

**Response to Comments for Shakopee Mdewakanton Sioux Community of Minnesota
New Little Six Casino
Air Quality Construction Permit
Permit No. MIN-SM-27139R0005-2013-01**

On February 27, 2014, the U.S. Environmental Protection Agency issued for public comment a draft Air Quality Construction Permit, permit number MIN-SM-27139R0005-2013-01, for Shakopee Mdewakanton Sioux Community of Minnesota (SMSC) – New Little Six Casino (NLSC), located in Prior Lake, Minnesota. Along with the permit public noticed for NLSC, two other similar permits for the SMSC were also public noticed. The public comment period for the permits ended on May 12, 2014.

This document provides a summary of all comments received during the public comment period and EPA's response. This document also lists any changes made to the permit or TSD.

Comments from Shakopee Mdewakanton Sioux Community (SMSC)

During the public comment period, EPA received comments on the New Little Six Casino permit from the Shakopee Mdewakanton Sioux Community (SMSC).

Comment 1.

Permit condition 2.0.A.1.iii on page 5 of the NLSC permit states:

Limit fuel usage to diesel fuel with a minimum cetane index of 40, or maximum aromatic content of 35 volume percent. [40 C.F.R. §§ 60.4207(b) and 80.510(b)]

Neither of the other two permits have this condition. The condition references 40 C.F.R. §§ 60.4207(b) which is the sulfur requirement for fuel and does not provide the basis for this condition. The other citation, 40 C.F.R. §§ 80.510(b), is a requirement for manufacturers of diesel and suppliers of diesel fuel. This condition should be removed to be consistent with the other two permits.

EPA's Response to Comment 1.

Permit condition 2.0.A.1.iii. lists an applicable requirement from the New Source Performance Standards (NSPS) for Compression Ignition Internal Combustion Engines, 40 C.F.R. Part 60, Subpart III. 40 C.F.R. § 60.4207(b) requires that all *owners and operators* of stationary compression ignition internal engines subject to this NSPS are required to meet the requirements of 40 C.F.R. § 80.510(b).

Under NSPS Subpart III, EPA determined that EU 112 is a non-emergency, stationary, compression-ignition, internal combustion engine with a displacement of less than 30 liters per cylinder. Since EU 112 has a displacement of less than 30 liters per cylinder, EPA determined that 40 C.F.R. § 60.4207(a) and (b) applies. Owners and operators of

stationary compression-ignition (CI) internal combustion engines (ICE) must comply with 40 C.F.R. § 60.4207 if they are subject to NSPS Subpart IIII.

In particular, 40 C.F.R. § 60.4207(a) and (b) read as follows:

(a) Beginning October 1, 2007, owners and operators of stationary CI ICE subject to this subpart that use diesel fuel must use diesel fuel that meets the requirements of 40 CFR 80.510(a).

(b) Beginning October 1, 2010, owners and operators of stationary CI ICE subject to this subpart with a displacement of less than 30 liters per cylinder that use diesel fuel must use diesel fuel that meets the requirements of 40 CFR 80.510(b) for nonroad diesel fuel, except that any existing diesel fuel purchased (or otherwise obtained) prior to October 1, 2010, may be used until depleted.

Since the permits are being issued after October 1, 2010, the requirements of 40 C.F.R. § 60.4207(b) apply. In particular, 40 C.F.R. § 60.4207(b) requires owners and operators of stationary CI ICE using diesel fuel to use diesel fuel that meets the requirements of 40 C.F.R. § 80.510(b) for nonroad diesel fuel.

40 C.F.R. § 80.510(b) reads as follows:

(b) *Beginning June 1, 2010.* Except as otherwise specifically provided in this subpart, all NR and LM diesel fuel is subject to the following per-gallon standards:

- (1) Sulfur content.
 - (i) 15 ppm maximum for NR diesel fuel.
 - (ii) 500 ppm maximum for LM diesel fuel.
- (2) Cetane index or aromatic content, as follows:
 - (i) A minimum cetane index of 40; or
 - (ii) A maximum aromatic content of 35 volume percent.

According to 40 C.F.R. § 80.2, “NR” stands for “nonroad” while “LM” stands for “locomotive or marine.” As mentioned previously, 40 C.F.R. § 60.4207(b) requires owners and operators of diesel CI ICE to use diesel fuel that meets the requirements for nonroad diesel fuel at 40 C.F.R. § 80.510(b). 40 C.F.R. § 80.510(b)(1)(i) establishes the sulfur requirement for diesel fuel for nonroad engines. 40 C.F.R. § 80.510(b)(2), where the cetane index or aromatic content requirement is established, applies to both nonroad and locomotive or marine engines.

EU 112 is subject to the fuel requirements of 40 C.F.R. § 60.4207(b). Since this condition requires the diesel fuel used in EU 112 to comply with the fuel requirements of 40 C.F.R. § 80.510(b), EPA determined that both the sulfur content and cetane index or

aromatic content requirements apply to the diesel fuel used by EU 112. EPA determined in the TSD for the draft NLSC permit that 40 C.F.R. § 60.4207(b) applies.

