – NESHAP for Perchloroethylene Dry Cleaning Facilities, be referenced in the draft general permit. One commenter (0048) stated that a side-by-side comparison suggests the permit conditions are more stringent than are the MACT requirements in some respects. The commenter (0048) recommended that it should be made clear in the permit that when there is a contradiction, that the MACT rule meaning applies, and recommended that EPA remove any sections from the general permit that duplicate what is in the MACT rule.

Response: EPA did not include standards from the NESHAP for perchloroethylene dry cleaners in the draft permit as the permit is not intended to regulate emissions of HAP. Instead, in establishing the requirements for the draft permit, EPA drew on requirements from the Petroleum Dry Cleaners NSPS (40 CFR part 60, subpart JJJ), and not the NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR 63, subpart M). The provisions of subpart M apply to dry cleaners that use the HAP perchloroethylene, which is not a pollutant regulated under the NSR program. The final Petroleum Dry Cleaning Facilities Permit by Rule is intended for use only by petroleum dry cleaning facilities, which are subject to the provisions of 40 CFR 60 subpart JJJ.

Regarding the stringency of the draft permit conditions, in some cases, more stringent provisions are necessary to protect the NAAQS, especially in serious, severe, and extreme ozone nonattainment areas, and EPA has included such provisions in the final permit. These limitations remain consistent with the requirements of the Federal Indian Country Minor NSR Rule, which requires that each permit must include applicable emission limitations for each affected emissions unit as determined by the reviewing authority, and that the emission limitations must assure that each affected emissions unit will comply with all requirements of parts 60, 61 and 63 (see 40 CFR 49.155(a)(2) and 40 CFR 49.154(c)(4)).⁹ The requirements included in the final Petroleum Dry Cleaning Facilities Permit by Rule are intended to harmonize with the existing NSPS rule to the greatest extent possible. We have tried to avoid contradictions with 40 CFR part 60, subpart JJJ to streamline the permit and to reduce burden to sources who must comply with both sets of requirements. If there are questions or concerns related to the compliance provisions of the final Petroleum Dry Cleaning Facilities Permit by Rule or 40 CFR part 60, subpart JJJ, facilities may contact the appropriate regulatory authority for additional information.

Comment 3.5.4: One commenter (0052) stated that the requirements in the draft Petroleum Dry Cleaners general permit for sources located in serious, severe, and extreme ozone nonattainment areas, such as having wastewater evaporators and meeting leak check and repair requirements, do not appear unreasonable, but there would be costs involved in meeting these requirements.

⁹ While we are ensuring compliance with part 63, sources covered by the Petroleum Dry Cleaning Facilities Permit by Rule are not covered by the MACT standard for dry cleaners, 40 CFR Subpart M – NESHAP for Perchloroethylene Dry Cleaning Facilities.

Response: EPA thanks the commenter for their support. We acknowledge that there are costs associated with meeting these requirements. EPA has previously analyzed the impact of streamlined permitting in the development of the proposed rule. We determined that the draft permit conditions would not impose a substantial direct compliance cost or have a significant economic impact. The permit conditions included are necessary to ensure that air quality is protected throughout Indian country.

Comment 3.5.5: One commenter (0035) noted that, in Section 2: Emission Limitations and Standards of the draft general permit, Paragraph 21, reference should be made to Attachment “C,” not “A”.

Response: EPA thanks the commenter for identifying the typo. We have corrected this reference in the final Dry Cleaning Facilities Permit by Rule.

4.0 Comments on the appropriateness of utilizing streamlined general permit applications (Permit by Rule) for three source categories

4.1 General comments on the regulatory framework that EPA proposed as an alternative to use to establish permits by rule

Comment 4.1.1: Several commenters (0030, 0031, 0033, 0038, 0040, 0041, 0042, 0049-2, 0052) provided support for EPA’s proposed use of streamlined permit applications (permits by rule) for three source categories (auto body repair and miscellaneous surface coating, GDFs, and petroleum dry cleaning facilities). Some commenters (0029, 0038) noted that several states and local reviewing authorities use permits by rule to authorize construction of minor sources and that EPA has approved several state or local permits by rule in SIPs. Two commenters (0031, 0033) stated that based on the simplicity of these operations and the type and number of pollutants emitted, a permit by rule is appropriate for these sources. One commenter (0033) specified that auto body repair and miscellaneous surface operations, GDFs, and petroleum dry cleaning facilities emit VOCs only in amounts that are significantly below the major source thresholds. Some commenters (0029, 0049-2) stated that the notification-only approach would not undermine the environmental benefits or compliance with requirements but would provide an equivalent level of emissions reductions; one commenter (0049-2) reiterated that there is no evidence that violations are more likely to occur with a permit by rule than with a general permit.

Three commenters (0031, 0033, 0049-2, 0052) asserted that the use of permits by rule would expedite the permitting process and reduce administrative burdens and costs for permitting agencies and/or operators. Commenters (0030, 0049-2) supported the permit by rule approach because it would allow permittees to begin construction without delay, rather than waiting for preconstruction review and approval. Some commenters (0049-2, 0038) urged EPA to consider available resources and the timing of permitting, noting that the permit by rule approach will allow EPA to more efficiently manage minor sources and ensure resources are available to ensure compliance for both major and minor sources. Some commenters (0029, 0032) pointed to other state or federal programs for EPA to consider as a model for the

development of its permit by rule approach. These commenters (0029, 0032) also expressed concerns about whether EPA has the resources to process general permits in a timely manner. These commenters (0029, 0032) referenced issues experienced by EPA Region 8 when the synthetic minor source permitting program for that region became effective, and pointed to the Fort Berthold Indian Reservation (FBIR) FIP used in that region as a model for EPA's minor source permitting.

Response: EPA has considered the input provided by commenters and is finalizing permits by rule, in lieu of general permits, for the auto body repair and miscellaneous surface coating operations, gasoline dispensing,¹⁰ and petroleum dry cleaning source categories. EPA has attempted to balance the air quality concerns in Indian country with the resource and workload needs of reviewing authorities and minimizing delays associated with the permitting process. Permits by rule provide a streamlined approach that reduces the time permitting authorities must devote to reviewing permit applications and issuing permits for source categories and simplifies the permitting process for sources that pose little environmental concern. EPA believes that permits by rule are appropriate for controlling emissions-generating activities that should be controlled to protect air quality, but pose a relatively lower environmental concern. Permits by rule have frequently been used by states to authorize construction of less complex sources that emit below the major stationary source thresholds, including auto body repair and miscellaneous surface coating operations, gasoline dispensing, and petroleum dry cleaning sources. These sources have the most straightforward operations, the least variations in equipment and configurations, largely involve one air pollutant (i.e., VOCs), and have the simplest compliance requirements. Given the relative simplicity and generally lower emissions of these sources, we have determined that we do not need to conduct case-specific reviews to evaluate whether an individual source qualifies for the permit, and we are comfortable requiring only notification from these sources. In this final rule, the permits by rule program would require an individual applicant to submit a letter and Notification of Coverage Form to the reviewing authority and the tribal authority, prior to construction or modification, indicating/demonstrating that it meets the eligibility criteria for the permit and that it can and will comply with all of the permit terms and conditions. We are also requiring that sources obtain written confirmation from the EPA that the screening procedures for threatened and endangered species and historic properties have been completed correctly prior to submitting the Notification of Coverage Form. To make this clearer, we have created a new document, Procedures to Address Threatened and Endangered Species and Historic Properties for New or Modified True Minor Sources in Indian Country Seeking Air Quality Permits by Rule, that sources will use to guide them through the screening processes prior to submitting a Notification of Coverage Form. We are adding the requirement to notify the tribal authority in order to ensure that the tribal authority is aware of new facilities and may communicate the information to the tribe.

In addition, where EPA is the reviewing authority, we must post a source's Notification of Coverage Form on the relevant Region's our web site upon receiving it. The posting of the Notification of Coverage Form is considered final agency action with respect to its applicability to an individual source. The sole issue that may be appealed after an individual source is covered under a permit by rule is the applicability of the permit by rule to that particular source. Appeals

¹⁰ The gasoline dispensing facilities permit by rule that EPA is finalizing does not apply to GDFs located in California (see Response to Comment 3.4.4).

must be made to the U.S. Court of Appeals for the relevant Circuit within 60 days of EPA's action. We have decided to promulgate this process as a separate regulation from 40 CFR 49.159 to provide a process for permits by rule that is streamlined compared to the two-step process of first seeking review by EPA's Environmental Appeals Board and then seeking review by the relevant Circuit Court provided in 40 CFR 49.159 for general permits.

Comment 4.1.2: Two commenters (0041, 0042) asserted that the permit by rule approach provides sufficient opportunities for public input. The commenters (0041, 0042) noted that each permit by rule would be codified, which would provide an opportunity for public notice and comment, similar to the procedures used for NSPS and MACT standards. The commenters (0041, 0042) also stated that the public would retain the right to judicial review of any source's receipt of coverage under a permit by rule. One commenter (0033) supported the use of permits by rule provided that the proposed requirement for certification of compliance is retained in the final rule; the commenter (0033) noted that the certification requirement is necessary to ensure that the source is aware of the relevant eligibility criteria and permit terms and conditions. The commenter (0033) also recommended that the applicant mail a copy of the application to the reviewing authority for the reviewing authority's records. Another commenter (0052) suggested that the receipt of a source notification requesting coverage would qualify as a final action for purposes of judicial review.

Response: For the auto body repair and miscellaneous surface coating operations, gasoline dispensing, and petroleum dry cleaning source categories, EPA agrees with commenters that the permit by rule approach provides sufficient opportunity for public input, including both comment and response to the proposed rule and the opportunity for judicial review of any source's receipt of coverage. The source is required to list the equipment at the facility in the Notification of Coverage Form that it submits to the reviewing authority and the tribe. EPA is retaining the proposed requirement for certification of compliance in the final rule, and is adding a requirement to send the certified notification to both the reviewing authority and the tribal authority, as discussed in response to comment 4.1.1 of this document. We agree that the receipt and posting of the Notification of Coverage Form qualifies as final agency action for the purposes of judicial review, which provides another avenue for the public to address concerns regarding the coverage of the facility and the implications on local air quality.

Comment 4.1.3: Four commenters (0035, 0045, 0047, 0052) opposed the use of permits by rule for the three source categories. One commenter (0047) also expressed opposition to the use of permits by rule for any future source categories that EPA may propose. Many commenters (0035, 0045, 0047, 0052) objected to the use of permits by rule or expressed concern because the process does not allow for public notice and comment on the applicability of the permit by rule. Two commenters (0047, 0052) stated that a facility may not be aware of all aspects of the permitting process that need to take place and which they must meet to comply. One of these commenters (0047) stated that a lack of notification could result in a permittee missing out on critical permitting steps. The commenter (0047) also asked how EPA or a tribe would be able to review and confirm that a facility is providing the correct information. The commenter (0047) asserted that this scenario is no different than the process before the Federal Indian Country

Minor NSR Rule. Two of these commenters (0045, 0047) indicated that they would support a permit by rule if EPA provided a notice and comment period under the process. One commenter (0031) who supported the permit by rule approach also requested that EPA provide a notice and comment period, if only for tribes, which have certain rights as set forth by the U.S. Constitution, treaties, and longstanding legal precedence.

