



**Southern Ute Indian Tribe/State of Colorado Environmental Commission's
Minor Source Program**

Approved by Southern Ute Indian Tribe/State of Colorado Environmental Commission
_____, 2011

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PART 4. MINOR SOURCE PROGRAM

5-101. Program overview.

(1) *What is the purpose of this program?* This program has the following purposes:

(a) It establishes a permitting program for existing minor sources and a preconstruction permitting program for new minor sources, modifications at minor sources, and minor modifications at major stationary sources located within the exterior boundaries of the Reservation, and it authorizes the imposition of emission limits and controls.

(b) It provides a mechanism for a source to voluntarily establish permit limits to become a synthetic minor source. Such limits must be enforceable as a practical matter.

(c) It sets forth the criteria and procedures that the Tribe will use to administer the program.

(2) *When and where does this program apply?* The provisions of this program apply within the exterior boundaries of the Reservation upon the effective date established by the Environmental Commission.

(3) *What general provisions apply under this program?* The following general provisions apply to you as an owner/operator of a stationary source:

(a) If you own or operate an existing minor source, you must submit an application for a minor source permit under this program within 18 months after the effective date of this program, as specified in § 5-105(1) of this program.

(b) If you apply for coverage under a general permit for your new or existing source, you may commence construction or operation as specified in § 5-107(6) of this program.

(c) If you propose to construct a new minor source, a modification at a minor source, or a minor modification at a major stationary source you must obtain a minor source permit under this program before commencing construction. If you commence construction after the effective date of this program without applying for and receiving a permit pursuant to this program, you will be subject to appropriate enforcement action. If you begin activities such as installation of building supports and foundations, laying of underground pipe work, or permanent storage, so long as these

activities do not cause an increase in the potential to emit of the source, prior to obtaining any required permits, you do so at your own risk; a permit may not be issued or may not contain the terms you desire.

(d) If you construct or operate your source or modification not in accordance with the terms of your minor source permit, you will be subject to appropriate enforcement action.

(e) Issuance of a permit does not relieve you of the responsibility to comply fully with applicable provisions of any EPA-approved implementation plan and any other requirements under applicable law.

(f) No reports or emission fees shall be submitted under this program that serve the same purpose and are also required to be submitted under a source's current Part 70 or Part 71 operating permit.

(4) *What is the process for issuing permits under this program?* For the Tribe to issue a final permit decision under this program the actions listed in paragraphs (a) through (h) below need to be completed. This paragraph (4) does not apply to sources requesting coverage under a general permit.

(a) You must submit a permit application that meets the requirements of § 5-105 of this program.

(b) The Tribe determines completeness of the permit application as provided in § 5-105(4) of this program.

(c) The Tribe determines the appropriate emission limitations for your affected emissions units under § 5-105(5) of this program.

(d) Where the Tribe has reason to be concerned that the construction of your minor source or modification would cause or contribute to a National Ambient Air Quality Standard (NAAQS) violation, you must submit an air quality analysis upon request by the Tribe.

(e) The Tribe determines that the new or modified source will not cause or contribute to a NAAQS violation.

(f) The Tribe develops a draft permit that meets the permit content requirements of § 5-106 of this program.

(g) The Tribe provides for public participation according to the requirements of § 5-109 of this program.

(h) The Tribe either issues a final permit that meets the requirements of § 5-106 of this program, or denies the permit and provides the reason for the denial.

5-102. Definitions.

(1) For sources of regulated air pollutants in attainment or unclassifiable areas, the definitions in 40 CFR § 52.21 and in §1-103 of this Code apply to the extent that they are used in this program (except for terms defined in paragraph (4) of this section).

(2) For sources of HAPs, the definitions in 40 CFR § 63 apply to the extent that they are used in this program (except for terms defined in paragraph (4) of this section).

(3) Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and its implementing regulations and § 1-103 of this program.

(4) The following definitions also apply to this program:

(a) *Actual emissions* means for purposes of calculating emissions fees pursuant to § 5-115 of this program, the amount of emissions, including fugitive emissions from a source subject to this program that is calculated by using:

(i) the actual rate of emissions in tons per year (TPY) of any fee pollutant emitted from a source over the preceding calendar year or any other period determined by the Tribe to be more representative of normal operation and consistent with the fee schedule adopted by the Tribe; and

(ii) the source's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year or other period used for this calculation;

(iii) you may choose to report actual emissions of your unit or source as equal to the potential to emit of your unit or source.

(iv) In the absence of actual operating hours, the operator shall assume 8760 annual hours of operation.

(v) Actual emissions shall not include any insignificant emissions.

(b) *Affected emissions units* means the following emissions units, as applicable:

- (i) For a proposed new minor source, all the emission units.
- (ii) For a proposed modification, the new, modified, and replacement emissions units involved in, or affected by, the modification.
- (iii) For existing minor sources, all the emission units.

(c) *Allowable emissions* means “allowable emissions” as defined in 40 CFR § 52.21(b)(16), except that the allowable emissions for any emissions unit are calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(d) *Authorized representative* means an individual selected by the owner or operator who is approved to represent the company in aspects related to the Minor Source Program. The authorized representative shall be responsible for, or oversee those individuals responsible for, emissions calculations, submittal of applications, and compliance assurance under this program.

(e) *Best available control technology (“BACT”)* means an emission limitation based on the maximum degree of reduction of each regulated air pollutant subject to regulation under this program emitted from or which results from any minor source, which the Tribe, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other factors, determines is achievable for such source through application of production processes and available methods, systems, and techniques.

(f) *Commence* as applied to construction or modification of a minor source means that the owner or operator has all necessary preconstruction approvals or permits and has begun, or caused to begin, a continuous program of actual on-site construction or modification of an emissions unit, to be completed within a reasonable time.

(g) *Construction* means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in an increase in the potential to emit of the source. Construction does not include site clearing, grading activities, installation of building supports and foundations, lying of underground pipe work, and construction of permanent storage structures in as much as these activities do not cause an increase in the potential to emit of the source.

(h) *Emergency* means any situation arising from sudden and unforeseeable events beyond the control of the permittee including acts of God, which situation requires immediate corrective action to restore normal operation. An emergency may cause the source or unit to exceed a technology-based emission limitation under its permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation or operator error.

(i) *Enforceable as a practical matter* means that an emission limitation is both legally and practically enforceable as follows:

(i) An emission limitation is “legally enforceable” if the Tribe has the right to enforce it.

(ii) Practical enforceability for an emission limitation in a permit for a source is achieved if the permit’s provisions specify:

(A) A limitation and the emissions unit(s) at the source subject to the limitation;

(B) The time period for the limitation (e.g., hourly, daily, monthly, and/or annual limits such as rolling annual limits); and

(C) The method to determine compliance, including appropriate monitoring, recordkeeping, reporting, and testing.

(iii) For rules and general permits that apply to categories of sources, practicable enforceability additionally requires that the provisions:

(A) Identify the types or categories of sources that are covered by the rule or general permit;

(B) Where coverage is optional, provide for notice to the Tribe of the source’s election to be covered by the rule or general permit; and

(C) Specify the enforcement consequences relevant to the rule or general permit.

(j) *Environmental Commission* means the Southern Ute Indian Tribe/State of Colorado Environmental Commission.

(k) *Existing minor source or existing source* means a minor source that was in operation or commenced construction within the exterior boundaries of the Reservation as of the effective date of this program.

(l) *Horsepower (hp)*, unless otherwise noted, means the maximum nameplate horsepower of an engine de-rated for elevation according to the manufacturer specifications.

(m) *Insignificant emissions* means, a potential to emit for any single emissions unit not exceeding 0.5 tons per year of any single regulated air pollutant with the exception of lead.

(n) *Minor source threshold* means any of the applicability cutoffs for this program listed in Table 1 of § 5-103 of this program.

