

**UNITED STATES COURT OF
APPEALS FOR THE TENTH
CIRCUIT**

UTE INDIAN TRIBE OF THE
UINTAH AND OURAY
RESERVATION, a federally recognized
Indian Tribe,

Petitioner,

v.

ENVIRONMENTAL PROTECTION
AGENCY; LEE ZELDIN,
ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION
AGENCY, in his official capacity; and
MARK SMITH, ACTING REGIONAL
ADMINISTRATOR, REGION 8, U.S.
ENVIRONMENTAL PROTECTION
AGENCY, in his official capacity;

Respondents.

Case No. _____

**PETITION FOR
JUDICIAL REVIEW**

Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1)(2018), the Administrative Procedure Act, 5 U.S.C. § 702 (2018), Federal Rule of Appellate Procedure 15(a), and Tenth Circuit Rule 15, the Ute Indian Tribe of the Uintah and Ouray Reservation (“Tribe”) petitions this Court for review of the Final Rule of then-Regional Administrator KC Becker, Region 8, of the United States Environmental Protection Agency (“EPA”) titled “Clean Air Act Operating Permit Program; Notice of Issuance of Title V Federal Operating Permit to Deseret

Generation and Transmission Cooperative,” published at 90 Fed. Reg. 4651 (Jan. 16, 2025) (EPA Docket Number EPA-R08-OAR-2019-0350) (hereinafter “Final Rule”). A copy of the relevant rule is attached as Exhibit A. 10th Cir. R. 15.1.

This Court has jurisdiction over this petition pursuant to Section 307(b)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7607(b)(1), because the Tribe is adversely affected by the final agency action, which is properly challenged in a court of appeals. The Tribe is a federally recognized Indian tribe with sovereign authority over its lands, waters, and airspace located within its Uintah and Ouray Reservation (“Reservation”). The Tribe has a direct and substantial interest in protecting the air quality and the integrity of natural resources within its Reservation homeland. As a sovereign government, the Tribe serves as *parens patriae*, duty-bound to protect the health and welfare of its members. The Tribe also has a vested interest in holding the United States and its agencies to its trust responsibility toward the Tribe and its members, a responsibility that includes – but is not limited to – engaging in meaningful government-to-government consultation on matters that can yield direct and adverse impacts on the Tribe and its resources.

The subject Title V Federal Operating Permit was issued to Deseret Generation and Transmission Cooperative (“Deseret”) for the operation of Deseret’s Bonanza coal-fired power plant, located on the Reservation. The emissions authorized by the Permit will directly impact the Tribe’s air quality, causing adverse

health effects to its members and damaging sensitive ecosystems. Further, the EPA's decision was unilaterally rendered over the express objections of the Tribe, whose members have historically shouldered a disproportionate share of the adverse environmental impacts resulting from the coal-fired power plant operations.

The Final Rule is a locally or regionally applicable final action of the EPA Administrator and is not "nationally applicable" or "of nationwide scope or effect." 42 U.S.C. § 7607(b)(1). Jurisdiction and venue for this petition are thus proper in this Court under 42 U.S.C. § 7607(b)(1).

The Tribe filed and prosecuted an appeal of EPA's Permit renewal decision to the Environmental Appeals Board ("EAB"), which denied review. *In re Deseret Generation & Transmission Coop. Bonanza Power Plant*, Permit No. V-UO-000004-2019.00, CAA Appeal No. 24-01 (EAB, Sept. 10, 2024). The Tribe timely requested that the EAB reconsider its Order Denying Review, which was also denied. (EAB, Nov. 8, 2024).

Notice of Issuance of Title V Federal Operating Permit to Deseret was posted in the Federal Register on January 16, 2025, 90 Fed. Reg. 4651 (Jan. 16, 2025), initiating the sixty (60) day timeline to file a petition for judicial review of the EPA's decision. 42 U.S.C. § 7607(b)(1). Accordingly, the Tribe hereby submits this timely petition for judicial review by this Court.

Dated: March 17, 2025.

