

Environmental Protection Agency

§ 49.4163

later than June 20, 2013 or upon initiation of well completion operations or well recompletion operations, whichever is later.

§ 49.4162 Delegation of authority of administration to the tribes.

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which the Regional Administrator may delegate to the Mandan, Hidatsa and Arikara Nation the authority to assist the EPA with administration of this Federal Implementation Plan (FIP). This section provides for administrative delegation and does not affect the eligibility criteria under 40 CFR 49.6 for treatment in the same manner as a state.

(b) *How does the Tribe request delegation?* In order to be delegated authority to assist us with administration of this FIP, the authorized representative of the Mandan, Hidatsa and Arikara Nation must submit a request to the Regional Administrator that:

(1) Identifies the specific provisions for which delegation is requested;

(2) Includes a statement by the Mandan, Hidatsa and Arikara Nation's legal counsel (or equivalent official) that includes the following information:

(i) A statement that the Mandan, Hidatsa and Arikara Nation are an Indian Tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement demonstrating that the Mandan, Hidatsa and Arikara Nation are currently carrying out substantial governmental duties and powers over a defined area and that meets the requirements of § 49.7(a)(2); and

(iii) A description of the laws of the Mandan, Hidatsa and Arikara Nation that provide adequate authority to carry out the aspects of the rule for which delegation is requested.

(3) Demonstrates that the Mandan, Hidatsa and Arikara Nation have, or will have, adequate resources to carry out the aspects of the rule for which delegation is requested.

(c) *How is the delegation of administration accomplished?* (1) A Delegation of Authority Agreement will set forth the terms and conditions of the delegation, will specify the rule and provisions

that the Mandan, Hidatsa and Arikara Nation shall be authorized to implement on behalf of the EPA, and shall be entered into by the Regional Administrator and the Mandan, Hidatsa and Arikara Nation. The Agreement will become effective upon the date that both the Regional Administrator and the authorized representative of the Mandan, Hidatsa and Arikara Nation have signed the Agreement. Once the delegation becomes effective, the Mandan, Hidatsa and Arikara Nation will be responsible, to the extent specified in the Agreement, for assisting us with administration of this FIP and shall act as the Regional Administrator as that term is used in these regulations. Any Delegation of Authority Agreement will clarify the circumstances in which the term "Regional Administrator" found throughout this FIP is to remain the EPA Regional Administrator and when it is intended to refer to the "Mandan, Hidatsa and Arikara Nation," instead.

(2) A Delegation of Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Mandan, Hidatsa and Arikara Nation.

(d) *How will any delegation of authority agreement be publicized?* The Regional Administrator shall publish a notice in the FEDERAL REGISTER informing the public of any delegation of authority agreement with the Mandan, Hidatsa and Arikara Nation to assist us with administration of all or a portion of this FIP and will identify such delegation in the FIP. The Regional Administrator shall also publish an announcement of the delegation of authority agreement in local newspapers.

§ 49.4163 General provisions.

(a) *Definitions.* As used in §§ 49.4161 through 49.4168, all terms not defined herein shall have the meaning given them in the Act, in subpart A and subpart OOOO of 40 CFR part 60, in the Prevention of Significant Deterioration regulations at 40 CFR 52.21, or in the Federal Minor New Source Review Program in Indian Country at 40 CFR 49.151. The following terms shall have the specific meanings given them.

(1) *Bakken Pool* means Oil produced from the Bakken, Three Forks, and Sanish Formations.

(2) *Breathing losses* means natural gas emissions from fixed roof tanks resulting from evaporative losses during storage.

(3) *Casinghead natural gas* means the associated natural gas that naturally dissolves out of reservoir fluids during well completion operations and recompletion operations due to the pressure relief that occurs as the reservoir fluids travel up the well casinghead.

(4) *Closed vent system* means a system that is not open to the atmosphere and that is composed of hard-piping, ductwork, connections, and, if necessary, flow-inducing devices that transport natural gas from a piece or pieces of equipment to a control device or back to a process.

(5) *Enclosed combustor* means a thermal oxidation system with an enclosed combustion chamber that maintains a limited constant temperature by controlling fuel and combustion air.