(o) *Minor stationary source or minor source* (“source”) means a stationary source or group of stationary sources located on one or more contiguous or adjacent properties, under control of the same person (or persons under common control) belonging to a single, major industrial grouping that has the potential to emit regulated air pollutants in amounts that are less than the major stationary source levels in 40 CFR § 52.21, and is subject to this program. A stationary source is not a mobile source. The term “minor source” applies independently to each regulated air pollutant that the source has the potential to emit.

(p) *Mobile source* means motor vehicles, engines, and equipment that emit air pollutants while moving and that commonly move, or can be moved, from site to site. Mobile sources include vehicles that operate on roads and highways (“on-road”), as well as nonroad vehicles, engines, and equipment. Examples of mobile sources are cars, trucks, buses, earth-moving equipment, lawn and garden power tools, ships, railroad locomotives, and airplanes.

(q) *Modification* means any physical or operational change at a source that would cause a net increase in the potential to emit of the affected emissions units for any regulated air pollutant, in amounts at or greater than those listed in Table 1 of § 5-103, or any increase in the allowable emissions at the source (calculated per § 5-108(1)) The following exemptions apply:

(i) A physical or operational change does not include routine maintenance, repair, or replacement.

(ii) An increase in the hours of operation or in the production rate is not considered an operational change unless such increase is

prohibited under any federally-enforceable permit condition or other permit condition that is enforceable as a practical matter.

(r) *New minor source or new source* means a minor source that commences construction or begins operations after the effective date of this program.

(s) *Portable source* (excluding non-road engines) means any stationary source that is commonly and by usual practice transported and operated in more than one location for a limited period of time. Examples include, but are not limited to, asphalt batch plants and portable compressor engines. Portable sources must meet all the requirements of this program. A source will not be considered portable if it remains on one site for more than two years.

(t) *Potential to emit* means the maximum capacity of a source or unit to emit air pollutants under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit air pollutants, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter. Secondary emissions, as defined at 40 CFR § 52.21(b)(18), do not count in determining the potential to emit of a source.

(u) *Regulated air pollutant* means any regulated air pollutant pursuant to § 1-103(54) except that, for the purposes of this program, greenhouse gases are excluded unless a source is seeking to establish synthetic minor status for a greenhouse gas regulation to which it would otherwise be subject.

(v) *Synthetic minor source* means a source that has taken a limit(s) such that it is no longer subject to a specific, potentially applicable, program or regulation. Such limits must be enforceable as a practical matter.

(w) *Unit* means a single apparatus that emits air pollutants.

5-103. Applicability.

(1) *Does this program apply to me?* This program applies to minor stationary sources within the exterior boundaries of the Southern Ute Indian Reservation except that it does not apply to the following activities or sources that are listed in paragraphs (a) through (p) below unless specifically requested by the applicant.

- (a) Mobile sources.
- (b) Air-conditioning units used for comfort that are not subject to applicable requirements under title VI of the Clean Air Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process.
- (c) Ventilating units used for comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process.
- (d) Heating units used for comfort that do not provide heat for any manufacturing or other industrial process.
- (e) Noncommercial food preparation.
- (f) Consumer use of office equipment and products.
- (g) Janitorial services and consumer use of janitorial products.
- (h) Internal combustion engines used for landscaping purposes.
- (i) Bench scale laboratory activities, except for laboratory fume hoods or vents.
- (j) Minor sources used in connection with agricultural activities.
- (k) Emergency generators (i.e., generators whose sole function is to provide backup power when electric power from the local utility is interrupted) which are in operation less than or equal to 500 hours per year. Emergency generators may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by the Tribe or Federal government, the manufacturer, the vendor, or the insurance company associated with the engine. Maintenance checks and readiness testing of such units is limited to 100 hours per year. This exemption does not apply to units operating under, or which should be operating under, the alternative operating scenario provisions at §§ 5-105(3)(d)(ii) and 5-106(1)(g)(viii).
- (l) Maintenance activities, including but not limited to, hand held aerosols, solvent usage, painting of equipment, and welding.
- (m) Catalytic heaters fired on natural gas.
- (n) Natural gas fired heaters with a rating less than 5 million Btu/hr.
- (o) Drilling rigs, workover rigs, completion rigs, and all equipment

and activities associated with well drilling, workovers, and completions.

(p) Insignificant emissions units.

(2) *Do the permitting requirements of this program apply to me?* The permitting requirements of this program apply to your source as set out in paragraph (a) below, unless you are eligible for a permitting exemption under paragraph (b) below.

(a) Existing, new and modified sources. The applicability of the permitting requirements of this program is determined individually for each regulated air pollutant that is emitted by your source. For each regulated air pollutant, determine applicability as set out in the following paragraphs (i)(A)-(C) below. Flowchart 1 is provided as an aid for making the applicability determination.

(i) Sources are subject to the permitting requirements of this program if they meet any of the criteria in (A) through (C) below.

(A) If the potential to emit for any regulated air pollutant is greater than the minor source permitting threshold in Table 1, and less than the major stationary source threshold, and the source does not have a current tribally issued minor source permit, you must apply for a minor source permit under of this program.

(B) If you are proposing a modification (as defined in § 5-102 of this program) at a minor source, or a minor modification at a major stationary source, you must either submit an application for a modification or a revision according to §§ 5-108 or 5-109 of this program as applicable.

(C) If the potential to emit any regulated air pollutant is greater than the major stationary source threshold and you propose to establish synthetic minor limits, you may apply for a permit under this program.

(b) Engines less than 100 hp are exempt from the BACT requirements of § 5-105(5) of this program until such time that appropriate emission controls exist for these units. At such time, engines less than 100 hp will be considered affected emissions units, as applicable, for modifications, revisions, and proposed new source permitting actions where those units are affected.

Table 1 to 5-103. Minor Source Program Thresholds.

Regulated Air Pollutant	Permitting Thresholds (TPY)
Carbon monoxide	10
Oxides of nitrogen	10
Sulfur dioxide	10
VOC	5
PM	10
PM-10	5
PM-2.5	3
Lead	0.1
Fluorides	1
Sulfuric acid mist	2
Hydrogen sulfide (H ₂ S)	2
Total reduced sulfur (including H ₂ S)	2
Reduced sulfur compounds (including H ₂ S)	2
Waste combustor emissions	2
Solid waste landfills emissions (measured as Non Methane Organic Compounds)	10

5-104. Certification for all submissions.

Any application, form, report, or other document submitted by the applicant or permittee pursuant to this program shall contain a certification by an authorized representative of truth, accuracy, and completeness. This certification and any other certification required under this program shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

5-105. Permit application requirements.

This section applies to you if you are subject to this program under § 5-103(2)(a) of this program for existing sources, the construction of new minor sources, or modifications. Alternatively, you may apply for a general permit under § 5-107 of this program if an applicable general permit is available for your source type.

- (1) *When must I submit my permit application?*
 - (a) For new minor sources and modifications, your permit application must be submitted prior to construction.
 - (b) For existing sources, permit applications are due for 1/3 of your existing sources by [T.B.D. based on effective date of program]; applications for the second 1/3 of your sources are due by [T.B.D. based on effective date of program]; and applications for the remaining 1/3 of your sources are due by [T.B.D. based on effective date of program]. Owners/operators shall determine which of their sources' permit applications shall be due on each of the dates indicated. If an owner or operator has fewer than 3 sources subject to permitting requirements under this program, all permit applications shall be due by [T.B.D. based on effective date of program].
 - (c) Existing sources establishing synthetic minor status must obtain a minor source permit through this program or through a federal permitting program prior to receiving a Part 70 permit from the Tribe.
- (2) *Where do I submit my permit application?* Submit your permit application to:

Southern Ute Indian Tribe
Attn: Air Quality Program - Minor Source Program
c/o Environmental Programs Division
P.O. Box 737 MS# 84
Ignacio, Colorado 81137

Online submission of applications and other forms will be accepted as soon as such capabilities are developed by the Tribe.