Response: EPA disagrees that the use of permits by rule is inappropriate for the auto body repair and miscellaneous surface coating operations, gasoline dispensing, and petroleum dry cleaning source categories. Permits by rule provide a streamlined permitting approach that reduces the time permitting authorities must devote to reviewing permit applications and issuing permits, while adequately controlling emissions-generating activities that pose a relatively lower threat to air quality. As discussed in the response to comment 4.1.1 of this document, EPA has striven to balance the air quality concerns in Indian country with the resource and workload needs of reviewing authorities. The issuance of general permits for these facilities would greatly add to the workload of the reviewing authority without providing greater benefits to air quality since a general permit would be unlikely to impose any additional substantive requirements. Since we are establishing the permits by rule through notice and comment rulemaking, the public has had an adequate opportunity to comment on the proposed rule and the provisions of the permits by rule for the three source categories for which we are establishing permit by rule. Given the simplicity and lower emissions of these sources, we have determined that we do not need to conduct an in-depth review to evaluate whether an individual source qualifies for the permit, and we are comfortable requiring only notification from these sources. Because we will need to continue to balance the workload and resource needs of the reviewing authority with the need to protect air quality, we do not agree with the comment that permits by rule should not be used for any future source categories.

Although we understand that some commenters are concerned that the permit by rule mechanism does not allow for public notice of and an opportunity to comment on each individual source's coverage under the permit, it is our determination that these source categories, which contain simple operations and thus need fewer requirements than those necessary for other minor sources, can be adequately controlled and permitted without the need for public notice and an opportunity to comment on an individual source's coverage. Detailed source specific information is not necessary because these source categories are composed of facilities that are straightforward in their configuration and emissions (they are primarily VOC emission sources), and thus do not require detailed review or confirmation of the information. We disagree with the comments that the approach is no different than prior to the Federal Indian Country Minor NSR Rule and that the approach does not provide opportunity for public input. Prior to the promulgation of the Federal Indian Country Minor NSR Rule, minor sources intending to locate in Indian country, other than those intending to locate in areas subject to the Federal Air Rule for Reservations, were not required to obtain a permit prior to commencing construction or modification. The public has currently provided comments on the proposed rule and the provisions of the permit by rule documents for the three source categories for which EPA is codifying permits by rule. The public retains the opportunity for judicial review by the U.S. Court of Appeals of any source's coverage under a permit by rule. The public will have the same opportunity to comment on the provisions of any permits by rule proposed in the future and the

opportunity to seek judicial review of an individual source's coverage under any such permits by rule that are ultimately promulgated.

Regarding the concern that a facility may not be aware of all aspects of the permitting process, EPA has developed multiple implementation tools and documents to provide facilities with the information necessary to understand the permitting process, assist facilities in navigating the permitting process and help to ensure that a facility meets critical permitting requirements. Specifically, we are providing seven tools to provide facilities with the adequate information necessary to understand the permitting process:

- Notification of Coverage Form: This form notifies the reviewing authority of the source's intent to proceed under a permit by rule.
- Document to address Threatened and Endangered Species and Historic Properties: "Procedures to Address Endangered and Threatened Species and Historic Properties for New or Modified True Minor Sources in Indian Country Seeking Air Quality Permits by Rule";
- Questionnaire: Guides sources through a series of questions to determine whether it is eligible for coverage under the permit by rule.
- Instructions: Provides additional guidance that may be useful in obtaining coverage.
- Permit terms and conditions: The permit document lays out the general and specific terms and conditions that the source must meet.
- PTE Calculator: A spreadsheet-based tool that helps sources calculate the PTE of the affected emissions units.
- Background document: Provided as a reference and contains important information including the source category definition, state minor source permit programs used for comparison, requirements for the permit by rule, and threshold development and rationale.

The availability of these implementation tools and documents will help ensure that a facility meets critical permitting steps. For example, the permittee will be informed in the permit instructions that a notification must be supplied to the tribal authority as well as the reviewing authority when EPA is the reviewing authority.

Comment 4.1.4: One commenter (0035) argued that the use of permits by rule would effectively mean that sources exceeding the minor source permit threshold are exempt from a permit. The commenter (0035) stated that it is difficult to enforce against a source that has constructed in violation of the "permit by rule" requirements. The commenter (0035) asserted that permits by rule would only make sense for sources below the threshold at which the rule requires a pre-construction permit, or for the very smallest of sources that slightly exceed the minor source threshold. One commenter (0047) asserted that permits by rule are not appropriate for either true minor or synthetic minor sources.

Response: EPA disagrees with the comment that the use of permits by rule effectively means that sources exceeding the minor source permit threshold are exempt from a permit. We also disagree that the permits by rule are not appropriate for minor sources. The permit by rule

provides that the source will be subject to a set of enforceable terms and conditions. Permits by rule are only available to true minor sources. As with general permits and source-specific permits, the permit by rule contains throughput limits which will ensure that facilities remain true minor sources. Facilities that cannot meet any of the requirements in the permit by rule would not be eligible for coverage. Facilities that are able to comply and choose to do so must submit a letter and Notification of Coverage Form certifying that the facility will comply with all of the terms and conditions in the relevant permit by rule. As such, the requirements of the permits by rule are written protectively, and only apply to facilities that can comply with the throughput limitations and control measures provided in the permit. Under these circumstances, and given EPA's limited resources, we do not believe that there is sufficient additional value in requiring the reviewing authority to review each Notification of Coverage Form. Rather, we think that requiring the source to submit a Notification of Coverage Form wherein in the source certifies its intent and ability to proceed under the relevant permit by rule. Any source that does not comply with the requirements of the permit by rule after it has submitted the Notification of Coverage Form will be subject to potential enforcement action. We disagree that such enforcement would be difficult. EPA has worked to ensure that each permit by rule contains clear, enforceable terms and conditions such that noncompliance can quickly be identified. In addition, if the reviewing authority believes in any instance that a permit by rule is not appropriate for a given source or sources in a particular area, then the permit by rule can be revoked for that specific source or set of sources.

Comment 4.1.5: One commenter (0048) pointed out that the proposed rule did not include “specific regulatory language for any of the proposed permits by rule; this commenter (0048) argued that the lack of regulatory text prevented full and complete public review and comment on the Proposed Rule. The commenter (0048) asked that EPA provide regulatory text and a full explanation of the permit by rule approach before finalizing the rule. Another commenter (0038) asked that EPA consider tribal authority, as it related to land use decisions, during the development of any permit by rule. The commenter (0038) asserted that EPA should refrain from regulating in areas within the tribal jurisdiction to minimize jurisdictional conflicts.

Response: As discussed in Section VIII of the preamble to the proposed rule, rather than proposing separate, specific regulatory language for any of the proposed permits by rule, we proposed a general approach to issuing permits by rule and to codify the requirements of the draft general permits for the specified source category. Therefore, EPA did effectively propose specific regulatory language for each proposed permit by rule. For the auto body repair and miscellaneous surface coating, gasoline dispensing, and petroleum dry cleaning source categories, we are codifying the requirements as contained in the draft general permit for that source category, including the changes that we have identified as appropriate based on our review of public comments on the general permits.

4.2 Comments Specific to whether EPA should use Permit by Rule for GDFs

Comment 4.2.1: One commenter (0035) specifically opposed the use of a permit by rule for GDFs. The commenter (0035) stated that if a permit by rule is issued for GDFs, it must be limited to sources that are located at least 750 feet from a sensitive receptor. The commenter

(0030) provided that for a facility with the highest throughput specified in the draft general permit (8,000,000 gals/yr) in a nonattainment area, the cancer risk likely to be present at this distance would be between 25.98 in a million (best case) and 50.11 in a million (worst case). The commenter suggested health-protective distances (to reduce risk to one in a million) of 490 feet (best case) and 670 feet (worst case). The commenter (0035) specified that these limitations are necessary because a GDF permitted on Indian land could be exposing sensitive receptors under state or local jurisdictions to unacceptable cancer risks.

Response: Due to the lack of an EPA analysis demonstrating the air quality benefits of requiring setbacks, we lack sufficient information to incorporate them in the final general permits for HMA plants and SQCS facilities. Therefore, the final general permits for HMA plants and SQCS facilities do not contain setback provisions. Nonetheless, the reviewing authority retains the discretion to deny the granting of source coverage under the general permits based on local air quality concerns. Because EPA has removed the setback requirement from the permits as finalized, this comment is rendered moot.

5.0 Proposal to change the policy in the Federal Indian Country Minor NSR Rule to allow the use of both general permits and permits by rule to create synthetic minor sources

5.1 General comments regarding eligibility of the draft general permits (i.e., whether the final general permits should be limited to use by true minor sources or whether any source is allowed to apply for coverage)

Comment 5.1.1: EPA received numerous comments (0025, 0030, 0031, 0032, 0033, 0035, 0039, 0041, 0042, 0045, 0048, 0049-2, 0049-5, 0052) providing support for the use of general permits and/or permits by rule to create synthetic minor sources. These commenters (0030, 0031, 0052) agreed that major sources should be able to take advantage of the streamlined process for general permits or permits by rule. One commenter (0052) noted that major sources that are truly minor sources (e.g., if operations are seasonal or sporadic) would benefit from being classified as minor sources. Commenters (0025, 0030, 0031, 0033, 0049-4, 0052) noted that this process would provide an incentive for sources that would otherwise be considered a major source to voluntarily reduce emissions. Two commenters (0030, 0041) provided that synthetic minor permits would result in lower emission levels than if the source must obtain a major source permit. For example, one commenter (0030) stated that the streamlined permits would allow sources to begin construction quickly, leading to reduced flaring of natural gas at well sites and reduced trucking of oil. Another commenter (0038) stated that due to the number of sources that will be covered under the new rules, these general permits will satisfy the air quality standards set by the NSR Program.