(6) *Existing facility* means an oil and natural gas production facility that begins actual construction prior to the effective date of the "Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota".

(7) *Flashing losses* means natural gas emissions resulting from the presence of dissolved natural gas in the produced oil and the produced water, both of which are under high pressure, that occurs as the produced oil and produced water is transferred to storage tanks or other vessels that are at atmospheric pressure.

(8) *Modified facility* means a facility which has undergone the addition, completion, or recompletion of one or more oil and natural gas wells, and/or the addition of any associated equipment necessary for production and storage operations at an existing facility.

(9) *New facility* means an oil and natural gas production facility that begins actual construction after the effective date of the "Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold In-

dian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota".

(10) *Oil* means hydrocarbon liquids.

(11) *Oil and natural gas production facility* means all of the air pollution emitting units and activities located on or integrally connected to one or more oil and natural gas wells that are necessary for production operations and storage operations.

(12) *Oil and natural gas well* means a single well that extracts subsurface reservoir fluids containing a mixture of oil, natural gas, and water.

(13) *Owner or operator* means any person who owns, leases, operates, controls, or supervises an oil and natural gas production facility.

(14) *Permit to construct or construction permit* means a permit issued by the Regional Administrator pursuant to 40 CFR 49.151, 52.10 or 52.21, or a permit issued by a tribe pursuant to a program approved by the Administrator under 40 CFR part 51, subpart I, authorizing the construction or modification of a stationary source.

(15) *Permit to operate or operating permit* means a permit issued by the Regional Administrator pursuant to 40 CFR part 71, or by a tribe pursuant to a program approved by the Administrator under 40 CFR part 51 or 40 CFR part 70, authorizing the operation of a stationary source.

(16) *Pit flare* means an ignition device, installed horizontally or vertically and used in oil and natural gas production operations to combust produced natural gas and natural gas emissions.

(17) *Produced natural gas* means natural gas that is separated from extracted reservoir fluids during production operations.

(18) *Produced oil* means oil that is separated from extracted reservoir fluids during production operations.

(19) *Produced oil storage tank* means a unit that is constructed primarily of non-earthen materials (such as steel, fiberglass, or plastic) which provides structural support and is designed to contain an accumulation of produced oil.

(20) *Produced water* means water that is separated from extracted reservoir fluids during production operations.

(21) *Produced water storage tank* means a unit that is constructed primarily of non-earthen materials (such as steel, fiberglass, or plastic) which provides structural support and is designed to contain an accumulation of produced water.

(22) *Production operations* means the extraction and separation of reservoir fluids from an oil and natural gas well, using separators and heater-treater systems. A separator is a pressurized vessel designed to separate reservoir fluids into their constituent components of oil, natural gas and water. A heater-treater is a unit that heats the reservoir fluid to break oil/water emulsions and to reduce the oil viscosity. The water is then typically removed by using gravity to allow the water to separate from the oil.

(23) *Regional Administrator* means the Regional Administrator of EPA Region 8 or an authorized representative of the Regional Administrator.

(24) *Standing losses* means natural gas emissions from fixed roof tanks as a result of evaporative losses during storage.

(25) *Storage operations* means the transfer of produced oil and produced water to storage tanks, the filling of the storage tanks, the storage of the produced oil and produced water in the storage tanks, and the draining of the produced oil and produced water from the storage tanks.

(26) *Supervisory Control and Data Acquisition (SCADA) system* generally refers to industrial control computer systems that monitor and control industrial infrastructure or facility-based processes.

(27) *Utility flare* means thermal oxidation system using an open (without enclosure) flame. An enclosed combustor as defined in §§ 49.4161 through 49.4168 is not considered a flare.

(28) *Visible Smoke emissions* means a pollutant generated by thermal oxidation in a flare or enclosed combustor and occurring immediately downstream of the flame. Visible smoke occurring within, but not downstream of, the flame, is not considered to constitute visible smoke emissions.

(29) *Well completion* means the process that allows for the flowback of oil and natural gas from newly drilled wells to

expel drilling and reservoir fluids and tests the reservoir flow characteristics, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

(30) *Well completion operation* means any oil and natural gas well completion using hydraulic fracturing occurring at an oil and natural gas production facility.

