



## United States Environmental Protection Agency General Air Quality Permit for New or Modified Minor Sources of Air Pollution in Indian Country

<https://www.epa.gov/tribal-air/tribal-minor-new-source-review>

### Request for Coverage under the General Air Quality Permit for New or Modified Minor Source Hot Mix Asphalt Plants in Indian Country

Last Modified: January 4, 2017

Version 1.0

This Request for Coverage under the General Air Quality Permit for Minor Source Hot Mix Asphalt Plants in Indian Country applies to the construction of new minor source hot mix asphalt plants or the modification of existing minor source hot mix asphalt plants in Indian country that meet certain production limitations and fuel restrictions as specified below. A hot mix asphalt plant is a facility that manufactures hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements, and is comprised only of any combination of the following activities: dryers, liquid asphalt storage tanks, fuel oil storage tanks, auxiliary heaters (including hot oil heaters), material storage handling and transfer systems, generators, storage bins/silos, storage piles, and haul roads. This general air quality permit does not apply to asphalt plants that perform contaminated soil remediation.

This permit is available in Indian country for use by true minor and synthetic minor sources.

#### **You qualify to apply for coverage under this General Permit if you meet all of the following criteria:**

- You plan to construct a new true or synthetic minor source batch or drum hot mix asphalt plant OR you plan to modify an existing minor source batch or drum hot mix asphalt plant;
- You are not planning to construct or modify a major source batch or drum hot mix asphalt plant;
- Your new or modified minor source hot mix asphalt plant is located within Indian country;
- Your facility produces only hot mix asphalt;
- Your facility is not located in a severe or extreme ozone nonattainment area (facilities in these areas must obtain a site-specific permit);
- You use only natural gas, propane, distillate fuel and biodiesel in the dryer/mixer;
- The asphalt dryer/mixer at your facility is controlled by a baghouse (fabric filter);
- Are located in an ozone attainment, unclassifiable or attainment/unclassifiable area, a marginal or moderate ozone nonattainment area, or a serious ozone nonattainment area, and the asphalt production rate at your new or modified facility is equal to or less than 83,000 tons per month for a drum mix plant, or 27,000 tons per month for a batch mix plant;
- If located in a serious nonattainment area for carbon monoxide, the new or modified source's asphalt production rate is equal to or less than 33,000 tons per month for a drum mix plant, or equal to or less than 11,000 tons per month for a batch mix plant;
- You use only the following fuel(s) in the auxiliary heaters: natural gas, propane, distillate fuel and biodiesel;
- The total maximum heat input capacity of the auxiliary heaters (including hot oil heaters) is equal to or less than 10 MMBtu/hour;
- You use only diesel, or biodiesel in the stationary engines/generators;
- If located in an attainment, unclassifiable or attainment/unclassifiable area for ozone or a marginal or moderate nonattainment area for ozone, the total liquid fuel usage for the generators and engines at your new or modified facility is equal to or less than 12,500 gallons per month;

- If located in a serious ozone nonattainment area, the total liquid fuel usage for the generators and engines at your new or modified facility is equal to or less than 5,200 gallons per month;
- Each asphalt storage tank and fuel storage tank has a maximum capacity less than 39,890 gallons;
- You are seeking to co-locate your facility with a stone quarrying, crushing and screening operation and would like to limit combined emissions to less than 100 tons per year (tpy) for NSR-regulated pollutants. You must comply with Conditions 17. and 20.b. in the General Permit and this option is not available in serious, severe, or extreme ozone nonattainment areas and serious carbon monoxide (CO) nonattainment areas. Sources in these areas would have to seek a site-specific permit to obtain tighter limits to further reduce their potential to emit (PTE);
- You demonstrate that you meet one of the criteria listed in Appendix A with respect to the protection of any and all species that are federally-listed as threatened or endangered under the Endangered Species Act (ESA) or of habitat that is federally-designated as “critical habitat” under the ESA; and
- You have completed the screening process in Appendix B to determine if the construction, modification or operation of your new or modified minor source of air pollutants has the potential to cause effects to historic properties (pursuant to the National Historic Preservation Act (NHPA)).

The reviewing authority retains discretion to terminate your coverage under the General Permit and require a source-specific permit even if the above criteria are met. Reasons the reviewing authority may terminate a permitted source’s coverage under the General Permit include:

1. The permittee is not in compliance with the provisions of the 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 the General Permit;
3. The reviewing authority has reason to believe that the permittee obtained coverage under the General Permit 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.

### **More Information**

This General Air Quality Permit for New or Modified Hot Mix Asphalt Plants in Indian Country is not applicable to:

- Facilities that perform contaminated soil remediation;
- Facilities that produce cold mix asphalt; and
- Facilities located in severe or extreme ozone nonattainment areas.

If your hot mix asphalt facility is co-located with another source, and the potential to emit of the combined source is less than the major source thresholds for any NSR-regulated pollutant, you may qualify for coverage under this General Permit.

Information on the definition of a “modification” and potential to emit or “PTE” can be found at 40 CFR 49.152(d) and in the “Instructions” document. Additional information on the applicability of the Federal Indian Country Minor NSR Rule can be found at 40 CFR 49.153.

Information on the ozone attainment status of the area where your facility is located can be found at:

<https://www.epa.gov/green-book>. You may also contact your reviewing authority for information on the area's attainment status.