Permit applications can be delivered by hand to the Environmental Programs Division, Air Quality Program at 116 Mouache Drive in Ignacio, Colorado.
- (3) *What information must my permit application contain?* Paragraphs (a) through (d) below govern the content of your application.

(a) General provisions for permit applications. The following provisions apply to permit applications under this program:

(i) The Tribe will develop permit application forms for your use.

(ii) The permit application for a modification, and the notice of a revision, need only include information on the affected emissions units.

(b) Required permit application content. Except as specified in paragraph (a)(ii) of this section, you must include the information listed in paragraphs(i) through (xii) below in your application for a permit under this program. The Tribe may require additional information as needed to process the permit application.

(i) Identifying information, including your company name and address, source name and address, and permit contact information (i.e., contact information for authorized representative).

(ii) A process and product description.

(iii) A list of all affected emissions units (with the exception of the exempted units and activities listed in § 5-103(1) of this program).

(iv) For each existing emissions unit, the potential to emit and actual emissions for the most recent calendar year of each regulated air pollutant in TPY (including fugitive emissions estimates).

(v) For each proposed new emissions unit, the potential to emit and estimated actual emissions of each regulated air pollutant in TPY (including fugitive emissions estimates), with supporting documentation. In your calculation of the potential to emit for an emissions unit, you must account for any proposed emission limitations.

(vi) For each proposed modified emissions unit, replacement unit, or otherwise affected emissions unit that is listed, the allowable emissions of each regulated air pollutant in TPY both before and after the modification (including fugitive emissions estimates), with supporting documentation. For emissions units that do not have an allowable emissions limit prior to the proposed modification, report the potential to emit and estimated actual

emissions. In your calculation of annual allowable emissions for an emissions unit after the proposed modification, you must account for any proposed emission limitations.

(vii) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(viii) Identification and description of any existing air pollution control equipment and compliance monitoring devices or activities which have been installed or undertaken to comply with any applicable regulation.

(ix) Any existing work practice standards or limitations on source operation affecting emissions, where applicable, for all regulated air pollutants at the source.

(x) A best available control technology (BACT) proposal for each affected emission unit. If installation of BACT, and the proposed limits on a unit, is intended to establish synthetic minor status for an applicable regulation(s), indicate the applicable regulation(s) for which the unit would otherwise be subject.

(xi) For each regulated air pollutant or HAP emitted from each affected emissions unit, for which an emission limit is being proposed, the following information:

(A) A proposed emission limitation which may include pollution prevention techniques, air pollution control devices, design standards, equipment standards, work practices, operational standards, or a combination thereof. Proposed emission limitations must have a reasonably short averaging period, taking into consideration the operation of the source and the methods to be used for demonstrating compliance;

(B) A proposed testing, monitoring, recordkeeping, and reporting requirements to be used to demonstrate and assure compliance with the proposed limitation;

(C) A description and estimated efficiency of air pollution control equipment, if any, under present or anticipated operating conditions;

(D) Estimates of the allowable emissions or potential to

emit that would result from compliance with the proposed limitation, including all calculations for the estimates;

(xii) Estimates of actual emissions must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the Tribe. Any emission estimates submitted to the Tribe must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

- (A) Source-specific emission tests,
- (B) Mass balance calculations,
- (C) Published, verifiable emission factors that are applicable to the source,
- (D) Other engineering calculations, or
- (E) Other procedures to estimate emissions specifically approved by the Tribe.

(c) Other relevant information as the Tribe may reasonably require or which is required by any applicable requirements.

(d) Optional permit application content. You may propose the following:

(i) Emission limitations for any affected emissions unit that are more stringent than the proposed BACT.

(A) These emission limits may be used to establish synthetic minor status for an applicable regulation or program.

(B) If these emission limitations are intended to establish synthetic minor status, indicate the applicable regulation(s) or program(s) for which the unit, or source, would otherwise be subject and include limits on the source wide PTE, if applicable.

(ii) For each reasonably anticipated alternative operating scenario (e.g., like-kind engine exchange) identified by the applicant, all of the information required in paragraphs (3)(b) through (d) of this section, as well as additional information determined to be necessary by the Tribe to define such alternative operating scenarios identified by the applicant.

(4) *How is my permit application determined to be complete?* Paragraphs (a) through (d) below govern the completeness review of your permit application.

(a) An application for a permit under this program will be reviewed by the Tribe within 45 days of its receipt to determine whether the application contains all the information necessary for processing the application. You should contact the Tribe to find out the date of receipt of the application.

(b) If the Tribe determines that the application is not complete, it will request additional information from you as necessary to process the application. If the Tribe determines that the application is complete, it will notify you in writing or with an online notification. If the Tribe does not mail you a request for additional information or a notice of complete application within 45 days after its receipt of your application, your application will be deemed complete.

(c) If, while processing an application that has been determined to be complete, the Tribe determines that additional information is necessary to evaluate or take final action on the application, it may request additional information from you and require your response within a reasonable time period.

(d) If the Tribe requests additional information, before or after a completeness determination has been made, the period of time from the Tribe's request for additional information until receiving that information from the applicant shall not count against any timeframe requirements under this program.

(5) *How will the Tribe determine the emission limitations that will be required in my permit?* After establishing that your application is complete, the Tribe will make a BACT determination, on a case-by-case basis, as to the appropriate level of control, if any, as well as the corresponding emission limitations for the affected emissions units at your source.

(a) In carrying out this case-by-case BACT determination, the Tribe will consider the following factors:

(i) The BACT proposal(s) submitted with the application.

(ii) Source location and local air quality conditions.

(iii) Typical control technology or other emissions reduction measures used by similar units in surrounding areas.

(iv) Cost-effective emission reduction alternatives.

(v) Any contractual commitment for certain emission limitations or controls.

(vi) Other factors that the Tribe determines are appropriate for the source.

(b) The Tribe must require an emission limit (i.e., a limit on the quantity, rate, or concentration of emissions) for each affected emissions unit at your source for which such a limit is technically feasible and economically reasonable.

(c) Emission limitations required by the Tribe may consist of emission limits, pollution prevention techniques, design standards, equipment standards, work practice standards, operational standards, or any combination thereof.

(6) *When may the Tribe require an air quality impacts analysis (AQIA)?* Paragraphs (a) through (c) below govern AQIA requirements under this program.

(a) Where the Tribe has reason to be concerned that the construction of your minor source or modification would cause or contribute to a NAAQS violation, it may require you to conduct and submit an AQIA.

(b) If required, you must conduct the AQIA using the dispersion models and procedures of 40 CFR part 51, Appendix W, or other methods or procedures approved by the Tribe.

(c) If the AQIA reveals that construction of your source or modification would cause or contribute to a NAAQS violation, the Tribe must require you to reduce such impacts before it can issue you a permit.

(7) *What is the time period for the completion for the Tribe's BACT determination and the preparation of a draft permit?* Except when an AQIA is requested and except when the application is for a synthetic minor permit, the Tribe's BACT determination will be completed and a draft permit prepared within 60 days of the date the application is determined to be complete. If an AQIA is requested, the Tribe's BACT determination will be completed and a draft permit prepared within 60 days of the receipt of the AQIA.

5-106. Permit Content.

This section applies to your permit if you are subject to this program under § 5-103(2)(a) or 5-108 of this program for existing minor sources, construction of new minor sources, or modifications, unless you applied for coverage under a general permit

under § 5-107 of this program (where an applicable general permit is available for your source type).

(1) *What information must my permit include?* Your permit must include the requirements in paragraphs (a) through (g) below.

(a) *General requirements.* The following elements must be included in your permit:

(i) The effective date of the permit and, for a proposed new minor source or modification, the date by which you must commence construction in order for your permit to remain valid (i.e., 18 months after the permit effective date).

(ii) The date by which an existing source must come into compliance with any new emission limitations and control requirements which, unless otherwise specified in the permit, will be three years from the date of permit issuance.

(iii) The affected emissions units and their associated emission limitations.

(b) *Emission limitations.* The permit must include the emission limitations determined by the Tribe under § 5-105(5) of this program for each affected emissions unit.

