

1-104. Administration.

Pursuant to the authorities cited above, the Southern Ute Indian Tribe is responsible for the administration, implementation and enforcement of this code, subject to the Commission's review of appealable administrative actions by the Tribe.

1-105. Investigations and Information Requests.

- (1) . For the purpose (i) of developing or assisting in the development of any implementation plan, any standard of performance, or any emission standard, (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this Code –
 - (a) the Tribe may require any person, on a one-time, periodic or continuous basis, who owns or operates any emission source, who the Tribe believes may have information related to the purposes set forth in this Code, or who is subject to any requirement of this Code to—
 - (i) establish and maintain records and reports; install, use, and maintain monitoring equipment; use audit procedures or methods; keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical, as determined by the Tribe;
 - (ii) sample emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Tribe shall prescribe);
 - (iii) submit compliance certifications in accordance with subsection (3) of this section; and
 - (iv) provide such other information as the Tribe may reasonably require relating to emissions of the source or to any investigation authorized by this Code;
 - (b) the Tribe, through its authorized representatives, upon presentation of credentials, has the power to enter and inspect any property, premises, or place for the purpose of investigating any actual, suspected, or potential source of air pollution or ascertaining compliance with any requirement of this Code or any order or permit, or term or condition thereof, issued or promulgated pursuant to this Code; and the Tribe may, at reasonable times, have access to and copy any record, inspect any monitoring equipment or method, or sample any emissions required pursuant to this Code. Any information relating to secret processes or methods of manufacture or production obtained in the course of the inspection or

investigation may be kept confidential in accordance with 2-124; except that emission data shall not be withheld from the Tribe as confidential. The Tribe shall promptly furnish a duplicate of any analytical report or observation of an air pollutant to the person who is suspected of causing such air pollution.

- (c) the Tribe shall in the case of any person who is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, and (E) such other facts as the Tribe may require. Submission of a compliance certification shall in no way limit the Tribe's authorities to investigate or otherwise implement this Code.

1-106. Air Pollution Emergencies Endangering Public Health or Welfare on the Reservation.

- (1) Whenever the Tribe determines, after investigation, that any person is either engaging in any activity involving a significant risk of air pollution or is discharging or causing to be discharged into the atmosphere, directly or indirectly, any air pollutants and such activity or discharge either (1) constitutes a clear, present, and immediate danger to the environment or to the health of the public, or that any such activity or discharge of air pollutants, if permitted to continue unabated, will result in a condition of clear, present, and immediate danger to the health of the public, or (2) does not constitute a clear, present, and immediate danger to the health of the public, but is of such a nature as to cause extreme discomfort or that it is an immediate danger to the welfare of the public because such pollutants make habitation of residences or the conduct of businesses subjected to the pollutants extremely unhealthy or disruptive, the Tribe shall:
 - (a) Issue a written cease-and-desist order to said person requiring immediate discontinuance of such activity or the discharge of such pollutant into the atmosphere, and, upon receipt of such order, such person shall immediately discontinue such activity or discharge; or
 - (b) Apply to the United States District Court for the District of Colorado, in accordance with the IGA and Public Law No. 108-336, for a temporary restraining order, temporary injunction, or permanent injunction as provided for in the federal rules of civil procedure; or
 - (c) Both issue such a cease-and-desist order and apply for any such restraining order or injunction.

- (2) **Other Incidental Powers.** The Tribe may exercise all incidental powers necessary to carry out the purposes of this Code.

1-1075. Enforcement.

In accordance with the IGA and Public Law No. 108-336, the Tribe and Commission shall enforce compliance with this Code including, if necessary, through a civil action for declaratory or injunctive relief, or for other orders in aid of enforcement, in the United States District Court for the District of Colorado. Appealable administrative actions taken by the Tribe shall be subject to review in accordance with the adjudicatory procedures contained in the Commission's Procedural Rules.

1-1086. Severability and Preservation of Rights.

- (1) **Severability.** If any provision of this code, or the application of any provision of this code to any person or circumstance, is held invalid, the remainder of this code and the application of such provision to other persons or circumstances shall remain unaffected.
- (2) **Preservation of rights.** It is the purpose of this code to provide additional and cumulative remedies to prevent, abate, and control air pollution on the Southern Ute Indian Reservation. Nothing contained in this code shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, nor shall any provisions of this part or any act done by virtue thereof be construed as preventing the Tribe, Commission, or individuals from the exercise of their rights under the common law or statutory law to suppress nuisances or to abate pollution, provided however, no action shall be inconsistent with the CAA and this code.