PATTERSON REAL BIRD & WILSON LLP

/s/Michael W. Holditch

Michael W. Holditch

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Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2025, the foregoing Petition for Review was electronically filed with the Clerk of Court of the U.S. Court of Appeals for the Tenth Circuit through the appellate CM/ECF system, and I will cause a copy of the Petition for Review and Exhibit A attached thereto, to be sent via certified mail to:

Hon. Lee Zeldin
Office of the Administrator (1101A)
United States Environmental Protection
Agency 1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Mark Smith, Acting Regional Administrator
US Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, C.O. 80202

Hon. Pam Bondi
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Correspondence Control Unit
Office of General Counsel (2311)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

/s/Michael W. Holditch

Exhibit A

that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in the **SUPPLEMENTARY INFORMATION** section. The EPA has determined that there is good cause for making this correction final without prior proposal. In this instance, notice and opportunity for comment is unnecessary because this action implements a minor, non-substantive technical correction that conforms the regulatory text to the rule's preamble.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Ozone.

Joseph Goffman,

Assistant Administrator, Office of Air and Radiation.

Accordingly, the EPA corrects FR Doc. 2023–22531 and 40 CFR part 50 as follows:

Federal Register Correction

In FR Doc. 2023–22531, at 88 FR 70595 in the **Federal Register** of October 12, 2023, on page 70597, in the first column, the second, third and fourth sentences of the last paragraph are corrected to read as follows:

“The absorption cross-section value stated in this appendix ($304.39 \text{ atm}^{-1} \text{ cm}^{-1} \pm 0.94 \text{ atm}^{-1} \text{ cm}^{-1}$) will be used in all U.S. Standard Reference Photometers (SRPs) beginning January 1, 2025. It is expected that implementation across all other ozone transfer standards and ozone monitors in the field will be completed by December 31, 2026.”

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

* * * * *

■ 2. Amend Appendix D to Part 50 by revising section 2.2 to read as follows:

Appendix D to Part 50—Reference Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere (Chemiluminescence Method)

* * * * *

2.2 The measurement system is calibrated by referencing the instrumental chemiluminescence measurements to certified O_3 standard concentrations generated in a dynamic flow system and assayed by ultraviolet (UV) photometry to be traceable to a National Institute of Standards and Technology (NIST) standard reference

photometer for O_3 (see Section 4, Calibration Procedure, below) with a specified ozone absorption cross-section value. The absorption cross-section value stated in section 4.1 and section 4.5.3.10 of this appendix ($304.39 \text{ atm}^{-1} \text{ cm}^{-1} \pm 0.94 \text{ atm}^{-1} \text{ cm}^{-1}$) will begin use in all U.S. Standard Reference Photometers (SRPs) on January 1, 2025. It is expected that implementation across all other ozone transfer standards and ozone monitors in the field will be completed by December 31, 2026.

* * * * *

[FR Doc. 2025–00946 Filed 1–15–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2019–0350; FRL–12535–01–R8]

Clean Air Act Operating Permit Program; Notice of Issuance of Title V Federal Operating Permit to Deseret Generation and Transmission Co-operative

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of final action.

SUMMARY: The Environmental Protection Agency (EPA) issued a final permit decision under title V of the Clean Air Act (CAA) to Deseret Bonanza and Transmission Co-operative (Deseret) for the operation of Deseret's Uintah County, Utah, Bonanza Power Plant (Bonanza).

DATES: EPA issued title V Permit to Operate No. V–UO–000004–2019.00 to Deseret on December 4, 2023, under 40 CFR part 71. This permit was appealed to the Environmental Appeals Board by the Ute Tribe of Utah. The Board denied review of the permit on September 10, 2024, and EPA issued the final permit decision on December 17, 2024. Pursuant to section 307(b)(1) of the CAA, judicial review of EPA's final permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Tenth Circuit by March 17, 2025.

FOR FURTHER INFORMATION CONTACT: Suman Kunwar, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–AP–P, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, telephone number: (303) 312–6095, email address: kunwar.suman@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA. This **SUPPLEMENTARY INFORMATION** is arranged as follows:

I. How can I get copies of this document and other related information?

EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2019–0350. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 8, Air and Radiation Division, 1595 Wynkoop Street, Denver, Colorado 80202. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Suman Kunwar, Environmental Engineer, at (303) 312–6095 with any questions about reviewing the docket material before visiting the Region 8 office.