(c) *Monitoring requirements.* The permit must include monitoring requirements sufficient to assure compliance with the emission limitations that apply to the affected emissions units at your source. The Tribe may require, as appropriate, any of the requirements in paragraphs (i) through (ii) below.

(i) Any emissions monitoring, including analysis procedures, test methods, periodic testing, instrumental monitoring, and non-instrumental monitoring. Such monitoring requirements shall assure use of test methods, units of measurement, averaging periods, and other statistical conventions consistent with the required emission limitations.

(ii) As necessary, requirements concerning the use, maintenance, and installation of monitoring equipment or methods.

(d) *Recordkeeping requirements.* The permit must include recordkeeping requirements sufficient to assure compliance with the emission limitations and monitoring requirements, and must require the elements in paragraphs (i) and (ii) below.

- (i) Records of required monitoring and emissions testing information that includes the information in paragraphs (A) through (F) below, as appropriate.
- (A) The location, date, and time of sampling or measurements.
 - (B) The date(s) analyses were performed.
 - (C) The company or entity that performed the analyses.
 - (D) The analytical techniques or methods used.
 - (E) The results of such analyses.
 - (F) The operating conditions existing at the time of sampling or measurement.
- (ii) Retention for 5 years of records of all required monitoring data and support information for the monitoring sample, measurement, report, and application.
- (e) *Reporting requirements.* The permit must include the reporting requirements in paragraphs (i) through (vi) of this section.
- (i) Annual submittal of required fees and emissions inventory.
 - (ii) Annual reporting of excess emissions or noncompliance with any other limitations assumed to establish synthetic minor status including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken, unless otherwise stated in your permit.
 - (iii) Portable sources shall submit relocation notices, on a form developed by the Tribe for this purpose, to the Tribe no later than 10 business days prior to commencement of relocation.
 - (iv) For emergencies, the report must be made verbally by telephone or in person by the close of business the next working day upon discovery of the occurrence, and in writing within 10 working days from discovery of the occurrence.
 - (v) Annual reports shall be due no later than August 1st following the source's anniversary of start up of operations.

(f) *Severability clause.* The permit must include a severability clause to ensure the continued validity of the other portions of the permit in the event of a challenge to a portion of the permit.

(g) *Additional provisions.* The permit must also contain provisions stating the requirements in paragraphs (i) through (ix) below.

(i) You, as the permittee, must comply with all conditions of your permit, including emission limitations that apply to the affected emissions units at your source. Noncompliance with any permit term or condition is a violation of the permit and may constitute a violation of the program and is grounds for enforcement action and for a permit termination or revocation.

(ii) Your permitted source must not cause or contribute to a NAAQS violation.

(iii) It is not a defense for you, as the permittee, in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(iv) The permit may be revised, reopened, revoked and reissued, or terminated for cause. The filing of a request by you, as the permittee, for a permit revision, revocation and re-issuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(v) The permit does not convey any property rights of any sort or any exclusive privilege.

(vi) You, as the permittee, shall furnish to the Tribe, within a reasonable time, any information that the Tribe may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit. For any such information claimed to be confidential, you must also submit a claim of confidentiality in accordance with § 5-117 of this program.

(vii) Inspection and entry provisions requiring that upon presentation of proper credentials, you, as the permittee, must allow a representative of the Tribe to:

(A) Enter upon your premises where a source is located or emissions-related activity is conducted, or where records are required to be kept under the conditions of the permit;

(B) Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;

(C) Inspect, during normal business hours or while the source is in operation, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(D) Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements; and

(E) Record any inspection by use of written, electronic, magnetic and photographic media in accordance with established safe work practices.

(viii) Any alternative operating scenarios proposed by the applicant and approved by the Tribe.

(ix) Prior to a relocation of a portable source to an existing stationary source that would cause a change in applicability of any regulations to the stationary source you shall obtain a permit under this program to incorporate the change(s) into the stationary source permit.

(2) *Can my minor source permit become invalid?* Your permit becomes invalid if you do not commence construction on a new source or modification within 18 months after the effective date of your permit, if you discontinue construction for a period of 18 months or more, or if you do not complete construction within a reasonable time. The Tribe may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; you must commence construction of each such phase within 18 months of the projected and approved commencement date.

5-107. General permits.

This section applies to general permits. Obtaining coverage under a general permit constitutes compliance with the permitting requirements for existing sources and the preconstruction permitting requirements for new and modified sources of regulated air pollutants under this program.

(1) *What is a general permit?* A general permit is a minor source permit issued by the Tribe that applies to similar sources. The purpose of a general

permit is to simplify the permit application and issuance process for similar sources.

(a) General permit applicability shall be determined for the entire source.

(b) General permits shall cover an entire source.

(2) *When must I submit my application for coverage under a general permit?* The applications for coverage under a general permit must be submitted according to the timelines in § 5-105(1) of this program.

(3) *How will the Tribe issue general permits?* The Tribe will issue general permits as follows:

(a) A general permit may be issued for a category of sources that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar requirements governing operations, emissions, monitoring, reporting, and recordkeeping. “Similar in nature” refers to size, processes, equipment type, and operating conditions.

(b) A general permit must be issued according to the requirements for public participation in § 5-109, and the requirements for final permit issuance in § 5-110, and administrative and judicial review in § 5-113 of this program.

(c) Issuance of a general permit is considered final agency action with respect to all aspects of the general permit except its applicability to an individual source. The sole issue that may be appealed after an individual source obtains coverage under a general permit (See paragraph (6) of this section) is the applicability of the general permit to that particular source.

(4) *For what categories will general permits be issued?*

(a) The Tribe will determine which categories of sources are appropriate for general permits.

(b) General permits will be issued at the discretion of the Tribe.

(5) *What should the general permit contain?* The general permit must contain the permit elements listed in § 5-106(1) of this program. In addition, the general permit must contain the information listed in paragraphs (a) and (b) below.

- (a) Identification of the specific category of sources to which the general permit applies, including any criteria that your source must meet to be eligible for coverage under the general permit.
 - (b) Information required to apply for coverage under a general permit including, but not limited to, the following:
 - (i) The name and mailing address of the Tribe, to whom you must submit your application.
 - (ii) The procedure to obtain any standard application forms developed for this purpose by the Tribe.
 - (iii) The information that you must provide to the Tribe in your application to demonstrate that your source is eligible for coverage under the general permit.
- (6) *How do I obtain coverage for my source under a general permit?*
- (a) If your source qualifies for a general permit, you may apply to the Tribe for coverage under the general permit by submitting an application for coverage. The Tribe will develop permit application forms for your use.
 - (b) If your source qualifies for a general permit, you may begin construction or operation under the general permit upon submittal of your complete general permit application to the Tribe and after confirming that the Tribe has received the application. You will be subject to enforcement action if you operate or construct prior to general permit approval and your source, as operated or constructed, is determined not to qualify for the conditions and terms of the general permit.
 - (c) The Tribe shall act on your application for coverage under the general permit as expeditiously as possible, but no later than 6 months from the date the application is deemed complete.
 - (d) The Tribe must send you a letter approving or disapproving the request to operate or construct under a general permit. Such a letter is a final permit action for purposes of administrative review by the Environmental Commission (See § 5-113 of this program) only for the issue of whether your new or modified source qualifies for coverage under the general permit.
 - (e) Any source approved for coverage under a general permit may request to be excluded from the general permit by applying for a permit under § 5-105 of this program.

- (f) A source shall continue to comply with the general permit under which it is covered until the applicant has applied, and received approval from the Tribe, for coverage under a more recent general permit or an individual permit.

5-108. Permit Revisions and Modifications.

If you propose to make a physical or operational change at a source, you must determine whether the change qualifies as a modification (as defined in § 5-102(4)(p)) according to paragraph (1) below. If the physical or operational change is not a modification under this program, refer to permit revisions under paragraph (3) below.