Sources eligible for the General Permit for New or Modified Minor Source Hot Mix Asphalt Plants may also be subject to federal standards under 40 CFR 60 Subpart I – Standards for Performance for Hot Mix Asphalt Facilities, 40 CFR 60 Subpart IIII – Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, and 40 CFR 63 Subpart ZZZZ – National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines. The conditions applicable to sources seeking coverage under this General Permit are intended to be generally consistent with the requirements in these regulations; however, compliance with the applicable requirements is required independent of the conditions in the General Permit, and not all requirements applicable under Subparts I, IIII, and ZZZZ are necessarily included in the General Permit. The Background Document for the General Permit identifies the specific requirements in these Subparts that are intended to be included in the General Permit.

## Instructions

**Step 1:** Complete all sections of the permit application. If you have questions, please contact the reviewing authority.

**Step 2:** Submit a copy of this permit application to the reviewing authority and the tribe in the area where the source is locating or being modified.

### After you submit the application to the reviewing authority:

- You may not commence construction of your new source or modification until you receive notification of the final decision on your application for coverage under this General Permit.
- Your reviewing authority will act on your permit as expeditiously as possible, and will notify you if more information is needed in writing within **30 days** from receipt of your application. Upon deeming the application complete, and if any additional information requested by the reviewing authority is received within 15 days of the request, the reviewing authority will follow the procedures outlined in 40 CFR 49.156(e) and your permit application will be granted or denied no later than 90 days after the receipt of your coverage request.
- Your reviewing authority will send you a letter notifying you of the approval or denial of your Request for Coverage under this General Permit if the reviewing authority determines that your Request for Coverage under this General Permit has all the relevant information and is complete. Such a letter is a final permit action for purposes of judicial review only for the issue of whether your source qualifies for this General Permit.

The public reporting and recordkeeping burden for this collection of information is estimated to average 32 hours per response. Applicants are welcome to send comments on the U.S. Environmental Protection Agency's (EPA's) need for the information in this application, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.



**Section 2: Facility Information for Requesting Coverage under the General Air Quality Permit for New or Modified Minor Source Hot Mix Asphalt Plants**

12. Please list all of the site locations for which you want approval to locate your hot mix asphalt plant. Include the site name (if any), street address, city, state, and name of the Indian Reservation. If needed, use additional paper. You may seek approval for additional locations in the future.

Site Name	Street Address	City/Town	Area of Indian Country

13. This application is for (check all that apply):

Construction/Relocation of a new hot mix asphalt facility in Indian country – no current general permit (please describe the proposed new source or location).

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Add a new location for your hot mix asphalt facility already covered by the General Permit (please describe the proposed new location).

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Modification of an existing hot mix asphalt facility. Please describe the modification below. The definition of “modification” can be found at 40 CFR 49.152(d), and in the “Instructions” document.

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A hot mix asphalt operation co-located with a stone quarrying, crushing, and screening operation and seeking to limit combined PTE to less than 100 tpy for NSR-regulated pollutants. You must comply with Conditions 17. and 20.b. in the General Permit. This option is not available in serious, severe and extreme ozone nonattainment areas and serious CO nonattainment areas (please describe the proposed source).

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14. North American Industry Classification System/Standard Industrial Classification Code and/or description of the facility:

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15. Type of Asphalt Plant: (check all that apply):

Stationary     Portable     Batch Mix     Parallel Flow Drum Mix     Counterflow Drum Mix

16. Will your new or modified facility be located in an ozone nonattainment area? Information on the ozone attainment status of the area where your facility is/will be located can be found at:  
<https://www.epa.gov/green-book>.

Yes     No

If you answered 'Yes,' specify the classification of the ozone nonattainment area:

Marginal     Moderate     Serious     Severe     Extreme

Note: If your facility will be located in severe or extreme ozone nonattainment area, it does not qualify for this General Permit and you must obtain a site-specific permit from the reviewing authority.

17. Will your new or modified facility be located in a particulate matter (PM<sub>10</sub>) nonattainment area? Information on the attainment status of the area where your facility is or will be located can be found at:  
<https://www.epa.gov/green-book>.

Yes     No

If you answered 'Yes,' specify the classification of the PM<sub>10</sub> nonattainment area:

Moderate     Serious

18. Will your new or modified facility be located in a particulate matter (PM<sub>2.5</sub>) nonattainment area? Information on the attainment status of the area where your facility is or will be located can be found at:  
<https://www.epa.gov/green-book>.

Yes     No

19. Will your new or modified facility be located in a carbon monoxide (CO) nonattainment area? Information on the attainment status of the area where your facility is or will be located can be found at: <https://www.epa.gov/green-book>.

Yes       No

If you answered ‘Yes,’ specify the classification of the CO nonattainment area:

Moderate       Serious

20. Will the PTE of your new facility, or the increase in potential emissions from your modified existing facility, be equal to or above the applicable minor NSR thresholds listed below for ANY of the listed pollutants, both in tpy? Emissions from your facility may be calculated using the calculator available online at: <https://www.epa.gov/tribal-air/5-source-categories-hot-mix-asphalt-plants-final-rule>. Be sure to include all new or modified emission units at your facility.

Pollutant	Attainment Area	Nonattainment Area
CO	10 tpy	5 tpy
Particulate Matter (PM)	10 tpy	5 tpy
Particulate Matter (PM <sub>10</sub> )	5 tpy	1 tpy
Particulate Matter (PM <sub>2.5</sub> )	3 tpy	0.6 tpy
Sulfur Dioxide (SO <sub>2</sub> )	10 tpy	5 tpy
Nitrogen Oxides (NO <sub>x</sub> )	10 tpy	5 tpy
Volatile Organic Compounds (VOC)	5 tpy	2 tpy

Yes       No

If you answered ‘No,’ your source is likely exempt from the minor NSR program. Please contact your reviewing authority to confirm that your facility will not need a permit. If you answered ‘Yes,’ continue on to the next question.