Response: EPA has considered the comments received on the proposed rule and is allowing for the use of general permits to create synthetic minor sources. However, we are not finalizing the use of a permit by rule for synthetic minor facilities. We note that many sources that would qualify as synthetic minor sources have the potential to emit pollutants above the major source thresholds in the absence of enforceable restrictions, but in many cases, the sources' actual emissions remain well below these thresholds even without the restrictions. Additionally, for sources that currently emit above major source threshold(s), we anticipate that

providing a pre-defined synthetic minor permit may provide the facilities with a degree of regulatory certainty and encourage the facility to voluntarily reduce emissions to qualify for minor source status. This provides the opportunity for sources that would be major sources to become minor sources, which provides a further protective effect on air quality. We have decided to allow the use of general permits to create synthetic minor sources because it provides for streamlining of the permit process (by providing a pre-defined set of conditions and limitations), but allows for greater scrutiny in the review of the permit application by the reviewing authority. This level of scrutiny helps to ensure that the coverage provided by the general permit is appropriate and protects the air quality in Indian county. The reviewing authority would be able to confirm through review of the application that it is likely that the source will meet the throughput limitations and emissions control requirements in the general permit and that doing so would effectively limit the source's PTE to below the major source threshold(s).

The final general permits for both HMA plants and SQCS facilities are written for use by both true minor sources and sources wishing to become synthetic minor sources. The permits contain a single set of requirements that apply to both true minor source and sources wishing to become synthetic minor sources and include a margin of safety between the permitted throughput limit and the major source threshold(s). The limits in the permits are both legally enforceable and enforceable as a practical matter. According to EPA guidance, for emission limits in a permit to be practically enforceable, the permit provisions must specify: (1) a technically-accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation; and (3) the method to determine compliance, including appropriate monitoring, record keeping, and reporting. The permits contain these provisions. In addition, the control technology determinations proposed are contained in the final general permits. They cover a myriad of emission points at sources in these categories, including engines, mixers, dryers, and heaters.

The throughput limits are set with an adequate margin between the relevant major source threshold(s) and the permit limit to account for uncertainties of measurement, emissions from unpermitted activities, variability in emission rates, and excess emissions during startup, shutdown, or malfunction. In setting the throughput limits, relevant factors have included the certainty of the compliance method, emission rates and the likelihood of unaccounted emissions.

Because permits by rule do not provide for the same level of review and scrutiny by the reviewing authority, we are not finalizing the use of permits by rule to establish synthetic minor sources for the other three categories in the proposal. They also do not provide the same level of public participation. We believe that this approach fairly considers both the need to protect air quality and the need to develop an efficient approach for application, review, and issuance of minor source permits.

Comment 5.1.2: Several commenters (0041, 0042, 0048, 0049-5) expressed that the use of general permits to establish federally enforceable emissions limits will ensure that emissions from synthetic minor sources are appropriately restricted. Several commenters (0030, 0039, 0041, 0042) contended that general permits can be used to set effective limits on PTE for

synthetic minor sources where equipment and operations do not significantly vary from source to source, at a significant efficiency savings for both operators and EPA. Some commenters (0041, 0042, 0048, 0049-5) asserted that the use of general permits for synthetic minor sources will pose no regulatory risk that would not also be present with a source-specific permit, as true and synthetic minor sources pose no significant difference to air quality when emissions are limited (0030, 0039). Other commenters (0033, 0045, 0052) affirmed that these emissions reductions would lead to improved health and welfare in Indian country. One commenter (0025) requested that EPA provide more discussion regarding the technical process of developing a general permit to authorize a source up to the major source threshold. The commenter (0025) asked how EPA plans to address compliance with the NAAQS (e.g., if an analysis would be performed during the development of the general permit), specifically for the one hour and annual standards for NO_x. One commenter (0030) recommended that the program be structured to allow federally-enforceable limits to be established during the application phase, using either a self-certification process and/or a response letter confirming authorization. Another commenter (0049-4) stated that EPA did not provide enough information in the proposed rule on the use of general permits or permits by rule for synthetic minors.

Response: EPA agrees with the comment that the use of general permits to establish federally enforceable emissions limits on PTE will ensure that emissions from synthetic minor sources are appropriately restricted. We agree with commenters that, if appropriately restricted and monitored, synthetic minor sources covered by a general permit would not pose a regulatory risk and would have emissions similar to sources subject to a source-specific permit. We also agree that the use of a general permit to establish synthetic minor sources could reduce emissions from facilities that would otherwise be major sources. The use of general permits to create synthetic minor sources could actually result in reductions in emissions beyond those achieved through a source-specific permit where, as here, the general permits ensure that there is a reasonable margin of safety between the emissions authorized by the permit and the major source threshold(s) since a source-specific synthetic minor source permit only needs to limit emissions to below the major source threshold(s) without any margin of safety. As such, we are allowing for the use of general permits to create synthetic minor sources. In order to develop general permits that would ensure that an otherwise major source would become a synthetic minor source, we have taken into consideration whether more stringent emission limits, monitoring, recordkeeping and reporting requirements are necessary for synthetic minor sources. We have made some alterations to the provisions in the final permits to accommodate synthetic minor sources. Specifically, we have revised the throughput limits and fuel use limits in the HMA and SQCS general permits. The revised limits are set at levels intended to keep the sources' emissions below the NSR major source thresholds, with an adequate margin to account for other pollutants emitted by the source. This margin accounts for uncertainties of measurement, emissions from unpermitted activities, variability in emission rates, and excess emissions during startup, shutdown, or malfunction. Furthermore, the use of throughput and fuel use limitations to establish synthetic minor sources ensures compliance as this information is readily available and easily monitored, lessening the likelihood for an exceedance of the permit limits. The monitoring, recordkeeping, and reporting requirements remain the same for true minor sources and synthetic minor sources; however, the revised throughput and fuel use limits ensure that emissions from sources that would otherwise be major are appropriately restricted and that emissions remain below major source thresholds with a reasonable margin of safety.

In the application process, permittees would apply to use a general permit to establish a synthetic minor source by agreeing to be bound by the federally-enforceable limits established in the general permit. EPA's approval of the request for coverage will then put the federally-enforceable limits in effect for the source. We disagree with the comment that we did not provide enough information in the proposed rule on the use of general permits or permits by rule to establish synthetic minor sources; EPA provided a discussion of the synthetic minor requirements in the preamble to the proposed rule and provided a detailed request for comments in Section XI of the preamble to the proposed rule. We have received multiple comments affirming and responding to this request; therefore, we feel that these requirements were sufficiently presented in the proposed rule. We note that the commenter did not specify the type of information sought that was apparently lacking from the proposal.

Comment 5.1.3: Several commenters (0041, 0042, 0048) reiterated that case-by-case permitting determinations for source types where equipment and operations do not differ significantly from source to source is unnecessary. Some commenters (0030) pointed to state programs (e.g., in Oklahoma and Texas) that have used general permits and permits by rule to authorize synthetic minor sources. One commenter (0030) argued that these permitting programs afford permittees consistency, predictability, and efficiency while reducing the administrative burden on the permitting authority. The commenter (0030) provided that a standardized set of permit conditions allows permittees of similar sites to operate on a level playing field. Another commenter (0037) compared the use of general permits or permits by rule to the use of SIPs, federal emission standards, or individual permits that establish federally enforceable emission limits. The commenter (0037) noted that because a general permit or permit by rule would be enforced by the EPA Administrator, it will qualify as legally and practicably enforceable regardless of whether the facility is a true or synthetic minor source. Two commenters (0032, 0043) requested that the true minor and synthetic minor permits should come from the same program to streamline the process. Three commenters (0032, 0037, 0043) pointed to the FBIR FIP as an example of the successful use of general permits or permits by rule for synthetic minor permits that EPA should consider going forward. One of these commenters (0037) noted that the requirements of the FBIR FIP were consistent with the requirements of the North Dakota SIP; thus, providing a level playing field. One commenter (0038) advocated that EPA not delay issuance of a general permit or permit by rule for synthetic minor sources; the commenter asked that if the requirements to qualify as a synthetic minor source would delay completion of the permit, EPA should develop a separate permit by rule or general permit governing sources seeking synthetic minor status.

Response: EPA agrees with commenters that the use of general permits to create synthetic minor sources provides consistency, predictability, and efficiency, and reduces the administrative burden on the permitting authority. We have decided to allow the use of general permits to create synthetic minor sources because it provides for streamlining of the permit process (by providing a pre-defined set of conditions and limitations), while allowing for an appropriate level of scrutiny in the review of the permit application by the reviewing authority. This level of scrutiny helps to ensure that the coverage provided by the general permit is appropriate and protects the air quality in Indian county. The reviewing authority will be able to

confirm through review of the application that it is likely that the source will meet the throughput limitations and emissions control requirements in the general permit. Because permits by rule do not provide for the same level of review and scrutiny by the reviewing authority, we are not finalizing the use of permits by rule to establish synthetic minor sources. As noted by commenters, the general permit will be enforced by the Administrator and will be legally and practically enforceable for both synthetic and true minor sources. We believe that this approach fairly considers both the need to protect air quality and the need to develop an efficient approach for application, review, and issuance of minor source permits, and will provide a level playing field for synthetic minor sources.

We are finalizing general permits that may be used by either true minor or synthetic minor sources in this final rulemaking and are not delaying the general permits. We do not believe it is necessary to establish a separate general permit for synthetic minor sources. We have established provisions in the final general permits to accommodate the creation of synthetic minor sources, ensuring that these sources are appropriately monitored and that emissions remain below major source thresholds (see response to comment 5.1.2 of this document for additional information). In this process we consulted regulations in neighboring states to attempt to create a level playing field for facilities located in Indian country. However, we have balanced the need to provide a level regulatory playing field with the need to protect the NAAQS. Therefore, in some cases, a greater level of control may be required to protect air quality. For example, we have drawn provisions for facilities located in nonattainment areas from regulatory programs in Southern California, where the majority of Indian country nonattainment areas are located. We recognize that in some cases, serious, severe, or extreme nonattainment areas outside of California may be located near facilities in the same nonattainment area that comply with requirements of a different stringency. We anticipate that this will affect a small portion of the facilities located in these nonattainment areas. Furthermore, we feel that the provisions we have selected are necessary for protection of the NAAQS in these areas, and are appropriate for inclusion in the final permits.

Comment 5.1.4: Several commenters (0031, 0033, 0040, 0045, 0052) provided support for the use of general permits to create synthetic minor sources, but opposed the use of a permit by rule for this purpose. One commenter (0040) indicated that permits by rule are more appropriate for less-complex, non-portable, true minor source categories. Other commenters (0025, 0031, 0033, 0045, 0052) expressed concerns about using the permits by rule approach for synthetic minor sources without providing the public an opportunity to comment on proposed permit applications. One commenter (0031) stated that if EPA is willing to amend its approach to permits by rule by allowing for a notice and comment period, the use of permits by rule for synthetic minor source determinations could be justified. Another commenter (0025) noted that because permits by rule are codified in a regulation, they are more difficult to revise or amend.