(1) *How do I determine the change in allowable emissions from a physical or operational change at my source?* Determine the resulting change in allowable emissions in TPY of each regulated air pollutant after considering all increases and decreases from the change according to this paragraph, as applicable. A physical or operational change may involve one or more units. The total change in allowable emissions resulting from your proposed change would be the sum of the following:

- (a) For each new unit that is to be added, the emissions increase would be the potential to emit of the unit.

- (b) For each unit with an allowable emissions limit that is to be changed or replaced, the emissions change would be the allowable emissions of the unit after the change or replacement minus the allowable emissions before the change or replacement. This may be a negative value for a unit if the allowable emissions of the unit would be reduced as a result of the change or replacement.

(2) *What are my responsibilities for a permit modification?*

- (a) For the air pollutant being evaluated, if the proposed modification causes the source to be subject to review under an applicable major New Source Review program, the modification is not subject to this program.

- (b) Submit a permit modification application per § 5-105 of this program.

- (i) Permit modification application shall contain information on all affected emissions units for the modification.

- (ii) All permit conditions for units not affected by the permit modification shall be retained, unless changes are requested by the owner or operator.

- (c) The final permit issued shall replace the source's previous permit.
 - (d) Permit modifications shall meet all requirements of this program for permit issuance, including permit applications, review by the Tribe, and public participation.
- (3) *How do I make a modification at a source covered under a general permit?*
- (a) If, after the proposed change, the entire source will continue to qualify for coverage under the same general permit, under which it is already covered, then a notice of the change shall be submitted with the next annual report.
 - (b) If, after the proposed change, the entire source will not continue to qualify for coverage under the same general permit, under which it is already covered, then a permit under this program must be obtained for the entire source, including the proposed change, prior to making the change.
- (4) *What is a permit revision?*
- (a) A permit revision is used to make any of the following changes:
 - (i) Correct typographical errors;
 - (ii) Identify a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
 - (iii) Require more frequent or additional monitoring or reporting by the permittee;
 - (iv) Allow for a change in ownership or operational control of a source where the Tribe determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Tribe;
 - (v) Any change to a source's allowable emissions limits where such changes are not otherwise subject to review under major New Source Review or under this program per paragraph (2) of this section.

(vi) Incorporate any other type of change that the Tribe determines to be similar to those in paragraphs (i) through (v) above.

(b) A permit revision is not subject to the permit application, issuance, public participation, or administrative and judicial review requirements of this program.

(c) The permittee shall submit notice of any permit revisions to the Tribe along with the annual emission limit exceedances report or permit modification, whichever occurs first.

(d) The permittee shall be subject to appropriate enforcement action if any changes made under this section are later determined to not qualify as permit revisions. This may include multiple revisions made in such a way as to avoid a permit modification.

5-109. Public participation requirements.

Unless exempted in paragraph (5) of this section, below, this section applies to the issuance of permits for existing sources, new sources, modifications, and the initial issuance of general permits. It does not apply to decisions regarding whether a specific source is eligible for coverage under a general permit.

(1) *What permit information will be publicly available?* With the exception of any confidential information as defined in § 5-117 of this program, the Tribe must make available for public inspection the documents listed in paragraphs (a) through (f) below. The Tribe must make such information available for public inspection at the appropriate tribal office.

(a) All information submitted as part of an application for a permit.

(b) All other information submitted to the Tribe and all final inspection reports.

(c) Any additional information requested by the Tribe.

(d) The Tribe's analysis of the application and any additional information submitted by the applicant, including the BACT proposal and determination.

(e) For new source permits, the Tribe's analysis of the effect of the construction of the minor source or modification on ambient air quality.

(f) A copy of the draft permit or the decision to deny the permit with the justification for denial.

(2) *How will the public be notified and participate?*

(a) Before issuing a permit under this program, the Tribe must prepare a draft permit and must provide adequate public notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information, as set out in paragraphs (i) and (ii) below. The public notice must provide an opportunity for public comment and notice of a public hearing, if any, on the draft permit.

(i) The Tribe must mail a copy of the notice to the applicant and the tribal and State air pollution authorities having jurisdiction in areas outside of the Reservation potentially impacted by the source.

(ii) Depending on such factors as the nature and size of the applicant's source, local air quality considerations, and the characteristics of the population in the affected area, the Tribe must use appropriate means of notification, such as those listed in paragraphs (A) through (D) below.

(A) The Tribe must publish the notice in a newspaper of general circulation in the area affected by the source. Where possible, the notice may also be published in a tribal newspaper or newsletter.

(B) The Tribe may provide copies of the notice for posting at one or more locations in the area affected by the source, such as post offices, trading posts, libraries, tribal environmental offices, community centers, or other gathering places in the community.

(C) Additionally, the Tribe may mail or e-mail a copy of the notice to persons on a mailing list developed by the Tribe consisting of those persons who have requested to be placed on such a mailing list. The Tribe may also post the notice on its web site.

(D) The Tribe may employ other means of notification as appropriate.

(b) The notice required under paragraph (2)(a) of this section must include the following information at a minimum:

(i) Identifying information, including the applicant's name and location of the source;

- (ii) Type of permit applied for;
 - (iii) Locations and times of availability of the information (listed in paragraph (1) of this section) for public inspection; and
 - (iv) A statement that any person may submit written comments, a written request for a public hearing, or both, on the draft permit action. The Tribe must provide a period of at least 30 days from the date of the public notice for comments, and for requests for a public hearing; and
 - (v) The name, address, and telephone number of a contact person in the Tribe's office from whom additional information may be obtained and to whom comments can be submitted.
- (3) *How will public comment be received, and will there be a public hearing?*
- (a) Any person may submit written comments on the draft permit and may request a public hearing. These comments must raise any reasonably ascertainable issue with supporting arguments by the close of the public comment period (including any public hearing). The Tribe must consider all comments in making the final decision. The Tribe must keep a record of the commenters and of the issues raised during the public participation process, and such records must be available to the public.
 - (b) The Tribe must extend the public comment period under paragraph (2) of this section to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.
 - (c) A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised at the hearing.
 - (d) The Tribe must hold a hearing whenever there is, on the basis of requests, a significant degree of public interest in a draft permit. The Tribe may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. The Tribe must provide notice of any public hearing at least 30 days prior to the date of the hearing. Public notice of the hearing may be concurrent with that of the draft permit, and the two notices may be combined. Reasonable limits may be set upon the time allowed for oral statements at the hearing. An applicant may request a public hearing at any time during the permit review process.
 - (e) The Tribe must make a tape recording or written transcript of any hearing available to the public.

(4) *What is the Tribe's process for reviewing comments and issuing final permits?*

(a) After the close of the public comment period, the Tribe will review all comments received and will either prepare a final permit pursuant to § 5-110(1) or deny the application.

(b) A final permit will be subject to administrative and judicial review as set out in § 5-113 of this program.

(c) The final permit will be issued pursuant to § 5-110(1).

(5) *What sources are exempt from the public participation requirements of this section?* The following sources are not subject to public participation requirements unless the Tribe determines that public participation is warranted pursuant to paragraph (6) of this section:

(a) Sources seeking coverage under a general permit; or

(b) Sources with potential emissions prior to emission control reductions, where the regulated air pollutant emitted in the greatest amount is less than 50 tpy.

(6) *What factors will the Tribe consider in determining when public comment is warranted?* Sources for which a permit is required but for which public comment is not required by paragraph (5) of this section are exempt from public comment requirements unless the Tribe determines that public comment is warranted. In making such determinations, the Tribe shall take into consideration the duration of the operation, its location, the nature and projected amount of emissions, anticipated public concern, and other relevant factors.

5-110. Final permit issuance.

(1) *How will final action occur, and when will my permit become effective?*

(a) After decision on a permit, the Tribe must notify you of the decision, in writing, and if the permit is denied, of the reasons for such denial.

(b) If the Tribe issues a final permit to you, it must make a copy of the permit available at all of the locations where the draft permit was made available.

