

May 23, 2002

## **FACT SHEET**

### **REVISION TO REGULATIONS IMPLEMENTING THE FEDERAL OPERATING PERMITS PROGRAM UNDER THE CLEAN AIR ACT IN INDIAN COUNTRY**

#### **TODAY'S ACTION**

- Ē The Environmental Protection Agency (EPA) is today revising its federal operating permits regulation, issued in February 1999. Today's revisions are in response to a court order regarding the Agency's authority to issue operating permits (under Title V of the Clean Air Act) when the Agency is uncertain if the industrial source of air pollution is located in Indian country.
- Ē Today's action removes regulatory language from the February 1999 rule authorizing EPA to issue permits to sources that are located in areas for which EPA believes the Indian country status is in question. It does not alter EPA's authority to administer the operating permit program in Indian country.

#### **BACKGROUND**

- Ē The Clean Air Act Amendments of 1990 included new provisions requiring all states to develop operating permits programs that meet certain federal criteria. The states, in turn, are to require affected facilities to obtain permits that contain all of their Clean Air Act requirements.
- Ē Unlike states, Indian tribes are not required to develop operating permits programs, although EPA encourages tribes to do so. EPA will generally administer an operating permits program in Indian country until the tribe assumes responsibility for the program.
- Ē The requirement to obtain a federal permit applies primarily to facilities located in Indian country that are considered a major source of air pollution, solid waste incineration units, and certain sources subject to requirements under the acid rain program. Sources whose potential emissions exceed certain levels are considered "major."
- Ē Indian country includes: (a) all land within the limits of any Indian reservation under the jurisdiction of the U.S. government (including land owned by non-Indians), (b) all dependent Indian communities within the borders of the U.S., and (c) all Indian allotments (or lands held in trust for individual Indians), the Indian title to which have not been extinguished.

#### **EFFECTS OF THE COURT DECISION**

- Ē In 1999, EPA adopted regulations that said the Agency would treat those areas where it

believed the Indian country status was in question as Indian country in order to assure air quality protection under Title V of the Clean Air Act. States and industry groups challenged this portion of the regulation.

- Ē On October 30, 2001, the D.C. Circuit Court of Appeals agreed with the Agency that EPA has the authority to administer operating permit programs in Indian country. However, the court found that EPA had exceeded its authority in deciding to issue permits to sources in areas where it believed the Indian country status was in question. EPA is removing the regulatory language that treats “in question” areas as Indian country, as well as regulatory language regarding the possible reduction of permit fees for sources located in these areas.

**FOR FURTHER INFORMATION . . .**

- Ē Anyone with a computer and a modem can download the revisions from EPA’s OAR Policy and Guidance Website at <http://www.epa.gov/ttn/oarpg/>. For further information about the revisions, contact Candace Carraway of EPA's Office of Air Quality Planning and Standards (telephone (919) 541-3189, email [carraway.candace@epa.gov](mailto:carraway.candace@epa.gov)).