SMSC's comment says that 40 C.F.R. § 60.4207(b) is a sulfur requirement for fuel and does not provide the basis for the cetane index or aromatic content condition in 40 C.F.R. § 80.510(b). EPA agrees that 40 C.F.R. § 60.4207(b) contains sulfur requirements for diesel fuels. EPA disagrees that the condition does not provide the basis for this condition. As mentioned previously, 40 C.F.R. § 60.4207(b) specifically requires owners and operators to use diesel fuel that complies with the nonroad diesel fuel standards at 40 C.F.R. § 80.510(b), with an exception for diesel fuel purchased prior to October 1, 2010.

SMSC also says in its comment that 40 C.F.R. § 80.510(b) is a requirement for manufacturers and suppliers of diesel fuel. While this is true to the extent that manufacturers and suppliers of diesel fuel must create or supply diesel fuel that meets these standards for use in CI ICE, EPA disagrees that the fuel requirements in 40 C.F.R. § 80.510(b) apply only to manufacturers or suppliers of diesel fuel. As mentioned previously, 40 C.F.R. § 60.4207(b) requires owners and operators to use diesel fuel that meets the diesel fuel standards for nonroad engines in 40 C.F.R. § 80.510(b). EPA interprets this to mean that diesel fuels used in CI ICE must have a sulfur content of no more than 15 ppm and either a minimum cetane index of 40 or a maximum aromatic content of 35 volume percent.

SMSC's comment requests that the cetane index or aromatic content requirements be removed from the New Little Six Casino permit for consistency with the Dakotah! Sport and Fitness (DSF) and Mystic Lake Casino Hotel (Mystic) permits. For the reasons previously discussed in the response to this comment, EPA disagrees that this condition should be removed from the New Little Six Casino permit and instead the condition should be added to the other two permits.

Comment 2.

In the Recordkeeping and Reporting of Section 2.0, the DSF and Mystic permits have a Condition C.1.i. that discusses routine recordkeeping and a separate Condition C.1.ii. that discusses recordkeeping for performance tests. The NLSC permit blends these two conditions together which could cause confusion. We request that Condition C.1.i. in the NLSC permit be rewritten as two separate conditions like in the other two permits.

EPA's Response to Comment 2.

EPA agrees with commenter and has revised the permit as requested. The "Performance test data and results" recordkeeping requirement under Section 2.0.C.1.i.d. was removed. Consistent with the Dakotah! Sport and Fitness and Mystic Lake Casino Hotel permits, a new condition was created under Section 2.0.C.1.ii. The condition created reads as follows:

The Permittee shall maintain initial performance test data and results for EU 112 as required in condition 2.0 B.2.ii. for at least five years. The Permittee shall

maintain subsequent periodic performance test data and results for at least five years or until the next periodic performance test is performed on each engine, whichever is later. All of the required performance test data and results shall be retained at the Tribal Government office. Performance test data and results include, but are not limited to:

- a. Sampling dates and the times of sampling or measurement;
- b. The operating conditions that existed at the time of sampling or measurement;
- c. The date analyses were performed;
- d. The location where samples were taken;
- e. The company or entity that performed the sampling and analysis;
- f. The analytical techniques or methods used; and
- g. The results of the analysis.

[40 C.F.R. § 49.155(a)(4)]

The new condition additionally requires that data for the initial performance test data be retained for at least five years. As a result, the condition in Section 3.0.B.1. has been removed. The condition required that the permittee maintain performance test data and relevant information which now exists under Section 2.0.C.1.ii.

Comment 3.

After Condition C.1 of Section 2.0, the NLSC permit inserts a Condition C.2 on Reporting for Compliance with Standards of Performance for Stationary Compression Engines which is not in the other two permits. This is because the deadline for this requirement has passed and SMSC has submitted these notifications by the deadline. We request that this condition be removed.

EPA's Response to Comment 3.

EPA agrees with the commenter and has revised the permit as requested. The applicable requirement lies in the past and is no longer relevant. Condition 2.0.C.2. has been removed from the permit.

Comment 4.

Under Facility-Wide Requirements (Section 3.0), the NLSC permit inserts a Section B which includes a requirement to maintain data for five years which is already stated in Section 2.0 Condition C.1.i. and a requirement to submit a copy of performance test results which is already required by Section B. in the Monitoring and Testing of Section 2.0 (page 6). We request that Section 3.0 Paragraph B. be removed.

EPA's Response to Comment 4.

EPA agrees with the commenter and has revised the permit as requested. As has been partially described in response to comment 2, the condition in Section 3.0.B.1. has been removed since the requirement for the facility to maintain records of performance testing and related the related

data is captured in the new condition under Section 2.0.C.ii.. Additionally, Condition 3.0.B.2., regarding submittal of performance test records within 45 days of completing the performance testing, has also been removed. The requirements for submittal of these records within 45 days already exists under Section 3.0.C.2.i.. Additionally, redundant language for submittal under the "Performance Testing" section, Condition 2.0.B.2.i. and ii. has been removed.