(c) The Tribe must provide public notice of the final permit decision in the same manner and to the same persons as the notice of draft permit was provided to ensure that the affected community, general public, and

any individuals who commented on the draft permit have reasonable access to the decision and supporting materials.

(d) A final permit becomes effective immediately upon permit issuance, unless a later effective date is specified in the permit.

(e) Except as provided in paragraphs (f) and (g) below, final permits shall be issued within 120 days of the completeness determination.

(f) A public hearing or other good cause may increase the time required to issue a final permit.

(g) Permits are effective subject to appeal under § 5-113(1) of this program. Operators assume the risk of proceeding before the appeal period expires. The Tribe shall not be liable for costs incurred by operators in reliance upon a final permit.

(2) *For how long will the Tribe retain my permit-related records?* The records, including any required applications for each permit or modification, must be kept by the Tribe for not less than 5 years.

(3) *What is the administrative record for each final permit?*

(a) The Tribe must base final permit decisions on an administrative record consisting of:

(i) The application and any supporting data furnished by the applicant;

(ii) The draft permit or notice of intent to deny the application;

(iii) Other documents in the supporting files for the draft permit that were relied upon in the decision making;

(iv) All comments received during the public comment period, including any extension or reopening;

(v) The tape or transcript of any hearing(s) held;

(vi) Any written material submitted at a hearing;

(vii) Any new materials placed in the record as a result of the Tribe's evaluation of public comments;

(viii) The final permit; and

(ix) Other documents in the supporting files for the final permit that were relied upon in the decision making.

(b) The additional documents required under paragraph (3)(a) of this section should be added to the record as soon as possible after their receipt or publication by the Tribe. The record must be complete on the date the final permit is issued.

(c) Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph (3)(a) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in that file.

5-111. Reopenings.

(1) *Can my permit be reopened?* Your permit can be reopened according to the following procedures:

(a) Any person (including the permittee) may petition the Tribe to reopen a permit for cause, or the Tribe may commence a permit reopening on its own initiative. The Tribe may not reopen a permit for cause unless it contains a material mistake or fails to assure compliance with applicable requirements. All requests must be in writing and must contain reasons supporting the request.

(b) If the Tribe decides the request is not justified, the Tribe must send the requestor a brief written response giving a reason for the decision. Denials of requests for reopening are not subject to public notice, comment, or hearings. Denials by the Tribe may be informally appealed to the Environmental Commission by a letter briefly setting forth the relevant facts, per § 5-113(1). The Environmental Commission may direct the Tribe to begin permit opening proceedings. The appeal must be considered denied if the Environmental Commission takes no action within 60 days after receiving it. This informal appeal is, under 42 U.S.C. § 307, a prerequisite to seeking judicial review of Tribal action in denying a request for reopening.

(c) If the Tribe decides the request is justified and that cause exists to reopen a permit, it shall initiate proceedings to reopen the permit.

(d) The permittee may informally appeal the decision of the Tribe to reopen a permit to the Environmental Commission following the procedures in § 5-113(1).

(2) *Notification.* The Tribe shall provide notice of intent to reopen a permit. Notice shall be provided by certified mail at least 30 days before the date on which the permit is to be reopened, except that the Tribe may provide less advance notice in the case of an emergency. The notice shall state that the permittee may, within 30 days of receipt, or in less time in the case of an emergency, submit comments or request a hearing on the proposed permit reopening.

5-112. Permit Termination.

(1) *When can a permit be terminated?* A permit, or an authorization to operate under a general permit, may be terminated when:

- (a) The permittee has been in significant or repetitious noncompliance with the permit terms or conditions;
- (b) The permittee has exhibited a history of willful disregard for environmental laws of any tribal or state authority, or of the United States;
- (c) The permittee has knowingly misrepresented a material fact in any application, record, report, plan, or other document filed or required to be maintained under the permit;
- (d) The permittee falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the permit;
- (e) The permittee fails to pay required fees;
- (f) The Tribe has found that cause exists to terminate the permit;
- (g) The permittee requests permit termination because the source is no longer in operation or no longer meets the definition of minor source and those facts are confirmed by the Tribe.

(2) *Notification.* The Tribe shall provide notice of intent to terminate a permit. Notice shall be provided by certified mail at least 30 days before the date on which the permit is to be terminated, except that the Tribe may provide less advance notice in the case of an emergency. The notice shall state that the permittee may, within 30 days of receipt, or in less time in the case of an emergency, submit comments, request a hearing on, or appeal the pending permit termination pursuant to § 5-113(1) of this section.

5-113. Administrative and Judicial Review.

Can permit decisions be appealed? Permit decisions may be appealed according to the following provisions:

(1) Final decisions in permit appeals filed under this program, including informal appeals of denials of requests for modification, revocation and re-issuance, or termination of permits under this program shall be made by the Environmental Commission. An appeal directed to the Tribe, rather than to the Environmental Commission, will be forwarded to the Environmental Commission for consideration.

(2) Within 30 days after a final permit decision has been issued by the Tribe, an applicant, any person who filed comments on the draft permit or participated in the public hearing and is aggrieved by a final permit decision or inaction of the Tribe, and any other person who could obtain judicial review of that action under applicable law may petition the Environmental Commission to review any condition of the permit decision. Any person who failed to file comments and failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent that the changes from the draft to the final permit or other new grounds were not reasonably foreseeable during the public comment period on the draft permit. The 30-day period within which a person may request review under this section begins when the Tribe has fulfilled the notice requirements for the final permit decision, unless a later date is specified in that notice.

(3) The petition must include a statement of the reasons supporting the review, including a demonstration that any issues identified were raised during the public comment period (including any public hearing) to the extent required by these regulations, unless the petitioner demonstrates that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period, and, when appropriate, a showing that the condition in question is based on:

- (a) A finding of fact or conclusion of law that is clearly erroneous; or
- (b) An exercise of discretion or an important policy consideration that the Environmental Commission should, in its discretion, review.

(4) The Environmental Commission may also decide on its own initiative to review any condition of any permit issued under this program.

(5) If review of a final permit decision is requested, the terms and conditions of the permit decision will remain in effect unless for good cause shown by petitioner, including a showing of irreparable harm, the Environmental Commission makes the determination that the permit decision shall be stayed.

(6) Within 60 days following the filing of the petition for review, the Environmental Commission must issue an order either granting or denying the petition for review. The appeal must be considered denied if the Environmental Commission takes no action within this time. To the extent review is denied, the

conditions of the final permit decision become final action. If the Environmental Commission grants review in response to requests under paragraph (2) or (4) of this section, public notice must be given as provided in § 5-109(2) of this program. Public notice must set forth a briefing schedule for the appeal and must state that any interested person may file an amicus brief. If the Environmental Commission denies review, the permit applicant and the person(s) requesting review must be notified through means that are adequate to assure reasonable access to the decision, which may include mailing a notice to each.

(7) A petition to the Environmental Commission under paragraph (2) of this section is, under 42 U.S.C. § 307(b), a prerequisite to seeking judicial review of the final action.

(8) For purposes of judicial review, final action occurs when a final permit is issued or denied by the Tribe and Environmental Commission review procedures are exhausted as follows:

(a) When the Environmental Commission issues notice to the parties that review has been denied;

(b) When the Environmental Commission issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(c) Upon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Commission's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(9) Motions to reconsider a final order must be filed within 10 days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision must be directed to, and decided by, the Environmental Commission. Motions for reconsideration directed to the Tribe, rather than to the Environmental Commission, will be forwarded to the Environmental Commission for consideration. A motion for reconsideration may request a stay, but will not automatically stay the effective date of the final order unless specifically so ordered by the Environmental Commission.

(10) For purposes of this section, time periods are computed as follows:

(a) Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event.

(b) Any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event, except as otherwise provided.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day.

(d) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days must be added to the prescribed time.

5-114. Emergency Situations.