(31) *Well recompletion operation* means any oil and natural gas well completion using hydraulic refracturing occurring at an oil and natural gas production facility.

(32) *Working losses* means natural gas emissions from fixed roof tanks resulting from evaporative losses during filling and emptying operations.

(b) *Requirement for testing.* The Regional Administrator may require that an owner or operator of an oil and natural gas production facility demonstrate compliance with the requirements of the "Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota" by performing a source test and submitting the test results to the Regional Administrator. Nothing in the "Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota" limits the authority of the Regional Administrator to require, in an information request pursuant to section 114 of the Act, an owner or operator of an oil and natural gas production facility subject to the "Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation)" to demonstrate compliance by performing testing, even where the facility does not have a permit to construct or a permit to operate.

(c) *Requirement for monitoring, record-keeping, and reporting.* Nothing in "Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation)" precludes the Regional Administrator from requiring monitoring, recordkeeping and reporting, including

§ 49.4164

40 CFR Ch. I (7-1-15 Edition)

monitoring, recordkeeping and reporting in addition to that already required by an applicable requirement in these rules, in a permit to construct or permit to operate in order to ensure compliance.

(d) *Credible evidence.* For the purposes of submitting reports or establishing whether or not an owner or operator of an oil and natural gas production facility has violated or is in violation of any requirement, nothing in the “Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota” shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a facility would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

§ 49.4164 Construction and operational control measures.

(a) Each owner or operator must operate and maintain all liquid and gas collection, storage, processing and handling operations, regardless of size, so as to minimize leakage of natural gas emissions to the atmosphere.

(b) During all oil and natural gas well completion operations or recompletion operations at an oil and natural gas production facility and prior to the first date of production of each oil and natural gas well, each owner or operator must, at a minimum, route all casinghead natural gas to a utility flare or a pit flare capable of reducing the mass content of VOC in the natural gas emissions vented to it by at least 90.0 percent or greater and operated as specified in §§ 49.4165 and 49.4166.

(c) Beginning with the first date of production from any one oil and natural gas well at an oil and natural gas production facility, each owner or operator must, at a minimum, route all natural gas emissions from production operations and storage operations to a control device capable of reducing the mass content of VOC in the natural gas emissions vented to it by at least 90.0 percent or greater and operated as specified in §§ 49.4165 and 49.4166.

(d) Within ninety (90) days of the first date of production from any oil and natural gas well at an oil and natural gas production facility, each owner or operator must:

(1) Route the produced natural gas from the production operations through a closed-vent system to:

(i) An operating system designed to recover and inject all the produced natural gas into a natural gas gathering pipeline system for sale or other beneficial purpose; or

(ii) A utility flare or equivalent combustion device capable of reducing the mass content of VOC in the produced natural gas vented to the device by at least 98.0 percent or greater and operated as specified in §§ 49.4165 and 49.4166.

(2) Route all standing, working, breathing, and flashing losses from the produced oil storage tanks and any produced water storage tank interconnected with the produced oil storage tanks through a closed-vent system to:

(i) An operating system designed to recover and inject the natural gas emissions into a natural gas gathering pipeline system for sale or other beneficial purpose; or

(ii) An enclosed combustor or utility flare capable of reducing the mass content of VOC in the natural gas emissions vented to the device by at least 98.0 percent or greater and operated as specified in §§ 49.4165(c) and 49.4166.

(iii) If the uncontrolled potential to emit VOCs from the aggregate of all produced oil storage tanks and produced water storage tanks interconnected with produced oil storage tanks at an oil and natural gas production facility is less than, and reasonably expected to remain below, 20 tons in any consecutive 12-month period, then, upon prior written approval by the EPA the owner or operator may use a pit flare, an enclosed combustor or a utility flare that is capable of reducing the mass content of VOC in the natural gas emissions from the storage tanks vented to the device by only 90.0 percent.

(e) In the event that pipeline injection of all or part of the natural gas collected in an operating system designed to recover and inject natural