21. If located in an attainment, attainment/unclassifiable or unclassifiable area, will the PTE of your facility be less than 250 tpy for PM, PM<sub>10</sub>, PM<sub>2.5</sub>, VOC, NO<sub>x</sub>, CO, and SO<sub>2</sub>, each individually? Be sure to include all existing, new, and modified emission units at the facility.

Yes       No

If you answered ‘No,’ your source does not qualify for the General Permit. Please contact your reviewing authority to apply for a site-specific permit. If you answered ‘Yes,’ continue on to the next question.

22. If located in a nonattainment area, will the PTE of your facility for the particular nonattainment pollutant be less than the NSR major source thresholds below for ALL pollutants? Be sure to include all existing, new, and modified emission units at the facility.

Pollutant	Nonattainment Classification	NSR Major Source Threshold
Ozone	Marginal	100 tpy of VOC or NO <sub>x</sub>
	Moderate	100 tpy of VOC or NO <sub>x</sub>
	Serious	50 tpy of VOC or NO <sub>x</sub>
	Severe	25 tpy of VOC or NO <sub>x</sub>
	Extreme	10 tpy of VOC or NO <sub>x</sub>
PM <sub>10</sub>	Moderate	100 tpy
	Serious	70 tpy
CO	Moderate	100 tpy
	Serious	50 tpy
SO <sub>2</sub> , NO <sub>2</sub> , PM <sub>2.5</sub>	No nonattainment classification	100 tpy

Yes       No       N/A - Not located in any nonattainment area

If you answered **'No,'** your source does not qualify for the General Permit. Please contact reviewing authority to apply for a site-specific permit. If you answered **'Yes' or 'N/A,'** continue on to the next question.

23. Projected asphalt production rate after construction/modification/relocation:  
 Tons/month: \_\_\_\_\_

24. Does or will this facility perform contaminated soil remediation?

Yes       No

If you answered **'Yes'** to this question, your facility does not qualify for a general permit and you must obtain a site-specific permit from your reviewing authority.



### Section 3: Technical Information for Requesting Coverage under the General Air Quality Permit for New or Modified Minor Source Hot Mix Asphalt Plants

Information regarding the emission units at your facility is required by 40 CFR 49.154 and 40.160. Please provide the information below for all equipment at your facility. For each emissions unit, include supporting documentation for the PTE of the unit with your Request for Coverage. In addition, for existing emissions units, include the most recent actual annual emissions. See 40 CFR 49.154(a)(2). (For more information on how to calculate actual emissions, you may go to: <https://www.epa.gov/tribal-air/registration-existing-true-minor-sources-air-pollution-indian-country>.) As needed, please include other relevant information with your Request for Coverage (including any equipment not identified below).

#### Dryer

25. Dryer ID: \_\_\_\_\_

26. Construction/Modification Date of the Dryer (mm/dd/yyyy; actual or anticipated): \_\_\_\_\_

27. Dryer Burner Capacity (MMBtu/hour): \_\_\_\_\_

28. Fuel(s) Used in the Dryer:

- Natural Gas     Propane     Distillate Fuel     Biodiesel

29. Is the dryer/mixer controlled by a baghouse (fabric filter) or venturi scrubber?

- Yes     No

If you answered No to this question, your facility does not qualify for a general permit and you must obtain a site-specific permit from reviewing authority.

30. **Internal Combustion Engines** (including emergency generators)

Unit ID #	Unit Description	Maximum Rated Capacity (HP)	Types of Fuel(s) Used <sup>1</sup>	Manufactured Date (mm/dd/yyyy)	Model Year

<sup>1</sup> Only diesel fuel or biodiesel are allowed in this General Permit.



**33. Volatile Liquid Storage Tanks**

This section applies to storage tanks used to store liquid materials. Please provide the following information for each storage tank.

Unit ID#	Type of Liquid	Capacity (gallons)	Vapor pressure of Liquid (psi)	Is the tank above or underground?	Date of Installation (if existing)

**Section 4: Information on Completing Screening Processes that Have to Be Satisfied to Request Coverage under the General Air Quality Permit for New or Modified Minor Source Hot Mix Asphalt Plants**

**34. Threatened or Endangered Species**

Have you demonstrated that you meet one of the criteria listed in Appendix A with respect to the protection of any and all species that are federally listed as threatened or endangered under the ESA or of habitat that is federally designated as “critical habitat” under the ESA? If you answered ‘No,’ you cannot request coverage under this permit.

Yes  No

If you answered ‘Yes,’ then you need to provide the appropriate documentation to the EPA to qualify for coverage under this permit. Please indicate under which criterion in Appendix A you are satisfying this requirement:

A  B  C  D  E

**35. Historic Properties**

Have you completed the screening process in Appendix B to determine if the construction, modification or operation of your new or modified minor source of air pollutants has the potential to cause effects to historic properties (pursuant to the NHPA)? If you answered ‘No,’ you cannot request coverage under this permit.

Yes  No

If you answered ‘Yes,’ then provide the appropriate documentation to the EPA to qualify for coverage under this permit.