(1) If replacement of an emission unit located at a source is necessitated due to an emergency, then the unit may be replaced upon receipt of notification by the Tribe.

(a) Notification to the Tribe shall include the unit being replaced, the nature of the emergency, the anticipated replacement equipment, and if the anticipated replacement will be covered under a permit modification, permit revision, or alternative operating scenario.

(b) A permit modification shall be submitted within 30 days of commencing construction to replace the unit if the replacement unit(s) trigger a modification under § 5-108 of this program.

(c) Replacements covered under an alternative operating scenario shall follow the alternative operating scenario requirements in the permit.

(d) Replacements that do not require a modification and are not covered under an alternative operating scenario shall submit a notice of permit revision within 30 days of commencing construction to replace the unit.

(e) Temporary replacement units may be used, but only for that period of time that is agreed upon by the Tribe in writing, including email, until a permanent unit can be installed.

(2) *Affirmative Defense.* An emergency, as defined in this program, constitutes an affirmative defense to an action brought for noncompliance with relevant technology-based emission limitations if the permittee demonstrates through contemporaneous operating logs or other relevant evidence that:

(a) an emergency occurred and the permittee can identify the cause(s) of the emergency;

- (b) the permitted source was being properly operated at the time;
 - (c) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and
 - (d) the permittee reported the emergency to the Tribe in compliance with § 5-106(1)(e)(iii) and (v) of this program.
- (3) *Burden of Proof.* In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency bears the burden of proof.
- (4) *Other Applicable Requirements.* This provision is in addition to any emergency or upset provision contained in any applicable requirement.

5-115. Fees.

- (1) *Who is required to pay fees?* If you are subject to this program under § 5-103 of this program, then you must pay fees as set forth in the following sections. Such fees shall be charged to recover the direct and indirect costs incurred by the Tribe in processing, permit applications, issuing permits, and in conducting a compliance monitoring and enforcement program.
- (2) *How do I pay my fee?* Your fee shall be remitted in the form of a money order, bank draft, certified check, corporate check, or electronic funds transfer payable to the Southern Ute Indian Tribe, Attn: Air Quality Program - Minor Source Program and sent or delivered to the Tribe c/o Environmental Programs Division, P.O. Box 737 MS# 84, Ignacio, Colorado 81137, or by hand to 116 Mouache Drive, Ignacio, Colorado.
- (3) *Permit application fee.*
- (a) The fee for filing a minor source permit application for an existing, new, or modified source shall be based upon the regulated air pollutant for which the affected emissions units have the greatest potential to emit as follows:
 - (i) \$[TBD] for sources with potential emissions, without controls, less than 50 tpy;
 - (ii) \$[TBD] for sources with potential emissions, without controls, greater than or equal to 50 tpy and less than 100 tpy;
 - (iii) \$[TBD] for sources with potential emissions, without controls, greater than or equal to 100 tpy and less than 250 tpy;

- (iv) \$[TBD] for sources with potential emissions, without controls, greater than or equal to 250 tpy;
 - (v) Sources applying for coverage under a general permit shall pay an application fee of 50% of the applicable fee in (i) through (iv) above.
- (b) The permit application fee is due upon submittal of the permit application.
 - (c) The Tribe will not take action on a permit application until all assessed fees have been paid.
 - (d) The permit application fee shall apply without regard to whether a permit is issued, denied, withdrawn, or revoked.
- (4) *Emissions fee.* Emissions fees shall be paid by each owner or operator of a source subject to this program.
- (a) Emissions fees for sources required to be permitted under this program shall be \$[TBD] per ton of emissions, as calculated in paragraphs (c) through (e), and (j) below, for all fee pollutants, including fugitive emissions estimates, adjusted pursuant to paragraphs (h) and (i) below.
 - (b) No emissions fees, including initial and annual emission fees, shall be paid under this program for any emissions for which fees have been, or will be, paid under a current part 70 or part 71 operating permit.
 - (c) The emissions fees shall be calculated by multiplying the applicable per ton emissions fee set pursuant to paragraph (a) of this section times the total tons of emissions, as calculated in paragraphs (d) and (e) of this section, for each fee pollutant, including fugitive emissions estimates.
 - (i) Emissions of any regulated air pollutant that are already included in the fee calculation under another category of regulated air pollutant, such as a federally listed HAP that is already accounted for as a VOC or as PM10, shall be counted only once in determining the source's actual emissions.
 - (ii) The total annual fee due under this section shall be the greater of the applicable minimum fee as set according to § 5-115(5)(h) or the annual fees for all fee pollutants, including fugitive emissions, to the extent they are quantifiable, emitted from the source.

- (d) Initial Emissions fees
 - (i) Existing Sources
 - (A) Initial emissions fees for an existing source are due upon submittal of the source's initial permit application.
 - (B) Fees shall be based on the source's estimated actual emissions from the effective date of this program, as established by the Environmental Commission, to the source's permit application due date, according to § 5-105(1) of this program. The initial emission fees must be paid in full with the initial permit application. The source may submit prior payments according to paragraph (C) below.
 - (C) Sources shall have the option to pay initial emissions fees incrementally, as agreed upon with the Tribe, based on estimated actual emissions from the effective date of this program to any permit application deadline, established in § 5-105(1) of this program, that have not previously been paid for and occurs prior to the permit application deadline for the source.
 - (ii) New Sources—there is no initial emissions fee due upon submittal of a new source's permit application.
- (e) Annual Emissions Fees
 - (i) Annual emissions fees shall be paid as stated in paragraphs (ii) and (iii) below except as provided in paragraph (iv) below.
 - (ii) Existing Sources
 - (A) Annual emissions fees for existing sources shall be due no later than August 1st, following the anniversary of the initial application deadline, established in § 5-105(1) of this program.
 - (B) Annual emissions fees shall be based on actual emissions for the previous calendar year, except as indicated in paragraph (C) below.
 - (C) Annual emissions fees shall not include any emissions that have been included in a previous emissions fees payment.

(iii) New Sources

(A) Annual emissions fees for new sources shall be due no later than August 1st, following the source's anniversary of start-up of operations.

(B) Annual emissions fees for new sources shall be based on actual emissions for the previous calendar year, except as indicated in paragraph (C) below.

(C) The first annual emissions fee shall cover emissions from the date of startup of operation of the source through the end of the previous calendar year.

(iv) No fees shall be paid for any emissions emitted prior to the effective date of this program.

(f) Sources subject to this program shall complete and submit an annual fee calculation work sheet provided by the Tribe. The fee calculation work sheet shall require the operator or owner to submit a report of its actual emissions for the preceding calendar year and to compute fees owed based on those emissions. Fee payment of the full amount must accompany each annual fee calculation work sheet. All annual fee calculation worksheets shall be certified by an authorized representative consistent with § 5-104 of this program.

(g) For sources that have been issued a minor source permit, actual emissions shall be computed using compliance methods required by the most recent permit. If actual emissions cannot be determined using the compliance methods in the permit, the actual emissions should be determined using procedures approved by the Tribe.

(h) The Tribe may set a minimum fee for all sources required to have a permit under this program. A minimum fee shall only be established, upon approval of the Commission, if necessary for the program to remain self-sustaining.

(i) Subject to approval by the Commission, except adjustments made under paragraph (j) below, the Tribe may alter or adjust the above annual emissions and minimum fee(s) in dollars per ton in the interest of program administration and/or to ensure that fees paid under this program are sufficient to cover minor source program costs, as those costs or the number or types of sources may change over time.

(j) The emissions and minimum fee(s) set under the preceding subsections shall be adjusted automatically at the beginning of each

calendar year to reflect any percentage increase by which the Consumer Price Index for the most recent year exceeds the Consumer Price Index for the preceding year.

(k) Pursuant to its rulemaking procedures, three years after program implementation, the Environmental Commission shall conduct an initial review of the fees assessed under this section. Subsequent reviews of fees shall be conducted in accordance with the schedule set forth in § 5-118 of this program.

(l) Fee assessment errors shall be corrected upon discovery by the Tribe.