Several commenters (0038, 0041, 0042, 0048) advocated for the use of a permit by rule for synthetic minor sources. Two commenters (0042, 0048) asserted that no additional risk of noncompliance would result from the use of permits by rule for synthetic minor sources. Another commenter (0038) agreed that issues or concerns related to specific major sources can be addressed in the permit by rule or general permit for those particular sources. The commenter

(0038) further urged EPA to consider using the streamlined permits for synthetic minor sources on a case-by-case basis. Another commenter (0035) stated that the permit by rule concept has been used in a Title V program, under which sources that might have been major based on PTE became synthetic minors by complying with specific limits set out in regional air rules.

Response: EPA has considered the concerns raised by commenters and has determined that a permit by rule approach to establishing synthetic minor sources is not appropriate. We are only allowing the use of general permits to create synthetic minor sources, which allows for greater scrutiny in the review of the permit application by the reviewing authority. This level of review helps to ensure that a particular source that would otherwise be major is likely to be able to comply with the throughput limits and emissions control requirements in the general permit, thereby ensuring that the source's emissions will be below the major source threshold(s). We believe that this level of review is necessary for sources with a PTE that would otherwise be above the major source threshold(s). Because permits by rule do not provide for the same level of review regarding coverage, we are not finalizing the use of permits by rule to create synthetic minor sources.

5.2 Comments regarding finalizing both permitting mechanisms for three source categories (i.e., auto body repair and miscellaneous surface coating operations; GDFs; and petroleum dry cleaning facilities)

Comment 5.2.1: One commenter (0040) specifically provided support for the establishment of both permitting mechanisms for the auto body repair and miscellaneous surface coating operations, GDF, and petroleum dry cleaning source categories for both true and synthetic minor sources. The commenter (0040) did not support the establishment of a permit by rule for the HMA and SQCS source categories.

Response: EPA thanks the commenter for their support. EPA did not propose, and is not establishing, permits by rule for the HMA or SQCS source categories. We proposed general permits and permits by rule in the alternative for the autobody repair and miscellaneous surface coating operations, GDF and petroleum dry cleaning facilities source categories and are finalizing permits by rule for those source categories in lieu of general permits. We do not believe that there is additional value in providing for the use of both permitting mechanisms.

Comment 5.2.2: Several commenters (0041, 0042, 0048) opposed EPA's proposed "hybrid approach" to establishing permits by rule for true minor sources and general permits for synthetic minor sources. Two commenters (0041, 0042) stated that while EPA appears to be applying this approach based on source category, reserving permits by rule for less complex sources, the proposed rule did not provide a compelling reason for adopting this approach. Two commenters (0042, 0048) pointed out that, for three of the five source categories proposed, EPA is proposing to codify the requirements of the draft general permits for the permits by rule for the specified source categories. Several commenters (0041, 0042, 0048) indicated that this approach suggests that permits by rule would work equally as well for any source category as a general permit, and that EPA should accordingly treat true and synthetic minor sources for all source categories in the same manner. One commenter (0049-2) disagreed that all synthetic minor

sources warrant use of a general permit as opposed to a permit by rule, and requested that EPA evaluate this on a case-by-case basis. Another commenter (0035) expressed support for the hybrid approach in which a source would establish itself as a synthetic minor using permit by rule, and then obtain an individual minor source permit or apply under a general permit.

Response: EPA is not adopting a hybrid approach. We do not anticipate that the need for a general permit would be an issue for the three source categories for which we are establishing permits by rule (auto body repair and miscellaneous surface coating operations, GDFs, and petroleum dry cleaning facilities). These sources are generally true minor sources with the most straightforward operation, the least variation in equipment and configurations, largely involve one regulated NSR pollutant (i.e., VOCs), and have the simplest compliance requirements. Given the simplicity and lower emissions of these sources, we do not anticipate that these sources would require a synthetic minor permit or that a hybrid approach would benefit these sources.

5.3 Comments regarding specific regulatory changes to the draft permits for each source category to address synthetic minor sources

Comment 5.3.1: Two commenters (0031, 0052) urged that EPA make regulatory changes to be more explicit and to inhibit future litigation concerning the issuance of general permits or permits by rule for synthetic minor sources. Three commenters (0031, 0047, 0052) stated that EPA must include more stringent monitoring, recordkeeping, and reporting for synthetic minor sources. One commenter (0047) stated that sources who opt for a synthetic minor permit and opt to avoid major source thresholds need to accept additional requirements to prove and report that they are below those thresholds. Three commenters (0031, 0047, 0052) supported EPA's suggestion to issue synthetic minor permits only to sources with actual emissions at a margin below the major source thresholds (e.g., 25-50% below the major source threshold), although one commenter (0047) stated that the exact percentage requires more analysis and discussion. The commenters (0031, 0052) stated that this approach should be adopted to assure that synthetic minor sources do not inadvertently convert themselves to major sources. One commenter (0033) expressed the concern that allowing higher surrogate emission limits may result in permitting of sources as synthetic minors when they are truly major sources; the commenter stated that although such sources may initially meet the federally enforceable emission limitations, they may struggle to continue to do so.

Four commenters (0033, 0041, 0042, 0048) stated that EPA should not require more stringent monitoring, recordkeeping, or reporting requirements for synthetic minor sources using a general permit or permit by rule. Several commenters (0030, 0033, 0041, 0042, 0048) stated that EPA should not impose additional requirements or limitations on the use of general permits or permits by rule to establish synthetic minor sources, including surrogate annual allowable emission limitations that are scaled up to reflect a value closer to the major source threshold. Two commenters (0041, 0042) stated that additional or more stringent requirements or limitations are unnecessary. These commenters (0041, 0042) argued that compliance with permit limits will be required regardless of whether a source is a true or synthetic minor source; one commenter (0030) asserted that there is no difference in emission impacts between true and synthetic minor sources if actual emissions are the same. One commenter (0033) stated that if the current surrogate annual allowable emission limitations are met, there is no need for additional

requirements. Commenters (0041, 0042, 0048) provided that requirements applicable to true minor sources are more than adequate to ensure compliance by synthetic sources, and that these sources should be treated the same for purposes of general permit applicability. Another commenter (0030) noted that site-specific federally enforceable limits can be established through a certification process to ensure compliance. Three commenters (0041, 0042, 0048) requested that the general permits, implementation documents, and tools contained in the Proposed Rule, which are currently drafted in a manner intended to limit applicability to true minor sources, be amended to allow both true and synthetic minor sources to apply for coverage.

Response: EPA has considered the concerns raised by commenters and is finalizing general permits for SQCS facilities and HMA plants that may be used either by true minor sources or to establish synthetic minor sources. We do not believe it is necessary to establish a separate general permit for synthetic minor sources. Additionally, we are not setting a requirement that only sources with actual emissions at a margin below the major source thresholds can use general permits to establish a synthetic minor source. We have established provisions in the final general permits, implementation documents, and tools to accommodate the establishment of synthetic minor sources, ensuring that these sources are appropriately monitored and that emissions remain below major source thresholds (see response to comment 5.1.2 of this document for additional information). Specifically, we have revised the throughput and fuel use limits in the HMA and SQCS general permits. The revised limits are set at levels intended to keep the source's emissions below the NSR major source thresholds, with an adequate margin to account for other pollutants emitted by the source. The monitoring, recordkeeping, and reporting requirements remain the same for true minor sources and synthetic minor sources; however, the revised throughput and fuel use limits ensure that emissions from sources that would otherwise be major remain below major source thresholds. We have also required sources to identify whether they are using the general permit to establish a synthetic minor source in the implementation documents. In the application process, permittees wanting to use a general permit to establish a synthetic minor source would only be able to do so if they agree to the federally-enforceable limits established in the general permit. EPA's approval for the request for coverage will then apply the federally-enforceable limits to the source. With these federally-enforceable limits, including throughput and emission limitations, otherwise major sources covered by a general permit would have actual emissions similar to true minor sources and would act and operate as true minor sources covered by the same permit. As long as the federally-enforceable limits in the permit are followed by the source, facilities would remain below major source thresholds and would not inadvertently convert themselves to major sources. As described in our response to comment 3.2.1.14 above, the limits in the final SQCS and HMA general permits are set such that there is a sufficient margin between allowable emissions and the major source thresholds to ensure that the limits are enforceable as a practical matter for purposes of establishing synthetic minor sources.

5.4 Comments related to the use of more than one general permit and/or permit by rule for a source at a particular location

Comment 5.4.1: EPA received several comments on whether it is appropriate to allow the use of more than one general permit and/or permit by rule for a single source. Several commenters (0030, 0040, 0037, 0042, 0048) supported the use of more than one general permit or permit by rule for a single source. Three commenters (0030, 0037, 0040) specifically

supported allowing more than one general permit for facilities with more than one source category. Some commenters (0030, 0037, 0052) provided examples of situations in which a facility may require more than one permit due to different types of equipment or collocated processes. One commenter (0030) asserted that co-located sources should not be precluded from using general permits if site-wide emissions remain below major source thresholds. Another commenter (0037) stated that facilities containing equipment covered under different general permits should retain the ability to establish synthetic minor sources. The same commenter (0037) stated that allowing a source to qualify for coverage under a general permit or permit by rule based on emission reductions obtained pursuant to a different general permit or permit by rule would be consistent with EPA's policy for determining whether facilities are major sources or area sources for purposes of MACT.

Other commenters (0025, 0031, 0047) expressed concerns with allowing a synthetic minor source to acquire coverage under more than one general permit or permit by rule. One commenter (0031) recommended that only one general permit or permit by rule be used for a synthetic minor source. Two commenters (0025, 0047) explained that allowing more than one general permit could potentially allow a source to incrementally increase emissions and avoid major NSR preconstruction review and major source requirements. Other commenters (0042) asserted there is no basis in the rulemaking record for assuming that use of more than one general permit or permit by rule might allow a source to increase emissions beyond regulatory requirements. The commenter (0042) argued that there is therefore no reason to limit the use of more than one general permit or permit by rule by a source. Two commenters (0042, 0048) stated that the process for applying for coverage will provide EPA and the public with all the information necessary to determine whether coverage is warranted. One commenter (0025) expressed that allowing a source to use more than one general permit or permit by rule to authorize emissions from a single source could pose an issue from a regulatory compliance standpoint. The commenter (0025) stated that during an air quality compliance evaluation, an inspector would have to assess and document emissions associated with multiple general permits and permits by rule.

One commenter (0025) asked how EPA planned to prevent "stacking" of authorizations, which may circumvent the general permit or site-specific NSR authorization process or PSD permitting requirements. The commenter (0025) contended that a permit by rule for larger, more complex, or synthetic minor sources would not provide an adequate mechanism for a reviewing authority to request an AQIA and accept or deny an authorization based on the results. Several commenters (0042, 0047, 0048, 0052) suggested that the general permit or permit by rule include a requirement that all total emissions at the stationary source be listed and compared to the major source thresholds. One commenter (0047) stated that because synthetic minor sources have the potential to create major source threshold emissions, this and possibly additional requirements should be included to prove the source is in compliance. Another commenter (0031) stated that any recordkeeping system by which synthetic minor sources are required to track simultaneously the emissions of all their permits would not be failsafe and that some sources could inadvertently surpass a major source threshold.