## Section 5: Additional Information about this General Air Quality Permit for New or Modified Minor Source Hot Mix Asphalt Plants

This section provides information on the sizes of sources in terms of emissions that are eligible for the General Permit. The emission limitations and standards in this permit are expected to ensure that source-wide emissions are below the rates shown in the following table:

Pollutant of Concern	Attainment, Unclassifiable or Attainment/Unclassifiable Areas	Nonattainment Areas
CO	80 tpy	80 tpy (moderate areas)
		40 tpy (serious areas)
PM <sub>10</sub>	26 tpy	26 tpy (moderate areas)
		26 tpy (serious areas)
PM <sub>2.5</sub>	14 tpy	14 tpy
SO <sub>2</sub>	18 tpy	18 tpy
NO <sub>x</sub>	71 tpy	71 tpy (marginal and moderate ozone areas)
		45 tpy (serious ozone areas)
VOC	28 tpy	28 tpy (marginal and moderate ozone areas)
		18 tpy (serious ozone areas)

For a hot mix asphalt operation co-located with a stone quarrying, crushing, and screening operation, the emission limitations and standards in Conditions 17. and 20.b of the General Permit are expected to ensure the source-wide emissions are below the rates shown in the following table:

Pollutant of Concern	Attainment, Unclassifiable or Attainment/Unclassifiable Areas	Nonattainment Areas
CO	78 tpy	78 tpy (moderate)
		Not applicable (serious areas)
PM	86 tpy	Not applicable
PM <sub>10</sub>	63 tpy	63 tpy (moderate)
		63 tpy (serious)
PM <sub>2.5</sub>	30 tpy	30 tpy
SO <sub>2</sub>	18 tpy	18 tpy
NO <sub>x</sub>	90 tpy	Not applicable (serious and above ozone areas)
		90 tpy (marginal and moderate ozone areas)
VOC	27 tpy	Not applicable (serious and above ozone areas)
		27 tpy (marginal and moderate ozone areas)

You should contact your reviewing authority if you intend to rely on the emission limitations and standards in this General Permit to prevent having to obtain a Title V permit.

**Applicant's Statement (to be signed by the applicant)**

I certify that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

Name: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature) (Print or Type)

Title: \_\_\_\_\_

## Appendix A – Threatened or Endangered Species Requirements

The purpose of this appendix is to assist you in completing the screening procedure for addressing threatened or endangered species prior to submitting your Request for Coverage under a General Air Quality Permit for New or Modified Minor Source Hot Mix Asphalt Plants in Indian Country. In order to be eligible for coverage under the General Permit, you must demonstrate that you qualify under one of the criteria listed in this appendix with respect to the protection of species that are federally-listed as threatened or endangered under the ESA or of habitat that is federally-designated as “critical habitat” under the ESA.

This appendix provides you information on the following:

- **Section 1:** Listed Species Eligibility Criteria and
- **Section 2:** Guidance for Determining Which Listed Species Criterion Applies.

### Section 1: Listed Species Eligibility Criteria

To be eligible for coverage under the General Permit, you must obtain confirmation from the EPA that you completed the screening procedure and meet one of the eligibility criteria listed below. You must also specify in your submittal the basis for your selection of the applicable eligibility criterion and provide documentation supporting the criterion selected. If you have not obtained confirmation from the EPA regarding listed species eligibility criteria, you will not be eligible for coverage under the General Permit, and you must apply for a site-specific permit.

Note: (1) Your determination must provide sufficient documentation to support your determination that you satisfy the requirements of the particular criterion you have selected. (2) While coordination between you and the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS; together, the “Services”) is not necessarily required in all cases, the EPA encourages you to coordinate with the relevant Service(s) and to do so early in the planning process prior to submitting your Request for Coverage.

You must comply with any applicable terms, conditions, or other requirements developed in the process of meeting any of the eligibility criteria (A-E) in this section to remain eligible for coverage under the General Permit. Documentation of these requirements shall be maintained by the permittee for the duration of time the affected emissions unit(s) is (are) covered under the General Permit.

The following is a summary of the five eligibility criteria. See Section 2 for detailed instructions to determine which criterion applies for your specific action:

#### Criterion A:

No federally-listed threatened or endangered species or designated critical habitat(s) of such species are likely to occur within the action area for your project.<sup>4</sup>

#### Criterion B:

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<sup>4</sup> *Action area* means all areas to be affected directly or indirectly by your project and may be broader than the immediate project area [See, e.g., 50 CFR 402.02].

Federally-listed threatened or endangered species or their designated critical habitat(s) are likely to occur within the action area of your source, but the construction and operation of your new minor source or construction and operation of the modification to your existing minor source is not likely to adversely affect listed threatened or endangered species or critical habitat. This determination may include consideration of any air pollution controls or other changes to the construction and/or operation of your new or modified source that you will adopt to ensure that construction, modification and operation of your new or modified source are not likely to adversely affect listed species or critical habitat. To make this certification, you must include the following in your Request for Coverage documentation: (1) identify any federally listed species and/or designated critical habitat located within the action area of your source; (2) the distance between your site and the listed species or designated critical habitat (in miles); and (3) any other information necessary (e.g., a detailed map of the action area and supporting justification) to show that the construction/modification and operation of your new or modified source are not likely to cause any adverse effects to the listed threatened or endangered species or their critical habitat.

**Criterion C:**

Coordination between you and the Service(s) has been concluded and has addressed the effects of your new or modified minor source's construction/modification and operation on federally-listed threatened or endangered species and federally-designated critical habitat. The coordination must result in a written concurrence from the relevant Service(s) that your new or modified minor source's construction/modification and operation are not likely to adversely affect listed species or critical habitat. You must include copies of the correspondence between yourself and the Service(s) with your submittal.