(i) If the Tribe determines that an operator or owner has completed the fee calculation work sheet incorrectly, the Tribe shall bill the applicant for the corrected fee or credit overpayments to the operator's or owner's account.

(ii) Each operator or owner notified by the Tribe of additional amounts due shall remit full payment within 30 days of receipt of an invoice from the Tribe.

(iii) An owner or operator of a minor source who thinks that the assessed fee is in error shall, within 30 days, provide a written explanation of the alleged error to the Tribe along with the assessed fee. The Tribe shall, within 30 days of receipt of the correspondence, review the data to determine whether the assessed fee was in error. If an error was made, the overpayment shall be credited to the account of the operator or owner.

5-116. Enforcement Authority.

Pursuant to the enforcement authority enumerated in P.L. 108-336 and applicable provisions of the Clean Air Act and its implementing regulations, the Tribe has the authority to conduct inspections of any property, premises or place within the Reservation with respect to any actual, suspected, or potential source of air pollution or for ascertaining compliance or noncompliance with any applicable requirements, and the following authority to prevent and address violations of this program:

(1) *Civil Action.* To bring a civil action for declaratory or injunctive relief immediately and effectively against any person who fails to comply with terms of a permit or any program requirement, including permit conditions, or is presenting an imminent and substantial endangerment to the public health or welfare, or the environment; without the necessity of a prior revocation of the permit.

(2) *Civil Penalties and Damages.* To assess or sue to recover in court civil penalties or recover civil damages according to the following:

(a) Civil penalties or damages assessed, sought, or agreed upon by the Tribe under this section shall be appropriate to the violation;

(b) These penalties or damages shall be separately recoverable in amounts of up to \$10,000 per day per violation;

(c) Civil penalties or damages shall be recoverable for the violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or orders issued by the Tribe. Mental state shall not be included as an element of proof for civil violations.

(3) *Criminal Enforcement.* The Tribe may exercise criminal enforcement in those situations in which it has jurisdiction.

(4) *Burden of Proof.* The burden of proof and degree of knowledge or intent required for establishing violations under this § 5-112 of this program shall be no greater than the burden of proof or degree of knowledge or intent required under the Clean Air Act.

5-117. Confidentiality.

(1) *Submittal.* An applicant or permittee who submits material to the Tribe under a claim of confidentiality:

(a) May submit the material separately;

(b) Shall precisely identify the material for which the confidentiality claim is asserted; and

(c) Shall provide sufficient supporting information to allow evaluation of that claim.

(2) *Eligibility.* All confidentiality claims made regarding material submitted to the Tribe under this part shall be evaluated under 40 CFR Part 2, Subpart B. Information which is emission data, a standard or limitation, or is collected pursuant to § 211(b)(2)(A) of the Clean Air Act is not eligible for confidential treatment, as provided in 40 CFR § 2.301(e).

(3) *Submittal to Commission.* The Tribe may require or allow an applicant or permittee to submit directly to the Commission a copy of such material for which

a confidentiality claim is asserted and shall be evaluated under 40 CFR § 70.5(a)(3).

(4) *Public Record.* All materials submitted to the Tribe and permits issued under this program, except to the extent determined confidential pursuant to this section, and all permits, are public records and not entitled to protection under § 114(c) of the Clean Air Act, 42 U.S.C. § 7414(c). If an applicant or permittee is required to submit information entitled to protection from disclosure under this part, the applicant or permittee may submit such information separately.

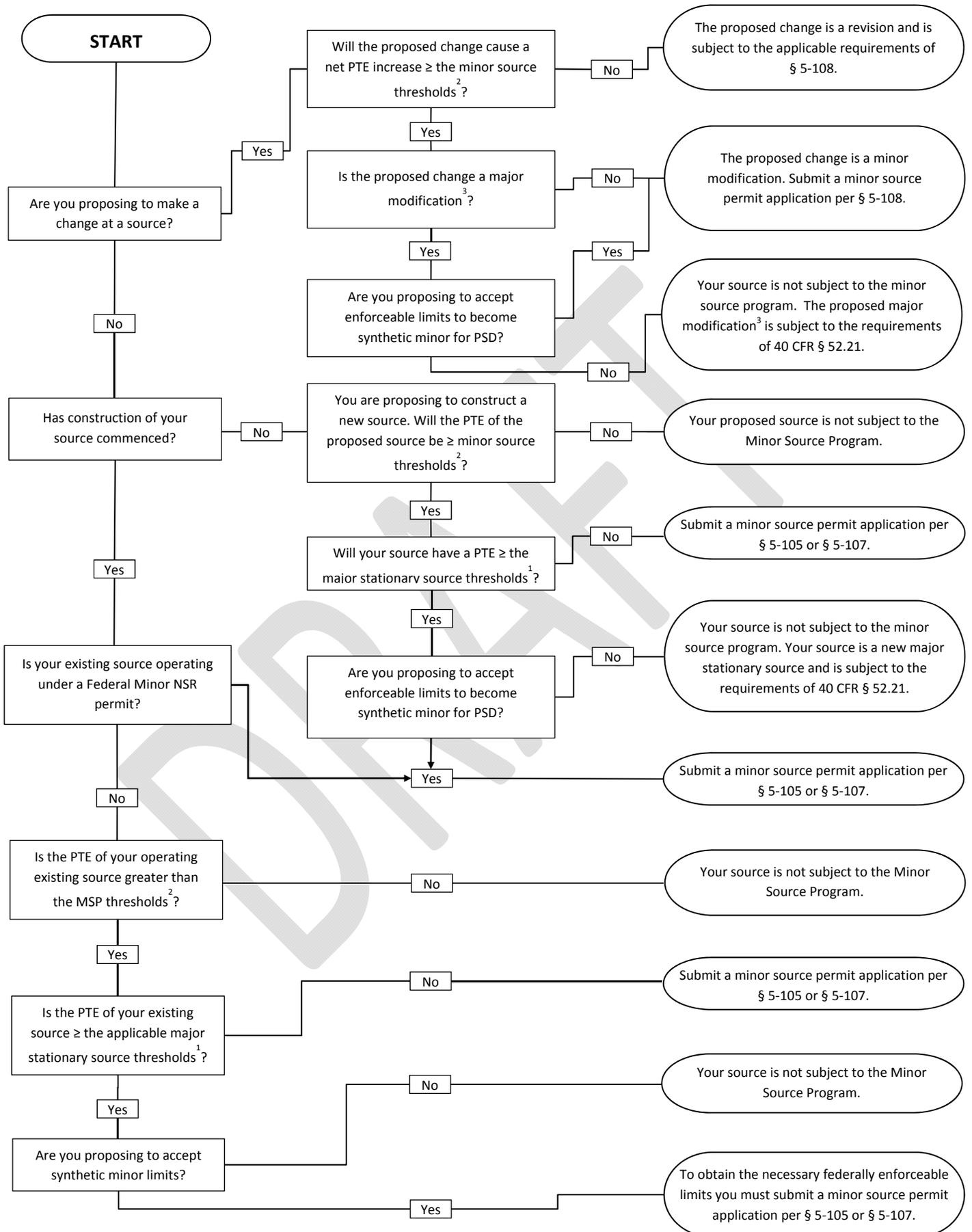
5-118. Program Revision.

Pursuant to its rulemaking procedures, the Environmental Commission shall review this program no less than once every five years to make any necessary changes.

DRAFT

Flow Chart 1: RAC Article 2, Part 4 - Minor Source Permitting Program Applicability

This flowchart is intended to help guide owners and operators in determining if they need to apply for a minor source permit. This is a guide only and does not replace use of the Minor Source Program regulations.



1 Major stationary source thresholds: Major source for PSD (Prevention of Significant Deterioration) (40 CFR §52.21)
 2 Minor source thresholds: potential emissions ≥ thresholds listed in Table 1 to §5-103.
 3 Major Modification as defined at 40 CFR §52.21(b)(2)