Response: EPA is finalizing its proposed policy with respect to a source gaining coverage under multiple general permits or permits by rule with modifications. Under the proposed policy, to qualify for more than one general permit or permit by rule, a source must

sum the PTE of its new, modified and existing units. If that sum is below major source thresholds, then the source is a true minor source and is eligible for a general permit/permit by rule, provided it can meet the permit's throughput limits and other terms and conditions. EPA's final policy for true minor sources is as proposed. For synthetic minor sources, EPA's final policy will also allow the same steps for synthetic minor sources seeking a general permit. In both cases, the Agency reserves the ability to deny a general permit for sources seeking to combine new emissions with existing emissions if the reviewing authority has concerns about local air quality conditions.

In addition, we have modified the general permit applications for HMA plants and stone, quarrying, crushing and screening facilities so as to allow those source types to co-locate, if desired. If the applicant is seeking such co-location, the permit will contain throughput limits set low enough to ensure the source's emissions are below the level that would trigger the requirement to receive a Title V permit.

6.0 Comments related to additional source categories for which EPA is planning to propose general permits and/or permits by rule in the future

6.1 General support/opposition for other source categories

Comment 6.1.1: EPA received several comments in support of the use of general permits and/or permits by rule for minor sources in the additional source categories for which EPA is planning to propose a streamlined permitting approach. Two commenters (0033, 0040) supported the use of general permits or permits by rule for engines (spark and compression ignition), concrete batch plants, saw mills, boilers, and landfills. One commenter (0040) supported the use of permits by rule for printing operations (including solvent cleaning/degreasing). The same commenter (0040) supported only site-specific permits for landfill operations. Another commenter (0047) stated that some tribes may have operational landfills that require a general permit, but the commenter did not support the use of permits by rule for these operations. EPA received one comment (0035) in opposition of the use of general permits or permits by rule for solid and/or liquid waste processing, storage and treatment facilities, landfills or oil and gas production facilities. The commenter (0035) stated that solid and/or liquid waste processing, storage and treatment facilities, landfills, and oil and gas production can be a significant source of odors, toxic releases, or volatile organic emissions and should not be handled through a general permitting approach. One commenter (0040) supported general permits for other source categories, provided that tribes will have an opportunity to comment on what source categories can qualify for a synthetic minor general permit.

Response: EPA thanks the commenters for their input. Subsequent to issuing the propose rule herein, EPA issued for comment a combination of draft general permits and a proposed permit by rule for six source categories: spark ignition engines, compression ignition engines, saw mills, graphic arts and printing operations, boilers, and concrete batch plants (79 FR 41846, July 17, 2014). Comments regarding these sources received in response to the January proposed rule will be considered in EPA's review of comments on that proposed rule. Commenters may comment on the use of general permits and permits by rule for these source categories, including whether to allow the use of general permits or permits by rule for synthetic minor sources in

these source categories, during the public comment period for the July 17, 2014 proposed rule. EPA has not issued a draft general permit or proposed permit by rule for landfills. A review of the available data for landfills in Indian country indicates that there are a limited number of these sources in Indian country and we do not expect this to change. As a result, we do not think that the establishment of a general permit or permit by rule for this source category is warranted. Commenters have not presented any new data for landfills that would warrant the development of a general permit or permit by rule for these sources at this time.

Regarding oil and natural gas facilities, the Administrator signed an Advance Notice of Proposed Rulemaking (ANPR) on May 22, 2014 to solicit input on potential new source permitting approaches to address emissions from proposed new and modified oil and natural gas production activities; see <http://www.epa.gov/air/tribal/tribalnsr.html> (79 FR 32502). The ANPR seeks broad feedback on the most effective and efficient mechanism for permitting oil and natural gas minor sources in Indian country. It lays out three options: a general permit, a permit by rule, or a FIP. EPA requested comment on several issues, including what control requirements would be appropriate for new and modified oil and natural gas production sources, and which specific oil and gas production activities should be controlled. In addition, the agency sought comment on pollutants that might warrant regulation. As a separate issue, the agency sought comment on whether a FIP should be used to establish requirements for existing oil and gas production sources in Indian country, if the agency determines a FIP is the best approach for permitting new and modified emission sources. EPA will consider comments received in response to the ANPR, as well as any comments concerning the oil and natural gas production category received in response to the January proposed rule, in developing any future proposed rule for that source category.

6.2 Comments supporting the use of general permits or permits by rule for oil and gas sources

Comment 6.2.1: EPA received numerous comments (0025, 0029, 0032, 0033, 0037, 0038, 0040, 0043) supporting the development of general permits and/or permits by rule for the oil and gas source category. Several of these commenters (0025, 0037, 0043) noted that the use of either general permits or permits by rule offers operators a level of certainty regarding permitting requirements and is more conducive to the needs of the oil and gas sector than site-specific permitting, due to the nature of oil and gas exploration and the similarities in the types and performance of process equipment used. Another commenter (0037) stated that the use of general permits and permits by rule will reduce emissions and decrease regulatory burdens for sources and regulators. Three commenters (0037, 0046, 0049-2) also expressed support for the use of general permits or permits by rule for synthetic minor sources in the oil and gas source category. One commenter (0037) maintained that the emission limits established would be effective for synthetic minor sources because the facilities and emission controls do not significantly vary from site to site. The commenter (0037) requested that general permits or permits by rule should enable oil and gas facilities to qualify as synthetic minor sources of all pollutants, including criteria pollutants, HAP, and greenhouse gases. Another commenter (0025) suggested a tiered approach for authorization of general permits for oil and gas sources to define emission thresholds and establish when an AQIA is required. At least two commenters (0037, 0039) requested that they participate in the development of the oil and gas permits. One

commenter (0032) reiterated that EPA is required to consult with the tribes in the development of a permitting mechanism and should do so to remain aware of how the permitting process will impact development on tribal lands.

Response: As indicated above, the Administrator signed an ANPR on May 22, 2014 to solicit input on approaches for permitting oil and natural gas production minor sources in Indian country. EPA will consider these comments in any action it takes as a follow up to the ANPR. See response to Comment 6.1.1 of this document.

6.3 Comments supporting a permit by rule for oil and gas sources

Comment 6.3.1: Multiple commenters (0029, 0032, 0037, 0038, 0043, 0044, 0046, 0049-2) requested that EPA use permits by rule in place of general permits, particularly for true minor oil and gas sources, where feasible. One commenter (0049-4) requested clarification of whether the oil and gas industry would qualify for permits by rule. Commenters (0038, 0049-2) recognized that oil and gas sources are prevalent in Indian country and that a streamlined permitting process is necessary. At least two commenters (0038, 0043) stressed that due to the large number of sources to be permitted, a streamlined permit by rule approach for oil and gas sources would simplify the permit issuance process and create an efficient and predictable process for both industry and EPA. Other commenters (0038, 0039, 0049-2) emphasized that the types of sources and anticipated controls warrant development of a permit by rule, as opposed to a general permit, with respect to oil and gas production sources. One commenter (0049-2) contended that all emissions sources in the oil and gas industry should be covered by the streamlined approach so that there are no overlapping areas requiring an individual permit for these sources.

Four commenters (0038, 0046, 0049-2, 0049-4) noted that the streamlined permit by rule approach would require fewer resources but not risk impacts to air quality. Several commenters (0043, 0044, 0046, 0049-2, 0049-5) acknowledged similar permit by rule programs in other states (e.g., Texas, Oklahoma, Colorado, Wyoming) that they assert protect the environment, allow industry operational flexibility, and reduce the burden on the permitting authorities. Another commenter (0049-4) suggested the existing FIP for the FBIR should serve as a model for the permitting program. One commenter (0039) provided that some of these states do not require submission of documentation, but require constant tracking of emissions and consistent recordkeeping to ensure that the permit by rule terms and conditions are being met. Two commenters (0039, 0049-2) stated that this approach would allow operators to focus on reducing emissions through engineering efforts, rather than filling out and filing of paperwork. Two commenters (0038, 0046) noted that the public would have an opportunity to review the permit by rule requirements during the rulemaking process.

Many commenters (0029, 0032, 0039, 0048) stated that the use of general permits will lead to delays in oil and gas operations. Some commenters (0029, 0032, 0049-1, 0049-4) stated that the draft general permits would not work for oil and gas because they impose pre-construction review. Two commenters (0049-1, 0049-5) emphasized that post-construction permitting is necessary for oil and gas because facilities are unable to predict production. Three commenters (0029, 0032, 0049-4) noted that industry needs flexibility in planning drilling schedules (e.g., examining leaseholds and choosing the most favorable development areas) as

well as predictability and certainty in the permitting process. Another commenter (0038) noted that because the general permit requires companies to submit applications for coverage over 3 months in advance of construction, it requires significant planning and budgeting. One commenter (0046) argued that there is no benefit to pre-construction review because initial production rates may differ tremendously from basin to basin and even within the same basin, requiring operators to guess at production rates. The commenter (0046) stated that oil and gas operations have a 20-70% decline in emissions associated with production declines in the first year of operation, which should be accounted for in the PTE calculation. The commenter (0046) argued that if an operator estimated emissions too low, they would be at risk of noncompliance, but if an operator guessed too high, operators would need to revise and submit Request for Coverage applications. The commenter (0046) stated that for these reasons, a post-construction process is more reasonable. Several commenters (0029, 0032, 0046) argued that preconstruction review hampers development because it results in uncertainty regarding when emission source permits will be issued and drives industry away. Other commenters (0043, 0048, 0049-2, 0049-4) asserted that due to the large number of applicants expected, EPA could become quickly overwhelmed in processing the thousands of general permit applications that would be required, significantly delaying the approval of applications and subsequent development. One of these commenters (0046) asserted that EPA does not have the resources to process the large number of applications it will receive for oil and gas development. Two commenters (0043, 0048) called attention to delays in EPA's processing of permits on the FBIR in North Dakota. Several commenters (0039, 0043, 0046, 0048, 0049-4) noted that a permit by rule approach would remove the potential for this delay, significantly reduce the burden on the agency, and result in a more efficient permitting process. One commenter (0039) attested that in the permit by rule approach provides certainty that the pressure associated with permit application deadlines and associated approvals is alleviated and that drilling operations can continue without the possibility of a potential delay.