**Criterion D:**

Consultation between another Federal Agency and the Service(s) under section 7 of the ESA has been concluded. The consultation must have addressed the effects of your minor source's construction/modification and operation on federally-listed threatened or endangered species and federally-designated critical habitat. The result of this consultation must be either:

1. A biological opinion that concludes that the action in question (taking into account the effects of your source's construction/modification and operation) is not likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of critical habitat; or
2. Written concurrence from the applicable Service(s) with a finding that the source's construction/modification and operation are not likely to adversely affect federally-listed species or federally-designated critical habitat.

You must include copies of the relevant documentation cited above in your submittal.

**Criterion E:**

You have obtained an incidental take permit from the Service(s) under section 10 of the ESA in connection with your construction/modification and operation activities, and this permit addresses the effects of the source on relevant federally-listed species and federally-designated critical habitat. You must include copies of the incidental take permit and associated documentation and correspondence between yourself and the Service(s) with your submittal.



## Section 2: Determining Which Criterion Applies

To qualify for the General Permit, you need to meet one of the five criteria listed above. You must follow the procedures in Steps 1 through 5 below to determine the listed species criterion, if any, under which your project is eligible for permit coverage.

### **Step 1 - Determine if Previous or Separate Assessments Have Already Addressed Your Source.**

You should first determine whether you are eligible to select either Criterion *D* or *E* based on an ESA section 7 consultation previously completed by another Federal Agency (Criterion *D*) or an ESA section 10 permit (Criterion *E*) issued by the Service(s) as follows:

**Meeting Criterion D:** If consultation under section 7 of the ESA has been concluded in connection with another Federal Agency's involvement with your source, you may be eligible to select Criterion *D*. To be eligible to select Criterion *D*, you must confirm that all the following are true:

- A consultation between a Federal Agency and the Service(s) under section 7 of the ESA has been concluded. Consultations can be either formal or informal, and would have occurred in connection with a separate action by a separate Federal Agency (e.g., as part of a separate Federal Agency's authorization for you to construct or operate your business in Indian country). The consultation must have addressed the effects of the construction, modification and operation of your new or modified source on all federally-listed threatened or endangered species and all federally-designated critical habitat in your action area. The result of this consultation must be either:
  - a. A biological opinion that concludes that the construction, modification and operation of your new or modified source is not likely to jeopardize the continued existence of any listed species, nor result in the destruction or adverse modification of any designated critical habitat. The consultation must have included consideration of the effects of your facility's emissions and other related activities on all listed species and designated critical habitat in your action area; or
  - b. Written concurrence (e.g., letter of concurrence) from the applicable Service(s) with a finding that the construction, modification and operation of your new or modified source are not likely to adversely affect listed species or designated critical habitat. The consultation must have included the effects of your facility's emissions and other related activities on all the listed species and designated critical habitat in your action area.
- The consultation remains current, in accordance with 50 CFR § 402.16; or, if re-initiation of consultation is required (e.g., due to a new species listing or critical habitat designation or new information), such reinitiated consultation is concluded, and the result of the consultation is consistent with the statements above. Attach a copy of any consultation re-initiation documentation from the Service(s) or other consulting Federal Agency.

**If all of the above are true, you may select Criterion *D*.** You must also provide a description of the basis for the criterion selected. In your submittal you must also provide the Biological Opinion (or Public Consultation Tracking System tracking number) or concurrence letter and any other documentation supporting your determination.

**If any of the above is not true, you may not select Criterion *D*.** For example: if the biological opinion or written concurrence from the Service(s) did not include the effects of your source's air emissions or other-related activities as described above; or if the previous consultation covered some but not all of the listed species or critical habitat in your action area; or if the consultation is no longer current (e.g., due to new species listings); then you are not eligible under Criterion *D*.

**Meeting Criterion E:** You have obtained an incidental take permit under section 10 of the ESA, and this permit addresses the effects of the construction/modification and operation of your new or modified source on federally-listed species and designated critical habitat in your action area.

You may rely on a section 10 permit that you have previously obtained so long as it addresses the construction/modification and operation of your new or modified source and all federally-listed species and designated critical habitat in your action area. (Note: If you do not hold a section 10 permit already, you can consider obtaining one, however, it may be more efficient to instead meet the requirements for Criterion A, B or C as described in Steps 2 – 5.)

If you choose to apply for a new section 10 permit, you must follow applicable Service procedures (see 50 CFR § 17.22(b)(1) for FWS and § 222.22 for NMFS). Application instructions for section 10 permits for FWS and NMFS can be obtained by accessing the FWS and NMFS websites (<https://www.fws.gov/permits/instructions/ObtainPermit.html> and <http://www.nmfs.noaa.gov>) or by contacting the appropriate FWS and NMFS regional office.

**If the above is true, you may select Criterion E.** You must also provide a description of the basis for the criterion selected. In your submittal you must provide a copy of the permit issued by the Service(s).

**If the above is not true, you may not select Criterion E at this time and must proceed to Step 2.** For example, if a permit has been issued under section 10 of the ESA, but the permit did not consider the effects of the facility's air emissions and/or emission-related activities on all federally listed species and designated critical habitat on your species list, you are not eligible under Criterion E.