II. Background

The 1990 amendments to the CAA established a comprehensive air quality permit program under the authority of Title V of the CAA. Title V requires certain facilities that emit large amounts of air pollution, or that meet other specified criteria, to obtain an operating permit, known as a title V permit, after the source has begun to operate. This permit is an enforceable compilation of all enforceable terms, conditions, and limitations applicable to the source, and is designed to improve compliance by clarifying what facilities must do to control air pollution. EPA regulations implementing title V are codified at 40 CFR part 71 for permits issued by EPA or its delegates, and at 40 CFR part 70 for permits issued by states and local agencies pursuant to approved programs. A title V permit is valid for no more than five years and may be renewed in five-year-increments.

Deseret operates a facility, Bonanza, in Uintah County, Utah. Bonanza is a coal-fired power plant located on the Uintah and Ouray Reservation. Coal is delivered to the Facility by train and is crushed and pulverized before being fed into the main boiler. The boiler produces steam, which powers a turbine to generate electricity. On December 5, 2014, EPA Region 8 issued an initial title V Permit to Deseret for Bonanza pursuant to 40 CFR part 71.

On December 4, 2023, EPA Region 8 renewed Deseret's Title V permit for a new five-year term. See title V Permit to Operate No. V–UO–000004–2019.00, Docket ID: EPA–R08–OAR–2019–0350. On January 3, 2024, the Ute Indian Tribe filed an appeal of the title V permit for Bonanza with the Environmental Appeals Board. The Tribe did not petition to review certain terms and conditions of the renewed title V permit but contended that the Region failed to

address the Tribe’s concerns about the health and environmental impacts of the Bonanza plant and acted contrary to Executive Orders and EPA policies regarding environmental justice and Tribal consultation, and contrary to the Federal trust responsibility to federally-recognized Indian Tribes. In addition, the Tribe asserted that EPA abused its discretion and violated the Federal trust responsibility by not providing the results of an investigation identifying potential non-compliance with coal combustion residual requirements under the Resource Conservation and Recovery Act (“RCRA”) until after the CAA title V permit was issued. Consequently, under 40 CFR 71.11(i)(2)(ii), the effective date of the permit was delayed.

III. Effect of this Action

On September 10, 2024, the EAB denied the petition for review. See *In re Deseret Generation and Transmission Co-operative Bonanza Power Plant*, Permit No. V–UO–000004–2019.00, CAA Appeal No. 24–01 (EAB, September 10, 2024) (Order Denying Review). The Tribe requested that the EAB reconsider its Order Denying Review and on November 8, 2024, the EAB denied the Tribe’s Motion for Reconsideration. Following the EAB’s action, pursuant to 40 CFR 124.19(l)(2)(i), the EPA issued a final permit decision on December 17, 2024. The final title V permit is effective immediately and will expire on December 17, 2029.

Authority: 42 U.S.C. 7401 *et seq.*

KC Becker,
Regional Administrator, Region 8.
[FR Doc. 2025–00651 Filed 1–15–25; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0607; FRL–10024–03–R9]

Air Plan Approval; Arizona; Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Maricopa County Air Quality Department (MCAQD or “County”) portions of the Arizona State Implementation Plan (SIP). These revisions concern the County’s reasonably available control technology (RACT) demonstration for the aerospace coating category and negative declarations for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or “standards”) in the portion of the Phoenix-Mesa ozone nonattainment area regulated by the MCAQD, as well as a rule covering emissions of volatile organic compounds (VOCs) from surface coatings and industrial adhesives. We are also approving a local rule that regulates these emission sources under the Clean Air Act (CAA or “the Act”).

DATES: This rule is effective February 18, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2022–0607. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:
Nicole Law, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4126 or by email at Law.Nicole@epa.gov.

SUPPLEMENTARY INFORMATION:
Throughout this document, “we,” “us” and “our” refer to the EPA.