At least three commenters (0029, 0032, 0049-4) expressed concern that many areas of Indian country are actively engaged in new energy development and that the use of general permits would encourage industry to move off-reservation. These commenters (0029, 0032) stated that some companies may cease development on Indian country lands due to the uncertainty regarding EPA's permitting for minor sources in the oil and gas sector. Other commenters (0029, 0032) pointed out that the use of general permits may impact the ability to expand operations and decrease the revenue that tribal governments earn from tribal lands. Two commenters (0029, 0032) provided estimates of economic losses due to lost royalties, jobs, and tax income. Two commenters (0029, 0049-4) asserted that a permit by rule approach would keep investments on tribal lands and allow tribes to receive the full benefit of their natural resources. These commenters (0029, 0032) also stated that current delays in the federal oil and gas permit approval process are already causing energy companies to limit their activities on reservation lands. One commenter (0032) declared that once a source diverts capital away from reservation lands, it may be years before the source reconsiders tribal lands.

Four commenters (0029, 0048, 0049-4, 0049-5) expressed concern that the general permit relies on throughput limits and other "surrogate" emission limitations that restrict flexibility. Two commenters (0048, 0049-4) stated that the draft general permits incorporate throughput and production limits, but that a well's production cannot be predicted in advance of bringing it on

line. These commenters (0029, 0049-4, 0049-5) also argued that the general permit imposes “unnecessarily stringent” pollution control requirements and burdensome recordkeeping and reporting requirements.

Response: The Administrator signed an ANPR on May 22, 2014 to solicit input on approaches for permitting oil and natural gas production minor sources in Indian country. EPA will consider these comments in any action it takes as a follow up to the ANPR. See response to Comment 6.1.1 of this document.

6.4 Concerns regarding specific conditions for oil and gas general permits

Comment 6.4.1: Several commenters (0029, 0030, 0032, 0038, 0046, 0048, 0049-1, 0049-2, 0049-4, 0049-5) expressed concerns regarding the sources covered or specific conditions that may need to be considered in the development of an oil and gas general permit or permit by rule. Three commenters (0030, 0038, 0048) requested that EPA include all operations and associated equipment that would typically be used at an oil and gas site, including the midstream sector and natural gas gathering and processing, in the developed oil and gas general permit or permit by rule. One commenter (0030) noted that by using a streamlined permitting approach, EPA will reduce the amount of time required for gatherers to install the infrastructure to support production facilities. Another commenter (0038) explained that this would clarify the enforceability of the permit and ease tracking of emissions at a site for comparison to Title V and PSD applicable standards. The same commenter (0038) listed several process/equipment types that should be included in a permit by rule, including temporary flaring of associated gas, storage tanks and storage tank emissions control devices (if required by NSPS Subpart OOOO), dehydrators, truck load out, engines, and fugitive emissions. One commenter (0030) noted that the states of Oklahoma and Texas have developed streamlined permits that cover oil and gas sources including natural gas compressor stations, small gas plants, well sites, and tank batteries. Another commenter (0048) suggested that sources should include heater treaters, engines for compression and power generation, fugitive emissions, tanks, small gas plants, dehydrators, control devices such as flares and combustors, and vapor recovery units and vapor recovery towers. The same commenter (0048) specifically requested that EPA delay any action on the general permit for engines related to permitting engines at oil and gas facilities and include these provisions in the general permit for an oil and gas site. One commenter (0030) noted that a permit by rule for all of these sources would be relatively straightforward to develop, since the majority of equipment is already regulated under EPA’s existing NSPS and NESHAP rules.

Four commenters (0029, 0032, 0038, 0046, 0049-4) objected to the incorporation of throughput limits in an oil and gas general permit or permit by rule. These commenters (0029, 0032, 0038, 0046, 0049-4) reiterated that oil and gas facilities are unable to predict well production, therefore, throughput limits would introduce significant uncertainty and cost. The commenters (0029, 0032, 0038, 0049-4) noted that oil and gas operators approaching a throughput limit would be required to restrict production in order to meet the permit limit. Two of these commenters (0029, 0032) argued that restricting production would have negative effect on a tribe’s ability to receive the financial benefit of its natural resources and would prove detrimental as tribes depend on revenues from oil and gas development. These same two commenters (0029, 0032) pointed out that the North Dakota regulations and the FBIR FIP do not contain throughput limits, but instead incorporate emissions limitations. One commenter (0046)

stated that providing oil and gas production limitations would be a “one size fits all” approach that ignores the diversity in gas to oil ratios, production related emission factors, and decline rates between one basin and another. The commenter (0046) asserted that production limitations would be inappropriate for synthetic minor source, as well, unless the limitation is provided by the operator in the Request for Coverage. Another commenter (0038) considered EPA’s proposal to restrict sources from locating in severe and extreme ozone nonattainment areas and contended that this provision would not be appropriate for inclusion in any general permit for oil and gas sources.

Other commenters (0029, 0032) expressed concerns that the draft general permits appear to include provisions significantly more stringent than NSPS for the same source category. One commenter (0032) stated that these stringent requirements appear to have been adopted with little or no analysis of whether such requirements are appropriate for minor sources. Two commenters (0029, 0032) expressed concern that this means EPA will incorporate requirements that are more strict than those in NSPS Subpart OOOO for true minor sources, such as such as requiring green completions for oil wells, requiring advance notice of plans to hydraulically fracture a well, or requiring reporting of materials used in fracturing a well. Several commenters (0030, 0046, 0048, 0049-1) requested that EPA consider existing NSPS and NESHAP standards and FIPs in the development of the oil and gas general permits and permits by rule. These commenters (0030, 0046) provided lists and examples of the existing regulations applicable to oil and gas equipment, including NSPS Subparts Dc, GG, KKK, LLL, IIII, JJJJ, KKKK, OOOO, ZZZZ; NESHAP Subparts HH and ZZZZ; flare requirements under 40 CFR part 60, and regulations under 40 CFR parts 49, 89, and 1048. One commenter (0049-1) stated that the current general permits did not provide exceptions for existing requirements and existing federal regulation or federal action, such as consent decrees. Two commenters (0046, 0049-5) expressed concern that a nationwide oil and gas general permit or permit by rule could include duplicative and contradictory requirements if EPA does not consider existing regulations. The commenters (0046, 0049-5) further argued that operators are likely to avoid the streamlined permits and file for individual permits if the existing regulations are not considered, which could place the burden back on to EPA. Another commenter (0030) stated that the general permitting program does not need to recreate the existing NSPS and NESHAP requirements, but could incorporate federally enforceable numeric emission limits for criteria and HAP that are requested by the permittee, in order to establish a source as a synthetic minor.

One commenter (0049-2) stated that EPA should be cautious about pulling concepts from existing general permits in developing the oil and gas general permit requirements. The commenter (0049-2) encouraged EPA to engage industry stakeholders and tribes to develop provisions for a permit by rule for oil and gas sources. Another commenter (0049-5) echoed this sentiment, and suggested that EPA consider that industry operators have worked closely with the State of Utah on developing a General Approval Order (GAO). The commenter (0049-5) suggested that if EPA wishes to use the GAO as a template for provisions in the minor source permits, it must engage with the operators to get appropriate feedback on concerns with the GAO.

Response: The Administrator signed an ANPR on May 22, 2014 to solicit input on approaches for permitting oil and natural gas production minor sources in Indian country. EPA

will consider these comments in any action it takes as a follow up to the ANPR. See response to Comment 6.1.1 of this document.

7.0 Comments related to other proposed rule changes to the Federal Indian Country Minor NSR Rule

7.1 Comments related to adjusting the deadline by which minor sources for which a general permit has been issued need to obtain a preconstruction permit and extending the permitting deadline for true minor sources within the oil and gas source category

Comment 7.1.1: EPA received two comments (0030, 0033) in support of the proposed amendments to §49.151(c)(1)(iii)(B) which clarify the date by which a source undertaking a minor modification must obtain a permit. The commenters supported the removal of the requirement for an owner/operator to obtain a permit within six months after the general permit for a source category is published, noting that this change is necessary because the proposed rule will not be finalized more than six months prior to September 2, 2014.

Response: The EPA Administrator signed final amendments to the Federal Indian Country Minor NSR Rule on May 22, 2014. This final rule amended §49.151(c)(1)(iii)(B) to eliminate the requirement to obtain a permit beginning 6 months after the general permit for a source category is published in the Federal Register, if that date is before September 2, 2014 (79 FR 34231). See the final rule at <http://www.epa.gov/air/tribal/tribalnsr.html> for additional information.

Comment 7.1.2: EPA received numerous comments generally supporting the extension of the deadline for true minor sources in the oil and gas source category. Several commenters (0025, 0029, 0030, 0031, 0032, 0033, 0037, 0038, 0039, 0041, 0043, 0044, 0045, 0046, 0048, 0049-1, 0049-2, 0049-3, 0049-4, 0049-5, 0052) specifically supported the amendments to §49.151(c)(1)(iii)(B) to extend the permitting deadline for true minor sources within the oil and natural gas production source category. Many of these commenters (0029, 0037, 0038, 0039, 0043) recognized that EPA had not yet developed a general permit for the oil and gas sector, and would be rushed or unable to complete the final oil and natural gas production minor source general permit or permit by rule by September 2, 2014. Two commenters (0049-1, 0049-5) noted that the assembly of the first bundle of permits prepared by EPA had taken nearly 3 years, and several commenters preferred that EPA have adequate time to implement a well-developed general permit or permit by rule for the oil and natural gas production source category and develop a streamlined method for permitting (0025, 0039, 0049-2, 0049-5). Two commenters (0041, 0042) stated that it was unreasonable to make the program effective for any sector until after a general permit or permit by rule has been issued.

Several commenters (0029, 0037, 0049-5) also noted that failure to provide an extension could cause significant delays and expenditures for industry. Commenters (0037, 0039, 0049-5) noted that the permitting process takes six months to complete, and, given the nature of the oil and gas sector, operators will need to submit permits between six and 12 months in advance of

the deadline. These commenters (0037) noted that permit processing may be further delayed if the agency needs to request additional information from the applicant. Multiple commenters (0029, 0037, 0039, 0043, 0049-5) also noted that without a general permit in place, given the large number of oil and gas sources, the number of applications for individual minor source permits would likely overwhelm EPA resources.

Several commenters (0032, 0043, 0048) expressed concerns regarding the industry's ability to comply with a general permit or permit by rule within the next 5 months. Commenters (0030, 0043) noted that sufficient time is needed for sources to assess applicability, determine the appropriate permit type, make control decisions and equipment purchases, and obtain the correct NSR authorization. One commenter (0049-1) emphasized that operators would need adequate time to adjust to a pre-construction permitting process. Some commenters (0041, 0048) noted that the extension was also necessary to accommodate sources that may wish to seek a source-specific permit after a general permit or permit by rule is finalized. At least one commenter (0029) expressed concerns that this would cause a financial hardship to tribes that rely on revenues from oil and gas development, in addition to resulting in a loss of economic opportunity and jobs, if oil and gas development were curtailed due to "costly and unnecessary expenditures".