**Step 2 - Determine if Listed Threatened or Endangered Species or their Designated Critical Habitat(s) are Likely to Occur within the Action Area of your Minor Source.**

You must determine, to the best of your knowledge, whether species federally listed as either threatened or endangered, or their designated critical habitat(s), are located within the action area of your minor source.<sup>5</sup> This is a two-step process. The first step is to determine your action area. When defining the boundaries of your action area, you should take into account the following criteria:

- *Ground disturbance* – Effects during construction, maintenance and operation of the facility should be considered.
- *Changes in water quality/quantity (both surface and groundwater)* – This would include effects that may extend far beyond the footprint of the facility. An example may be stormwater runoff from impervious surfaces (containing sediments or other contaminants) on the site that may reach water bodies (including ditches that empty into water bodies) some distance from a facility. All receiving water bodies that could receive pollutants from the facility's construction, maintenance, or operation should be included in the action area.
- *Air Quality Impacts* – Effects during construction, maintenance and operation of the facility should be considered.
- *Lighting effects* – Effects during construction, maintenance and operation of the facility should be considered.
- *Noise Disturbance* – Effects during construction, maintenance and operation of the facility should be considered.

Note: If you have questions about determining the extent of the action area, you should coordinate with the

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<sup>5</sup> For definitions of terms that you might encounter when addressing the listed species requirements, go to: <http://www.fws.gov/midwest/endangered/glossary/index.html> and <http://www.fws.gov/northeast/nyfo/es/actionarea.htm>.

local Service field office as noted below. If site-specific conditions exist such that the action area would be limited to the facility footprint, but that fact may not be obvious from a map or figure, submit a narrative description of the action area in addition to a map for evaluation of the action area selected. To determine the field office that corresponds to your project site, visit: <http://www.fws.gov/endangered/regions/index.html> and <http://www.nmfs.noaa.gov/> (under the left tab for “Regions”).

After determining the boundaries of the action area, you will next determine if listed species and/or critical habitat are expected to exist there. Relevant sources of information regarding the locations of listed species and critical habitats are often organized along county and/or township lines. You should thus first identify the counties and/or townships within which your action area is located. You would then consult relevant sources of information regarding the locations of listed species and critical habitats. The local offices of the FWS and NMFS often maintain lists of federally listed threatened or endangered species on their Internet sites. For FWS terrestrial and aquatic species information, you can use the FWS on-line mapping tool, the Information, Planning, and Consultation System, located at <http://www.fws.gov/ipac/>.

In most cases, listed species and designated critical habitat lists will allow you to determine if any such species or habitat exists in your county or township. You can also find critical habitat designations and associated requirements at 50 CFR Parts 17 and 226 (see <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>). You may also use the FWS Critical Habitat Portal (see <http://criticalhabitat.fws.gov/crithab/>).

- ***If there are no listed species and/or critical habitat in the counties/townships where your action area is located, you may select Criterion A.*** You must also provide a description of the basis for the criterion selected and provide documentation supporting the criterion selected in your submittal.
- ***If there are listed species and/or critical habitat in the counties/townships in your action area,*** you should contact your local FWS or NMFS office to determine if the listed species are known to exist within the specific action area of your minor source and if any designated critical habitat areas overlap the action area of your minor source.
  - If your local FWS or NMFS office indicates that these species and/or critical habitat could exist within the action area of your minor source, you must do one of the following to determine if the species and/or critical habitat may actually be present in or may use your action area:
    - Conduct visual inspections. This method may be particularly suitable for sites that are smaller in size or located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no natural habitat.
    - Conduct a formal biological survey. In some cases, particularly for larger sites, biological surveys may be an appropriate way to assess whether species are located within the action area of your minor source. Biological surveys are frequently performed by environmental consulting firms. A biological survey may in some cases be useful to conduct in conjunction with Steps 3, 4 or 5 of these instructions.
- ***If, after performing one or more of the assessments above, you determine that there are no listed species or critical habitat in your action area, you may select Criterion A.*** You must also provide a description of the basis for the criterion selected and provide documentation supporting the criterion selected in your submittal.
- ***If listed species or critical habitat are located in your action area, then proceed to Step 3.***

**Step 3 - Determine if the Construction/Modification or Operation of Your New or Modified Minor Source is Likely to Adversely Affect Listed Threatened or Endangered Species or Designated Critical Habitat.**

If in Step 2 you determine, based on communication with your local FWS or NMFS office, or otherwise, that listed species and/or critical habitat could exist within the action area of your new or modified minor source, you must next assess whether the construction/modification or operation of your new or modified minor source is likely to adversely affect listed threatened or endangered species or designated critical habitat.

Potential adverse effects from construction/modification and operation activities include direct and indirect effects and could include, but are not limited to, the following:

- *Habitat Disturbance.* Surface disturbance activities such as excavation, site development, grading, and associated light and noise may adversely affect listed species or their habitat.
- *Operation of the Source.* Source operations could result in additional traffic, noise and light that could affect species or habitat.
- *Water-Related Impacts.* Changes in water usage or water discharges may affect listed species or their habitat.
- *Air Emission Impacts.* Increases in emission of certain pollutants may in certain cases affect vegetation growth patterns that can affect listed species or their habitat.

The scope of effects to consider will vary with each site and project. If you are having difficulty determining whether your project is likely to adversely affect listed species or critical habitat, or one of the Services has already raised concerns to you, you should contact the appropriate office of the FWS or NMFS for assistance.

- ***If adverse effects to listed threatened or endangered species or their critical habitat are not likely, then you may select Criterion B.*** You must provide the following specific information with your submittal:
  1. The federally listed species and/or designated habitat that are located within the action area of your minor source;
  2. The distance between your site and the listed species or designated critical habitat (in miles); and
  3. Any other information necessary to show that the construction/modification and operation of your source are not likely to cause any adverse effects to the listed threatened or endangered species or their critical habitat.
- ***If adverse effects to listed threatened or endangered species or their critical habitat are likely,*** you must follow Step 4 below.