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- II. Public Comments and EPA Responses
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- IV. Incorporation by Reference
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I. Proposed Action and Interim Final Determination

On August 4, 2022 (87 FR 47663), the EPA proposed to approve a RACT certification for Aerospace Manufacturing and Rework Operations, Rule 336 “Surface Coating Operations and Industrial Adhesive Application Processes,” and negative declarations for the 2008 8-hour ozone NAAQS. The following table lists the documents that were submitted by the Arizona Department of Environmental Quality (ADEQ) for incorporation into the Arizona SIP and were the subject of our August 4, 2022 proposed rulemaking action.

Local agency	Document	Adopted	Submitted
MCAQD	Maricopa County Reasonably Available Control Technology (RACT) Certification for Volatile Organic Compound (VOC) Emissions from Aerospace Manufacturing and Rework Operations In Maricopa County June 2021.	06/23/21	06/30/21
MCAQD	Rule 336 Surface Coating Operations and Industrial Adhesive Application Processes.	09/01/21	09/17/21
MCAQD	Negative Declarations for Three Coating Categories Listed in the 2008 Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings.	09/01/21	09/17/21

We proposed to approve the RACT certification, rule, and negative declarations because we determined that they comply with the relevant CAA requirements. Our proposed action contains more information on the RACT certification, rule, negative declarations,

and our evaluation. On the same day, we also made an interim final determination (87 FR 47630) that the submittal from the ADEQ corrected SIP deficiencies from a previous submittal, allowing us to defer the imposition of sanctions resulting from our previous

disapproval action concerning ozone nonattainment requirements.

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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Jane K. Castro
Chief Deputy Clerk

March 17, 2025

Michael W. Holditch
Jeffrey S. Rasmussen
Jeremy J. Patterson
Patterson Earnhart Real Bird & Wilson
1900 Plaza Drive
Louisville, CO 80027

RE: 25-9531, Ute Indian Tribe v. EPA, et al
Dist/Ag docket: EPA-R08-OAR-2019-0350

Dear Counsel:

Your petition for review has been docketed, and the case number is above. **Within 14 days** from the date of this letter, Petitioner's counsel must electronically file:

- **An entry of appearance and certificate of interested parties** per 10th Cir. R. 46.1(A) and (D).
- **A docketing statement** per 10th Cir. R. 3.4.

In addition, any counselled entities that are required to file a Federal Rule of Appellate Procedure 26.1 disclosure statement must do so **within 14 days of the date of this letter**. All parties must refer to Federal Rule of Appellate Procedure 26.1 and Tenth Circuit Rule 26.1 for applicable disclosure requirements. All parties required to file a disclosure statement must do so even if there is nothing to disclose. Rule 26.1 disclosure statements must be promptly updated as necessary. *See* 10th Cir. R. 26.1(A).

Also within 14 days, Respondent's counsel must electronically file an entry of appearance and certificate of interested parties. **Attorneys that do not enter an appearance within the specified time frame will be removed from the service list.**

Within 40 days from the date of service of the petition for review, the respondent agency shall file the record or a certified list. *See* Fed. R. App. P. 17. If a certified list is filed, the entire record, or the parts the parties may designate, must be filed on or before the deadline set for filing the respondent's brief. *See* 10th Cir. R. 17.1.

We have served the petition for review on the respondent agency via electronic notice using the court's ECF system. Petitioner must serve a copy of the petition for review on all parties, other than the respondent(s), who participated in the proceedings before the agency. *See* Fed. R. App. P. 15(c).

The [Federal Rules of Appellate Procedure](#), the [Tenth Circuit Rules](#), and [forms](#) for the aforementioned filings are on the court's [website](#). The Clerk's Office has also created a set of [quick reference guides](#) and [checklists](#) that highlight procedural requirements for appeals filed in this court.

Please contact this office if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Christopher M. Wolpert', with a long horizontal line extending to the right.

Christopher M. Wolpert
Clerk of Court

cc: Pamela J. Bondi
Correspondence Control Unit
Lee Zeldin

CMW/jjh