Six commenters (0030, 0037, 0041, 0042, 0049-2, 0049-5) supported the extension of the deadline to September 2015 and eight commenters (0038, 0039, 0043, 0044, 0046, 0048, 0049-1, 0049-3) supported the extension of the deadline to March 2016. However, many of these commenters (0030, 0037, 0038, 0039, 0041, 0042, 0046, 0048, 0049-1, 0049-3, 0049-5) also asked EPA to use or add conditional language extending the deadline to one year after a general permit or permit by rule is finalized. One commenter (0037) noted that an extension to September 2, 2015 would require EPA to finalize general permits or permits by rule between September 2014 and March 2015. The commenter (0037) noted that tying the extension to the effective date of the general permits or permits by rule will avoid the need for another extension of the permitting deadline. At least two other commenters (0039, 0043) expressed concern that if the deadline is extended but a general permit or permit by rule for the industry is never finalized, EPA will find itself in the same situation 18 months from now. Another commenter (0046) stated that twelve months lead time, in addition to the requested 18 month extension, is necessary to allow oil and gas operators time to determine whether the final oil and gas general permit or permit by rule is a usable document. Five of the commenters (0030, 0037, 0041, 0042, 0049-2) proposed that the effective date should be extended until 12 months after the effective date of any general permits or permits by rule covering the oil and gas sector, or until September 2, 2015, whichever is later. Seven commenters (0032, 0038, 0039, 0043, 0044, 0046, 0048) recommended similar rule language, with the exception that the effective date would be the later of March 2, 2016 or the date 12 months after the effective date of a general permit or permit by rule. One commenter (0049-2) reiterated that EPA cannot delay finalizing any developed general permits or permits by rule beyond the extended deadline.

One commenter (0030) urged EPA to set the deadline far enough in the future to allow time to develop a full general permit and permit by rule program that addresses midstream, as well as oil and gas production sources. Some commenters (0041, 0042) advocated that EPA provide a similar deferral of the effective date for all other source categories. Another commenter (0043) requested that if EPA allows for the use of general permits or permits by rule

for synthetic minor sources, these sources should have the same extension of the deadline. The commenter (0043) specifically asked that EPA apply the full 18 month extension proposed for true minor sources or one year after a general permit or permit by rule for synthetic minor sources is finalized, whichever is later.

One commenter (0029) argued that EPA has provided no assurance that it will extend the deadline for permitting minor sources in the oil and gas sector. Several commenters (0038, 0039, 0049-3, 0049-5) urged EPA to immediately extend the deadline, noting that operators may need to begin the individual permitting process, if an extension is not granted in a timely manner, in order to ensure that a final permit would be in place by the current September 2, 2014 deadline. One commenter (0049-5) asked that EPA issue a separate extension in order to give operators sufficient lead time to prepare for the proper permit. Another commenter (0038) urged EPA to decide on the extension within 30 days of the comment filing deadline in order to allow sufficient lead time for permit applications for sources.

Response: EPA's Administrator signed final amendments to the Federal Indian Country Minor NSR Rule on May 22, 2014. This final rule extended the permitting deadline for all true minor sources (both new and modified true minor sources and minor modifications at existing major sources) within the oil and natural gas production sector that are subject to the Federal Indian Country Minor NSR Rule from September 2, 2014, to March 2, 2016 (79 FR 34231). See EPA's response to these comments in the final rule at <http://www.epa.gov/air/tribal/tribalnsr.html>. As explained in the final rule, EPA believes that an extension of the permitting deadline for sources in the oil and natural gas production source category to March 2, 2016 is both necessary and sufficient to allow EPA to finalize a streamlined approach to permitting such facilities. (79 FR 34231)

Comment 7.1.3: Several commenters (0030, 0037, 0038, 0039, 0049-3) requested clarification that the extension would apply to all oil and gas sources. One commenter (0037) stated that the facilities included in the extension must include glycol dehydrators, compressor stations, natural gas processing plants, and any other gas gathering facilities, and not be limited to wells or other oil and gas production facilities. Commenters (0030, 0037, 0039, 0049-3) stated that it appeared that EPA intended to include these sources in the use of NAICS 21111 for midstream facilities. However, two commenters (0037, 0039) noted that clarification is needed because the NAICS codes listed in the rule do not explicitly apply to gathering, processing or compression. Another commenter (0038) recommended that EPA include the NAICS codes 486 (pipeline transportation) and 324 (petroleum and coal products manufacturing) for further clarification.

Response: The EPA Administrator signed final amendments to the Federal Indian Country Minor NSR Rule on May 22, 2014. This final rule extended the permitting deadline for all true minor sources (both new and modified true minor sources and minor modifications at existing major sources) within the oil and natural gas sector that are subject to the Federal Indian Country Minor NSR Rule from September 2, 2014, to March 2, 2016 (79 FR 34231). (See EPA's response to these comments in the final rule at <http://www.epa.gov/air/tribal/tribalnsr.html>.)

As we explained in response to comments in the final rule, EPA agrees with the commenters that the permitting extension should apply to all affected emissions units that are located at a true minor source in the oil and natural gas sector. An affected emissions unit, such as a boiler or an internal combustion engine, does not have to be exclusive to the industry, but it must be necessary for, and used in conjunction with, the extraction, production, processing, storage, transmission or distribution of oil or natural gas to be part of the oil and natural gas sector. We decided to apply the extension to all affected emissions units at true minor sources in the oil and natural gas sector because we have yet to determine which affected emissions units will be covered by a general permit, FIP or other approach. Before we decide in a subsequent notice of proposed rulemaking which affected emission units we want to propose to be covered, we wanted to consider the public comments received on a host of issues outlined in the ANPR. We expect that most affected emissions units at true minor sources in the oil and natural gas sector will be covered by one of the approaches outlined in the ANPR; however, we believed it best to extend the deadline for all affected emissions units at true minor sources in the oil and natural gas sector until we determine exactly which affected emissions units will be covered.

Comment 7.1.4: One commenter (0040) expressed concerns that extending the permitting deadline for minor sources within the oil and gas source category may provide additional time for these sources to startup or modify without a permit. The commenter noted that these are prolific sources and that it may not be beneficial to have these sources unpermitted. One commenter (0050) asked how EPA would protect air quality in Indian country during the period of the extension. Another commenter (0049-5) noted that there is existing regulatory framework in place to address emissions growth during the extension period. The commenter identified NSPS subpart OOOO, which requires controls on oil and gas for new and modified facilities, in addition to Records of Decisions through environmental impact statements. The commenter stated that the NSPS and RODs would require controls for new and modified sources, as well as require retrofitting of existing sources. The commenter also suggested that VOC emissions would remain low due to the natural decline in production over time.

Response: The EPA Administrator signed final amendments to the Federal Indian Country Minor NSR Rule on May 22, 2014. This final rule extended the permitting deadline for all true minor sources (both new and modified true minor sources and minor modifications at existing major sources) within the oil and natural gas sector that are subject to the Federal Indian Country Minor NSR Rule from September 2, 2014, to March 2, 2016 (79 FR 34231). (See the final rule at <http://www.epa.gov/air/tribal/tribalnsr.html> for additional information.)

As we explained in response to comments in the final rule, EPA recognizes that extending the minor NSR permitting deadline for the oil and natural gas sector could have negative impacts on air quality in Indian country, because some sources will not have to install air pollution controls that might otherwise have been required. Such impacts should be minimized, because many new, modified and reconstructed sources in Indian country will have to meet the requirements of the Agency's oil and natural gas NSPS. The NSPS will help protect air quality during the extension. Moreover, the permitting extension applies only to true minor sources; the requirement that major sources and synthetic minor sources obtain preconstruction permits in Indian country is not affected.

7.2 Comments related to removing a provision to make clear that sources may seek coverage under a general permit as soon as it is effective

Comment 7.2.1: Several commenters (0030, 0031, 0032, 0038, 0039, 0040, 0041, 0042, 0043) supported EPA's proposal to amend §49.156(e)(1) so that minor sources would not be required to wait 4 months to seek coverage under the general permit after the general permit's effective date, but may seek coverage as soon as the general permit is effective. Two commenters (0041, 0042) noted that the current provisions would have caused significant permitting delays and lacked an apparent rationale. Two commenters (0032, 0043) reiterated that industry would like to be able to apply for permits as soon as the general permit is effective, in order to facilitate planning. EPA did not receive any comments in opposition to the proposed change.

Response: EPA agrees with the commenters and is amending §49.156(e)(1) as proposed, removing the requirement for sources to wait 4 months after the general permit is finalized to request coverage. This change clarifies that sources may seek coverage under a general permit as soon as it is effective.

7.3 Comments related to shortening the general permit application review process from 90 to 45 days for certain source categories (auto body repair and miscellaneous surface coating, GDFs, and petroleum cleaning facilities)

Comment 7.3.1: EPA received no comments objecting to the proposed amendments to §49.156(e)(4). Multiple commenters (0030, 0031, 0033, 0035, 0038, 0039, 0041, 0042, 0045, 0047, 0049-2, 0052) supported EPA's proposal to shorten the general permit application review process from 90 to 45 days for three of the proposed source categories (auto body repair and miscellaneous surface operations, GDFs, and petroleum dry cleaning facilities). One commenter (0047) asserted that the change to the review period is acceptable provided that the tribe and community is notified and given the full time to comment. Several commenters (0031, 0033, 0045, 0052) stated that based on the type and limited number of pollutants emitted by these source categories and the straightforward nature of these operations, shortening the period of the review is acceptable. Another commenter (0030) supported the change stating that the short review period will set expectations and encourage development of well-crafted general permits. One commenter (0052) noted that the changes would allow for a reduction in the information required in requests for coverage. Other commenters (0038, 0049-2) recommended that EPA consider reducing the application review period so that the total application review time for general permits would be reduced to 30 days, in order to further reduce administrative processing. Two commenters (0040, 0052) supported the retention of a 90-day review period for the HMA and SQCS source categories.

Several commenters (0031, 0032, 0041) supported shortening the permit application review process to 45 days, but objected to EPA's proposal to allow the reviewing authority the option of automatically denying a request for coverage if the source fails to submit the additional information requested by the reviewing authority. These commenters (0031, 0032, 0041) stated that, instead of an automatic denial for sources who do not submit information within the timeline, EPA should adopt a case-specific approach.

One commenter (0038) noted that in some sections of the proposal preamble, EPA refers to the timing within which a reviewing authority must act and the date of request by the source for coverage under the “permit by rule.” The commenter expected that this should refer to the date of request by the source for coverage under a “general permit.”

Response: We are not finalizing revisions to §49.156(e)(4) to shorten the general permit application review process from 90 to 45 days for the permits by rule for the auto body repair and miscellaneous surface operations, GDF, or petroleum dry cleaning source categories. The extension of the deadline for general permits is not an issue for these three source categories because we are establishing permits by rule for these operations instead of general permits. For a permit by rule, the individual applicant must complete the ESA and NHPA screening process, document that it has done so in a letter to the reviewing authority and submit a Notification of Coverage certifying to the reviewing authority that it meets the eligibility criteria for the permit and can comply with the permit conditions, and the reviewing authority needs to take no further action other than posting the Notification of Coverage on its web page. Therefore, the general permit application review process does not apply.