**Step 4 - Determine if Measures Can Be Implemented to Avoid Adverse Effects.**

If you determine in Step 3 that adverse effects from the construction/modification or operation of your new or modified minor source are likely to occur, you can still select eligibility Criterion B if you undertake appropriate measures to avoid or eliminate the likelihood of adverse effects prior to seeking coverage under the General Permit. These measures may involve relatively simple changes to construction activities such as re-routing construction to bypass an area where species are located, relocating source activities, or modifying the “footprint” of the site.

- ***If you are able to implement appropriate measures to avoid the likelihood of adverse effects, then you may select Criterion B.*** The measures you adopt to avoid or eliminate adverse effects must be implemented for the duration of the construction/modification and operation of your new or modified minor source and your coverage under this General Permit. You must also provide a description of the basis for the criterion selected, and the following specific information in your documentation: (1) the federally listed species and/or

designated habitat that are located within the action area of your minor source; (2) the distance between your source and the listed species or designated critical habitat (in miles); and (3) what steps were or will be taken to avoid the likelihood of adverse effects.

- ***If you cannot determine sufficient measures to implement to avoid the likelihood of adverse effects, you must follow the procedures in Step 5.***

**Step 5 - Coordinate with the Service(s).**

If in Step 4 you cannot determine sufficient measures to avoid the likelihood of adverse effects, you must contact the applicable Service(s). You may still be eligible for coverage under the General Permit if the likely adverse effects can be addressed through meeting Criterion C.

- **Criterion C:** You have coordinated with the Service(s) and have addressed the effects of the construction/modification and operation of your new or modified minor source on federally-listed threatened or endangered species and federally-designated critical habitat. The Service(s) must provide written concurrence that the construction/modification and operation of your new or modified minor source is not likely to adversely affect listed species or critical habitat.
  - ***If you have obtained the Service(s) written concurrence as described above,*** then you may select Criterion C. As part of your submittal, you must provide a description of the basis for the criterion selected and must include copies of the correspondence between you and the applicable Service(s).

## Appendix B – Historic Property Screening Process

### Section 1: Background

The purpose of this appendix is to assist you in completing the screening procedure for addressing historic properties that are either listed on, or eligible for listing on, the National Register for Historic Places prior to submitting your Request for Coverage under a General Air Quality Permit for New or Modified Minor Source Hot Mix Asphalt Plants in Indian Country. In order to be eligible for coverage under the General Permit, you must demonstrate that you qualify under one of the criteria listed in this appendix with respect to the protection of historic properties under the NHPA.

To address any issues relating to historic properties, the EPA has developed the screening process in this appendix to enable source owners/operators to: (1) appropriately consider the potential impacts, if any, resulting from the construction, modification, and/or operation of a new or modified emission source on historic properties and, (2) if applicable, determine whether actions can be taken to mitigate any such impacts. Although each decision that a specific minor source meets the requirements for coverage under this General Permit does not constitute a separate Federal undertaking, the screening process in this appendix provides an appropriate site-specific means of addressing historic property issues in connection with coverage under the General Permit.

If the impacts from your source have already been reviewed under another Federal agency's approval process (e.g., the Bureau of Indian Affairs authorizing operation of your source in Indian country) then documentation from that review may satisfy the requirements of this section. In some cases, the review by another agency will have evaluated the impacts from site disturbance activities (e.g., site clearing), but not from air emissions. In such cases supplemental evaluation may be required to complete the analysis.

### Section 2: Instructions for Source Owners/Operators

You are required to follow the screening process in this appendix to determine if the construction, modification or operation of a new or modified minor source of air pollutants on your site has the potential to cause effects to historic properties, and whether or not you need to contact your State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), or other tribal representative for further information. The following four steps describe how applicants can meet the historic property requirements under this permit.

#### Key Terms

**Historic property**– prehistoric or historic districts, sites, buildings, structures, or objects that are included in or eligible for inclusion in the National Register of Historic Places, including artifacts, records, and remains that are related to and located within such properties

**SHPO**– The State Historic Preservation Officer for a particular state

**THPO or Tribal representative**– The Tribal Historic Preservation Officer for a particular Tribe or, if there is no THPO, the representative designated by such Tribe for NHPA purposes

***Step 1 - Have prior professional cultural resource surveys or other evaluations determined whether historic properties exist in the area of your proposed source? Or, have prior earth disturbances precluded the existence of historic properties in the area of your proposed source?***

If it has already been determined that no historic properties exist in the area of your proposed source based on available information, including information that may be provided by your applicable SHPO, THPO, or other tribal representative, then you may submit the appropriate documentation of “**no historic properties affected**” with your submittal, and no further screening steps are necessary.

Similarly, if earth disturbances that have occurred prior to your project have eliminated the possibility that historic properties exist on your site or in the area affected by your new or modified minor source, then you may submit the appropriate documentation of “**no historic properties affected**” with your submittal, and no further screening steps are necessary.

During the 30-day period following receipt of your screening process documentation by the EPA, the SHPO, THPO, or other tribal representative may request that the EPA deny coverage under the General Permit based on concerns about potential adverse impacts to historic properties. The EPA will evaluate any such request and notify you if any additional information is needed to address adverse impacts to historic properties.

***Step 2 - If you are constructing, or modifying a minor source of air pollutants, as defined in 40 CFR § 49.152, you must determine if the construction, modification or operation of the minor source will have an effect on historic properties.***

If your answer to the questions in Step 1 is “no,” then you must assess whether the activities related to the construction, modification or operation of your new or modified minor source will have an effect on historic properties. Activities that could have an adverse effect on historic properties could include, for example:

- Excavations;
- Demolitions of existing buildings;
- Construction of foundations (e.g., for buildings, tanks or stacks);
- Installations of underground tanks;
- Addition of impervious surfaces; and
- Increases in truck traffic during excavation, demolition, or construction.