Comment 5.

SMSC requests that the contact information in the technical support document (TSD) be updated to the following:

Charlie Vig, Tribal Chairman phone #: 952-496-6109

EPA's Response to Comment 5.

EPA will update the TSD for the final permit with the requested contact information.

Comments from Ms. Beverly Koehnen, March 28, 2014.

During the public comment period, EPA received several comments from Ms. Beverly Koehnen. The letter is dated March 28, 2014.

Ms. Koehnen's Comment 1:

In her letter, Ms. Koehnen made this comment with respect to public participation for the current permitting action:

I did go to the Prior Lake Library to look at the documents. After a diligent search by the librarians, they could not find the documents on the shelves. They said they had been received and cataloged, so someone apparently had taken them, even though the documents were supposed to be left at the library for others to see. As a result, I am unable to comment on them specifically.

EPA's response to Ms. Koehnen's Comment 1:

40 C.F.R. § 49.157 establishes the public notice requirements for synthetic minor source permits issued pursuant to 40 C.F.R. Part 49. Particularly, 40 C.F.R. § 49.157(b)(1) requires the reviewing authority, in this case EPA, to prepare a draft permit and provide adequate public notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information according to certain criteria. The criteria is summarized as follows:

- 1.) EPA must mail a copy of the notice to the permit applicant, the Indian governing body, and the tribal, state, and local air pollution authorities having jurisdiction adjacent to the area that could be potentially impacted by the air pollution source; and

- 2.) EPA must use appropriate means of notification that accounts for the size of the source, local air quality considerations, and the characteristics of the population in the affected area. Examples of appropriate means of notification include mailing or emailing the notice to persons on a mailing list, posting the notification on its website, publishing the notice in a newspaper of general circulation in the area and/or a tribal newspaper or newsletter, providing the notice at gathering places in the community such as a public library, or other means that EPA deems appropriate.

To fulfill the public participation requirements for this permit, EPA mailed the public notice, draft permit, and supporting documents to the permit applicant, the Indian governing body, and affected tribal, state, and local air pollution authorities on February 19, 2014. EPA mailed a paper copy of the application, draft permit, and supporting documents to the Prior Lake branch of the Scott County Library on February 19, 2014. EPA published the public notice in two newspapers in the area: the Prior Lake American on February 22, 2014, and the Shakopee Valley News on February 27, 2014. EPA also posted an electronic copy of the application, draft permit, supporting documents, and the public notice on its website. The public notice document itself included the internet address where the permit documents are available for review.

Although EPA provided a copy of the draft permit documents for inspection at a local library, the documents were unavailable to members of the public. Since the documents were unavailable, reasonable access to the application and the draft permit documents was unavailable to Ms. Koehnen and possibly other members of the public during the public comment period.

The ability for some members of the public to participate in the notice and comment period for this draft permit was negatively affected. EPA believes that public participation is an important component of the permitting process. As a result, EPA extended the public comment period by 30 days, ending on May 12, 2014. EPA also mailed a complete set of permit documents to Ms. Koehnen and to the Prior Lake branch of the Scott County Library.

No changes to the permit or the TSD have been made as a result of this comment.

Ms. Koehnen's Comment 2:

In her letter, Ms. Koehnen asks who will monitor the air in the area and whether EPA will monitor the air.

EPA's response to Ms. Koehnen's Comment 2:

On pages 1 and 2 of the draft TSD, EPA explains that New Little Six Casino is located on lands held in trust by the United States government for the Shakopee Mdewakanton Sioux Community. Since the facility is located on lands held in trust by the government, EPA is responsible for permitting and enforcing any air quality construction permits. The permit, once issued, will establish emission limits for the engine at the facility. Monitoring, periodic testing, recordkeeping, and reporting requirements designed to ensure compliance with the operating limits and emission limits are included in the permit. If there are any concerns regarding New Little Six Casino's compliance with permit terms and conditions, you may contact the EPA

Region 5's Air Enforcement and Compliance Assurance Branch at (312) 353-2088 for further assistance.

No changes to the permit or the TSD have been made as a result of this comment.

Ms. Koehnen's Comment 3:

In her letter, Ms. Koehnen submitted a comment regarding emissions from a nearby compost site and another industrial operation that is unknown to her.

EPA's response to Ms. Koehnen's Comment 3:

EPA understands that emissions from nearby facilities may be concerning. However, EPA can only respond to comments about the current permitting action in this response to comments document. If there are any concerns about emissions from nearby facilities, you may contact the EPA Region 5's Air Enforcement and Compliance Assurance Branch at (312) 353-2088 for further assistance.

No changes to the permit or the TSD have been made as a result of this comment.