7.4 Comments related to adjusting the deadline by which minor sources within the oil and gas source category must register

Comment 7.4.1: Three commenters (0031, 0038, 0039) supported EPA’s proposal to amend §49.160(c)(1)(ii) and (iii) to adjust the deadline for when true minor sources must register. Two commenters (0038, 0039) acknowledged that these changes are necessary to be consistent with the proposed permitting deadline extension for oil and gas sources.

Response: The EPA Administrator signed final amendments to the Federal Indian Country Minor NSR Rule on May 22, 2014. This final rule amended §49.160(c)(1)(ii) and (c)(1)(iii) to extend the registration deadline from September 2, 2014 to March 2, 2016 for all true minor sources in the oil and natural gas sector that are subject to the Federal Indian Country Minor NSR Rule, consistent with the minor NSR permitting deadline (79 FR 34231). See the final rule at <http://www.epa.gov/air/tribal/tribalnsr.html> for additional information.

8.0 Comments on EPA’s Legal Authority and EPA Administrative Procedures

Comment 8.1: One commenter (0042) stated that the proposed rule did not include specific regulatory language for any of the issues addressed in the proposed action. The commenter asserted that the lack of regulatory text prevented a complete public review and comment on the proposed rule. The commenter asked that EPA provide regulatory text for general permits, permits by rule, and all other elements of the proposal that require regulatory text.

Response: EPA acknowledges that we did not include specific regulatory language for every aspect of the requirements of the general permits. Instead, we referred readers to the draft permits and associated background information in the docket to review all the detailed requirements we would include in each general permit. We did not provide specific regulatory language for any of the proposed permits by rule, but rather proposed to codify the requirements of the draft general permits of the specified source category. For the auto body repair and

miscellaneous surface coating operations, gasoline dispensing, and petroleum dry cleaning source categories, we are codifying the requirements as contained in the proposed draft general permits for those source categories, including the changes that we have identified as appropriate based on our review of public comments on the general permits. All other revisions to the Federal Indian Country Minor NSR Rule were discussed explicitly in Section XIII of the preamble to the proposed rule. We believe that the descriptions provided in the preamble to the proposed rule, in addition to the draft general permits and background documents, provided the public with a sufficient understanding of the contents of the final rule to allow for the development and submission of informed comments.

Comment 8.2: Five commenters (0029, 0032, 0038, 0049-2, 0049-4) stated that EPA must further consult with tribes in the development of Federal standards and permitting that would apply to reservations. Three of these commenters (0029, 0032, 0049) specifically requested additional consultation with EPA as part of the development of the general permits and/or permits by rule for the oil and gas sector. Two commenters (0029, 0032) cited Executive Order No. 13175 - Consultation and Coordination with Indian Tribal Governments, EPA's May 4, 2011 "Policy on Consultation with Indian tribes", and President Obama's November 5, 2009 "Memorandum for the Heads of Executive Departments and Agencies on tribal Consultation", reiterating that EPA must engage tribes early in the development process. One commenter (0038) noted that early engagement was necessary to accurately consider the scope of the oil and gas sources; the types, benefits, and costs of pollution control equipment; and the impacts to permittees. Another commenter (0049-4) reiterated the concern that loss of energy revenue could result in loss or curtailment of essential services. Three commenters (0038, 0049-2, 0049-4) specifically requested government-to-government consultation, including two commenters (0038, 0049-2) with concerns regarding the relevant governing body for certain lands. These commenters requested that EPA acknowledge the difficulties associated with identifying the proper governing body and ensure that companies are not penalized for misidentifying the appropriate jurisdiction. One commenter (0049-4) requested consultation on any permit, general permit, or permit by rule for the five source categories in the proposed rule to review and develop the final permits.

Response: These comments are addressed in the final amendments to the Federal Indian Country Minor NSR Rule signed by the Administrator on May 22, 2014 (79 FR 34231); see <http://www.epa.gov/air/tribal/tribalnsr.html>.

9.0 Out of Scope Comments Related to Provisions of the Federal Indian Country Minor NSR Rule Not Covered by the Proposal

Comment 9.1: One commenter (0042) suggested that the definition of "synthetic minor source" should be expanded to apply not only to "NSR regulated pollutants" but also to HAPs. The commenter stated that for purposes of establishing a source as a synthetic minor under Part 71, a source may need to limit its potential to emit of HAP and must be able to establish these limits by way of a general permit or permit by rule.

Response: The Federal Indian Country Minor NSR Rule applies to new and modified minor sources and to minor modifications at major sources with a potential to emit equal to or greater than the minor thresholds for the regulated NSR pollutants in Table 1 of Section IV.A.3 of the preamble to the final minor NSR rule (see 76 FR 38758, July 1, 2011). EPA is not considering inclusion of requirements for controlling HAP as such in any of the general permits or permits by rule. EPA is administering the Federal Minor NSR Program in Indian Country under the authority provided in Section 301(d)(4) and consistent with the requirements in Section 110(a)(2)(C) of the CAA. Section 110(a)(2)(C) of the CAA requires the development of a program to regulate the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. The NAAQS address criteria pollutants. In addition to addressing criteria pollutants directly, the Federal Indian Country Minor NSR Program addresses precursors to those pollutants and certain other pollutants as listed in Table 1 of the preamble to the final minor NSR rule and in 40 CFR 49.153. Therefore, we have not revised the definition of “synthetic minor source” in this final rule. We note, however, that 40 CFR 49.158 provides a specific mechanism for limiting HAP for purposes of establishing a synthetic minor source.

Comment 9.2: One commenter (0042) requested that EPA make clear in the final rule that any source that obtains a permit under the tribal minor NSR program (including a general permit or permit by rule) is no longer covered by the FBIR FIP. The commenter (0042) stated that the FIP for the Ft. Berthold reservation was intended as a stop-gap rule that would be needed only until appropriate permits could be obtained through the tribal minor NSR permitting program. The commenter (0042) asserted that once the rule is revised to make general permit (and permits by rule) available as a means of establishing synthetic minor sources, the tribal minor NSR program will have all of the elements needed to permit and appropriately manage emissions from sources on tribal lands.

Response: EPA has not yet issued a mechanism for the permitting of minor oil and natural gas sources in Indian country. When we do so, we will provide clear direction on how the mechanism impacts, or relates to, the implementation of the FBIR FIP.

10.0 Other Out of Scope Comments

Comment 10.1: One commenter (0027) stated that EPA’s implementation of general permits and permits by rule must not interfere with states’ flexibility to manage their own NSR programs. The commenter noted that EPA has previously stated that the minor NSR programs within each state’s implementation plan are designed to ensure the attainment of NAAQS. The commenter asked whether EPA will allow the states the same flexibility to develop general permits and permits by rule, including flexibility with respect to minor NSR public participation requirements.

Response: With regard to state NSR programs, EPA evaluates SIP submittals based on the criteria established in 40 CFR 51.160 through 164. At this time, EPA is not seeking comment on the requirements applicable to state minor NSR programs. However, we note that the particular requirements in state minor NSR programs vary widely across the country and are often tailored to the specific concerns of the individual state or local agency.

11.0 Comments on EPA’s Second Proposed Rule for General Permits and Permits by Rule in Indian Country.

The following comments were made with respect to the second set of permits EPA made available for comment in July 2014.¹¹ They apply generally to all permits and we have made changes in response to them for these final permits. Therefore, we are providing the comments and responses here. They will also appear in the Response to Comments Document for the second set of permits we proposed in July 2014.

Comment 11.1: One commenter (0035) stated that Condition 38 of the draft general permit (Notification of Change in Ownership) is unclear in establishing whether it is the responsibility of the new permittee or the old permittee to comply with the notification requirements; the commenter requested that the paragraph be clarified to indicate if the new permittee or the old permittee is required to submit the required notice. The same commenter (0035) requested that Conditions 38 and 47 of the draft general permit be clarified to cover situations in which there is a change of operator, but the ownership of the equipment is the same.

Response: The commenter is correct. We have revised the final general permits and permit by rule for clarification. If the permitted source changes ownership, then the *new* permittee must submit a written or electronic notice to the reviewing authority within 90 days before or after the change in ownership is effective. This clarifying change to the notification and reporting requirements has been applied to the final general permits and permits by rule established in this rulemaking and will be applied to all future final general permits and permits by rule. We have also modified the change in ownership conditions¹² that appear in Section 5 and 6 of the general permits and in §49.162(d)(5), §49.163(d)(5) and §49.164(d)(5) of the final permits by rule to include the word “operator” to clarify that these conditions also cover a change in operators where ownership of the equipment is the same.

Comment 11.2: One commenter (0035) stated that the term “Responsible Official” should be defined to ensure truth, accuracy, and completeness of required reports.

Response: In response to the comment, EPA has added a definition of *Responsible Official* to each of the final permits as follows:

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is directly responsible for the overall operation of the permitted source.

¹¹ “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,” 79 *Federal Register* 41846, July 17, 2014, <http://www.gpo.gov/fdsys/pkg/FR-2014-07-17/pdf/2014-16814.pdf>.

¹² The change in ownership condition in §49.162(d)(5), §49.163(d)(6) and §49.164(d)(6) of the final permits by rule has been dropped because there is no Approval of Coverage for permits by rule to change.

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively.
 3. For a public agency: Either a principal executive officer or ranking elected official, such as a chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
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Comment 11.3: Two commenters (0115, 0122) supported the proposed rule’s approach of requiring each source to post the current approval of the request for coverage and to label each affected emissions unit and associated air pollution control technology with the identification numbers listed in the approval; these commenters noted that this requirement is neither costly nor time-consuming. One commenter (0117) recommended that the general permit and the most current approval of the request for coverage for the permitted source “must be made available immediately upon request,” as opposed to “must be posted.” The commenter (0117) stated that it was not necessary to label the air pollution control equipment as the description and serial numbers are provided in the application.

Response: EPA acknowledges the support of the commenters with respect to posting the Approval of the Request for Coverage. Upon review of comments received related to the posting of the general permit in addition to the Approval of the Request for Coverage, EPA is revising the permits to exclude the requirement that the general permit must be posted. Posting of the Approval of the Request for Coverage is required under 40 CFR 49.156(e)(6), but the general permit itself is not required under the regulation to be posted and only needs to be available on site as needed. Regarding the labeling of emission units and air pollution control equipment, identification and labeling of these units is needed to facilitate identification of equipment covered under the general permit by any potential inspectors. Therefore, EPA is finalizing the labeling requirements as proposed.