*Note: This list is not intended to be exhaustive. Other activities that are not on this list may involve earth-disturbing activities and must also be examined for their potential to affect historic properties. For more information, go to the National Park Service, National Register of Historic Places database found at <http://www.nps.gov/history/nr/research/index.htm>.*

The assessment may be based on a site map of your source and an analysis of historical sources, knowledge of the area, an assessment of the types of activities you are engaging in, considerations of any controls and/or management practices you will adopt to ensure that your activities will not have an effect on historic properties, and any other relevant factors.

If you determine based on this assessment that the activities related to the construction, modification or operation of your new or modified minor source will not cause effects to historic properties, then you may submit the appropriate documentation of **“no historic properties affected”** with your submittal, and no further screening steps are necessary. During the 30-day period following receipt of your screening process documentation by the EPA, the SHPO, THPO, or other tribal representative may request that the EPA delay your coverage under the General Permit based on concerns about potential adverse impacts to historic properties. The EPA will evaluate any such request and notify you if any additional information is needed to address adverse impacts to historic properties.

If you are installing or modifying equipment that has the potential to have an adverse effect on historic properties, then you must proceed to Step 3.

***Step 3 - If you are constructing or modifying a minor source and you have not satisfied the conditions in Steps 1-2, you must contact and consult with the appropriate historic preservation authorities.***

Where you are constructing or modifying a minor source and you cannot determine in Step 2 that this activity will not have effects on historic properties, then you must contact the relevant SHPO, THPO, or other tribal representative to request their views as to the likelihood that historic properties may be adversely affected by the construction, modification or operation of your new or modified minor source.

*Note: Addresses for SHPOs and THPOs may be found on the Advisory Council on Historic Preservation’s (ACHP’s) website (<http://www.achp.gov/programs.html>). In instances where a tribe does not have a THPO, you should contact the appropriate Tribal government office designated by the tribe for this purpose when responding to this permit eligibility condition.*

You must submit the following minimum information in order to properly initiate your request for information:

1. Project name (i.e., the name or title most commonly associated with your project);
2. A narrative description of the project;
3. Name, address, phone and fax number, and email address (if available) of the operator;
4. Most recent U.S. Geological Survey map section (7.5-minute quadrangle) showing actual project location and boundaries clearly indicated; and
5. Sections of site map that show locations where activities might cause an adverse effect on historic properties.

Without submitting this minimum information, your request cannot be considered. You will need to provide the SHPO, THPO, or other tribal representative a minimum of 15 calendar days after they receive these materials to respond to your request for information about your project. You are advised to get a receipt from the post office or other carrier confirming the date on which your letter was received.

If you do not receive a response within 15 calendar days after receipt by the SHPO, THPO, or other tribal representative of your request, then you may indicate this in your submittal, and no further screening steps are necessary. Or, if the applicable SHPO, THPO, or other tribal representative responds to your request with an indication that no historic properties will be adversely affected by the construction or modification of your minor source, then you may submit the appropriate documentation of **“no adverse effects”** with your submittal, and no further screening steps are necessary.



If within 15 calendar days of receipt of your request the applicable SHPO, THPO, or other tribal representative responds with a request for additional information or for further consultation regarding appropriate measures for treatment or mitigation of effects on historic properties caused by the construction, modification or operation of your minor source, you must comply with this request and proceed to Step 4.

During the 30-day period following receipt of your screening process documentation by the EPA, the SHPO, THPO, or other tribal representative may request that the EPA place a hold on authorization based on concerns about potential adverse impacts to historic properties. The EPA will evaluate any such request and notify you if any additional information is needed to address adverse impacts to historic properties before continuing review of your Request for Coverage under the general permit.

**Step 4 - Consultation with your applicable SHPO, THPO, or other tribal representative.**

If, following your discussions with the appropriate historic preservation authorities in Step 3, the applicable SHPO, THPO, or other tribal representative requests additional information or further consultation, you must respond with such information or consult to determine impacts and appropriate measures to mitigate such impacts to historic properties that may be caused by the construction, modification or operation of your new or modified minor source site. If after consultation it is determined that there will be no adverse effects to historic properties, then you may submit the appropriate documentation of “**no adverse effects**” with your submittal, and no further screening steps are necessary. If as a result of your discussions with the applicable SHPO, THPO, or tribal representative, you enter into, and comply with, a written agreement regarding treatment and/or mitigation of impacts on your site, then you may submit the appropriate documentation of “**adverse effects**” with your submittal.

If, however, agreement on an appropriate treatment or mitigation plan cannot be reached between you and the SHPO, THPO, or other tribal representative within 30 days of your response to the SHPO, THPO, or other tribal representative’s request for additional information or further consultation, you may submit your screening process documentation, but you must indicate that you have not negotiated measures to avoid or mitigate such effects. You must also include the following with your submittal:

1. Copies of any written correspondence between you and the SHPO, THPO, or other tribal representative; and
2. A description of any significant remaining disagreements as to mitigation measures between you and the SHPO, THPO, or other tribal representative.

During the 30-day period following receipt of your submittal by the EPA, the SHPO, THPO, ACHP or other tribal representative may request that the EPA place a hold on confirmation based upon concerns regarding potential adverse effects to historic properties. The EPA, in coordination with the SHPO, THPO, ACHP or other tribal representative, will evaluate any such request and notify you if any additional measures to address potential adverse effects to historic properties are necessary.